

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
)
MR. JUSTICE KOEHNEN) FRIDAY, THE 29th
) DAY OF OCTOBER, 2021

B E T W E E N:



AMERICAN GENERAL LIFE INSURANCE COMPANY,
LEXINGTON INSURANCE COMPANY, AND
THE VARIABLE ANNUITY LIFE INSURANCE COMPANY

Applicants

- and -

SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658
ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH
HOLDINGS INC., 100 COLBORNE HOLDINGS INC., 240 OLD
PENETANGUISSH HOLDINGS INC., GROSS PROPERTIES INC., 180 VINE
PURCHASER INC., AND 2413667 ONTARIO INC.

Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,
c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**ORDER
(Approval of Broker Engagement, Sale Process and Ancillary Matters)**

THIS MOTION, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “A”** (collectively with the leases related thereto, the “**Real Property Assets**”) of the Appointment Order granted on June 29, 2021 (the “**Appointment Order**”) of: (i) Southmount Healthcare Centre Inc. (formerly Carriage Gate Group Inc.), 180 Vine Inc. (“**Vine Co.**”), 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the “**Legal Owners**”) acquired for, or used in relation to the Legal

Owners' business, including any interest held by Vine Co. to which Her Majesty the Queen in Right of Ontario (the "**Crown**") may have rights and any interest in the applicable real property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the "**Legal Owners' Property**"), and (ii) 180 Vine Purchaser Inc., Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "**Beneficial Owners**", and together with the Legal Owners, the "**Debtors**"), but solely in respect of all of the Beneficial Owners' right, title and interest in and to the Legal Owners' Property, including the Real Property Assets and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (the "**Beneficial Owners' Property**" and together with the Legal Owners' Property, the "**Property**") for an Order, among other things:

- (i) approving the broker listing agreement dated as of October 20, 2021 (the "**Broker Engagement Agreement**") among the Debtors and CBRE Limited (the "**Broker**") and the engagement of the Broker as exclusive real estate broker in accordance with the terms therein;
- (ii) approving the proposed sale process set out at Schedule "A" hereto (the "**Sale Process**");
- (iii) sealing Confidential Appendices "A", "B" and "C" (collectively, the "**Confidential Appendices**") to the Receiver's First Report to the Court dated October 21, 2021 (the "**First Report**"); and
- (iv) approving the Lease Termination Settlement (as defined below),

was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver's Notice of Motion, the First Report and the appendices thereto, the affidavit of Nancy Thompson sworn October 26, 2021 (the "**Thompson Affidavit**"), and on hearing the submissions of counsel for the Receiver and the Applicants and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver's motion record as appears from the Thompson Affidavit:

SERVICE

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit be and are hereby

abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

ENGAGEMENT OF BROKER

2. **THIS COURT ORDERS** that the Broker Engagement Agreement, a redacted copy of which is attached as Appendix “C” to the First Report and an unredacted copy of which is attached as a Confidential Appendix “C” to the First Report, is hereby approved and (i) the Receiver is hereby authorized to execute, on behalf of the Debtors, such other ancillary agreements or documents as may be necessary or desirable in connection with the Broker’s mandate, and (ii) the Broker is authorized to act as the exclusive real estate broker to market the Property in accordance with the Sale Process.

SALE PROCESS

3. **THIS COURT ORDERS** that the Sale Process be and is hereby approved.

4. **THIS COURT ORDERS** that the Receiver and the Broker are hereby authorized and directed to perform their obligations under the Sale Process and to do all such things as are necessary or desirable to implement and carry out the Sale Process.

5. **THIS COURT ORDERS** that the Receiver and the Broker and their respective representatives and advisors shall have no corporate or personal liability in connection with conducting the Sale Process, save and except for any gross negligence or wilful misconduct on their part, as determined by this Court. Nothing in this Order shall derogate from the protections afforded to the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* (Canada) or the Appointment Order.

6. **THIS COURT ORDERS** that, in connection with the Sale Process and pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver and Broker are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or bidders and to their advisors, but only to the extent desirable or required (in the sole discretion of the Receiver) to negotiate and attempt to complete one or more sale transactions (each, a “**Transaction**”). Each prospective purchaser or bidder to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not

complete a Transaction, shall: (i) return all such information to the Receiver or Broker (as applicable); or (ii) destroy all such information that is not electronically stored and, in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser in any Transaction shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors or the Receiver, and shall return all other personal information to the Receiver or Broker (as applicable), or ensure that all other personal information is destroyed.

