

Court File No.: CV-21-00665375-00CL

**FIFTH REPORT OF KPMG INC.,
IN ITS CAPACITY AS RECEIVER AND MANAGER OF
Victoria Avenue North Holdings Inc.**

FEBRUARY 23, 2023

Court File No.: CV-21-00665375-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**AMERICAN GENERAL LIFE INSURANCE COMPANY and
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.**

Applicants

AND

**VICTORIA AVENUE NORTH HOLDINGS INC.
and THE PARTIES LISTED ON SCHEDULE
“A”¹**

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

**FIFTH REPORT OF KPMG INC.
In its capacity as Receiver and Manager**

DATED FEBRUARY 23, 2023

¹ See Schedule “A” to the Appointment Order of Mr. Justice Koehnen granted on August 3, 2021.

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	PURPOSE OF REPORT.....	5
III.	QUALIFICATIONS & TERMS OF REFERENCE	6
IV.	STATUS OF PROCEEDINGS AND OCTOBER 14 TRANSACTION.....	7
V.	ACTIVITIES OF THE RECEIVER.....	7
VI.	INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS.....	9
VII.	INTERIM DISTRIBUTION.....	10
VIII.	RECEIVER’S CONCLUSION AND RECOMMENDATION	12

APPENDICES

APPENDIX “A” – Broker Engagement Extension Agreement

I. INTRODUCTION

1. On August 3, 2021 (the “**Receivership Date**”), upon application by American General Life Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the “**Applicants**”), KPMG Inc. (“**KPMG**”) was appointed as receiver and manager (the “**Receiver**”), pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act* R.S.O. 1990 c. C. 43, as amended, of (i) all of the assets, undertakings and properties, including the Real Properties (as defined in the Appointment Order) of Victoria Avenue North Holdings Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”), and (ii) all right, title and interest of any beneficial owners (the “**Beneficial Owners**”) in and to the Legal Owner’s Property and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (collectively, and together with the Legal Owner’s Property, the “**Property**”).
2. The Property primarily comprises the real property assets consisting of two (2) medical office buildings, located at 304 Victoria Avenue North in Hamilton, Ontario (the “**304 Victoria Building**”) and 414 Victoria Avenue North in Hamilton, Ontario (the “**414 Victoria Building**”) and together with the 304 Victoria Building, the “**Buildings**”) and their related real property leases (the “**304 Victoria Real Property Assets**” and the “**414 Victoria Real Property Assets**”, respectively, and collectively, the “**Real Property Assets**”).
3. Prior to its appointment as Receiver in these receivership proceedings (the “**Proceedings**”), KPMG filed a report dated July 26, 2021 (the “**Pre-Filing Report**”) to provide information to the Court in connection with the Applicants’ application for the Appointment Order.
4. On September 7, 2021, the Receiver filed a report (the “**First Report**”) with the Court in support of the Beneficial Owner Notification & Service Order (as defined below) and to provide an update on the status of these Proceedings generally.
5. On September 14, 2021, the Court granted an order (the “**Beneficial Owner Notification & Service Order**”): (i) authorizing and directing the Receiver to undertake the Notification Procedure (as defined in the First Report) to obtain contact information for Beneficial Owners, and (ii) approving a service protocol in respect of the Beneficial Owners, effective as of September 24, 2021.