LEASE TERMINATION SETTLEMENT

7. **THIS COURT ORDERS** that the Minutes of Settlement between 2478658 Ontario Ltd. (by the Receiver) and Peterborough Regional Health Centre dated as of September 29, 2021, a copy of which is attached as Confidential Appendix “A” to the First Report and the settlement contemplated therein (the “**Lease Termination Settlement**”) are hereby approved and the Receiver is authorized to take or cause to be taken such steps and execute such additional documents as may be necessary or desirable for the performance thereof.

RECEIVER TERM SHEET

8. **THIS COURT ORDERS** that the Receiver is hereby authorized to execute an amending agreement with the Applicants, amending the definition of “Initial Term” in the Receiver Term Sheet (as defined in the Appointment Order) to “June 30, 2022” and that the Receiver’s Borrowings Charge (as defined in the Appointment Order) shall continue to secure all amounts owing pursuant to the Receiver Term Sheet, as amended, with the same priority provided for in the Appointment Order.

SEALING ORDER

9. **THIS COURT ORDERS** that the Confidential Appendices are hereby sealed and shall not form part of the public record.

GENERAL

10. **THIS COURT ORDERS** that the Receiver is at liberty to apply to the Court for advice and directions with respect to this Order and/or the Sale Process.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Receiver in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as may be necessary or desirable to give effect to this Order and to assist the Receiver in carrying out the terms of this Order.

RAJ

Schedule "A"
SALE PROCESS

Procedures for the Sale Process

Background

1. On June 29, 2021, pursuant to an application by American General Life Insurance Company, Lexington Insurance Company, and The Variable Annuity Life Insurance Company (collectively, the “**Applicants**”), KPMG Inc. was appointed as Receiver and Manager (in such capacity, the “**Receiver**”) of all of the Property (as defined in Schedule “A” hereto), pursuant to an Order of the Superior Court of Justice (Commercial List) (the “**Court**”) granted in receivership proceedings bearing Court File No. CV-21-00664273-00CL (the “**Receivership Proceedings**”).
2. On October 29, 2021, the Court granted an Order, approving a sale process in accordance with the terms and conditions set forth herein (the “**Sale Process**”) and the engagement of CBRE Limited as listing broker (in such capacity, the “**Broker**”).
3. The Sale Process is to be conducted by the Receiver, with the assistance of the Broker. The purpose of the Sale Process is to identify one or more purchasers of the Real Property Assets and any other Property (as defined and listed in Schedule “A” hereto) and to complete one or more transactions as contemplated herein. Set forth below are the procedures that shall govern the Sale Process and any transactions consummated as a result thereof.

Sale Process Overview and Timeline

4. The Sale Process procedures set forth herein describe: (i) the manner in which prospective bidders may gain or continue to have access to due diligence materials and information concerning the Property, including the Real Property Assets, (ii) the process for the receipt and negotiation of Non-Binding LOIs, Bids, Successful Bids and Binding Agreements (each as defined below), (iii) the process and criteria by which Qualified Bids (defined below) are determined, and (iv) the process and criteria by which a Qualified Bid may be evaluated and selected as a Successful Bid (defined below).
5. The Sale Process shall be implemented by the Receiver, with the assistance of the Broker.
6. The following table sets out a summary and approximate timeline of key milestones under this Sale Process, subject to any amendments by the Receiver pursuant to and in accordance with the terms herein (all capitalized terms are defined below):

Milestone	Anticipated Date / Timeline
Commencement of Sale Process	November 1, 2021
Commencement of Phase I (Portfolio) Marketing Period	November 1, 2021
Commencement of Phase II (Sub-Portfolio) Marketing Period	November 30, 2021
Determination of Initial Bid Deadline by the Receiver, and communication to prospective bidders (<i>on no less than 30 days’ notice</i>)	December, 2021
Initial Bid Deadline	To be determined by Receiver as set out above and paragraph 13 herein