6. On October 29, 2021, the Court granted an order (the “**Sale Process Order**”) approving, among other things:
 - (a) the broker listing agreement dated October 20, 2021 (the “**Broker Engagement Agreement**”), and the engagement of CBRE Limited (“**CBRE**”) as exclusive real estate broker for the Real Property Assets;
 - (b) a sale process for the Real Property Assets, as appended to the Sale Process Order in these Proceedings;
 - (c) the sealing of the confidential appendices to the Receiver’s second report dated October 22, 2021 (the “**Second Report**”); and
 - (d) the extension of the term of the Receiver’s term sheet dated as of July 9, 2021 (the “**Receiver Term Sheet**”), pursuant to which the Receiver had borrowed certain amounts to fund these Proceedings, to June 30, 2022.
7. As detailed in the First Report, on June 29, 2021, upon application by American General Life Insurance Company and affiliated secured lenders, KPMG was appointed as receiver and manager (in such capacity, the “**Southmount Et Al. Receiver**”) of, among other things, the properties of Southmount Healthcare Centre Inc. and certain other entities (collectively, “**Southmount Et Al.**”), pursuant to an order of this Court granted in proceedings bearing Court file no. CV-21-00664273-00CL. The primary assets of the respondents in the Southmount Et Al. receivership proceedings were seven (7) medical office buildings in the same asset class as the Buildings subject to these Proceedings (the “**Southmount Et Al. Real Property Assets**”). Southmount Et Al. are affiliated with the Legal Owner, and they are all indirect subsidiaries of Gross Capital Inc. (“**Gross Capital**”), which as detailed in the First Report, was assigned into bankruptcy on June 25, 2021. The Receiver understands that historically the Legal Owner and Southmount Et Al. were each managed by representatives of Gross Capital.
8. At a hearing before the Court on May 24, 2022 (the “**May 24 Hearing**”), the Court granted an approval and vesting order in these Proceedings, among other things, approving a sale transaction (the “**May 24 Transaction**”) in respect of the Real Property Assets, and authorizing and directing the Receiver to take such steps as necessary to complete same.
9. Also at the May 24 Hearing, the Court granted an order in these Proceedings, among other things:

- (a) authorizing and directing the Receiver to pay CBRE its brokerage commission in connection with the May 24 Transaction, upon closing thereof;
 - (b) authorizing KPMG, in its capacity as bankruptcy trustee of the Legal Owner and certain of the Southmount Et Al. Legal Owners to administer the procedural matters relating to the bankruptcy proceedings of the Legal Owner and the applicable Southmount Et Al. Legal Owners on a consolidated basis;¹
 - (c) authorizing the Receiver to:
 - (i) transfer funding for costs associated with the bankruptcy proceedings of the Legal Owner as determined by the Receiver in consultation with the Applicants to KPMG, in its capacity as bankruptcy trustee;
 - (ii) repay the indebtedness owing to the Applicants pursuant to the Receiver Term Sheet from the net proceeds of the May 24 Transaction and any other funds in the possession of the Receiver; and
 - (iii) make one or more distributions to the Applicants from the net proceeds of the May 24 Transaction and any other funds in the possession of the Receiver, less a reserve to be determined and held back by the Receiver to fund, among other things, the costs of these Proceedings and ongoing operating expenses;
 - (d) approving the First Report, the Second Report, and the Third Report (as defined herein), and the Receiver’s activities described therein; and
 - (e) sealing the confidential appendices to the Third Report (as defined herein).
10. The Receiver filed a report dated May 13, 2022 (the “**Third Report**”) and a supplemental report dated May 20, 2022 (the “**Supplemental Report**”), in support of the relief sought at the May 24 Hearing.
 11. The May 24 Transaction did not close.
 12. At a hearing before the Court on October 14, 2022 (the “**October 14 Hearing**”), the Court granted an approval and vesting order in these Proceedings (the “**October 14 AVO**”), among other things, approving a sale transaction (the “**October 14 Transaction**”) in respect of the 304

¹ The Appointment Order already empowered (but did not obligate) the Receiver to bankrupt the Legal Owner.

Victoria Real Property Assets, and authorizing and directing the Receiver to take such steps as necessary to complete same.

13. Also at the October 14 Hearing, the Court granted an order in these Proceedings (the “**October 14 Distribution & Ancillary Relief Order**”), among other things:
 - (a) authorizing the Receiver to:
 - (i) extend the initial term under the Receiver Term Sheet to December 31, 2022; and
 - (ii) repay the indebtedness owing to the Applicants pursuant to the Receiver Term Sheet (the “**Receiver’s Borrowings**”) from the net proceeds of the October 14 Transaction (the “**Net Sale Proceeds**”) and any other funds in the possession of the Receiver;
 - (b) authorizing and directing the Receiver to pay CBRE its brokerage commission in connection with the October 14 Transaction, upon closing thereof;
 - (c) approving the Supplemental Report and the Fourth Report (defined herein), and the Receiver’s activities described therein; and
 - (d) sealing the confidential appendices to the Fourth Report.
14. The Receiver filed a report dated October 4, 2022 (the “**Fourth Report**”) in support of the relief sought at the October 14 Hearing.
15. At a hearing before the Court on February 8, 2023 (the “**February 8 Hearing**”), the Court granted an order (the “**Lift Stay Order**”) in various proceedings, including these Proceedings, the Southmount Et Al. receivership proceedings, and the Gross Capital bankruptcy proceedings, declaring (among other things) that:
 - (a) the stay of proceedings pursuant to the Appointment Order shall no longer operate in respect of the Action (as defined in the Lift Stay Order), which is based upon certain alleged false representations by Sheldon Gross and Mark Gross (former principals of Gross Capital) that allegedly induced the Moving Parties to invest in certain entities affiliated with Gross Capital; and
 - (b) the right of the Moving Parties (as defined in the Lift Stay Order) to commence and

continue to prosecute that action as against the Bankrupts or Receivership Respondents (each as defined in the Lift Stay Order) shall be for the purpose only of establishing the amount for which the Moving Parties are entitled to prove in the bankrupt estates or these Proceedings as an unsecured claim, such that, the enforcement of any judgement obtained by the Moving Parties against the Bankrupts or Receivership Respondents (each as defined in the Lift Stay Order) or their respective property remains stayed pending further Order of the Court.

16. The Receiver filed a report dated January 23, 2023 (the “**Responding Report**”, and together with the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Supplemental Report, and the Fourth Report, the “**Prior Reports**”) to provide the Court with information pertaining to the motion heard during the February 8 Hearing.
17. Electronic copies of the Prior Reports are available on the Receiver’s Website at: home.kpmg/ca/VictoriaHoldings (the “**Receiver’s Website**”).

II. PURPOSE OF REPORT

18. The purpose of this fifth report of the Receiver (the “**Fifth Report**”) is to provide this Court with information pertaining to:
 - (a) the status of these Proceedings to date, including the status and outcome of the October 14 Transaction;
 - (b) the Receiver’s activities since the date of the Fourth Report, including ongoing marketing and sale efforts in respect of the 414 Victoria Real Property Assets, and the extension of the term of the Broker Engagement Agreement, pursuant to an amending agreement dated as of January 31, 2023, (the “**Broker Engagement Extension Agreement**”), a copy of which is appended hereto as **Appendix “A”**;
 - (c) the Receiver’s interim statement of receipts and disbursements (the “**Interim SRD**”) for the period from the Receivership Date to and including January 31, 2023 (the “**Period**”);
 - (d) the Receiver’s proposed interim distribution to the Applicants from cash on hand comprising, among other things, the Net Sale Proceeds; and
 - (e) the Receiver’s recommendation that this Court grant an order:

- (i) approving the activities of the Receiver since the date of the Fourth Report, as set out in this Fifth Report; and
- (ii) authorizing the Receiver to issue the proposed interim distribution.

III. QUALIFICATIONS & TERMS OF REFERENCE

19. In preparing this Fifth Report and making the comments herein, the Receiver has been provided with, or has relied upon certain unaudited, draft, and/or internal financial information, the Legal Owner's records and financial information and information from other third-party sources (collectively, the "**Information**"). The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
20. Some of the Information referred to in this Fifth Report consists of financial forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
21. Certain Information referred to in this Fifth Report is based on estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and as a consequence no assurance can be provided regarding the forecasted or projected results. The reader is cautioned that the actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant.
22. The Receiver has prepared this Fifth Report in connection with a motion currently scheduled to be heard on March 2nd, 2023 (the "**March 2 Motion**"). This Fifth Report should not be relied on for other purposes.
23. The information contained in this Fifth Report is not intended to be relied upon by any prospective purchaser in any transaction with the Receiver.
24. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. STATUS OF PROCEEDINGS AND OCTOBER 14 TRANSACTION

25. The October 14 Transaction (which resulted in the sale of the 304 Victoria Real Property Assets) closed on December 6, 2022, following which, the Receiver proceeded to repay the Receiver's Borrowings in their entirety and pay the related brokerage commissions to CBRE, pursuant to the October 14 Distribution & Ancillary Relief Order.
26. The primary remaining assets in these Proceedings are the 414 Victoria Real Property Assets. As of the date of this Fifth Report, re-marketing efforts in respect of the 414 Victoria Real Property Assets are ongoing and the 414 Victoria Building is actively listed on MLS. The Receiver, in consultation with CBRE and the Applicants, continues to assess potential realization options and engage with interested parties.