Review of Non-Binding LOIs, selection of any Lead Bid(s) and determination by Receiver to proceed with a Qualified Bid Deadline	21 days following Initial Bid Deadline
Qualified Bid Deadline, if applicable (<i>on no less than 10 days' notice</i>)	Within 31 days following Initial Bid Deadline
Negotiation of Binding Agreement(s)	2 weeks following selection of Lead Bid (if applicable) or Qualified Bid Deadline (if applicable)
Satisfaction or waiver of due diligence conditions in Binding Agreement(s)	4 to 6 weeks following execution of such Binding Agreement(s) (exact timeline to be agreed upon therein)
Court approval of any Successful Bid(s)	As soon as reasonably practicable following satisfaction of any due diligence conditions in applicable Binding Agreement(s)
Closing of any Successful Bid(s)	As soon as reasonably practicable following Court approval

Marketing Period

Phase I (Portfolio) Marketing Period

7. The Broker, in consultation with the Receiver, will prepare a list of parties that may have an interest in a potential transaction to acquire the entire portfolio of the Real Property Assets (the “**Identified Portfolio Buyers**”). As soon as reasonably practicable following the commencement of the Sale Process, the Broker shall: (i) notify the Identified Portfolio Buyers and any other parties who reach out to the Broker or the Receiver and express an interest in acquiring the entire portfolio of Real Property Assets (together with the Identified Portfolio Buyers, the “**Known Portfolio Buyers**”) of the existence of the Sale Process, and invite the Known Portfolio Buyers to participate in the Sale Process in accordance with the terms of the Sale Process, (ii) market the entire portfolio of Real Property Assets on such social media platforms as the Broker, in consultation with the Receiver, deems advisable including, without limitation, LinkedIn, and (iii) take any other steps to advertise the Real Property Assets as the Receiver, in consultation with the Broker, deems appropriate.

8. A non-confidential marketing presentation prepared by the Broker, in consultation with the Receiver, (the “**Marketing Presentation**”) describing the opportunity to acquire the entire portfolio of Real Property Assets will be made available by the Broker to all Known Portfolio Buyers as soon as reasonably practicable following the commencement of the Sale Process.

Phase II (Sub-Portfolio) Marketing Period

9. The Broker, in consultation with the Receiver, will prepare a list of parties that may have an interest in a potential transaction to acquire less than the entire portfolio of Real Property Assets (the "**Identified Sub-Portfolio Buyers**"). As soon as reasonably practicable following November 30, 2021 (or such earlier date that the Receiver deems appropriate, in consultation with the Broker), the Broker shall: (i) notify local brokerage firms identified by the Broker (the "**Local Brokers**"), (ii) notify Identified Sub-Portfolio Buyers and any other parties who reach out to the Broker or the Receiver and express an interest in acquiring less than the entire portfolio of Real Property Assets (collectively, the "**Known Sub-Portfolio Buyers**" and together with the Known Portfolio Buyers, the "**Known Buyers**") of the existence of the Sale Process, and invite the Known Sub-Portfolio Buyers to express their interest and participate in the Sale Process in accordance with the terms of the Sale Process, (iii) erect "For Sale" signage in respect of any one or more Real Property Asset that the Broker may determine, (iv) list each Real Property Asset on the Multiple Listing Service (MLS) and (v) take any other steps to advertise the Real Property Assets as the Receiver, in consultation with the Broker, deem appropriate.

10. A non-confidential marketing brochure for each Real Property Asset describing the opportunity to acquire each Real Property Asset (each, a "**Brochure**") will be made available by the Broker to all Known Sub-Portfolio Buyers and Local Brokers as soon as practicable following November 30, 2021 (or such earlier date that the Receiver deems appropriate, in consultation with the Broker).

Access to Dataroom & Site Visits

11. In order for any party that is interested in participating in the Sale Process to: (i) participate in the Sale Process, (ii) be granted access to the electronic dataroom that contains confidential information concerning the Property, including the Real Property Assets (the "**Dataroom**"), and (iii) be provided with any other confidential information by the Broker or the Receiver, such party must deliver to the Receiver, an executed confidentiality agreement, in form and substance satisfactory to Receiver ("**Confidentiality Agreement**", with a party who executes a Confidentiality Agreement becoming a "**Potential Bidder**").