V. ACTIVITIES OF THE RECEIVER

27. The Receiver's activities from the Receivership Date to the date of the Fourth Report are detailed in certain of the Prior Reports. The Receiver's activities since the date of the Fourth Report have included:
 - (a) engaging with CBRE in respect of the marketing of the 414 Victoria Real Property Assets, including evaluating and considering verbal and written offers received from interested parties for same;
 - (b) further extending of the term of the Broker Engagement Agreement to March 31, 2023, pursuant to an amending agreement dated as of January 31, 2023;
 - (c) liaising with Prime Real Estate Group Inc. in respect of various operational matters, including repairs and maintenance requirements, leasing and other tenant-related matters at each of the Buildings;
 - (d) liaising with tenants of the Buildings in respect of lease extensions, renewals, and new lease arrangements;
 - (e) reviewing and signing cheques for vendor payments;
 - (f) collecting rents from tenants of the Buildings;
 - (g) securing various short-term extensions of insurance coverage from the Legal Owner's insurance provider, as evidenced by binder letters from the Legal Owner's insurance

broker, the most recent of such extensions set to expire on February 28, 2023 and is set to be further extended;

- (h) monitoring cash flows and liquidity, and attending to various banking matters including reviewing monthly bank reconciliations;
- (i) reviewing and filing quarterly HST returns with Canada Revenue Agency (“CRA”), and responding to HST return examination requests from CRA;
- (j) attending the October 14 Hearing in respect of the Receiver’s motion seeking approval of the October 14 AVO and the October 14 Distribution & Ancillary Relief Order;
- (k) negotiating an amending agreement in connection with the October 14 Transaction which, among other things, provided for an additional non-material payment by the purchaser and an extension of the outside date of the October 14 Transaction to December 5, 2022 (which outside date was subsequently further extended to December 6, 2022 by mutual agreement);
- (l) closing the October 14 Transaction and filing the Receiver’s certificate with the Court confirming same, and attending to activities related to the October 14 Transaction;
- (m) preparing the Third Interim Report of the Receiver pursuant to subsection 246(2) of the BIA, and filing same with the Office of the Superintendent of Bankruptcy;
- (n) maintaining and updating the Receiver’s Website where copies of all Court and other statutory materials are available in electronic format;
- (o) preparing and reviewing Court materials, including the Responding Report, in connection with the February 8 Hearing;
- (p) preparing and reviewing Court materials, including this Fifth Report, in connection with the March 2 Motion;
- (q) communicating with the Receiver’s counsel, Blake, Cassels & Graydon LLP, and the Receiver’s independent counsel, Norton Rose Fulbright Canada LLP (“Norton Rose”), in respect of various aspects of these Proceedings;

- (r) providing updates to and consulting with the Applicants in respect of the ongoing marketing of the 414 Victoria Real Property Assets and various aspects of these Proceedings; and
- (s) communicating with vendors, creditors, parties purporting to have an interest in the Property and other stakeholders in respect of various aspects of these Proceedings.

VI. INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

28. As shown in the Interim SRD below, during the Period (being August 3, 2021 to January 31, 2023), the Receiver had cash receipts (including borrowings) of approximately \$10.2 million, and cash disbursements (including repayment of borrowings) of approximately \$3.7 million. As at January 31, 2023, the Receiver's cash on hand was approximately \$6.5 million.