12. Potential Bidders shall be provided with access to the Dataroom, together with the Marketing Presentation, Brochures and such further information and marketing materials (collectively, the "**Marketing Materials**") as the Receiver or Broker may deem appropriate. The Receiver, Broker, Legal Owners and Beneficial Owners and their respective representatives and advisors make no representation or warranty as to the accuracy or completeness of any information provided to Potential Bidders, including the information contained in any Marketing Materials or the Dataroom. The Receiver and Broker will coordinate all reasonable requests from Potential Bidders for additional information and due diligence access to the Real Property Assets. The Receiver, Broker, Legal Owners and Beneficial Owners and their respective representatives and advisors are not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Property, whether provided during site visits or obtained from the Dataroom or otherwise.

Bidding Process

Initial Bid Deadline

13. The Receiver, in consultation with the Broker, will determine and designate an initial bid deadline (the "**Initial Bid Deadline**") and provide no less than 30 days' notice of same by:

- (a) Email and/or telephone to all Potential Bidders;
- (b) Email to all Known Buyers (other than Potential Bidders notified pursuant to subparagraph 13(a) above);
- (c) Updating any applicable social media and/or MLS postings; and
- (d) Publication in the Dataroom and the website established by the Receiver for the Receivership Proceedings.

Non-Binding LOIs & Bids

14. A Potential Bidder that wishes to make a formal offer to consummate a potential transaction must deliver a non-binding letter of intent ("**Non-Binding LOI**") to the Broker and the Receiver by sending an email attaching same to the email addresses set out for each in Schedule "A" hereto. A Non-Binding LOI shall only be considered a "**Bid**" (and such Potential Bidder submitting the Bid, a "**Bidder**") and reviewed by the Receiver in the Sale Process if it is received by the Broker and Receiver by no later than the Initial Bid Deadline, and meets the requirements set by the Receiver and/or the Broker, which shall include all of the following:

- (a) General Deal Structure: Clear identification of: (i) the Property (including Real Property Assets) proposed to be acquired (the "**Purchased Assets**"), (ii) any liabilities anticipated to be assumed, and (iii) the total proposed purchase price for the Purchased Assets (the "**Purchase Price**");
- (b) Material Conditions: Clear identification of all material conditions to closing that the Bidder may wish to impose and the process and expected timing for satisfaction of same;
- (c) Overview of Bidder: The identity and background of all parties submitting the Bid;
- (d) No Reliance: An acknowledgement and representation that the Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets and liabilities to be assumed; and (ii) has not relied upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied regarding the Purchased Assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith;
- (e) As is/Where is: A confirmation that the Purchased Assets to be acquired and liabilities to be assumed are to be acquired and assumed substantially on an "as, is, where is" and without recourse basis; and
- (f) Additional Information: Such other information as may reasonably be requested by the Receiver and/or the Broker.

Review of Non-Binding LOIs & Bids

15. The Receiver, in consultation with the Broker, will review each Non-Binding LOI. The Receiver and/or the Broker may request clarification of the terms of any Non-Binding LOI and, for greater certainty, may hold clarifying discussion with any Bidder regarding its Non-Binding LOI, including to request that such Bidder submit a revised and clarified Non-Binding LOI, provided the initial Non-Binding LOI was submitted by the Initial Bid Deadline.

16. As soon as reasonably practicable following the Initial Bid Deadline, the Receiver, in consultation with the Broker, will assess the Non-Binding LOIs received and determine which Non-Binding LOIs constitute Bids. To the extent that a Non-Binding LOI is not compliant with any one or more of the requirements specified in paragraph 14, the Receiver, in consultation with the Broker, may waive such non-compliance, in the Receiver's sole discretion.

17. Within 21 days of the Initial Bid Deadline, the Receiver, following consultation with the Broker may:

- (a) Select one or more non-overlapping Bids as a lead bid (a "**Lead Bid**"), if the Bidder submitting such Lead Bid is determined to be a Qualified Bidder and such Bid is determined to satisfy the requirements of a Qualified Bid set out in paragraph 19 (with the exception of it being irrevocable and binding, and provided that it has been submitted by the Initial Bid Deadline) and negotiate and settle the terms of Binding Agreement(s) with such Qualified Bidder(s).

- (b) Initiate a second round of bidding and request that two or more Bidders submit qualifications to become Qualified Bidders and submit a “**Binding Offer**” in the form of a markup of a form of purchase and sale agreement prepared by the Receiver (“**Form of Binding Agreement**”) and deliver a copy thereof, together with a blackline against the Form of Binding Agreement (or such other form of binding agreement that the Receiver, in its sole discretion, determines is satisfactory), by a deadline to be designated by the Receiver in consultation with the Broker, and communicated to such Bidders on no less than 10 days’ notice (the “**Qualified Bid Deadline**”), in which case the Receiver may, following consultation with the Broker, select any one or more non-overlapping Binding Offers as a successful bid and negotiate and settle the terms of Binding Agreement(s).

18. Any Binding Agreement that is settled in accordance with paragraph 17(a) and executed or any Binding Offer that is selected as a successful bid in accordance with paragraph 17(b) shall be a “**Successful Bid**”.

Qualified Bids

19. As soon as reasonably practicable following the Qualified Bid Deadline, the Receiver, in consultation with the Broker, will assess the Binding Offers received and determine which Binding Offers constitute Qualified Bids. A Binding Offer shall only be considered a “**Qualified Bid**” if it meets the requirements set by the Receiver and/or the Broker, which shall include all of the following:

- (a) Qualified Bidder: The Binding Offer is submitted by a Qualified Bidder (as defined and described below) and meets all of the criteria of a Bid as set out in paragraph 14;
- (b) Deadline: The Binding Offer is received by the Broker and Receiver by no later than the Qualified Bid Deadline;
- (c) Irrevocability: The Binding Offer is irrevocable for a period of not less than 5 days;
- (d) Identity of Sponsors: The identity of all parties that will be sponsoring or participating in the proposed transaction, including all direct and indirect principals of the Qualified Bidder and information about any sources of debt or equity capital sufficient for the Receiver to determine which individuals have a direct or indirect economic interest in the proposed transaction;
- (e) Approval: Evidence, in form and substance reasonably satisfactory to the Receiver, of corporate authorization and approval from the Qualified Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Binding Offer, which clearly identifies any anticipated shareholder, regulatory or other approvals outstanding (and the anticipated time frame and any anticipated impediments for obtaining such approvals);
- (f) Assumed Contracts: Clear identification of the contracts, agreements or other arrangements that are to be assumed by the Qualified Bidder;
- (g) Due Diligence: To the extent that the proposed transaction is conditional upon additional confirmatory due diligence, clear identification of the scope and nature of such confirmatory due diligence and timing for satisfaction of same;
- (h) Timeline to Closing: A timeline to closing with critical milestones; and
- (i) Additional Information: Such other information as may reasonably be requested by the Receiver and/or the Broker.

20. To the extent that a Binding Offer is not compliant with any one or more of the requirements specified in paragraph 19, the Receiver, in consultation with the Broker, may waive such non-compliance, in the Receiver’s sole discretion.

Qualified Bidder Requirements

21. The Receiver, in consultation with the Broker, shall assess each Bidder to determine whether such Bidder is likely to be able to consummate its proposed transaction (a “**Qualified Bidder**”), taking into account such factors as, without limitation, the Bidder’s financial wherewithal, availability of financing, existing market presence (if any), experience with comparable transactions to the proposed transaction and any other factors that may be relevant, in the sole discretion of the Receiver. The Receiver shall promptly notify any Bidder which has been determined to be a Qualified Bidder.

22. At any time during the Sale Process, the Receiver may, in consultation with the Broker, eliminate a Potential Bidder or Bidder from the Sale Process, including if: (i) such party does not submit a Bid by the Initial Bid Deadline, (ii) such party does not submit a Qualified Bid by the Qualified Bid Deadline (if applicable), or (iii) the Receiver determines that a previously designated Qualified Bidder ceases to meet the criteria of a Qualified Bidder. Any Potential Bidder or Bidder who is disqualified from the Sale Process will be notified as such by the Receiver, and shall (i) have its access to the Dataroom terminated, and (ii) no longer be entitled to further correspondence or updates regarding the Sale Process, in each case unless and until the Receiver determines, in its sole discretion, that the Bidder qualifies (or re-qualifies) as a Qualified Bidder.

Successful Bids

23. Evaluation criteria with respect to whether a Bid or Qualified Bid constitutes a Successful Bid may include, but are not limited to factors such as: (i) the Purchase Price and net value (including assumed liabilities and other obligations to be performed by the Qualified Bidder), (ii) the form of consideration being offered, including any Purchase Price adjustments and/or any non-cash consideration, (iii) whether there is a firm irrevocable commitment for financing or whether the Qualified Bidder has demonstrated access to sufficient capital resources to consummate its proposed transaction, (iv) the claims likely to be created by such bid in relation to other bids, (v) the counterparties to its proposed transaction, (vi) the terms of its proposed Binding Agreement, (vii) the scope, nature and anticipated length of any remaining due diligence that remains to be carried out, (viii) other factors affecting the speed, certainty and value of its proposed transaction (including any regulatory approvals required to close its proposed transaction), (ix) the Property and liabilities included or excluded from the bid, and (x) the likelihood and timing of consummating the proposed transaction.

Court Approval

24. The acceptance of the Successful Bid(s) by the Receiver will be subject to approval of the Court. The Receiver shall use reasonable efforts to apply to the Court for approval of any Successful Bid(s) as soon as practical following the determination by it of any such Successful Bid(s).

25. On closing of a Successful Bid, all overlapping Binding Offers (other than such Successful Bid) shall be deemed rejected by the Receiver as of the date of the closing of such Successful Bid.

Modification, Termination & Waiver

26. The Receiver shall have the right, at any time and in its sole discretion, to: (i) waive strict compliance with the terms of this Sale Process by any person (including missed deadlines or late submission of materials), and (ii) modify the procedures set out herein (including altering the deadlines set out herein), and/or adopt such other procedures that will better promote the sale of any part of the Property (or any portion thereof), provided that material modifications to, or the termination of, the Sale Process shall require Court approval. For certainty, any waiver of or amendments to the deadlines set out herein shall not constitute a material modification.

“As Is, Where Is”

27. Any sale of the Property will be on an “as is, where is” and without recourse basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, the Broker, the Legal Owners, the Beneficial Owners (as defined in Schedule “A” hereto) or their respective representatives or advisors, except to the extent otherwise expressly provided under a Binding Agreement.

Free of Any and All Claims and Interests

28. In the event of a sale of Purchased Assets, to the extent permitted by law, all of the rights, title and interests of the Legal Owners and Beneficial Owners in such Purchased Assets will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges and interests on or against such Purchased Assets (collectively, the “**Claims and Interests**”), other than those permitted encumbrances expressly set out in any applicable Binding Agreement, and such Claims and Interests are only to attach to the net proceeds of the sale of Purchased Assets (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof).

No Obligation to Conclude a Transaction

29. Neither the Receiver nor the Broker shall be under any obligation to (i) continue negotiations with any Qualified Bidder, and/or (ii) accept any Qualified Bid or other offer (including the highest or best offer), or to select any Successful Bid(s). Without limiting the generality of the foregoing and for greater certainty, the Receiver, in consultation with the Broker, shall have the discretion to determine that a Qualified Bid is not a Successful Bid, even if such Qualified Bid has the highest gross Purchase Price, having regard in all circumstances to the criteria set out in paragraph 23 above.

No Liability

30. The Receiver, Broker, Legal Owners and Beneficial Owners and their respective representatives and advisors shall have no liability or obligations whatsoever to any party or person in connection the Sale Process, including but not limited to arising from any rejection of any Bid, Qualified Bid or Binding Offer. No party or person shall have any entitlement for any reason (including in the event of any modification or termination of the Sale Process) to reimbursement for any costs or expenses incurred.

Notice

31. Any documents, notices, communication or deliverables to be provided to the Receiver or Broker hereunder shall be provided in accordance with and in the manner specified in Schedule “A” hereto.