**Interim Statement of Receipts and Disbursements
For the period August 3, 2021 to January 31, 2023
(C\$, unaudited)**

Receipts	
Net sale proceeds ¹	7,238,623
Rent and other receipts ²	2,192,281
Receiver's borrowings ³	300,000
HST collected	281,059
Pre-filing bank balance ⁴	165,920
Total Receipts	<u>10,177,883</u>
Disbursements	
Professional fees and disbursements	1,238,623
Property operating costs ⁵	1,147,715
HST paid	350,327
Receiver's borrowings repayment ³	336,119
Municipal realty taxes ⁶	233,548
Broker commissions ⁷	225,900
Property management fees ⁸	165,110
Environmental and building condition reports	7,681
Total disbursements	<u>3,705,023</u>
Balance in Receiver's accounts	<u>6,472,860</u>

Notes:

- (1) Sale proceeds in connection with sale of 304 Victoria Real Property Assets, net of closing adjustments.
- (2) Includes monthly rent collections from tenants and other miscellaneous receipts.
- (3) Borrowings in accordance with Receiver Term Sheet. Principal and interest repaid in December 2022.
- (4) Cash transferred to the Receiver's estate bank account from the Legal Owner's bank account upon commencement of the Proceedings.
- (5) General operating costs such as utilities, maintenance, insurance, etc.
- (6) Payment of municipal taxes following sale of Real Property Assets.
- (7) Broker commissions paid to CBRE in connection with sale of Real Property Assets.
- (8) Includes third party property management fees and leasing commissions for assisting the Receiver in negotiating new leases and lease extensions with existing tenants.

29. As at January 31, 2023, the Receiver had accrued and unpaid expenses in the amount of approximately \$0.32 million.

VII. INTERIM DISTRIBUTION*Applicants' Security*

30. As detailed in the Second Report, the Receiver has obtained an independent legal opinion from Norton Rose, with respect to the validity and enforceability of the security granted in favour of the Applicants under the laws of the Province of Ontario, concluding (subject to the qualifications, assumptions and limitations therein) that the Applicants' security is valid and enforceable against the Property and that first in time registrations of the Applicants' security have been made against the Property.
31. The balance of the Applicants' secured debt is estimated to be approximately \$24.3 million as at January 31, 2023, composed of the following:
- (a) principal: \$21.7 million;
 - (b) accrued interest: \$2.5 million; and
 - (c) other costs and other amounts that may be claimable by the Applicants in connection therewith, including yield maintenance amounts.
32. A portion of the Net Sale Proceeds was used to fully repay the Receiver's Borrowings, pursuant to the October 14 Distribution & Ancillary Relief Order. The remainder of the Net Sale Proceeds

will not be sufficient to repay the principal and interest owing to the Applicants (without accounting for their costs and any other amounts that may be claimable by the Applicants pursuant to their loan and security documents, including yield maintenance amounts).

33. The Receiver notes that distributions to the Applicants from the proceeds of sale of the Real Property Assets were previously approved by the Court in connection with the May 24 Transaction, though the May 24 Transaction was not subsequently completed and such distributions did not proceed as a result.

Potential Priority Claims

34. The Legal Owner did not have any employees, thus, the Receiver understands that there are no potential deemed trust claims in connection with employee source deductions owing to CRA or other priority claims of former employees for unpaid wages.
35. Payment of municipal realty tax arrears of the Legal Owner in connection with the 304 Victoria Building was made in connection with the closing of the October 14 Transaction. Payment of any outstanding municipal realty tax arrears of the Legal Owner in connection with the 414 Victoria Building will be made as a condition of closing of any proposed transaction involving the 414 Victoria Real Property.
36. The Legal Owner appears to have outstanding HST arrears related to the period prior to the Receivership Date, as evidenced by documentation obtained from CRA. The Receiver has not concluded that such HST arrears would have any priority over the secured claims of the Applicants, but has, nonetheless and in the abundance of caution, provided for such amounts in the Reserve (defined herein). Such reserved amount will be subject to a further distribution motion at a later date.
37. The Receiver is not aware of any priority claims that would rank ahead of the Applicants at the time of the proposed interim distribution.