General

32. The Receiver shall be at liberty, throughout the duration of the Sale Process, to consult with any mortgagee of Real Property Assets (including the Applicants) in respect of matters related to the Sale Process and provide such party with a copy of all Non-Binding LOIs, Binding Offers and Binding Agreements, provided that: (i) such party confirms to the Receiver in advance of such consultation and in writing that, neither it nor its affiliates, related parties or principles will be participating in the Sale Process as a Potential Bidder or Bidder, and (ii) the Receiver has reached confidentiality arrangements that are satisfactory to it with such party.

33. Nothing in this Sale Process or in any court order approving this Sale Process shall create any rights in any person other than the Receiver and the Broker.

34. All inquiries from parties interested in participating in the Sale Process (including any Potential Bidders) shall be directed to the Receiver or the Broker. For greater certainty, no party interested in

participating in the Sale Process (including any Potential Bidder) shall have any discussions regarding any transaction, Real Property Assets or other Property with representatives of the Legal Owners, Beneficial Owners or any tenants of any of the Real Property Assets without the advance written consent of the Receiver.

35. At any time during this Sale Process, the Receiver may apply to the Court for advice and directions with respect to the matters contemplated hereby.

Schedule "A" to Sale Process

Defined Terms:

Capitalized terms used but not otherwise defined in the Sale Process procedures shall have the following meanings:

"Beneficial Owners" means, collectively, 180 Vine Purchaser Inc., Gross Properties Inc. and 2413667 Ontario Inc.

"Binding Agreement" means a definitive and binding agreement of purchase and sale.

"Business Day" means a day, other than a Saturday or Sunday, on which banks are open for business in the City of Toronto.

"Legal Owners" means, collectively, Southmount Healthcare Centre Inc., 240 Old Penetanguish Holdings Inc., 100 Colborne Holdings Inc., 2478658 Ontario Ltd., 65 Larch Holdings Inc., 2009 Long Lake Holdings Inc. and 180 Vine Inc.

"Legal Owners' Property" means all of the assets, undertakings and properties, including the Real Property Assets of the Legal Owners, including any interest held by 180 Vine Inc. to which Her Majesty in Right of Ontario ("**Crown**") may have rights and any interest in any of the Real Property Assets conveyed by the Crown to 180 Vine Purchaser Inc.

"Property" means, collectively, all of the Legal Owners' Property and all of the Beneficial Owners' right, title and interest to the Legal Owners' Property, whether held directly or indirectly by the Beneficial Owners for themselves or for others.

"Real Property Assets" means the medical office buildings and other real property located at the following municipal addresses and the real property leases related thereto:

- 35 Upper Centennial Parkway, Hamilton Ontario
- 180 Vine Street South, St. Catharines Ontario
- 849 Alexander Court, Peterborough Ontario
- 2009 Long Lake Road, Sudbury Ontario
- 65 Larch Street, Sudbury Ontario
- 100 Colborne Street, Orillia Ontario
- 77 Wyandotte Street, Orillia Ontario (parking lot adjoining 100 Colborne Street)
- 240 Penetanguishene Road, Midland Ontario

Notice:

Any notice, document, communication or other deliverable permitted or required to be given under the Sale Process (including the submission of Non-Binding LOIs and/or any Binding Offers) shall be given by electronic mail to the below recipients, and shall be deemed to be sent: (i) on the day that it is sent, if it is sent prior to 5:00 pm (Toronto Time) on a Business Day, or (ii) on the next following Business Day, if it is sent after 5:00 pm (Toronto Time) on a Business Day, or on a non-Business Day.

TO THE RECEIVER:

KPMG INC.

Attention: Katherine Forbes / George Bourikas

Email: katherineforbes@kpmg.ca / gbourikas@kpmg.ca

TO THE BROKER:

CBRE Limited

Attention: Michael Bellissimo / Jordan Lunan

Email: Michael.Bellissimo@cbre.com / Jordan.Lunan@cbre.com

WITH A COPY TO:

Blake, Cassels & Graydon LLP

Attention: Aryo Shalviri / Chris Burr

Email: aryo.shalviri@blakes.com / chris.burr@blakes.com

AMERICAN GENERAL LIFE INSURANCE COMPANY, *et al.* - and -
Applicants

SOUTHMOUNT HEALTHCARE CENTRE INC., *et al.*
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding Commenced at Toronto

ORDER
(Approval of Broker Engagement,
Sale Process and Ancillary Matters)

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Lawyers for the Receiver