Interim Distribution

38. As noted above, the Receiver is in possession of cash on hand in the amount of approximately \$6.5 million as at January 31, 2023.
39. The Receiver is seeking an order authorizing it to issue a distribution in the amount of \$5.7

million to the Applicants from cash on hand, which is net of a reserve in the amount of approximately \$800,000 (the “**Reserve**”) to be retained by the Receiver to fund, among other things, the remaining costs of these Proceedings, ongoing operating expenses and the costs of the Legal Owner’s ultimate bankruptcy proceedings. The Receiver has consulted with the Applicants in respect of the interim distribution amount and the Reserve.

VIII. RECEIVER’S CONCLUSION AND RECOMMENDATION


40. Based on the forgoing, the Receiver respectfully requests that the Court grant the relief referenced in paragraph 18(e) herein.

All of which is respectfully submitted this 23rd day of February, 2023.


KPMG Inc.
In its capacity as Receiver and
Manager of Victoria Avenue North
Holdings Inc.

And not in its personal or corporate capacity

Per:



Katherine Forbes
CPA, CA, CIRP, LIT
 Senior Vice-President



George Bourikas
CPA, CA, CIRP, LIT
 Vice President

APPENDIX "A"

EXCLUSIVE ENGAGEMENT AGREEMENT SECOND AMENDING AGREEMENT

This **AMENDING AGREEMENT** is dated as of January 31, 2023 (the "**Second Amending Agreement**") and is entered into among Victoria Avenue North Holdings Inc. (the "**Owner**") by KPMG Inc. in its capacity as Court-appointed Receiver and Manager and not in its personal or corporate capacity (in such capacity, the "**Receiver**") and CBRE Limited ("**CBRE**").

WHEREAS:

- A. The Owner and CBRE (collectively, the "**Parties**") are parties to an Exclusive Engagement Agreement dated as of October 20, 2021 (as amended by an amending agreement dated as of September 19, 2022, the "**Exclusive Engagement Agreement**").
- B. Pursuant to an Order granted by the Ontario Superior Court of Justice [Commercial List] (the "**Court**") on October 29, 2021, the Exclusive Engagement Agreement was approved and the Receiver was authorized to execute, on behalf of the Owner, such other ancillary agreements or documents as may be necessary or desirable in connection with CBRE's mandate.
- C. The Parties wish to further amend certain terms and conditions of the Exclusive Engagement Agreement.

NOW THEREFORE THIS SECOND AMENDING AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements contained in this Second Amending Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1 AMENDMENTS

- 1.1 Amendment to Section 2.2.** Effective as of the date hereof, Section 2.2 of the Exclusive Engagement Agreement is hereby amended by deleting it in its entirety and replacing it with the following:

"Subject to the granting of the Approval Order, the Owner grants to CBRE the exclusive right to list the Property for sale for a period commencing October 30th, 2021 and ending on March 31, 2023 (the "**Term**"), at a price and terms which are satisfactory to the Owner."

ARTICLE 2 GENERAL

2.1 Continuing Effect; Confirmation of Documents. Except as specifically stated herein, the Exclusive Engagement Agreement shall continue in full force and effect with the provisions thereof and all other documents and instruments issued or granted in connection therewith shall continue in full force and effect. After the date hereof, any reference to the Exclusive Engagement Agreement shall refer to the Exclusive Engagement Agreement as amended hereby.

2.2 Successors and Assigns. This Second Amending Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

2.3 Governing Law. This Second Amending Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

2.4 No Waiver of Rights or Remedies. Except as specifically set forth herein, this Second Amending Agreement shall not constitute a waiver or amendment by the Parties of any of their rights or remedies under or in connection with the Exclusive Engagement Agreement or pursuant to applicable law, and all such rights are hereby expressly reserved by the Parties.

2.5 Counterparts. This Second Amending Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart to this Second Amending Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by e-mail in pdf format or by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Second Amending Agreement to the receiving Party.

[Signature page follows]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

**VICTORIA AVENUE NORTH HOLDINGS INC. BY
KPMG INC. IN ITS CAPACITY AS COURT-
APPOINTED RECEIVER AND MANAGER AND
NOT IN ITS PERSONAL OR CORPORATE
CAPACITY**

DocuSigned by:
By: Katherine Forbes
Name: Katherine Forbes
Title: Senior Vice President

CBRE LIMITED

DocuSigned by:
By: Adrian Lee
Name:
Title: