

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

B E T W E E N:

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"

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**

**MOTION RECORD
(Sale Approval and Ancillary Matters)
Returnable October 14, 2022**

October 4, 2022

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Barristers and Solicitors
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Ellen Fleishman
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James Brand
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Johann Strasser
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Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly
Randall Y.C. Ho
Robert Atkinson
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Seymour Kazimirski
Stanley Salcedo

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Fleishman Family Trust, by and through its trustee(s)
J. Zachery Jones Trust, by and through its trustee(s)
Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Jasen Takei Revocable Living Trust, by and through its trustee(s)
Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Ruth Hisaye Honda Trust, by and through its trustee(s)
S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Wallace K. Tsuha Trust, by and through its trustee(s)
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1649750 Ontario Inc.
1818019 Ontario Limited
Citydrill Inc.
Gross Capital Inc.
Dirk and Dale IRA LLC
Gross Medical Opportunities Fund LP
Hybrid Activities Inc.
Mark Craig Gross Holdings Inc.
Randy 88, LLC
Rastogi Medicine Professional Corporation
RMK IRA LLC

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(as at May 24, 2022)

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Legal Owner / Beneficial Owners:

VICTORIA AVENUE NORTH HOLDINGS INC. 200 Ronson Drive, Suite 201 Toronto, Ontario M9W 5Z9 Attention: Mark Gross Email: mark@danimax.ca	THE BENEFICIAL OWNERS LISTED ON SCHEDULE "A"
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Ministries / Municipalities:

CANADA REVENUE AGENCY c/o Department of Justice Ontario Regional Office The Exchange Tower, Box 36 Suite 3400, 130 King Street West Toronto, Ontario M5X 1K6 Diane Winters , General Counsel Tel: 416-973-3172 Fax: 416-973-0810 Email: diane.winters@justice.gc.ca Rakhee Bhandari Tel: 416-952-8563 Email: rakhee.bhandari@justice.gc.ca	MINISTRY OF FINANCE (ONTARIO) Insolvency Unit 33 King Street West, 6th Floor Oshawa, Ontario L1H 8H5 Email: insolvency.unit@ontario.ca
CITY OF HAMILTON 71 Main Street West Hamilton, Ontario L8P 4Y5 Attention: Legal Services Email: kaush.parameswaran@hamilton.ca	

Parties with PPSA Registrations:

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<p>MERIDIAN ONECAP CREDIT CORP. 204 - 3185 Willingdon Green Burnaby, British Columbia V5G 4P3 Attention: Joanna Alford, Loss Recovery Specialist Email: joanna.alford@meridianonecap.ca</p>	
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Parties with Encumbrances Registered on Title:

<p>1012689 ONTARIO LIMITED 45 Lower Jarvis Street Toronto, Ontario M5E 1R8 Attention: Joe Chiaravalloti Email: joe@canadaautoparks.com</p> <p>With a copy to:</p> <p>DALE & LESSMANN LLP 181 University Avenue, Suite 2100 Toronto, Ontario M5H 3M7</p> <p>Nedko Petkov Tel: 416-369-7821 Email: npetkov@dalelessmann.com</p>	<p>MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p>Asim Iqbal, LSO #61884B Tel: 416-597-6008 Fax: 416-863-1716 Email: aiqbal@millerthomson.com</p> <p><i>Lawyers for De Lage Landen Financial Services Canada Inc.</i></p>
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**SUPPLEMENTAL NOTICE LIST
(Sale Approval Motion – October 14, 2022)**

VICTORIAN ORDER OF NURSES HAMILTON WENTWORTH BRANCH 414 Victoria Avenue North, Suite M2 Hamilton, Ontario L8L 5G8 Email: national@von.ca	Mark Gross Email: mark@danimax.ca
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<p>Sheldon Gross <i>[by blind copy]</i> Email: [REDACTED]</p>	<p>TYR LLP 488 Wellington Street West, Suite 300-302 Toronto, Ontario M5V 1E3</p> <p>James Bunting Tel: 647-519-6607 Email: jbunting@tyrllp.com</p> <p>Lawyers for Mark Gross and Sheldon Gross</p>
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Purchaser's Counsel:

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MOTION RECORD

I N D E X

Tab	Description	Page
1.	Notice of Motion, returnable October 14, 2022	1
2.	Fourth Report of the Receiver dated October 4, 2022	13
A.	Appendix A: Broker Engagement Extension Agreement	32
B.	Appendix B: Receiver Term Sheet Extension Agreements	35
C.	Appendix C: Asset Purchase Agreement (Redacted)	44
A.	Confidential Appendix A: Summary of Redacted Commercially Sensitive Information	89

Tab	Description	Page
B.	Confidential Appendix B: Summary of Material Terms of Binding Offers	90
3.	Draft Approval and Vesting Order (304 Victoria Ave. North, Hamilton, Ontario)	91
4.	Blackline to Model Approval and Vesting Order	107
5.	Draft Distribution and Ancillary Matters Order	129

TAB 1

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

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**NOTICE OF MOTION
(Sale Approval and Ancillary Matters)
Returnable October 14, 2022**

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 "B"** (the "**Real Property**") of the Appointment Order granted on August 3, 2021 (the "**Appointment Order**"), of (i) 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) the beneficial owners of the Legal Owner's Property (collectively, the "**Beneficial Owners**", and together with the Legal Owner, the "**Debtors**"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof,

whether held directly or indirectly by any Beneficial Owner for themselves or for others (together with the Legal Owner's Property, the "**Property**") will make a motion to Mr. Justice McEwen on **Friday, October 14, 2022 at 1:00 p.m. (Toronto time)**, or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- In writing under subrule 37.12.1(1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

Zoom meeting link, meeting ID and passcode to be created and posted to Caselines by court staff

Please advise if you plan to attend the motion by emailing Nancy Thompson at nancy.thompson@blakes.com.

THE MOTION IS FOR:

(a) An order, substantially in the form of the draft Order included in the Motion Record of the Receiver, *inter alia*:

- (i) approving the asset purchase agreement dated September 1, 2022 (the "**APA**") among the Debtors (by the Receiver) and 1000301029 Ontario Limited (the "**Purchaser**") and the proposed transaction (the "**Proposed Transaction**") contemplated thereby;

- (ii) vesting title in and to the Purchased Assets (as defined herein) in the Purchaser, free and clear of all liens, claims and encumbrances, except certain permitted encumbrances;
- (b) An order substantially in the form of the draft Order included in the Motion Record of the Receiver, *inter alia*:
- (i) approving the extension of the term sheet among the Applicants and the Receiver dated as of July 9, 2021 (as amended, the “**Receiver Term Sheet**”) pursuant to which the Receiver has borrowed certain amounts to fund these receivership proceedings (the “**Proceedings**”);
 - (ii) authorizing the Receiver to pay the commission of its real estate broker, CBRE Limited (“**CBRE**”), upon closing of the Proposed Transaction;
 - (iii) authorizing the Receiver to repay the indebtedness outstanding under the Receiver Term Sheet and evidenced by Receiver’s Certificates (as defined in the Appointment Order), upon closing of the Proposed Transaction;
 - (iv) approving the activities of the Receiver, as set out in the Receiver’s Supplement to the Third Report to the Court dated May 20, 2022 (the “**Supplemental Report**”) and the Receiver’s Fourth Report to the Court dated October 4, 2022 (the “**Fourth Report**”, and together with the Supplemental Report, the “**Reports**”);
 - (v) sealing Confidential Appendix “A” and Confidential Appendix “B” to the Fourth Report (collectively, the “**Confidential Appendices**”); and

(c) such further and other relief as counsel may request and this Honourable court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

1. Pursuant to the Order of the Honourable Mr. Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on August 3, 2021, KPMG Inc. was appointed as Receiver of the Property which primarily consist of interests in 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, and their related real property leases (collectively, the “**Real Property Assets**”).

2. 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 as exclusive real estate broker for the Real Property Assets; and

(b) a sale process for the Real Property Assets, as appended to the Sale Process Order (the “**Sale Process**”).

3. On June 29, 2021, KPMG Inc. was appointed as receiver and manager of, among other things, the properties of Southmount Healthcare Centre Inc. and certain other entities (“**Southmount Et Al.**”) pursuant to an order of this Court. The primary assets of the respondents in the Southmount Et Al. receivership proceedings are seven (7) medical office buildings in the

same asset class as the Real Properties 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, which was assigned into bankruptcy on June 25, 2021.

4. On October 29, 2021, the Court granted an order approving a sale process for the Southmount Et Al. Real Property Assets which was run by the Receiver in conjunction with the Sale Process.

5. Details of the conduct of the Sale Process by the Receiver and CBRE are set out in the Receiver’s Third Report to the Court dated May 13, 2022 (the “**Third Report**”) and are not repeated herein for brevity.

Proposed Transaction

6. At a hearing that took place before the Court on May 24, 2022 (the “**May 24 Hearing**”), the Court granted an approval and vesting order in respect of the sale of the Real Property Assets, which transaction (the “**May 24 Transaction**”) was subject to a due diligence condition in favour of the relevant purchasers.

7. Subsequent to the May 24 Hearing and prior to the expiry of the due diligence period, the purchasers of the Real Property Assets declined to waive their due diligence condition and proceed towards closing the May 24 Transaction on the terms approved at the May 24 Hearing.

8. Subsequent to such purchasers indicating they would not proceed with the May 24 Transaction, the Receiver pursued further marketing efforts in respect of the Real Property Assets. Following these efforts, the Receiver has negotiated and entered into the APA for the sale of the

Purchased Assets (as defined in the APA), being primarily comprised of the 304 Victoria Building and real property leases related thereto.

9. The Receiver recommends that the Court approve the Proposed Transaction for, among others, the following reasons:

(a) the Proposed Transaction follows a robust and thorough Court-approved Sale Process that broadly canvassed the market and was conducted in accordance with its terms, resulting in significant participation from potential purchasers;

(b) the Proposed Transaction is the result of extensive negotiations and represents the highest and best offer that is available;

(c) the Proposed Transaction contemplates the sale of the Purchased Assets on an 'as is where is' basis, by which they will be transferred to the Purchaser free and clear (with certain limited exceptions);

(d) the Proposed Transaction is not conditional upon due diligence on behalf of the Purchaser;

(e) the closing conditions are limited and customary in the circumstances, and the Receiver is not currently aware of any information to suggest that such conditions will not be met;

(f) prior to entering into the Proposed Transaction, the Receiver consulted with the Applicants. Additionally, in advance of entering into the May 24 Transaction in respect of the Real Property Assets (which, as set out above, did not proceed as the prior purchasers

did not waive their due diligence condition), the Receiver consulted with the other secured mortgagee thereof; and

(g) the Applicants, who are the only secured creditors anticipated to realize a recovery in these Proceedings, support the Proposed Transaction.

Receiver Term Sheet

10. In light of the May 24 Transaction not proceeding to completion, the Receiver Term Sheet was extended to September 30, 2022 pursuant to an amending agreement dated as of June 22, 2022.

11. In order to permit sufficient time for the Proposed Transaction to close, the Receiver Term Sheet was subsequently extended to December 31, 2022 pursuant to a second amending agreement dated as of September 21, 2022.

12. The extensions of the Receiver Term Sheet are subject to Court approval and in the Receiver's view, such extensions are appropriate in the circumstances as they preserve liquidity and provide additional stability to the operations of these Proceedings and access to funding (if necessary) while the Receiver pursues the closing of the Proposed Transaction.

CBRE Commission

13. Pursuant to the Court-approved Broker Engagement Agreement, CBRE is entitled to commission, in the amount set out in the Broker Engagement Agreement, which is only due and payable in respect of the Proposed Transaction, should it close. The brokerage commission earned by the cooperating brokers in the Proposed Transaction is paid out of the commission.

Repayment of Receiver's Borrowings

14. As of the date of the Fourth Report, the Receiver has borrowed \$300,000 (the “**Receiver’s Borrowings**”) pursuant to the Receiver’s Term Sheet, which Receiver’s Borrowings are evidenced by a Receiver’s Certificate (as defined in the Appointment Order). The Receiver is seeking the Court’s approval to fully repay the Receiver’s Borrowings (together with interest accrued thereon), should the Proposed Transaction be approved by the Court and close.

Approval of the Receiver's Activities

15. In the Receiver’s view, the activities of the Receiver as set out in the Reports have been necessary, consistent with the Receiver’s duties and powers in the Appointment Order and other Orders granted in these Proceedings, and undertaken with efficiency and reasonableness. Accordingly, the Receiver respectfully requests that such activities be approved.

Sealing Order

16. The Confidential Appendices contain (a) a summary of the key economic terms redacted from the APA that is appended to the Fourth Report, and (b) a summary of the material terms of each binding offer received in respect of the 304 Victoria Building.

17. The Receiver recommends that the Court grant an Order, sealing the Confidential Appendices pending further Order of this Court as disclosure thereof would, in the Receiver’s view, be prejudicial to: (i) future negotiations or marketing efforts in respect of the remaining Real Property Assets should the Proposed Transaction be approved and close as anticipated, and (ii) future negotiations or marketing efforts in respect of all of the Real Property Assets, should the Proposed Transaction not be approved or not close as anticipated.

Additional Grounds

18. In addition to the other grounds discussed in this Notice of Motion, the Receiver relies on:
- (a) Rules 1.04, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg 194, as amended;
 - (b) section 100 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (c) the inherent and equitable jurisdiction of this Honourable Court; and
 - (d) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Third Report, filed;
- (b) The Supplemental Report filed;
- (c) The Fourth Report, filed; and
- (d) Such further and other evidence as counsel may advise and this Honourable Court may permit.

October 4, 2022

BLAKE, CASSELS & GRAYDON LLP

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TO: SERVICE LIST

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Carole Kai Onouye
Diane Curtis
Dwight Otani and Theresa Otani, jointly
Edward Bugarin
Ellen Fleishman
Gemie Arakawa
George Tamashiro
Guy Pace and Caroline Berdusco, jointly
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Janis L. Lai Trustee
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Johann Strasser
John Dattomo and Daniela Dattomo
Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly
Randall Y.C. Ho
Robert Atkinson
Roberta Sunahara and Paul Sunahara, jointly
Seymour Kazimirski
Stanley Salcedo

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Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Fleishman Family Trust, by and through its trustee(s)
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Jane Shigeta Revocable Living Trust, by and through its trustee(s)
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Proceeding Commenced at Toronto

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Lawyers for the Receiver

TAB 2

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

**FOURTH REPORT OF KPMG INC.,
IN ITS CAPACITY AS RECEIVER AND MANAGER OF**

Victoria Avenue North Holdings Inc.

OCTOBER 4, 2022

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

**ONTARIO
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(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

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

DATED OCTOBER 4, 2022

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.....	4
III.	QUALIFICATIONS & TERMS OF REFERENCE	5
IV.	MAY 24 TRANSACTION UPDATE	6
V.	PROPOSED TRANSACTION	6
VI.	BROKER ENGAGEMENT AGREEMENT & COMMISSION	11
VII.	REMAINING REAL PROPERTY ASSETS	12
VIII.	ACTIVITIES OF THE RECEIVER.....	12
IX.	INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS.....	14
X.	RECEIVER TERM SHEET & REPAYMENT OF BORROWINGS.....	14
XI.	RECEIVER’S CONCLUSION AND RECOMMENDATION	15

APPENDICES

APPENDIX “A” – Broker Engagement Extension Agreement

APPENDIX “B” – Receiver Term Sheet Extension Agreements

APPENDIX “C” – Asset Purchase Agreement (Redacted)

CONFIDENTIAL APPENDICES

CONFIDENTIAL APPENDIX “A” – Summary of commercially sensitive information redacted from Asset Purchase Agreement

CONFIDENTIAL APPENDIX “B” – Summary of material terms of Binding Offers received

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 (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 (the “**Sale Process**”) 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 has 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. (“**Southmount**”) 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. Also on October 29, 2021, the Court granted an order approving a substantially similar sale process for, and the engagement of CBRE in respect of, the Southmount Et Al. Real Property Assets. As detailed in the First Report, the Southmount Et Al. Real Property Assets were marketed alongside the Real Property Assets that are the subject of these Proceedings.
9. 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 (the “**May 24 AVO**”), 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.
10. Also at the May 24 Hearing, the Court granted an order in these Proceedings (the “**May 24 Distribution & Ancillary Relief Order**”), 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).
11. The Receiver filed a report dated May 13, 2022 (the "**Third Report**") and a supplemental report dated May 20, 2022 (the "**Supplemental Report**", and collectively with the Pre-Filing Report, the First Report, the Second Report, and the Third Report, the "**Prior Reports**"), in support of the relief sought at the May 24 Hearing.
 12. On July 15, 2022, the Court granted orders in the Southmount Et Al. receivership proceedings which, among other things, approved the procedural consolidation of the bankruptcy proceedings of Southmount and 180 Vine Purchaser Inc. – a beneficial owner of certain of the Southmount Et Al. Real Property Assets, with the Legal Owner and the other applicable Southmount Et Al. legal owners (as had been previously approved at the May 24 Hearing).
 13. Electronic copies of the Prior Reports are available on the Receiver's Website at: home.kpmg/ca/VictoriaHoldings (the "**Receiver's Website**").

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

II. PURPOSE OF REPORT

14. The purpose of this fourth report of the Receiver (the “**Fourth Report**”) is to provide this Court with information pertaining to:
- (a) the status and outcome of the May 24 Transaction;
 - (b) details pertaining to the Proposed Transaction (as defined herein) relating to the sale of the 304 Victoria Building, which the Receiver is proposing to pursue should the Court grant an order approving same;
 - (c) ongoing marketing and sale efforts in respect of the 414 Victoria Building;
 - (d) the extension of the term of the Broker Engagement Agreement, pursuant to an amending agreement dated as of September 9, 2022, (the “**Broker Engagement Extension Agreement**”), a copy of which is appended hereto as **Appendix “A”**;
 - (e) the extension of the term of the Receiver Term Sheet, pursuant to an amending agreement dated as of June 22, 2022 and an amending agreement dated as of September 21, 2022 (the “**Receiver Term Sheet Extension Agreements**”), copies of which are appended hereto as **Appendix “B”**;
 - (f) the activities of the Receiver since the date of the Supplemental Report;
 - (g) the Receiver’s interim statement of receipts and disbursements (the “**Interim SRD**”) for the period from the Receivership Date to and including August 31, 2022 (the “**Period**”);
 - (h) the Receiver’s proposed repayment of the Receiver’s borrowings (including accrued interest thereon) pursuant to the Receiver Term Sheet from the net proceeds of the Proposed Transaction (the “**Net Proceeds**”); and
 - (i) the Receiver’s recommendation that this Court grant orders:
 - (i) approving the APA (as defined herein) and the Proposed Transaction and authorizing and directing the Receiver to take such steps as necessary to complete the Proposed Transaction;
 - (ii) vesting title in and to the applicable Real Property Assets in the Purchaser (as defined below), free and clear of all liens, claims encumbrances, except certain permitted encumbrances, upon the Receiver filing a certificate confirming among other things, completion of the Proposed Transaction;
 - (iii) authorizing and directing the Receiver to pay the Commission (as defined herein) upon closing of the Proposed Transaction;

- (iv) approving the extension of the term of the Receiver Term Sheet to December 31, 2022;
- (v) authorizing the Receiver repay the Receiver's borrowings (including accrued interest thereon) pursuant to the Receiver Term Sheet from the Net Proceeds;
- (vi) approving the activities of the Receiver as set out in the Supplemental Report and this Fourth Report; and
- (vii) sealing the confidential appendices to this Fourth Report.

III. QUALIFICATIONS & TERMS OF REFERENCE

15. In preparing this Fourth 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.
16. Some of the Information referred to in this Fourth 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.
17. Certain Information referred to in this Fourth 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.
18. The Receiver has prepared this Fourth Report in connection with a motion currently scheduled to be heard on October 14th, 2022 (the "**October 14 Motion**"). This Fourth Report should not be relied on for other purposes.
19. The information contained in this Fourth Report is not intended to be relied upon by any prospective purchaser in any transaction with the Receiver.
20. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. MAY 24 TRANSACTION UPDATE

21. The Sale Process and results thereof are detailed in the Third Report, and are not repeated herein, for brevity. Readers are encouraged to refer to the Third Report for further context and background, and unless otherwise noted, all terms not defined in this section of this Fourth Report are as defined in the Third Report.
22. Following a comprehensive and robust Sale Process, at the May 24 Hearing, the Receiver sought and obtained the May 24 AVO in respect of the sale of all of the Real Property Assets. As noted in the Third Report, the May 24 Transaction was, at the time of the May 24 Hearing, still subject to a due diligence condition, but approval thereof was nonetheless sought together with several sale transactions in respect of certain of the Southmount Et Al. Real Property Assets, in an effort to minimize – to the extent possible – the incremental additional professional costs associated with multiple Court hearings.
23. Subsequent to the May 24 Hearing and prior to the expiry of their due diligence period, the May 24 Transaction purchasers declined to waive their due diligence condition and proceed towards closing the May 24 Transaction on the terms approved at the May 24 Hearing.
24. At that time, being on or about June 13, 2022, the Receiver, in consultation with the Applicants, proceeded to send notice to the May 24 Transaction purchasers formally terminating the related asset purchase agreement.

V. PROPOSED TRANSACTION

25. Shortly after the termination of the May 24 Transaction asset purchase agreement, CBRE and the Receiver re-engaged with other parties which had previously submitted bids for the Real Property Assets during the Sale Process or who had otherwise expressed interest in the Real Property Assets (the “**Prior Interested Parties**”).
26. Taking into account the following factors in consultation with CBRE and the Applicants: (i) the offers which had previously been submitted for Real Property Assets during the Sale Process, (ii) the level of interest expressed by the Prior Interested Parties upon re-engagement with CBRE, and (iii) general real estate market conditions (including rising interest rates) since the commencement of the Sale Process, the Receiver determined that re-marketing the Buildings was a prudent course of action and proceeded to re-market each of the Buildings on the Multiple Listing Service (“**MLS**”) on an un-priced basis. Additionally, CBRE sent a new email to the broader distribution list previously utilized during the Sale Process, advertising the Real Property Assets.
27. After a period of approximately two (2) weeks following the foregoing re-marketing efforts, a firm (i.e., not subject to due diligence) offer was received in respect of the 304 Victoria Building (the “**304 Victoria Offer**”) and the Receiver, in consultation with CBRE and the Applicants, commenced negotiations with the party that submitted such offer, during which time re-marketing efforts for each of the Buildings continued.

28. Ultimately on September 1, 2022, following more than six (6) weeks of the Real Property Assets being re-marketed, the Receiver entered into an asset purchase agreement (the “**APA**”) with the party that submitted the 304 Victoria Offer (the “**Purchaser**”). A copy of the executed APA redacted for confidential and commercially sensitive financial information, is appended hereto as **Appendix “C”**. A summary of the commercially sensitive information redacted from the APA is included in **Confidential Appendix “A”** appended hereto.
29. Prior to the APA being executed, only one other offer was received in respect of the Real Property Assets that the Receiver, in consultation with CBRE viewed as competitive in light of the 304 Victoria Offer. This other offer was for both of the Buildings and subject to a due diligence condition for a period of time following execution of an asset purchase agreement in respect of same (the “**Victoria Portfolio Offer**”).
30. The Receiver, in consultation with CBRE and the Applicants, engaged in discussions with the party that submitted the Victoria Portfolio Offer to determine if the due diligence condition could be removed from the offer. Concurrently with these efforts and so as to preserve both certainty in respect of the 304 Victoria Offer, and optionality in respect of the Victoria Portfolio Offer (or any other potential offer that could be received in respect of the Real Property Assets), the Receiver, in consultation with CBRE and the Applicants, negotiated the inclusion of a termination right in the APA. As set out in greater detail below, this termination right permitted the Receiver to terminate the APA and pursue any other transaction which met the definition of an “Alternative Transaction” (as defined in the APA) identified during a period of thirty (30) calendar days from the execution of the APA (the “**Optionality Period**”).
31. As at the date hereof, (i) the party that submitted the Victoria Portfolio Offer has indicated that it does not wish to proceed with a transaction, and (ii) the Optionality Period has expired, with the Receiver not having received any potential Alternative Transaction.
32. The details of what constitutes an Alternative Transaction are included in **Confidential Appendix “A”**. A summary comparison of the economic terms of each of the 304 Victoria Offer and the Victoria Portfolio Offer is included in **Confidential Appendix “B”** appended hereto (the information contained therein, together with the information contained in Confidential Appendix “A” are hereafter referred to as the “**Confidential Information**”).
33. The transaction contemplated by the APA (the “**Proposed Transaction**”) is subject to Court approval and its key terms are as follows (all capitalized terms in this paragraph 33 not otherwise defined are as defined in the APA):
- (a) Vendors: The Legal Owner and Beneficial Owners of the Real Property Assets, in each case by the Receiver.
 - (b) Purchased Assets: Comprised of the Vendors’ right, title and interest in and to the 304 Victoria Building and certain ancillary assets related thereto. The Purchased Assets are to

be purchased on an 'as is, where is' basis, and transferred free and clear of encumbrances other than the Permitted Encumbrances.

- (c) Assumed Liabilities: Include all obligations related to the Assigned Contracts, permits and licenses, the Purchased Assets or related business (other than the Excluded Liabilities), tax liabilities for post-closing tax periods, trade payables accrued after the Closing Date, environmental claims and liabilities, and all liabilities of the Vendors to any of the Vendors' tenants in respect of any tenant inducements or other incentives given by the Vendors to their tenants in the ordinary course of business.
- (d) Assigned Contracts: The Purchaser is assuming: (i) all of the real property leases in respect of the 304 Victoria Building, (ii) all of the personal property leases related to lighting and safety devices installed at the 304 Victoria Building, and (iii) those other contracts specifically scheduled in the APA.
- (e) Cure Costs: With respect to any Assigned Contract for which a consent to assignment is required, any amounts required to be paid in respect of the Vendors' monetary defaults thereunder as at the Closing Date, are to be paid by the Purchaser on Closing.
- (f) Deposit: The Proposed Transaction contemplates the payment of a Deposit upon the execution of the APA in an amount equal to approximately 3.75% of the Purchase Price. The Deposit has been paid to the Receiver in trust.
- (g) Consideration: Comprises the following and is to be satisfied (net of Deposit) by the Purchaser on Closing:
 - (i) cash Purchase Price;
 - (ii) payment of Cure Costs; and
 - (iii) assumption of the Assumed Liabilities.
- (h) Excluded Assets: Include all receivables which are due, accrued or have become owing immediately prior to the Closing, trade accounts, bank accounts, book debts, insurance claims, insurance contracts or policies, bills, credits, rebates, deposits, prepaid expenses, prepaid rent, prepayments, holdbacks, funds, cash and cash equivalents, marketable securities, short-term investments, intercompany claims, tax credits, including without limitation, tax returns, tax installments paid by or on behalf the Vendors or any of their affiliates, and all rights to claim and/or receive a rebate, refund of, and/or credit in respect of taxes paid by or on behalf the Vendors or any of their affiliates, all minute books and other corporate records of the Vendors, and all causes of action which arise from loss, damage or facts occurring prior to the Closing Date and any insurance proceeds or claims payable for losses or damages incurred prior to the Closing Date.

- (i) Excluded Liabilities: Include taxes (including municipal taxes) payable by the Vendors arising with respect to any period prior to the closing date, taxes which do not relate to the Purchased Assets, any liability of the Vendors which are incurred under any contract that is not an Assigned Contract and any liability arising from any of the Excluded Assets.
- (j) Motion Date: The Receiver is to file a motion with the Court seeking the Court's issuance of an Approval and Vesting Order by no later than the Motion Date, being thirty (30) calendar days following the execution of the APA.
- (k) Closing Date: Targeted for the 15th calendar day following the issuance of an Approval and Vesting Order.
- (l) Closing Adjustments: Any rents, realty taxes including local improvement rates, unmetered public or private utility charges, unmetered cost of fuel, and personal property taxes and similar ad valorem obligations levied with respect to the Purchased Assets, in each case as applicable and for a period that includes (but does not end on) the Closing Date shall be apportioned and adjusted between the Vendors and the Purchaser based on the number of days of such period up to the Closing Date.
- (m) Transfer Taxes: In addition to the Purchase Price, the Purchaser shall, at Closing, pay all applicable Transfer Taxes.
- (n) Alternative Transaction: The Proposed Transaction contemplates that during the Optionality Period, the Purchased Assets will continue to be marketed for sale and the Vendors may accept and execute any Alternative Transaction, thereby terminating the APA, provided however that in the event that an Alternative Transaction is accepted by the Vendors, the Receiver shall, as soon as reasonably practicable thereafter advise the Purchaser of same.
- (o) Break-up Fee: In the event that the Vendors accept an Alternative Transaction and the APA is terminated, (i) the Purchaser shall be entitled to a break-fee from the proceeds of such Alternative Transaction (the "**Break-Up Fee**") provided that such Break-Up Fee is approved by the Court, and (ii) the Receiver shall, at the same time that it seeks Court approval of the Alternative Transaction, seek Court approval of the Break-Up Fee. The Break-Up Fee, if payable, will, in addition to the return of the Deposit, be the sole and exclusive remedy as liquidated damages of the Purchaser, in the event that an Alternative Transaction is pursued. For greater certainty, the Vendors' obligation to pay the Break-Up Fee pursuant to the APA is expressly subject to Court approval.
- (p) Due Diligence: The APA is not subject to a due diligence condition in favour of the Purchaser.
- (q) Outside Date: November 1, 2022.

- (r) Termination: The APA can generally be terminated as follows:
- (i) immediately and automatically and without any action or notice by either the Vendors to the Purchaser or the Purchaser to the Vendors, upon the Vendors accepting and executing an Alternative Transaction;
 - (ii) by the mutual agreement of the Vendors and the Purchaser;
 - (iii) by written notice from the Purchaser to the Vendors, in the event that the Purchased Assets are destroyed, lost, or materially damaged;
 - (iv) by written notice from the Purchaser to the Vendors if there has been a material breach by the Vendors of any representation, warranty or covenant contained in the APA, which breach has not been waived by the Purchaser, and such breach is not curable and has rendered the satisfaction of the Vendors' Conditions impossible by the Outside Date, provided that at the time of providing such notice of termination, the Purchaser is not in breach of any of its obligations under the APA;
 - (v) by written notice from the Vendors to the Purchaser if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in the APA, which breach has not been waived by the Vendors and such breach is not curable and has rendered the satisfaction of any of the Vendors' Conditions impossible by the Outside Date, provided that at the time of providing such notice of termination, the Vendors are not in breach of any of their obligations under the APA; and
 - (vi) by either the Vendors or the Purchaser if Closing has not occurred before the Outside Date, being November 1, 2022 or such later date as the Parties may mutually agree.
- (s) Other:
- (i) The representations and warranties of the Vendors are limited and generally consistent with "as-is, where-is" transactions of this nature; and
 - (ii) The Proposed Transaction is subject to Court approval, and closing is subject to the issuance of an Approval and Vesting Order and to such Approval and Vesting Order being a Final Order (meaning, at the relevant time or date, an order of the Court that has not been vacated, stayed, amended, reversed or modified).

34. The Receiver is recommending that this Court approve the Proposed Transaction in respect of the 304 Victoria Real Property Assets for the following reasons:

- (a) the Proposed Transaction follows a robust and thorough Court-approved Sale Process that broadly canvassed the market and was conducted in accordance with its terms, resulting in significant participation from potential purchasers;
 - (b) the Proposed Transaction is the result of extensive negotiations of the terms of the APA, and represents the highest and best offer for the 304 Victoria Real Property Assets;
 - (c) the Proposed Transaction contemplates the sale of the 304 Victoria Real Property Assets on an 'as is, where is' basis, by which the 304 Victoria Real Property Assets will be transferred to the Purchaser free and clear;
 - (d) the Receiver is of the view, informed by consultation with CBRE, that the deposit and timeline of the Proposed Transaction is market and typical in real estate transactions of this type;
 - (e) the Purchaser's and Vendors' closing conditions are limited and customary in the circumstances, and the Receiver is not currently aware of any information to suggest that such conditions will not be met;
 - (f) prior to entering into the Proposed Transaction, the Receiver consulted with the Applicants. Additionally, prior to entering into the May 24 Transaction in respect of all of the Real Property Assets (which, as set out above, did not proceed as the prior purchasers did not waive the due diligence conditions), the Receiver consulted with 1012689 Ontario Inc., a secured mortgagee of the Real Property Assets; and
 - (g) the Applicants, who as described in the Third Report, are the only creditors anticipated to realize a recovery in these Proceedings, support the Proposed Transaction.
35. The Receiver is also recommending that the Court grant an Order, sealing the Confidential Information, as the disclosure thereof would, in the Receiver's view, be prejudicial to: (i) future negotiations or marketing efforts in respect of the remaining Real Property Assets should the Proposed Transaction be approved and close as anticipated, and (ii) future negotiations or marketing efforts in respect of all of the Real Property Assets, should the Proposed Transaction not be approved or not close as anticipated.

VI. BROKER ENGAGEMENT AGREEMENT & COMMISSION

36. As set out above, the Receiver has engaged CBRE as its real estate broker, pursuant to the Court-approved Broker Engagement Agreement.
37. Given the status of ongoing sale efforts in connection with the Real Property Assets, on September 9, 2022, the Receiver entered into the Broker Engagement Extension Agreement, extending the term of the Broker Engagement Agreement to January 31, 2023.

38. CBRE earns a commission in the amount as set out in the Broker Engagement Agreement, which is only due and payable should the Proposed Transaction close (the “**Commission**”). Brokerage commissions earned by the cooperating broker in the Proposed Transaction are paid out of the Commission.

VII. REMAINING REAL PROPERTY ASSETS

39. Should this Court approve the Proposed Transaction and it close as anticipated, the key remaining assets subject to these Proceedings will be the 414 Victoria Building and real property leases related thereto.
40. As at the date of this Fourth Report, re-marketing efforts in respect of the 414 Victoria Building are ongoing and it remains listed on MLS on an un-priced basis. The Receiver, in consultation with CBRE and the Applicants, is assessing potential realization options for such remaining assets, including, without limitation, listing the 414 Victoria Building on MLS on a “priced” basis and/or marketing it for sale for alternative use.

VIII. ACTIVITIES OF THE RECEIVER

41. The Receiver’s activities from the Receivership Date to the date of the Supplemental Report are detailed in the First Report, Second Report, Third Report and the Supplemental Report. The Receiver’s activities since the date of the Supplemental Report have included:
- (a) engaging with CBRE in respect of the re-marketing of the Real Property Assets and attending a further site visit at the Buildings, with the assistance of Prime Real Estate Group Inc. (“**Prime**”), the property manager of the Buildings;
 - (b) negotiating with the party that submitted the Victoria Portfolio Offer, facilitating due diligence requests in respect of same and liaising with Prime in respect of same, as necessary;
 - (c) facilitating due diligence information requests from the Purchaser prior to execution of the APA, and liaising with Prime in respect of same, as necessary;
 - (d) with the assistance of counsel to the Receiver, Blake, Cassels & Graydon LLP (“**Blakes**”), negotiating, finalizing and executing the APA with the Purchaser, including preparing and finalizing schedules of assigned contracts and other transaction details;
 - (e) facilitating payment of the Deposit from the Purchaser to the Receiver in trust;
 - (f) executing the Receiver Term Sheet Extension Agreements (as described in more detail in a later section of this Fourth Report) and engaging with Blakes and the Applicants, in respect of same;

- (g) liaising with Prime in respect of various operational matters, including repairs and maintenance requirements, leasing and other tenant-related matters at each of the Buildings;
- (h) liaising with tenants of the Buildings in respect of lease extensions, renewals, and new lease arrangements;
- (i) reviewing and signing cheques for vendor payments;
- (j) collecting rents and outstanding accounts receivable from tenants of the Buildings;
- (k) 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 October 31, 2022 and is expected to be further extended;
- (l) monitoring cash flows and liquidity, and attending to various banking matters including reviewing monthly bank reconciliations;
- (m) reviewing and filing quarterly HST returns with Canada Revenue Agency;
- (n) attending the May 24 Hearing in respect of the Receiver's motion seeking approval of the May 24 AVO and the May 24 Distribution & Ancillary Relief Order;
- (o) preparing the Second Interim Report of the Receiver pursuant to subsection 246(2) of the BIA, and filing same with the Office of the Superintendent of Bankruptcy;
- (p) maintaining and updating the Receiver's Website where copies of all Court and other statutory materials are available in electronic format;
- (q) preparing and reviewing Court materials, including this Fourth Report, in connection with the October 14 Motion;
- (r) communicating with the Receiver's counsel, Blakes, and the Receiver's independent counsel, Norton Rose Fulbright Canada LLP, in respect of various aspects of these Proceedings;
- (s) providing updates to and consulting with the Applicants in respect of the ongoing marketing of the Real Property Assets and the Proposed Transaction, and various aspects of these Proceedings; and
- (t) communicating with vendors, creditors, parties purporting to have an interest in the Property and other stakeholders in respect of various aspects of these Proceedings.

IX. INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

42. As shown in the Interim SRD below, during the period from August 3, 2021 to August 31, 2022, the Receiver had cash receipts (including borrowings) of approximately \$2.3 million, and cash disbursements of approximately \$2.0 million. As at August 31, 2022, the Receiver's cash on hand was approximately \$0.4 million.

**Interim Statement of Receipts and Disbursements
For the period August 3, 2021 to August 31, 2022
(C\$, unaudited)**

Receipts	
Rent and other receipts ¹	1,662,300
Receiver's borrowings ²	300,000
Pre-filing bank balance ³	165,920
HST collected	212,051
Total Receipts	2,340,270
Disbursements	
Property operating costs ⁴	890,007
Professional fees and disbursements	732,521
HST paid	219,021
Property management fees ⁵	112,683
Environmental and building condition reports	7,681
Total disbursements	1,961,912
Balance in Receiver's accounts	378,358

Notes:

- (1) Includes monthly rent collections from tenants and other miscellaneous receipts.
(2) Borrowings in accordance with Receiver Term Sheet.
(3) Cash transferred to the Receiver's estate bank account from the Legal Owner's bank account upon commencement of the Proceedings.
(4) General operating costs such as utilities, maintenance, insurance, etc.
(5) Includes third party property management fees and leasing commissions for assisting the Receiver in negotiating new leases and lease extensions with existing tenants.

43. As at August 31, 2022, the Receiver had accrued and unpaid expenses in the amount of approximately \$0.46 million.

X. RECEIVER TERM SHEET & REPAYMENT OF BORROWINGS

44. As detailed in the Prior Reports, pursuant to the terms of the Appointment Order, the Receiver was authorized to borrow up to \$500,000 from the Applicants pursuant to the Receiver Term Sheet, and the Applicants were granted a Receiver's Borrowings Charge (as defined in the Appointment Order) as security for such borrowings, which charge has customary super-priority to other liens and encumbrances, as set out in the Appointment Order. As authorized by the Sale Process Order, the term of the Receiver Term Sheet was extended to June 30, 2022.

45. As of the date of this Fourth Report, the Receiver has borrowed \$300,000 from the Applicants pursuant to the Receiver Term Sheet, which borrowing is evidenced by a Receiver's Certificate (as defined in the Appointment Order).
46. Pursuant to the Receiver Term Sheet Extension Agreements, (i) on June 22, 2022, the Receiver Term Sheet was further extended to September 30, 2022 in light of the May 24 Transaction not proceeding to completion, and (ii) on September 21, 2022, the Receiver Term Sheet was further extended to December 31, 2022 in order to permit sufficient time for the Proposed Transaction to close (provided that it is approved by this Court).
47. The Receiver Term Sheet Extension Agreements are subject to Court approval and accordingly, the Receiver is seeking this Court's approval of same. In the Receiver's view, extending the term of the Receiver Term Sheet is appropriate in the circumstances, as it preserves liquidity and provides additional stability to the operations of these Proceedings and access to funding (if necessary) while the Receiver pursues the closing of the Proposed Transaction and continues to re-market the 414 Victoria Building. Provided that the Proposed Transaction is approved by the Court and closes as anticipated, the Receiver does not expect that it will be required to draw on the balance of the facility made available by the Receiver Term Sheet (as amended).
48. The Receiver is also seeking the Court's approval to fully repay the indebtedness outstanding under the Receiver Term Sheet, as amended, following the closing of the Proposed Transaction, which closing is expected to occur before the December 31, 2022 expiry of the Receiver Term Sheet (as amended).
49. 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, and as such the Receiver is not aware of any claims which could rank in priority to the Receiver's Borrowings Charge.

XI. RECEIVER'S CONCLUSION AND RECOMMENDATION

50. Based on the forgoing, the Receiver respectfully requests that the Court grant the relief referenced in paragraph 14(i) herein.

All of which is respectfully submitted this 4th day of October, 2022.

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
President

George Bourikas
CPA, CA, CIRP, LIT
Vice President

APPENDIX “A”

EXCLUSIVE ENGAGEMENT AGREEMENT AMENDING AGREEMENT

This **AMENDING AGREEMENT** is dated as of September 9, 2022 (the “**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 (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 amend certain terms and conditions of the Exclusive Engagement Agreement.

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements contained in this 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 January 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 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 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 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 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 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 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:
Katherine Forbes
By: BAB666AE0E90403...
Name: Katherine Forbes
Title: President

CBRE LIMITED

By: *Adrian Lee*
Name: Adrian Lee
Title: Executive Vice President, Managing Director

APPENDIX “B”

AMENDING AGREEMENT NO. 3

THIS AMENDING AGREEMENT is dated as of September 21st, 2022 (the “**Third Amending Agreement**”) and is entered into among the Receiver and the Lenders (as each term is defined below).

WHEREAS:

- A.** On August 3, 2021, the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) granted an Order (the “**Receivership Order**”) appointing KPMG Inc., as receiver and manager (in such capacity, the “**Receiver**”) in proceedings bearing Court File No. CV-21-00665375-00CL), pursuant to an application by American General Life Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the “**Lenders**”).
- B.** The Receiver and the Lenders are party to a Term Sheet dated as of July 9, 2021 (as amended, the “**Receiver Term Sheet**”), pursuant to which the Lenders agreed to fund certain costs and obligations of the Receiver in accordance with the terms set out therein.
- C.** The Receiver Term Sheet was approved by the Court pursuant to the Receivership Order.
- D.** To date, the Lenders have advanced CAD \$300,000 to the Receiver pursuant to the Receiver Term Sheet.
- E.** The “Initial Term” in the Receiver Term Sheet was initially for the period ending February 3, 2022.
- F.** Pursuant to an Amending Agreement dated as of December 13, 2021 among the Lenders and the Receiver, the definition of “Initial Term” in the Receiver Term Sheet was amended and extended to June 30, 2022.
- G.** Pursuant to an Amending Agreement dated as of June 22, 2022 among the Lenders and the Receiver, the definition of “Initial Term” in the Receiver Term Sheet was further amended and extended to September 30, 2022
- H.** The Receiver and the Lenders wish to further amend the Receiver Term Sheet, which amendment shall be subject to subsequent Court approval as set out herein.

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements contained in this Third 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
INTERPRETATION**

1.1 Defined Terms. All capitalized terms not otherwise defined in this Third Amending Agreement shall have the meaning ascribed to them in the Receiver Term Sheet.

1.2 Headings. The headings of the Articles and Sections of this Third Amending Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of this Third Amending Agreement.

ARTICLE 2 AMENDMENTS

2.1 Amendment to Section 6. Subject to Section 2.2 below, Section 6 of the Receiver Term Sheet is amended by deleting it in its entirety and replacing it with the following:

- 6. TERM:** The Facility will be available to the Receiver for an initial period ending December 31, 2022 (the “**Initial Term**”). Prior to the expiry of the Initial Term, the Lenders shall determine, at their sole discretion in consultation with the Receiver, the need to provide additional availability under the Facility for the purposes of continuing to pursue the sale of the Property (or any portion thereof) and/or consummating any transactions for the Property (or any portion thereof). If the Lenders so elect to provide additional funding, such additional funding is to be provided for a period of time to be agreed upon by the Lenders and the Receiver in accordance with a revised budget to be agreed upon between the Lenders and the Receiver.

Notwithstanding the foregoing, the Lenders may terminate the Facility at any time following the occurrence of an Event of Default (as defined below) at which point the Initial Term shall be deemed to have expired.

2.2 Court Approval. The further amendment to the Receiver Term Sheet set out herein shall be conditional upon the Court granting an Order, by no later than October 17, 2022 or such later date as the parties may agree: (i) approving this Third Amending Agreement, and (ii) ordering that the Receiver’s Borrowings Charge (as defined in the Receivership Order) shall continue to secure all amounts owing pursuant to the Receiver Term Sheet, as amended hereby, with the same priority provided for in the Receivership Order.

ARTICLE 3 GENERAL

3.1 Continuing Effect; Confirmation of Documents. Except as specifically stated herein, the Receiver Term Sheet shall continue in full force and effect in accordance with the provisions thereof and the certificates and documents issued or granted in connection therewith shall continue in full force and effect. After the date hereof, any reference to the Receiver Term Sheet shall refer to the Receiver Term Sheet as amended hereby.

3.2 Successors and Assigns. This Third Amending Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

3.3 Governing Law. This Third 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.

3.4 No Waiver of Rights or Remedies. This Third Amending Agreement shall not constitute a waiver or amendment by the Lenders of any of their rights or remedies under or in connection with the Receiver Term Sheet, and all such rights are hereby expressly reserved.

3.5 Counterparts. This Third 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 Third 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 Third Amending Agreement to the receiving party.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amending Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

AMERICAN GENERAL LIFE INSURANCE COMPANY by its investment advisor, AIG Asset Management (U.S.), LLC, a Delaware limited liability company

DocuSigned by:
Michelle Campion
B01CCB3D0FE9403...
Per: _____
Name: Michelle Campion
Title: Vice President

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA by its investment advisor, AIG Asset Management (U.S.), LLC a Delaware limited liability company

DocuSigned by:
Michelle Campion
B01CCB3D0FE9403...
Per: _____
Name: Michelle Campion
Title: Vice President

Acknowledged and accepted as of the 21st day of September, 2022.

KPMG INC., solely in its capacity as Receiver and not in its personal or corporate capacity, and without personal or corporate liability

Per: _____
Name: Katherine Forbes
Title: President

IN WITNESS WHEREOF, the parties hereto have caused this Third Amending Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

AMERICAN GENERAL LIFE INSURANCE COMPANY by its investment advisor, AIG Asset Management (U.S.), LLC, a Delaware limited liability company

Per: _____
Name: Michelle Campion
Title: Vice President

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA by its investment advisor, AIG Asset Management (U.S.), LLC a Delaware limited liability company

Per: _____
Name: Michelle Campion
Title: Vice President

Acknowledged and accepted as of the 21st day of September, 2022.

KPMG INC., solely in its capacity as Receiver and not in its personal or corporate capacity, and without personal or corporate liability

Per: Katherine Forbes
Name: Katherine Forbes
Title: President

AMENDING AGREEMENT NO. 2

THIS AMENDING AGREEMENT is dated as of June 22, 2022 (the “**Second Amending Agreement**”) and is entered into among the Receiver and the Lenders (as each term is defined below).

WHEREAS:

- A.** On August 3, 2021, the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) granted an Order (the “**Receivership Order**”) appointing KPMG Inc., as receiver and manager (in such capacity, the “**Receiver**”) in proceedings bearing Court File No. CV-21-00665375-00CL), pursuant to an application by American General Life Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the “**Lenders**”).
- B.** The Receiver and the Lenders are party to a Term Sheet dated as of July 9, 2021 (as amended, the “**Receiver Term Sheet**”), pursuant to which the Lenders agreed to fund certain costs and obligations of the Receiver in accordance with the terms set out therein.
- C.** The Receiver Term Sheet was approved by the Court pursuant to the Receivership Order.
- D.** To date, the Lenders have advanced CAD \$300,000 to the Receiver pursuant to the Receiver Term Sheet.
- E.** The “Initial Term” in the Receiver Term Sheet was initially for the period ending February 3, 2022.
- F.** Pursuant to an Amending Agreement dated as of December 13, 2021 among the Lenders and the Receiver, the definition of “Initial Term” in the Receiver Term Sheet was extended to June 30, 2022.
- G.** The Receiver and the Lenders wish to further amend the Receiver Term Sheet, which amendment shall be subject to subsequent Court approval as set out herein.

NOW THEREFORE THIS 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 INTERPRETATION

1.1 Defined Terms. All capitalized terms not otherwise defined in this Second Amending Agreement shall have the meaning ascribed to them in the Receiver Term Sheet.

1.2 Headings. The headings of the Articles and Sections of this Second Amending Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of this Second Amending Agreement.

- 2 -

ARTICLE 2 AMENDMENTS

2.1 Amendment to Section 6. Subject to Section 2.2 below, Section 6 of the Receiver Term Sheet is amended by deleting it in its entirety and replacing it with the following:

6. TERM: The Facility will be available to the Receiver for an initial period ending September 30, 2022 (the “**Initial Term**”). Prior to the expiry of the Initial Term, the Lenders shall determine, at their sole discretion in consultation with the Receiver, the need to provide additional availability under the Facility for the purposes of continuing to pursue a Court-approved sale process for the Property (or any portion thereof) and/or consummating any successful bid(s) for the Property (or any portion thereof). If the Lenders so elect to provide additional funding, such additional funding is to be provided for a period of time to be agreed upon by the Lenders and the Receiver in accordance with a revised budget to be agreed upon between the Lenders and the Receiver.

Notwithstanding the foregoing, the Lenders may terminate the Facility at any time following the occurrence of an Event of Default (as defined below) at which point the Initial Term shall be deemed to have expired.

2.2 Court Approval. The amendment to the Receiver Term Sheet set out herein shall be conditional upon the Court granting an Order, by no later than August 1, 2022 or such later date as the parties may agree: (i) approving this Second Amending Agreement, and (ii) ordering that the Receiver’s Borrowings Charge (as defined in the Receivership Order) shall continue to secure all amounts owing pursuant to the Receiver Term Sheet, as amended hereby, with the same priority provided for in the Receivership Order.

ARTICLE 3 GENERAL

3.1 Continuing Effect; Confirmation of Documents. Except as specifically stated herein, the Receiver Term Sheet shall continue in full force and effect in accordance with the provisions thereof and the certificates and documents issued or granted in connection therewith shall continue in full force and effect. After the date hereof, any reference to the Receiver Term Sheet shall refer to the Receiver Term Sheet as amended hereby.

3.2 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.

3.3 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.

3.4 No Waiver of Rights or Remedies. This Second Amending Agreement shall not constitute a waiver or amendment by the Lenders of any of their rights or remedies under or in connection with the Receiver Term Sheet, and all such rights are hereby expressly reserved.

- 3 -

3.5 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 hereto have caused this Second Amending Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

AMERICAN GENERAL LIFE INSURANCE COMPANY by its investment advisor, AIG Asset Management (U.S.), LLC, a Delaware limited liability company

DocuSigned by:
Michelle Campion
B01CCB3D0FE9403...

Per: _____
Name: Michelle Campion
Title: Vice President

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA by its investment advisor, AIG Asset Management (U.S.), LLC a Delaware limited liability company

DocuSigned by:
Michelle Campion
B01CCB3D0FE9403...

Per: _____
Name: Michelle Campion
Title: Vice President

Acknowledged and accepted as of the 22nd day of June, 2022.

KPMG INC., solely in its capacity as Receiver and not in its personal or corporate capacity, and without personal or corporate liability

Per: *Katherine Forbes*

Name: Katherine Forbes
Title: President

APPENDIX “C”

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

- and -

BENEFICIAL OWNERS BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

- and –

DR. ALLEN GREENSPOON

- and –

1000301029 ONTARIO LIMITED

ASSET PURCHASE AGREEMENT

DATED AS OF SEPTEMBER 1, 2022

TABLE OF CONTENTS

	Page
ARTICLE 1 INTERPRETATION	2
1.1 Definitions	2
1.2 Actions on Non-Business Days	12
1.3 Currency and Payment Obligations	12
1.4 Calculation of Time	12
1.5 Tender	12
1.6 Additional Rules of Interpretation	13
1.7 Schedules	13
ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES	14
2.1 Purchase and Sale of Purchased Assets	14
2.2 Assumption of Assumed Liabilities	14
2.3 Assignment of Contracts	14
2.4 Transfer and Assignment of Permits and Licences	15
ARTICLE 3 PURCHASE PRICE & TAXES	16
3.1 Purchase Price	16
3.2 Satisfaction of Purchase Price	16
3.3 Allocation of Purchase Price	17
3.4 Closing Adjustments	17
3.5 Taxes	17
3.6 Taxes and GST/HST Gross Up	17
ARTICLE 4 REPRESENTATIONS AND WARRANTIES	18
4.1 Representations and Warranties of the Purchaser	18
4.2 Representations and Warranties of the Vendors	19
4.3 As is, Where is	19
ARTICLE 5 COVENANTS	21
5.1 Motion for Approval and Vesting Order	21
5.2 Access During Interim Period	21
5.3 Transaction Personal Information	22
5.4 Risk of Loss	22
5.5 Indemnity	22
5.6 Environmental Liabilities	22
5.7 Books and Records	22
5.8 Regulatory Approvals	23
5.9 Cooperation and Consultation with Governmental Authorities	23
5.10 Excluded Assets	23
5.11 Guarantee	23

TABLE OF CONTENTS

	Page
5.12 Alternative Transaction	25
5.13 Break-Up Fee	25
ARTICLE 6 CLOSING ARRANGEMENTS	25
6.1 Closing.....	25
6.2 Vendors' Closing Deliveries	25
6.3 Purchaser's Closing Deliveries	26
ARTICLE 7 CONDITIONS OF CLOSING	27
7.1 Purchaser's Conditions	27
7.2 Vendors' Conditions.....	27
7.3 Receiver's Certificate	28
ARTICLE 8 TERMINATION.....	28
8.1 Grounds for Termination	28
8.2 Effect of Termination.....	29
8.3 Treatment of Deposit	30
ARTICLE 9 GENERAL	30
9.1 Survival.....	30
9.2 Expenses.....	30
9.3 Public Announcements	30
9.4 Notices.....	31
9.5 Time of Essence	31
9.6 Further Assurances.....	31
9.7 Post-Closing Wind-Up of Receivership Proceedings.....	32
9.8 Entire Agreement.....	32
9.9 Amendment	32
9.10 Waiver	32
9.11 Severability	32
9.12 Remedies Cumulative.....	32
9.13 Governing Law.....	32
9.14 Dispute Resolution.....	33
9.15 Attornment	33
9.16 Successors and Assigns.....	33
9.17 Assignment.....	33
9.18 Receiver's Capacity	33
9.19 Third Party Beneficiaries.....	33
9.20 Counterparts.....	33

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of September 1, 2022 is made by and between:

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

(the “**Legal Owner**”)

- and -

BENEFICIAL OWNERS BY KPMG IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

(together with the Legal Owner, the “**Vendors**”)

- and -

DR. ALLEN GREENSPOON

- and –

1000301029 ONTARIO LIMITED

(the “**Purchaser**”)

RECITALS:

- A. The Legal Owner is the legal owner of and in the business of operating the Real Property Assets (the “**Business**”).
- B. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on August 3, 2021 in the proceedings bearing Court File No. Court File No. CV-21-00665375-00CL (the “**Receivership Proceedings**”), KPMG Inc. was appointed as receiver and manager of, among other things, (i) all of the assets and undertakings of the Legal Owner, and (ii) all right, title and interest of any beneficial owners (collectively, the “**Beneficial Owners**”) in and to the Legal Owners’ assets, undertakings and properties, including the Real Property Assets (in such capacity and not in its personal or corporate capacity, the “**Receiver**”).
- C. On October 29, 2021, the Court granted an order (the “**Sale Process Order**”) in the Receivership Proceedings, approving a sale process in respect of the Real Property Assets (the “**Sale Process**”).
- D. Pursuant to the Sale Process and the Sale Process Order, the Receiver wishes to cause the Vendors to sell and assign to the Purchaser, and the Purchaser wishes to purchase and assume from the Vendors, all of the Vendors’ right, title and interest in and to the Purchased Assets and the Assumed Liabilities (each as defined below), on the terms and subject to the conditions contained in this Agreement.

- E. The transactions contemplated by this Agreement are subject to the approval of the Court and will be consummated pursuant to the Approval and Vesting Order to be entered by the Court in the Receivership Proceedings.
- F. The Break-Up Fee (to the extent applicable) is subject to the approval of the Court.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement:

“414 Victoria Property” means the real property located at 414 Victoria Ave N, Hamilton ON.

“Action” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, Order, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at Law or in equity and by or before a Governmental Authority.

“Affiliate” means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to **“control”** another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term **“controlled”** shall have a similar meaning.

“Agreement” means this Asset Purchase Agreement, including the preamble and the Recitals, and all the Schedules attached hereto, as they may be amended, restated or supplemented from time to time in accordance with the terms hereof.

“Alternative Transaction” means any Asset Purchase Agreement pursuant to which the Vendors agree to sell and a purchaser agrees to purchase (i) the Real Property Assets for a cash purchase price of at least \$██████████, or (ii) the Real Property Assets and the 414 Victoria Property for an aggregate total cash purchase price of at least \$██████████, irrespective of the allocation thereof among the Real Property Assets and the 414 Victoria Property.

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, (i) any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order or other requirement having the force of law, (ii) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law (collectively, in the foregoing clauses (i) and (ii), **“Law”**), in each case relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

“Approval and Vesting Order” means an Order of the Court issued in the Receivership Proceedings, in form and substance satisfactory to the Parties and the Receiver, each acting reasonably, approving the transactions contemplated by this Agreement and vesting in the Purchaser all of the Vendors’ right, title and interest in and to the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances).

“Assigned Contracts” means, collectively, the Critical Contracts, the Real Property Leases, the Personal Property Leases and the other Contracts listed on Schedule “C”.

“Assignment and Assumption Agreement” means an assignment and assumption agreement, in form and substance satisfactory to the Parties and the Receiver, each acting reasonably, evidencing the assignment to the Purchaser of the Vendors’ rights, benefits and interests in, to and under the Assigned Contracts and the assumption by such Purchaser of all of the Assumed Liabilities under or in respect of such Assigned Contracts.

“Assignment Order” means an order of the Court issued in the Receivership Proceedings in form and substance satisfactory to the Parties and the Receiver, each acting reasonably, assigning to the Purchaser the Vendors’ right, benefit and interest in and to any of the Critical Contracts or Real Property Leases for which any necessary consent to assign has not been obtained.

“Assumed Liabilities” means the following Liabilities of each of the Vendors:

- (1) all Liabilities under the Assigned Contracts and Permits and Licences (in each case to the extent such Assigned Contract or Permit and Licence is effectively assigned to the Purchaser) arising on or after the Closing Date;
- (2) all Liabilities relating to the Purchased Assets or Related to the Business arising on or after the Closing Date, including any Post-Closing Real Property Taxes, but, for greater certainty, does not apply to any such Liabilities arising prior to the Closing Date;
- (3) all Environmental Claims and all Environmental Liabilities; and
- (4) without limiting foregoing clause (1), all Liabilities of the Vendors to any of the Vendors’ tenants in respect of any tenant inducements or other incentives given by any of the Vendors to their tenants in the ordinary course of business, in each case, provided that any such inducements or incentives have been disclosed to the Purchaser by the Vendors prior to Closing.

“Books and Records” means the books, records, files, papers, books of account and other financial data of the Vendors which are solely Related to the Business or related to the Purchased Assets, including drawings, engineering information, manuals and Data, sales and advertising materials, rent rolls, sales and purchase correspondence, trade association files, research and development records, lists of present and former customers and suppliers, marketing lists and marketing consent records and all records, Data and information stored electronically, digitally or on computer-related or any other media.

“Break-Up Fee” has the meaning set forth in Section 5.12.

“Broker” means CBRE Limited.

“Business” has the meaning set out in Recital A.

“Business Day” means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto, Ontario.

“Cash and Cash Equivalents” means cash, bank balances, monies in possession of banks and other depositories, term or time deposits, marketable securities, short term investments, funds, bankers’ acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents of, owned or held by the Vendors or the Receiver or for the account of the Vendors.

“Cash Purchase Price” has the meaning set out in Section 3.1(1).

“Casualty” has the meaning set out in Section 5.4.

“Closing” means the completion of the purchase and sale of the Vendors’ right, title and interest in and to the Purchased Assets and the assignment to and assumption by the Purchaser of the Assumed Liabilities in accordance with the provisions of this Agreement.

“Closing Date” means the date on which Closing occurs, which date shall be the Target Closing Date or such other date as may be agreed to in writing by the Parties.

“Closing Time” means the time of day on the Closing Date when Closing occurs.

“Contracts” means all pending and executory contracts, agreements, leases, understandings and arrangements (whether oral or written) to which any of the Vendors are a party or by which any of the Vendors or any of the Purchased Assets are bound or under which the Vendors have rights.

“Court” has the meaning set out in Recital B.

“Critical Contracts” means those other Contracts that are, in the opinion of the Purchaser, acting reasonably, necessary and critical to the operation of the Business and the Purchased Assets as a going concern after the Closing Date as listed and specified as “Critical Contracts” on Schedule “C”.

“Cure Costs” means (i) with respect to any Assigned Contract for which a consent to assignment is required and has not been obtained and is to be assigned to the Purchaser in accordance with the terms of the Assignment Order, the amounts, if any, required to be paid to remedy all of the Vendors’ monetary defaults existing as at the Closing Date under such Assigned Contract (or such other amounts as may be agreed by the Purchaser and the counterparty to such Assigned Contract), and (ii) with respect to any Assigned Contract to be assigned on consent, where consent is required, the amount, if any, required to be paid to a counterparty to secure its consent to the assignment of such Assigned Contract by any of the Vendors to the Purchaser (which

any past, present or future non-compliance with, violation of or Liability under any Environmental Laws or any Environmental Permit applicable to or otherwise involving the Purchased Assets, whenever occurring or arising.

“Environmental Permit” means any Permit and Licence, letter, clearance, consent, waiver, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“Environmental Release” includes any actual or potential release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“ETA” means the *Excise Tax Act*, RSC 1985, c E-15 and the regulations thereunder.

“Excluded Assets” means (i) all Receivables which are due, accrued or have become owing immediately prior to the Closing Time, trade accounts, bank accounts, book debts, insurance claims, insurance Contracts or policies, bills, credits, rebates, deposits, prepaid expenses, prepaid rent, prepayments, holdbacks, funds, Cash and Cash Equivalents, marketable securities, short-term investments, Intercompany Claims, Tax credits, including without limitation, Tax Returns, Tax installments paid by or on behalf of any of the Vendors or any of their Affiliates, and all rights to claim and/or receive a rebate, refund of, and/or credit in respect of Taxes paid by or on behalf of any of the Vendors or any of their Affiliates, (ii) all proprietary marks and other Intellectual Property which includes the word “Gross”, (iii) all minute books and other corporate records of any of the Vendors and any Books and Records that any of the Vendors or the Receiver are required by Applicable Law to retain in their possession, (iv) the rights of any of the Vendors under this Agreement or any other agreement, certificate or instrument executed and delivered pursuant to this Agreement, (v) all causes of action which arise from loss, Damage or facts occurring prior to the Closing Date and any insurance proceeds or claims payable for losses or damages incurred prior to the Closing Date, other than insurance proceeds or rights thereto assigned to the Purchaser in accordance with Section 5.4, (vi) all shares, units, partnership interests or other ownership or equity interests of the Vendors in any Affiliate of the Vendors, and (vii) any other assets, rights or property of any kind or nature whatsoever of any of the Vendors not listed in Schedule “A” as “Purchased Assets”.

“Final Order” means, at the relevant time or date, an order of the Court that has not been vacated, stayed, amended, reversed or modified.

“Governmental Authority” means:

- (1) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);
- (2) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;

- (3) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and
- (4) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, securities commission or professional association.

“**GST/HST**” means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA.

“**GST/HST Certificate and Indemnity**” has the meaning set forth in Section 3.5.

“**Guarantee**” has the meaning set forth in Section 5.13(1).

“**Guaranteed Obligations**” has the meaning set forth in Section 5.13(1).

“**Guarantor**” has the meaning set forth in the preamble hereto.

“**Hazardous Materials**” means: (i) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral, gas, odour, heat, sound, vibration, radiation or combination of them that may impair the natural environment, injure or damage property or animal life or harm or impair the health of any individual and includes any contaminant, waste or substance or material defined, prohibited, regulated or reportable pursuant to any Applicable Law relating to the environment, pollution or human health and safety, in each case, whether naturally occurring or manmade; and (ii) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“**ICA**” means the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.).

“**Intellectual Property**” means all intellectual property and industrial property, throughout the world, whether or not registerable, patentable or otherwise formally protectable, and whether or not registered, patented, otherwise formally protected or the subject of a pending application for registration, patent or any other formal protection, including all (i) trade-marks, corporate names and business names, (ii) inventions, (iii) works and subject matter in which copyright, neighbouring rights or moral rights subsist, (iv) industrial designs, patents, (v) know-how, trade secrets, proprietary information, confidential information and information of a sensitive nature that have value to the Business or relate to business opportunities for the Business, in whatever form communicated, maintained or stored, (vi) telephone numbers and facsimile numbers, (vii) registered domain names, and (viii) social media usernames and other internet identities and all account information relating thereto.

“**Intercompany Claims**” means all present and future claims of any nature or kind whatsoever of any of the Vendors against an Affiliate thereof, whether such Affiliate is a Party to this Agreement or otherwise.

“**Interim Period**” means the period from the date that this Agreement is entered into by the Parties to the Closing Time.

“**ITA**” means the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supplement), and the regulations thereto.

“**Law**” has the meaning set out in the definition of “**Applicable Law**”.

“**Legal Owner**” has the meaning set out in the preamble hereto.

“**Legal Proceeding**” means any litigation, Action, application, demand, suit, investigation, hearing, claim, complaint, deemed complaint, grievance, civil, administrative, regulatory or criminal, arbitration proceeding or other similar proceeding, before or by any court or other tribunal or Governmental Authority and includes any appeal or review thereof and any application for leave for appeal or review.

“**Liability**” means, with respect to any Person, any liability, cost, expense, debt, dues, guarantee, surety, indemnity obligation, or other obligation of such Person of any kind, character or description, whether legal, beneficial or equitable, known or unknown, present or future, direct, indirect, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due or accruing due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“**Material Casualty**” means a Casualty in respect of all or substantially all of the Purchased Assets.

“**Motion Date**” means the date that is thirty (30) calendar days following the due execution of this Agreement.

“**Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Outside Date**” means the date that is sixty (60) calendar days following the due execution of this Agreement.

“**Party**” means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and “**Parties**” means more than one of them.

“**Permits and Licences**” means any and all licences, permits, approvals, authorizations, certificates, directives, Orders, variances, registrations, rights, privileges, concessions, granted, conferred or otherwise created by any Governmental Authority and held by or on behalf of any of the Vendors or other evidence of authority Related to the Business issued to, granted to, conferred upon, or otherwise created for, any of the Vendors which relate to the ownership, maintenance, operation of the Business or the Purchased Assets.

“**Permitted Encumbrances**” means, collectively:

- (1) Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested;

- (2) construction, mechanics', carriers', workers', repairers', storers' or other similar Encumbrances (inchoate or otherwise) if individually or in the aggregate: (i) they are not in respect of indebtedness exceeding \$██████ (ii) they arose or were incurred in the ordinary course of business; (iii) they have not been filed, recorded or registered in accordance with Applicable Law; (iv) notice of them has not been given to the Vendors; and (v) the indebtedness secured by them is not in arrears;
- (3) title defects or irregularities, unregistered easements or rights of way, and other unregistered restrictions or discrepancies affecting or in any way limiting the use of real property if such title defects, irregularities or restrictions would be disclosed by an up-to-date survey of such real property or, if not, are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (4) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect or materially limit the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (5) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (6) registered easements on real property for the supply of utilities or telephone services and for drainage, storm or sanitary sewers, public utilities lines, telephone lines, cable television lines or other services, provided such easements have been complied with in all material respects;
- (7) registered easements or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Real Property Assets, provided such easements or rights-of-way have been complied with in all material respects;
- (8) facility cost sharing, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or any Governmental Authority in respect of the Real Property Assets, provided such agreements have been complied with in all material respects;
- (9) any minor encroachments by any structure located on the Real Property Assets onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Real Property Assets;
- (10) the Real Property Leases, any registered notices of leases and all other encumbrances and instruments registered against title to the Real Property Assets by reason of any tenant of a Real Property Lease having encumbered such Real Property Lease; and

- (11) in respect of the Real Property Assets and the Real Property Leases, the provisions of any Applicable Law, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning, and any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent.

“Person” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity.

“Personal Information” means information about an identifiable individual as defined in Privacy Law.

“Personal Property” means any and all vehicles, machinery, equipment, parts, chattels, inventory of spare parts, parts and supplies, furniture and any other tangible personal and movable property in which any of the Vendors have a beneficial right, title or interest (whether owned or leased), in all cases, solely Related to the Business, wherever situate, other than Excluded Assets.

“Personal Property Leases” means a personal or movable property lease, chattel lease, equipment lease, financing lease, conditional or instalment sales contract and other similar agreement relating to Personal Property to which any of the Vendors are a party or under which they have rights to use Personal Property as listed and specified as “Personal Property Leases” on Schedule “C”.

“Pre-Closing Period” has the meaning set out in Section 3.4.

“Post-Closing Period” has the meaning set out in Section 3.4.

“Post-Closing Real Property Taxes” means, any Taxes payable respect of any Real Property Assets, in respect of the period from and after the Closing Date which shall be calculated on a pro-rata basis on the basis of a 365 day year.

“Privacy Law” means the *Personal Information Protection and Electronic Documents Act* (Canada) and any Applicable Law of any other Province or territory of Canada.

“Purchase Price” has the meaning set out in Section 3.1.

“Purchased Assets” means, collectively, those assets of each of the Vendors which are Related to the Business as set out in Schedule “A” (or any of them), but, for greater certainty, does not include any Excluded Assets.

“Purchaser” has the meaning set out in the preamble hereto and includes any successor or permitted assignee thereof in accordance with Section 9.17.

“Real Property Assets” means the real property listed and specified on Schedule “B”.

“Real Property Leases” means all of the Real Property Assets, including those listed and specified on Schedule “C”.

“Receiver” has the meaning set out in Recital B.

“Receiver’s Certificate” means the certificate, substantially in the form to be attached as Schedule “B” to the Approval and Vesting Order and in form and substance satisfactory to the Parties and the Receiver, each acting reasonably, to be delivered by the Receiver to the Purchaser on Closing and thereafter filed by the Receiver with the Court certifying that the conditions to Closing have been satisfied and/or waived by the Vendors and the Purchaser and that the transactions contemplated by this Agreement have been completed to the satisfaction of the Receiver.

“Receivership Proceedings” has the meaning set out in Recital B.

“Receivables” means, in respect of a Person all cash, accounts receivable, rents, bills receivable, trade accounts, holdbacks, retention, book debts and insurance claims due or accruing due to such Person, together with any unpaid interest or fees accrued on such items and any security or collateral for such items, including recoverable deposits.

“Related to the Business” means primarily (i) used in, (ii) arising from or (iii) otherwise related to the Business or any part thereof.

“Replacement Permit and Licence” means a new permit, licence, authorization, approval or other similar item providing substantially equivalent rights to the Purchaser as the Vendors are entitled to as of the Closing Date pursuant to the applicable Permit and Licence.

“Representative” when used with respect to a Person means each director, officer, employee, consultant, subcontractor, financial adviser, legal counsel, broker, sale agent, accountant and other agent, adviser or representative of that Person.

“Sale Process” has the meaning set out in Recital B.

“Sale Process Team” means each of the Vendors and any of their Affiliates, the Broker and the Receiver.

“Successful Bid” has the meaning set out in the Sale Process.

“Target Closing Date” means the fifteenth (15th) calendar day following the issuance of the Approval and Vesting Order.

“Tax Returns” means all returns, reports, declarations, elections, notices, filings, information returns, statements and forms in respect of Taxes that are filed or required to be filed with any applicable Governmental Authority, including all amendments, schedules, attachments or supplements thereto and whether in tangible or electronic form.

“Taxes” means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, *ad valorem* taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, government pension plan premiums and contributions, social security premiums, workers’ compensation premiums,

employment/unemployment insurance or compensation premiums and contributions, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority and any instalments in respect thereof of another taxpayer or entity, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties, and whether disputed or not, and “**Tax**” means any one of such Taxes.

“**Transaction Personal Information**” means any Personal Information (i) in the possession, custody or control of any member of the Sale Process Team at the Closing Time, including Personal Information about tenants, former employees, suppliers, customers, directors, officers, beneficial owners or shareholders that is disclosed to the Purchaser or any Representative of the Purchaser prior to the Closing Time by any member of the Sale Process Team or their Representatives, or (ii) collected by the Purchaser or any Representative of the Purchaser prior to the Closing Time from any member of Sale Process Team or their Representatives, in either case in connection with the transactions contemplated by this Agreement.

“**Transfer Taxes**” means all applicable Taxes, including any applicable, GST/HST, other sales or value added taxes, duties and land transfer taxes and registration fees payable upon or in connection with the transactions contemplated by this Agreement and any filing, registration, recording or transfer fees, or other charges payable in connection with the instruments of transfer provided for in this Agreement.

“**Vendors**” has the meaning set out in the preamble hereto.

1.2 Actions on Non-Business Days. If any payment is required to be made or other action (including the giving of notice) is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this Agreement if made or taken on the next succeeding Business Day.

1.3 Currency and Payment Obligations. Except as otherwise expressly provided in this Agreement: (i) all dollar amounts referred to in this Agreement are stated in the lawful currency of Canada; and (ii) any payment contemplated by this Agreement shall be made by wire transfer of immediately available funds to an account of the Receiver specified by the Receiver, by certified cheque or by any other method that provides immediately available funds as agreed to by the Receiver.

1.4 Calculation of Time. In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. Toronto time on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. Toronto time on the next succeeding Business Day.

1.5 Tender. Any tender of documents or money hereunder may be made upon the Parties or, if so indicated, the Receiver, or their respective counsel.

1.6 Additional Rules of Interpretation.

(1) *Gender and Number.* In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.

(2) *Headings and Table of Contents.* The inclusion in this Agreement of headings of Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.

(3) *Section References.* Unless the context requires otherwise, references in this Agreement to Articles, Sections or Schedules are to Articles or Sections of this Agreement, and Schedules to this Agreement.

(4) *Words of Inclusion.* Wherever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

(5) *References to this Agreement.* The words “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Section or portion of it.

(6) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision and also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.

(7) *Document References.* All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules attached thereto.

1.7 Schedules. The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

SCHEDULES

<u>Schedule “A”</u>	Purchased Assets
<u>Schedule “B”</u>	Real Property Assets
<u>Schedule “C”</u>	Assigned Contracts
<u>Schedule “D”</u>	Allocation of Purchase Price
<u>Schedule “E”</u>	GST/HST Certificate and Indemnity

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary

intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Purchased Assets. At the Closing Time, on and subject to the terms and conditions of this Agreement and the Approval and Vesting Order, the Vendors shall sell to the Purchaser, and the Purchaser shall purchase from the Vendors, all of the Vendors' right, title and interest in and to the Purchased Assets, which shall be free and clear of all Encumbrances other than Permitted Encumbrances, to the extent and as provided for in the Approval and Vesting Order. For greater certainty, notwithstanding any other provision of this Agreement, this Agreement does not constitute an agreement by the Purchaser to purchase, or by the Vendors to sell, any Excluded Assets.

2.2 Assumption of Assumed Liabilities. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the applicable Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not assume any Liabilities hereunder other than the Assumed Liabilities, except as required under Applicable Law.

2.3 Assignment of Contracts.

(1) *Obtaining Consents.* Prior to Closing, at the written request of the Purchaser, the Vendors, with the assistance of the Purchaser, shall use commercially reasonable efforts to obtain all consents required to assign the applicable Assigned Contracts to the Purchaser.

(2) *Assignment Order.* To the extent that any Assigned Contract is not assignable without the consent of the counterparty or any other Person and such consent has not been obtained prior to the Closing Date, (i) the Vendors' rights, benefits and interests in, to and under such Assigned Contract may be conveyed to the Purchaser pursuant to an Assignment Order, (ii) the Receiver will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contract on or prior to the Closing Date in form and substance acceptable to the Purchaser, acting reasonably, (iii) the Purchaser, at its own expense, will promptly provide to the Receiver all such information within its possession or under its control as the Receiver may reasonably request to obtain the Assignment Order, and (iv) if an Assignment Order is obtained in respect of such Assigned Contract in form and substance acceptable to the Purchaser, acting reasonably, the Purchaser shall accept the assignment of such Assigned Contract on such terms.

(1) *Cure Costs.* Unless the Parties otherwise agree, to the extent that any Cure Costs are payable with respect to any Assigned Contract, the Purchaser shall (i) where such Assigned Contract is assigned pursuant to an Assignment Order, pay all such Cure Costs in accordance with the Assignment Order, [REDACTED] and (ii) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay all such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty, [REDACTED]

(3) *Assignment.* At the Closing Time, on and subject to the terms and conditions of this Agreement (including Section 2.3(4) below), the Approval and Vesting Order and the Assignment Order (if applicable), all of the Vendors' rights, benefits and interests in, to and under the Assigned Contracts shall be assigned to the Purchaser, the consideration for which is included in the Purchase Price.

(4) *Where Consent Required.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Assigned Contract to the extent such Assigned Contract is not assignable under Applicable Law, or the terms of the applicable Assigned Contract provide that it is not assignable without the consent of another Person, unless such consent has been obtained or the assignment is subject to an Assignment Order.

(5) *No Adjustment.* For greater certainty, in respect of any Assigned Contract other than the Critical Contracts or the Real Property Leases, if the consent of any Person is required to assign such Contract but such consent is not obtained prior to Closing and such Contract is not assigned pursuant to an Assignment Order, such Contract shall not form part of the Purchased Assets and (i) no Party shall be considered to be in breach of this Agreement, (ii) the failure to assign or otherwise transfer such Assigned Contract shall not be a condition to Closing, (iii) the Purchase Price shall not be subject to any adjustment, and (iv) the Closing shall not be delayed.

(6) *Intercompany Corporate Services.* Any corporate support, treasury, legal, human resources, risk management, property management, commercial, marketing, accounting, payroll and technical support services Related to the Business provided by any of the Vendors or by any Affiliate to any of the Vendors, to the Business prior to Closing will be terminated as of the Closing, and the Purchaser acknowledges and agrees it they shall be responsible for providing its own corporate support, treasury, legal, human resources, risk management, property management, commercial, marketing, accounting, payroll and technical support services in respect of the Purchased Assets and the Business following Closing.

2.4 Transfer and Assignment of Permits and Licences.

(1) *Obtaining Consents.* Prior to Closing, to the extent that a Permit and Licence is assignable or otherwise transferable by any of the Vendors to the Purchaser, the Vendors, with the assistance of the Purchaser, shall use commercially reasonable efforts to obtain all necessary consents or approvals to assign or otherwise transfer such Permits and Licences to the Purchaser. The Purchaser (i) shall pay all costs required to be paid to third parties and/or Governmental Authorities in connection with obtaining the assignment or transfer of any applicable Permit and Licence to such Purchaser, or reissuance thereof (which costs shall be in addition to the Purchase Price), and (ii) shall reimburse the Vendors to the extent of any third party costs and/or any costs payable to Governmental Authorities that are incurred by any of the Vendors in connection with obtaining the assignment or transfer of any applicable Permit and Licence to such Purchaser or obtaining any Replacement Permits and Licence (which costs shall be in addition to the Purchase Price), provided, however, that the applicable Vendors provide evidence of such third party costs and/or Governmental Authority costs satisfactory to such Purchaser, acting reasonably, and such third party costs and/or Governmental Authority costs shall exclude all salaries, fees and costs of any and all consultants, employees, counsel or other Representatives of the Vendors related to such assignment and transfer.

(2) *Transfer and Assignment.* At the Closing Time, on and subject to the terms and conditions of this Agreement and the Approval and Vesting Order, all of the Vendors' rights, benefits and interests in, to and under the Permits and Licences, to the extent assignable, shall be assigned to the Purchaser, the consideration for which is included in the Purchase Price.

(3) *Where Consent Required.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or otherwise transfer any Permit and Licence to the extent such Permit and Licence is not assignable or transferable under Applicable Law or the terms of the applicable Permit and Licence provide that it is not assignable without the consent of another Person, unless such consent has been obtained.

(4) *Post-Closing Assignment.* Notwithstanding anything in this Agreement to the contrary, if the consent or approval of any Person or Governmental Authority is required to assign or otherwise transfer a Permit and Licence, but such consent or approval is not obtained prior to Closing, (i) the Vendors and the Purchaser shall use its commercially reasonable efforts to obtain the necessary consents or approvals to the assignment or transfer of such Permit and Licence to such Purchaser or such Purchaser shall use its commercially reasonable efforts to obtain (with commercially reasonable assistance from the Vendors) a Replacement Permit and Licence thereof, in each case, as soon as practicable following Closing, (ii) neither Party shall be considered to be in breach of this Agreement, (iii) the failure to assign or otherwise transfer such Permit and Licence or obtain any Replacement Permit or Licence, shall not be a condition to Closing, (iv) the Purchase Price shall not be subject to adjustment, and (v) the Closing shall not be delayed.

(5) *Obtaining Replacement Permits and Licenses.* To the extent that a Permit and Licence is not assignable or otherwise transferrable by the Vendors to any Purchaser, such Purchaser, with the assistance of the Vendors, shall use commercially reasonable efforts to obtain a Replacement Permit and Licence in connection with the purchase and sale of the Purchased Assets. The Purchaser shall pay all costs required in connection with obtaining any Replacement Permit and Licence (which shall be in addition to the Purchase Price).

ARTICLE 3 PURCHASE PRICE & TAXES

3.1 Purchase Price. The consideration payable by the Purchaser to the Vendors for the Vendors' right, title and interest in and to the Purchased Assets (the "**Purchase Price**") shall be the aggregate of:

- (1) \$██████████ (the "**Cash Purchase Price**");
- (2) the Cure Costs; and
- (3) the agreed value of the Assumed Liabilities, which is estimated to be \$██████████

3.2 Satisfaction of Purchase Price. The Purchase Price shall be paid and satisfied as follows:

- (1) a deposit in the amount of \$██████████ (the "**Deposit**") which shall be paid by the Purchaser to the Receiver upon execution of this Agreement and shall be applied against the Cash Purchase Price on Closing. The Purchaser agrees that the Deposit shall be deposited into a non-interest bearing account of the Receiver;

- (2) the balance of the Cash Purchase Price, after crediting the Deposit in Section 3.2(1), shall be paid by the Purchaser to the Receiver on behalf of the Vendors at Closing;
- (3) the Cure Costs, shall be paid or otherwise satisfied by the Purchaser on behalf of the Vendors at Closing in accordance with Section 6.3(3); and
- (4) an amount equal to the agreed value of the Assumed Liabilities, shall be satisfied at Closing by the assumption by the Purchaser of the applicable Assumed Liabilities by the execution and delivery of the Assignment and Assumption Agreement.

3.3 Allocation of Purchase Price. The Vendors and the Purchaser agree to allocate the Purchase Price to the Purchased Assets held by each Vendor and purchased by the Purchaser for Tax purposes in the manner set out in Schedule “D”, and to report the sale and purchase of the Purchased Assets for all federal, provincial and local Tax purposes in a manner consistent with such allocation, which shall include, for greater certainty, an allocation by category of Purchased Assets and among the Vendors. If such allocation is disputed by any Governmental Authority with respect to Taxes, the Party receiving notice of such dispute will promptly notify the other Party and the Parties will use their commercially reasonable efforts to sustain the final allocation. The Parties will share information and cooperate to the extent reasonably necessary to permit the transaction contemplated by this Agreement to be properly, timely and consistently reported.

3.4 Closing Adjustments. Any (i) rents, prepaid rents or security deposits, (ii) realty Taxes including local improvement rates, (iii) unmetered public or private utility charges, and (iv) unmetered cost of fuel, in each case as applicable and for a period that includes (but does not end on) the Closing Date shall be apportioned and adjusted between the Vendors and the Purchaser based on the number of days of such period up to the Closing Date (such portion of such period, the “**Pre-Closing Period**”) and the number of days of such period including and after the Closing Date (such portion of such period, the “**Post-Closing Period**”). For greater certainty the Post-Closing Period, including the Closing Date itself shall be apportioned to the Purchaser.

3.5 Taxes. The Purchaser shall pay or cause the payment of all applicable Transfer Taxes as and when such Transfer Taxes are payable pursuant to Applicable Law. The Purchaser and the Vendors acknowledge and agree that the Purchase Price and all other amounts referenced herein are exclusive of all Transfer Taxes. With respect to the Purchased Assets, the Vendors shall charge and collect all applicable GST/HST on Closing, unless the Purchaser provides on Closing a certificate and indemnity substantially in the form attached hereto as **Schedule “E”** (the “**GST/HST Certificate and Indemnity**”). The GST/HST Certificate and Indemnity shall include provisions confirming that the Purchaser is registered under the Excise Tax Act and shall self-assess, file the required form and remit any HST that may be payable.

3.6 Taxes and GST/HST Gross Up. Subject to Section 3.5 above, in the event that any payment made by any Vendor or Purchaser as a consequence of a breach, modification or termination of this Agreement is deemed by the ETA to include GST/HST, or is deemed by any applicable provincial or territorial legislation to include a similar value added or multi-staged tax, the amount of such payment or forfeiture shall be increased accordingly. For greater certainty, if the Purchaser is required by Applicable Law to deduct or withhold any

amount from the Purchase Price payable hereunder, then the Purchase Price shall be increased by an additional amount such that the amount received by the Vendors after such deduction or withholding (including deduction or withholding from such additional amount) is equal to the amount that the Vendors would have received absent any such deduction or withholding.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Purchaser. As a material inducement to the Vendors entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendors are entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 4.1, the Purchaser represents and warrants to the Vendors as follows:

(1) *Incorporation and Corporate Power.* The Purchaser is a corporation incorporated, organized and subsisting under the Laws of the jurisdiction of its incorporation. The Purchaser has the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform its obligations under this Agreement and under all such other agreements and instruments.

(2) *Authorization by Purchaser.* The execution and delivery of this Agreement and all other agreements and instruments to be executed by it as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser.

(3) *Approvals.* No consent, waiver, authorization or approval of any Person and no notice or declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement or all other agreements and instruments to be executed by the Purchaser or the performance by the Purchaser of its obligations hereunder or thereunder.

(4) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms. There is no Legal Proceeding in progress, pending against or threatened against or affecting the Purchaser, and there are no grounds on which any such Legal Proceeding might be commenced and there is no Order outstanding against or affecting the Purchaser which, in any such case, affects adversely or might affect adversely the ability of the Purchaser to enter into this Agreement or to perform its obligations hereunder.

(5) *ICA.* Neither Purchaser is a “non-Canadian” within the meaning of the *ICA*, or, if any Purchaser is a “non-Canadian”, such Purchaser is a “WTO investor” within the meaning of the *ICA*.

(6) *ETA.* The Purchaser is registered for GST/HST purposes under Part IX of the *ETA*, and its GST/HST numbers indicated on the GST/HST Certificate and Indemnity will be true and accurate.

(7) *Commissions.* The Vendors will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Purchaser, except as agreed upon with the Broker and the Receiver.

(8) *Sufficient Funds.* The Purchaser has sufficient financial resources or have arranged sufficient financing for themselves, on Closing (which financing is not subject to any conditions other than the conditions to Closing set out herein), to pay the Cash Purchase Price, the Cure Costs and the Transfer Taxes payable on Closing and any and all other amounts payable by the Purchaser, if any, pursuant to this Agreement.

4.2 Representations and Warranties of the Vendors. As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendors set out in this Section 4.2, the Vendors jointly and severally represent and warrant to the Purchaser as follows:

(1) *Incorporation and Corporate Power.* The Legal Owner is incorporated, organized and subsisting under the laws of the jurisdiction of its incorporation. Subject to the Approval and Vesting Order having been granted and being a Final Order, the Vendors have the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform their other obligations hereunder and under all such other agreements and instruments.

(2) *Authorization by Vendors.* Subject to the Approval and Vesting Order having been granted and being a Final Order, the execution and delivery of this Agreement and all other agreements and instruments to be executed by the Vendors as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by the Court to be executed and delivered by the Receiver.

(3) *Enforceability of Obligations.* Subject to the Approval and Vesting Order having been granted and being a Final Order, this Agreement constitutes a valid and binding obligation of the Vendors enforceable against the Vendors in accordance with its terms.

(4) *ITA.* Each of the Legal Owner and the Receiver is not a non-resident of Canada for purposes of the *ITA*.

(5) *Commissions.* The Purchaser will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Vendors. The Vendors will be responsible for payment of any fees and other amounts charged by the Broker in connection with the transactions contemplated by this Agreement.

4.3 As is, Where is. Notwithstanding any other provision of this Agreement, the Purchaser acknowledges, agrees and confirms that:

(a) except for the representations and warranties of the Vendors set forth in Section 4.2, it is entering into this Agreement, acquiring the Purchased Assets and assuming the Assumed Liabilities on an "as is, where is" basis as they exist as of the Closing Time and will accept the Purchased Assets in their state, condition and location as of the Closing Time except

as expressly set forth in this Agreement and the sale of the Purchased Assets is made without legal warranty and at the risk of such Purchaser;

(b) it has conducted to its satisfaction such independent searches, investigations and inspections of the Purchased Assets, the Business and the Assumed Liabilities as it deemed appropriate, and based solely thereon, has determined to proceed with the transactions contemplated by this Agreement;

(c) except as expressly stated in Section 4.2, neither the Vendors nor any other member of the Sale Process Team or their Representatives have made or are making, and the Purchaser is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Purchased Assets, the Vendors' right, title or interest in or to the Purchased Assets, the Business or the Assumed Liabilities, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of any parts/and/or components, latent defects, quality, quantity or any other thing affecting any of the Purchased Assets or the Assumed Liabilities, or normal operation thereof, or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any Applicable Law in any jurisdiction, which the Purchaser confirms do not apply to this Agreement and are hereby waived in its entirety by the Purchaser;

(d) without limiting the generality of the foregoing, no representation, warranty or covenant is given by the Sale Process Team or any of the Sale Process Team's Representatives that any of the Purchased Assets are or can be made operational within a specified time frame or will achieve any particular result, level of service, occupancy or use;

(e) without limiting the generality of the foregoing, except as expressly stated in Section 4.2, neither the Sale Process Team nor any of the Sale Process Team's Representatives have made any representation or warranty as to any regulatory approvals, licenses, permits, consents or authorizations, including the Permits and Licences, that may be needed to complete the transactions contemplated by this Agreement or to operate or carry on the Business or any portion thereof, and the Purchaser is relying entirely on its own investigation, due diligence and inquiries in connection with such matters;

(f) all written and oral information or Data obtained from any member of the Sale Process Team or any of the Sale Process Team's Representatives, including in any teaser letter, asset listing, confidential information memorandum or other document made available to the Purchaser (including in certain "data rooms", presentations, site visits and diligence meetings or telephone calls), with respect to the Purchased Assets, the Business, and the Assumed Liabilities has been obtained for the convenience of the Purchaser only, and no member of the Sale Process Team nor any of the Sale Process Team's Representatives have made any representation or warranty, express or implied, statutory or otherwise as to the accuracy or completeness of any such information;

(g) any information regarding or describing the Purchased Assets, the Business or the Assumed Liabilities in this Agreement (including the Schedules hereto), or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by the Purchaser, and no representation, warranty or condition, express or implied, has or will be given by the Sale Process Team or any of the Sale Process Team's Representatives, or any other Person concerning the completeness or accuracy of such information or descriptions;

(h) except as otherwise expressly provided in this Agreement, the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or claims the Purchaser might have against any member of the Sale Process Team or any of the Sale Process Team's Representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties of the Vendors expressly set forth in Section 4.2. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including claims regarding defects, whether or not discoverable or latent, product liability claims, or similar claims, and all other claims that may be later created or conceived in strict liability or as strict liability type claims and rights;

(i) none of the representations and warranties of the Vendors contained in this Agreement shall survive Closing and, subject to Section 8.3(2), the Purchaser's sole recourse for any breach of representation or warranty of the Vendors in Section 4.2 shall be for the Purchaser not to complete the transactions as contemplated by this Agreement and for greater certainty the Purchaser shall have no recourse or claim of any kind against the Vendors or the proceeds of the transactions contemplated by this Agreement following Closing; and

(j) this Section 4.3 shall not merge on Closing and is deemed incorporated by reference in all closing documents and deliveries.

ARTICLE 5 COVENANTS

5.1 Motion for Approval and Vesting Order. This Agreement is subject to Court approval, and Closing is subject to the issuance of the Approval and Vesting Order. The Receiver shall file with the Court a motion seeking the Court's issuance of the Approval and Vesting Order by no later than the Motion Date. The Purchaser shall cooperate with the Receiver in its efforts to obtain the issuance and entry of the Approval and Vesting Order. The Purchaser, at its own expense, will promptly provide to the Receiver all such information within its possession or under its control as the Receiver may reasonably request to obtain the Approval and Vesting Order.

5.2 Access During Interim Period. During the Interim Period, the Vendors shall, subject to any confidentiality, privacy or safety restrictions, give, or cause to be given, to the Purchaser and its Representatives reasonable access during normal business hours to the Purchased Assets (where situated), including the Books and Records, to conduct such investigations, inspections, surveys or tests thereof and of the financial and legal condition of the Business and the Purchased Assets as the Purchaser deems reasonably necessary or desirable to further familiarize themselves with the Business and the Purchased Assets and plan for the operation of the Business following Closing. Without limiting the generality of the foregoing, the Purchaser shall be permitted reasonable access during normal business hours to the Real Property Assets and all Books and Records relating to information scheduled or required to be disclosed under this Agreement. Such investigations, inspections, surveys and tests shall be carried out at the Purchaser's sole and exclusive risk and peril, during normal business hours, and the Vendors shall co-operate reasonably in facilitating such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchaser.

5.3 Transaction Personal Information. Each Party shall comply with Privacy Law in the course of collecting, using and disclosing Transaction Personal Information. The Purchaser shall cause its Representatives to observe the terms of this Section 5.3 and to protect and safeguard Transaction Personal Information in its possession in accordance with Privacy Law. The Purchaser shall collect Transaction Personal Information prior to Closing only for purposes related to the transactions contemplated by this Agreement. The Purchaser shall not, without the consent of the individuals to whom such Personal Information relates or as permitted or required by Applicable Law, use or disclose Transaction Personal Information (i) for purposes other than those for which such Transaction Personal Information was collected by any of the Vendors prior to the Closing and (ii) for a purpose which does not relate directly to the carrying on of the Business or to the carrying out of the purposes for which the transactions contemplated by this Agreement were implemented.

5.4 Risk of Loss. The Purchased Assets shall be at the risk of the Vendors until Closing. If, between the date hereof and Closing, any of the Purchased Assets are destroyed, lost or materially damaged (each a “**Casualty**”), the Purchaser shall still complete the purchase of the Purchased Assets on an “as is, where is” basis without any adjustment to the Cash Purchase Price payable hereunder and take an assignment from the Vendors of all insurance proceeds payable to the Vendors in respect of the Casualty, provided that, in the event of a Material Casualty, the Purchaser shall have the option, in its discretion, to terminate this Agreement. For greater certainty, in no event shall the aggregate total of the insurance proceeds assigned to the Purchaser in accordance with this Section 5.4 and the fair market value of Purchased Assets exceed the Cash Purchase Price.

5.5 Indemnity. The Purchaser hereby indemnifies the Vendors, the Receiver and its respective Representatives, and saves them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatsoever to:

- (1) any Transfer Taxes (including penalties and interest) which may be assessed against any of the Vendors;
- (2) the Purchaser’s access in accordance with Section 5.1;
- (3) the collection, use or disclosure of Transaction Personal Information by the Purchaser and its Representatives; and
- (4) the Purchaser’s failure to pay when due and perform and discharge the Assumed Liabilities in accordance with their terms.

5.6 Environmental Liabilities. The Purchaser acknowledges and agrees that upon Closing, the Purchaser shall become responsible for the payment, performance and discharge of all Environmental Liabilities related to the Purchased Assets including, as applicable, all obligations of any kind whatsoever under Environmental Laws relating to the Purchased Assets.

5.7 Books and Records. The Purchaser shall preserve and keep the Books and Records acquired by them pursuant to this Agreement for a period of six (6) years after Closing, or for any longer periods as may be required by any Laws applicable to such Books and Records. The Purchaser shall make such Books and Records, as well as electronic copies of such Books and Records (including all software systems containing such Books and Records),

available to the Receiver and the Vendors, and their respective Representatives and successors, and any trustee in bankruptcy of the Vendors, and shall permit any of the foregoing persons to take copies of such Books and Records as they may require.

5.8 Regulatory Approvals. The Purchaser, with the assistance of the Vendors shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions, as applicable, required under any Law applicable to such Party or any of its Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement. The Vendors shall cooperate reasonably with the Purchaser and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders, approvals and clearance certificates. The Parties shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

5.9 Cooperation and Consultation with Governmental Authorities. All meetings, submissions, filings, and proposals made by or on behalf of either Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the consummation of the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Vendors or the Purchaser with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other Party hereunder in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such filings, meetings, submissions and proposals. Each Party shall give notice to the other Party with respect to any meeting, submission, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact (except where such Governmental Authority expressly requests that such Party not attend or participate in such meeting, discussion, appearance or contact). Notwithstanding any requirement under this Section 5.9, a Party shall not be required to provide the other Party with any information required to be provided under this Section 5.9 where the information is confidential and competitively sensitive, in which case the supplying Party shall provide a redacted version to the requesting Party and shall provide the information on a non-redacted basis to the receiving Party's external counsel, and the receiving Party agrees that it shall neither request nor receive such non-redacted information from its external counsel.

5.10 Excluded Assets. Following the Closing Date, the Purchaser shall undertake commercially reasonable efforts to collect, for and on behalf of the Vendors, any Receivables that are Excluded Assets. To the extent that any Receivables that are Excluded Assets are received by the Purchaser following the Closing Date, the Purchaser shall, as soon as reasonably practicable and in any event no later than three (3) Business Days following such receipt, remit such Receivables to the Receiver, for and on behalf of the Vendors.

5.11 Guarantee.

- (1) *Guarantee.* The Guarantor hereby absolutely, unconditionally and irrevocably guarantees to each of the Vendors the due, complete and punctual observance

and performance of each and every obligation of the Purchaser under this Agreement that exists up to Closing (the “**Guaranteed Obligations**”). The guarantee hereinbefore referred to is called the “**Guarantee**”;

- (2) *Guarantee Unaffected by Judgment or Bankruptcy.* None of the Guaranteed Obligations shall be limited, lessened or released, nor shall the Guarantee be discharged, by the recovery of any judgment against any Purchaser;
- (3) *No Requirement to Exhaust Recourse.* The Vendors shall not be bound to seek or exhaust recourse against the Purchaser or to enforce or value any security before being entitled to payment under the Guarantee;
- (4) *Survival of Guarantee.* The Guaranteed Obligations shall continue unaffected by any change in the name of the Purchaser or by any change whatsoever in the objects, capital structure or constitution of the Purchaser, or by the Purchaser being amalgamated, merged or otherwise combined with another corporation or by any defect in the authorization, execution or delivery by the Purchaser of this Agreement or any other agreement or instrument executed and delivered by the Purchaser pursuant to this Agreement which may result in unenforceability of any of the Guaranteed Obligations;
- (5) *Dealing with Guaranteed Obligations.* Subject to the other terms and conditions of this Agreement, the Vendors may:
 - (a) grant or allow any waiver, consent, extension, indulgence or other act or omission in respect of this Agreement, any other agreement or instrument executed and delivered pursuant to this Agreement;
 - (b) do, or omit to do, anything to enforce the payment or performance of this Agreement or any other agreement or instrument executed and delivered pursuant to this Agreement; and
 - (c) vary, compromise, exchange, renew, discharge, release, subordinate, postpone or abandon any Guaranteed Obligations of the Purchaser hereunder, or under any agreement or instrument executed and delivered pursuant to this Agreement,

all without thereby lessening, limiting or releasing the Guaranteed Obligations or their rights and remedies under the Guarantee in any way;

- (6) *Guarantee in Addition.* The rights and remedies of the Vendors hereunder are in addition to and not in substitution for any other rights or remedies which the Vendors have at any time respecting the Guaranteed Obligations;
- (7) *Consideration.* The Guarantor acknowledges that each of the Vendors has required, as a condition for their entry into this Agreement, that the Guarantor executes this Agreement and be bound by the terms of this Section 5.11; and
- (8) *Termination.* The Parties agree that upon Closing, the Guarantee (including all obligations, covenants and undertakings of the Guarantor under this Section 5.11) shall terminate.

5.12 Alternative Transaction. The Purchaser acknowledges and agrees that until the Motion Date, (i) the Purchased Assets will continue to be marketed for sale and that the Sale Process Team and their respective representatives shall be entitled to engage in discussions and negotiations with any prospective purchasers thereof, and (ii) the Vendors may accept and execute any Alternative Transaction, thereby terminating this Agreement pursuant to Section 8.1(7), provided however that in the event that an Alternative Transaction is accepted by the Vendors, the Receiver shall, as soon as reasonably practicable thereafter advise the Purchaser or its counsel that an Alternative Transaction was accepted.

5.13 Break-Up Fee. If this Agreement is terminated pursuant to Section 8.1(7) and the Vendors' right, title and interest in and to the Purchased Assets (or any portion thereof) are sold pursuant to an Alternative Transaction, (i) the Purchaser shall be entitled to a break-fee in the aggregate total amount of \$██████, from the proceeds of such sale (the "**Break-Up Fee**"), and (ii) the Receiver shall, at the same time that it seeks Court approval of the Alternative Transaction, seek Court approval of the Break-Up Fee. The Break-Up Fee, if payable, will, in addition to the return of the Deposit pursuant to Section 8.3(2), be the sole and exclusive remedy as liquidated damages of the Purchaser, whether at Law or in equity, for any breach by the Vendors of the terms and conditions of this Agreement. For greater certainty, the Vendors' obligation to pay the Break-Up Fee pursuant to this Section 5.12 is expressly subject to Court approval.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing. The Closing may be affected by way of a virtual Closing, whereby required executed Closing deliverables are circulated by electronic mail in pdf and released at such time and pursuant to such protocols and confirmations as the Parties may agree.

6.2 Vendors' Closing Deliveries. At the Closing, the Vendors shall deliver or cause to be delivered to the Purchaser the following:

- (1) the Purchased Assets, with delivery to occur in situ wherever such Purchased Assets are located at the Closing Time;
- (2) keys and access cards required to gain access to the applicable Real Property Assets;
- (3) a copy of the Approval and Vesting Order, which shall be a Final Order;
- (4) a copy of any Assignment Order, if applicable, in respect of any Critical Contracts or Real Property Leases for which consents to assignment were required which have not been obtained, which Assignment Order shall be a Final Order;
- (5) the Assignment and Assumption Agreement, duly executed by the Vendors;
- (6) a bring-down certificate executed by each of the Vendors dated as of the Closing Date, in form and substance satisfactory to the Purchaser, acting reasonably, certifying that (i) all of the representations and warranties of the Vendors hereunder remain true and correct in all material respects as of the Closing Date as if made on and as of such date or, if made as of a date specified therein, as of such date, and (ii) all of the terms and conditions set out in this Agreement to be

complied with or performed by the Vendors at or prior to Closing have been complied with or performed by the Vendors in all material respects;

- (7) a notice and direction, in form and substance satisfactory to the Parties, advising each of the tenants located at the Real Property Assets of the Closing and directing such tenants to remit all rents for the period following Closing to the Purchaser;
- (8) transfers of title to the applicable Real Property Assets in registrable form, which transfers shall be prepared by the Vendors' solicitor, provided that the Vendors shall not be obligated to execute the Planning Act statements in such transfers; and
- (9) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the transactions provided for in this Agreement, or as are required to be delivered by the Vendors or Receiver's counsel under this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

6.3 Purchaser's Closing Deliveries. At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendors (or as otherwise indicated below), the following:

- (1) the payment referred to in Section 3.2(2), which shall be made to the Receiver for and on behalf of the Vendors;
- (2) the payment of all Transfer Taxes (if any) required to be paid on Closing, which shall be made directly to the applicable Governmental Authorities, together with evidence of payment of such Transfer Taxes;
- (3) to the extent payable on Closing and provided that the total amount of Cure Costs payable in respect of all of the Assigned Contracts [REDACTED] [REDACTED] evidence that Cure Costs (if any) in respect of each Assigned Contract have been paid in accordance with (i) the Assignment Order where such Assigned Contract is assigned pursuant to an Assignment Order, and (ii) the consent of the applicable counterparty or as otherwise agreed upon by a Purchaser and such counterparty, where such Assigned Contract is not assigned pursuant to an Assignment Order;
- (4) the Assignment and Assumption Agreement, duly executed by the Purchaser;
- (5) a bring-down certificate executed by a senior officer of the Purchaser dated as of the Closing Date, in form and substance satisfactory to the Vendors, acting reasonably, certifying that (i) all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the Closing Date as if made on and as of such date or, if made as of a date specified therein, as of such date, and (ii) all of the terms and conditions set out in this Agreement to be complied with or performed by the Purchaser at or prior to Closing have been complied with or performed by the Purchaser in all material respects; and
- (6) the GST/HST Certificate and Indemnity; and

- (7) such other agreements, documents and instruments as may be reasonably required by the Vendors to complete the transactions provided for in this Agreement, or as are required to be delivered by the Purchaser or the Purchaser's counsel under this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

ARTICLE 7 CONDITIONS OF CLOSING

7.1 Purchaser's Conditions. The Purchaser shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Outside Date, each of the conditions listed below in this Section 7.1 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Purchaser, and may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall only be binding on the Purchaser if made in writing:

(1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court at least fifteen (15) calendar days prior to the Closing Date and be a Final Order.

(2) *Critical Contracts & Real Property Leases Consents.* All consents necessary to assign the Critical Contracts and the Real Property Leases to the Purchaser shall have been obtained, or an Assignment Order shall have been issued and entered by the Court in respect of such Critical Contracts and Real Property Leases where necessary consents have not been obtained, and any such Assignment Order shall be a Final Order.

(3) *Vendors' Deliveries.* The Vendors shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 6.2.

(4) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any Final Order or Law which has the effect of (i) making any of the transactions contemplated by this Agreement illegal, or (ii) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.

(5) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.2 shall be materially true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

(6) *No Breach of Covenants.* The Vendors shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Vendors on or before the Closing.

7.2 Vendors' Conditions. The Vendors shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the conditions listed below in this Section 7.2 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Vendors, and may be waived by the Vendors in whole or in part, without prejudice to any of their rights of termination in the

event of non-fulfillment of any other condition in whole or in part. Any such waiver shall only be binding on the Vendors if made in writing.

(1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court at least fifteen (15) calendar days prior to the Closing Date and be a Final Order.

(2) *Successful Bid.* The Receiver shall have determined in accordance with the Sale Process that this Agreement is the Successful Bid.

(3) *Purchaser's Deliverables.* The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendors at the Closing all the documents and payments contemplated in Section 6.3.

(4) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any Final Order or Law which has the effect of (i) making any of the transactions contemplated by this Agreement illegal, or (ii) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.

(5) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.1 shall be materially true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

(6) *No Breach of Covenants.* The Purchaser shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser, on or before the Closing.

7.3 Receiver's Certificate. When the conditions to Closing set out in Section 7.1 and Section 7.2, have been satisfied and/or waived by the Vendors or the Purchaser, as applicable, the Receiver shall (i) issue its Receiver's Certificate to the Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Receiver's Certificate with the Court (and shall provide a copy of such filed Receiver's Certificate to the Purchaser). The Parties hereby acknowledge and agree that the Receiver will be entitled to file the Receiver's Certificate with the Court without independent investigation upon receiving written confirmation from the Purchaser that all conditions to Closing in favour of the Purchaser have been satisfied or waived and the Receiver will have no Liability to the Purchaser or any other Person as a result of filing the Receiver's Certificate.

ARTICLE 8 TERMINATION

8.1 Grounds for Termination. This Agreement may be terminated prior to the Closing Time:

- (1) by the mutual written agreement of the Vendors and the Purchaser;
- (2) by written notice from the Purchaser to the Vendors in accordance with Section 5.4;

- (3) [REDACTED]
- (4) by written notice from the Purchaser to the Vendors if there has been a material breach by the Vendors of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchaser, and such breach is not curable and has rendered the satisfaction of any condition in Section 7.1 impossible by the Outside Date, provided that at the time of providing such notice of termination, the Purchaser is not in breach of any of its obligations under this Agreement;
- (5) by written notice from the Vendors to the Purchaser if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendors and such breach is not curable and has rendered the satisfaction of any condition in Section 7.2 impossible by the Outside Date, provided that at the time of providing such notice of termination, the Vendors are not in breach of any of their obligations under this Agreement;
- (6) by the Purchaser, on the one hand, or by the Vendors, on the other hand, upon written notice to the other Party if the Closing has not occurred by the Outside Date, provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(6) shall not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in the Closing not occurring by the Outside Date; and
- (7) immediately and automatically and without any action or notice by either the Vendors to the Purchaser or the Purchaser to the Vendors, upon the Vendors accepting and executing an Alternative Transaction.

8.2 Effect of Termination. If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder, except as contemplated in Sections 5.3 (*Transaction Personal Information*), 5.5 (*Indemnity*), 5.12 (*Alternative Transaction*), 5.13 (*Break-Up Fee*), 8.2 (*Effect of Termination*), 8.3 (*Treatment of Deposit*), 9.2 (*Expenses*), 9.3 (*Public Announcements*), 9.4 (*Notices*), 9.7 (*Entire Agreement*), 9.9 (*Amendment*), 9.11 (*Severability*), 9.13 (*Governing Law*), 9.14 (*Dispute Resolution*), 9.15 (*Attornment*), 9.16 (*Successors and Assigns*), 9.17 (*Assignment*), 9.18 (*Receiver's Capacity*) and 9.19 (*Third Party Beneficiaries*), which shall survive such termination.

8.3 Treatment of Deposit.

(1) *Retention of Deposit.* In the event that this Agreement is terminated by the Vendors pursuant to (i) Section 8.1(5), or (ii) Section 8.1(6) and the reason that Closing did not occur by the Outside Date was the result of a breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, the Deposit and any interest earned thereon shall be forfeited by the Purchaser and retained by the Receiver on behalf of the Vendors as a genuine estimate of liquidated damages, and not as a penalty.

(2) *Return of Deposit.* In the event that this Agreement is terminated pursuant to any Section of this Agreement other than (A) Section 8.1(5), or (B) Section 8.1(6) and the reason that Closing did not occur by the Outside Date was not the result of a breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, then in each such case the Deposit and any interest earned thereon shall be promptly returned to the Purchaser by the Receiver. The return of the Deposit and payment of the Break-Up Fee, if applicable, shall be the Purchaser's sole and exclusive remedy for any termination of this Agreement.

ARTICLE 9 GENERAL

9.1 Survival. All representations, warranties, covenants and agreements of the Vendors or the Purchaser made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall merge and shall not survive the Closing except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or obligations extending after the Closing, or as otherwise expressly provided in this Agreement. For greater certainty, the following sections shall survive Closing: 2.2 (*Assumed Liabilities*), 2.3(6) (*Intercompany Corporate Services*), 2.4(4) (*Post-Closing Assignment*), 3.3 (*Allocation of Purchase Price*), 3.4 (*Closing Adjustments*), 3.5 (*Taxes*), 3.6 (*GST/HST Gross Up*), 4.2(5) (*Commissions*), 4.3 (*As is, Where is*), 5.3 (*Transaction Personal Information*); 5.5 (*Indemnity*), 5.6 (*Environmental Liabilities*), 5.7 (*Books and Record*), 5.10 (*Excluded Assets*), 7.3 (*Receiver's Certificate*), 8.3 (*Treatment of Deposit*), 9.1 (*Survival*), 9.2 (*Expenses*), 9.3 (*Public Announcements*), 9.4 (*Notices*), 9.5 (*Time of Essence*), 9.6 (*Further Assurances*), 9.7 (*Post-Closing Wind-Up of Receivership Proceedings*), 9.8 (*Entire Agreement*), 9.9 (*Amendment*), 9.10 (*Waiver*), 9.11 (*Severability*), 9.12 (*Remedies Cumulative*), 9.13 (*Governing Law*), 9.14 (*Dispute Resolution*), 9.15 (*Attornment*), 9.16 (*Successors and Assigns*), 9.17 (*Assignment*), 9.18 (*Receiver's Capacity*) and 9.19 (*Third Party Beneficiaries*).

9.2 Expenses. Except as otherwise expressly provided herein, each Party shall be responsible for all costs and expenses (including any Taxes imposed on such expenses) incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisers).

9.3 Public Announcements. The Receiver and Vendors shall be entitled to disclose this Agreement (on an unredacted basis) and all information provided by the Purchaser in connection herewith to the Court and any mortgagee of the Real Property Assets that is not participating in the Sale Process, and a copy of this Agreement may be posted on the Receiver's website maintained in connection with the Receivership Proceedings. Notwithstanding any other provision of this Agreement, unless such information is otherwise

publicly disclosed or, upon the advice of counsel, required by Applicable Law or by any Governmental Authority to be disclosed (including in any Tax Returns), the Purchaser shall not disclose the quantum of or any other terms related to, the Purchase Price, Cash Purchase Price, Deposit, Assumed Liabilities, Alternative Transaction, Break-Up Fee or allocation of Purchase Price without the prior written consent of the Vendors and the Receiver.

9.4 Notices.

(1) *Mode of Giving Notice.* Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if sent by e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

(2) *if to the Vendors, to:*

c/o KPMG Inc., in its capacity as Receiver
Attention: Katherine Forbes / George Bourikas
Email: katherineforbes@kpmg.ca / gbourikas@kpmg.ca

with a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
Attention: Aryo Shalviri / Chris Burr
Email: aryo.shalviri@blakes.com / chris.burr@blakes.com

(3) *if to the Purchaser, to:*

1000301029 Ontario Limited
Attention: Dr. Allen Greenspoon
Email: allengreenspoon@gmail.com

with a copy (which shall not constitute notice) to:

Attention: Ira Greenspoon
Email: ira@counsellaw.ca

(4) *Deemed Delivery of Notice.* Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of e-mailing or sending by other means of recorded electronic communication, provided that such day is a Business Day and the communication is so e-mailed or sent before 5:00 p.m. Toronto time on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

(5) *Change of Contact Particulars.* Any Party may from time to time change its contact particulars under this Section 9.4 by notice to the other Party given in the manner provided by this Section 9.4.

9.5 Time of Essence. Time shall be of the essence of this Agreement in all respects.

9.6 Further Assurances. The Vendors and the Purchaser shall, at the sole expense of the requesting Party, from time to time promptly execute and deliver or cause to be executed

and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Party may reasonably require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

9.7 Post-Closing Wind-Up of Receivership Proceedings. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall operate to restrict in any way the rights of the Receiver to distribute any of the Vendors' assets or otherwise wind up the Receivership Proceedings as it may determine in its sole discretion after the Closing, even if doing so may impair the Vendors' ability to provide or perform any further cooperation, assistance or further assurances as may otherwise be provided under this Agreement.

9.8 Entire Agreement. Other than any confidentiality agreement, non-disclosure agreement or similar undertaking or agreement signed by the Purchaser in favour of any of the Vendors, which remain in full force and effect, except as amended by this Agreement, this Agreement and the agreements contemplated hereby constitute the entire agreement between the Parties or any of them pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written (including any letter of intent or expression of interest submitted by any affiliates of the Purchaser). There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as explicitly set out in this Agreement.

9.9 Amendment. No amendment of this Agreement shall be effective unless made in writing and signed by the Parties (which, for greater certainty, may be by way of e-mail exchanged by counsel for the Parties).

9.10 Waiver. A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing by the Party to be bound by the waiver and then only in the specific instance and for the specific purpose for which it has been given (which, for greater certainty, may be by way of e-mail exchanged by counsel for the Parties). No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

9.11 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

9.12 Remedies Cumulative. The rights, remedies, powers and privileges herein provided to a Party are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Party.

9.13 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein.

9.14 Dispute Resolution. If any dispute arises with respect to the interpretation or enforcement of this Agreement, including as to what constitutes a breach or material breach of this Agreement for the purposes of Article 8, such dispute shall be determined by the Court within the Receivership Proceedings, or by such other Person or in such other manner as the Court may direct. Without prejudice to the ability of any of the Vendors or the Purchaser to enforce this Agreement in any other proper jurisdiction, the Purchaser and the Vendors irrevocably submit and attorn to the non-exclusive jurisdiction of the Court.

9.15 Attornment. Each Party agrees (i) that any Legal Proceeding relating to this Agreement must be brought in the Court, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of the Court; (ii) that it irrevocably waives any right to, and shall not, oppose any such Legal Proceeding in the Province of Ontario on any jurisdictional basis, including *forum non conveniens*; and (iii) not to oppose the enforcement against it in any other jurisdiction of any Order duly obtained from the Court as contemplated by this Section 9.15. Each Party agrees that service of process on such Party as provided in Section 9.4 shall be deemed effective service of process on such Party.

9.16 Successors and Assigns. This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

9.17 Assignment. Prior to the issuance of the Approval and Vesting Order, the Purchaser may assign all of its rights and obligations under this Agreement to an Affiliate, provided that (i) such Purchaser shall remain liable to perform all of its obligations hereunder, and (ii) such Purchaser and its assignee execute and deliver to the Vendors an assignment and assumption agreement, in form and substance satisfactory to the Vendors, evidencing such assignment. Other than in accordance with the preceding sentence, the Purchaser may not assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement.

9.18 Receiver's Capacity. The Purchaser acknowledge and agree that (i) any reference to the Vendors in this Agreement shall mean the Vendors, by the Receiver, and (ii) the Receiver, acting in its capacity as the Receiver in the Receivership Proceedings will have no Liability or obligation in connection with this Agreement whatsoever in its capacity as Receiver, in its personal or corporate capacity or otherwise.


9.19 Third Party Beneficiaries. Except as set forth in Section 4.3 and Section 5.5, this Agreement is for the sole benefit of the Parties, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9.20 Counterparts. This 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 of this 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 Agreement to the receiving Party.


[SIGNATURE PAGE TO FOLLOW]

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**

By: 
Name: Katherine Forbes
Title: President

**BENEFICIAL OWNERS BY KPMG INC. IN ITS
CAPACITY AS COURT-APPOINTED
RECEIVER AND MANAGER AND NOT IN ITS
PERSONAL OR CORPORATE CAPACITY**

By: 
Name: Katherine Forbes
Title: President

1000301029 ONTARIO LIMITED

Name: Allen Greenspoon
Title:

DR. ALLEN GREENSPOON

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

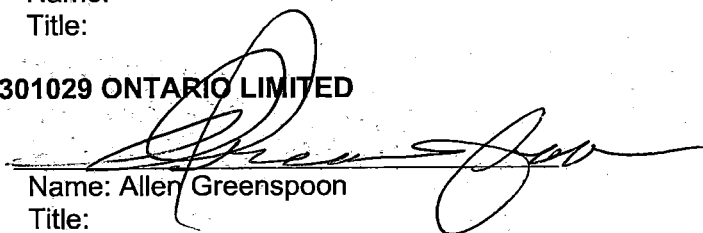
**VICTORIA AVENUE NORTH HOLDINGS INC.
BY KPMG INC. IN ITS CAPACITY AS COURT-
APPOINTED RECEIVER AND MANAGER
AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

By: _____
Name:
Title:

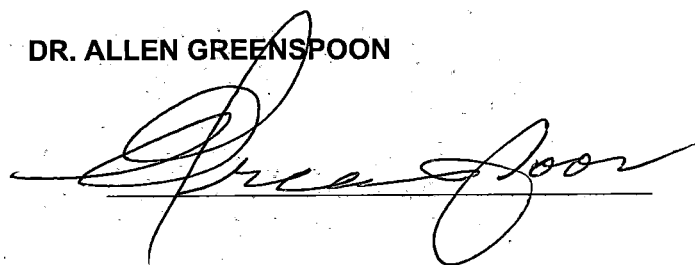
**BENEFICIAL OWNERS BY KPMG INC. IN ITS
CAPACITY AS COURT-APPOINTED
RECEIVER AND MANAGER AND NOT IN ITS
PERSONAL OR CORPORATE CAPACITY**

By: _____
Name:
Title:

1000301029 ONTARIO LIMITED


Name: Allen Greenspoon
Title:

DR. ALLEN GREENSPOON



SCHEDULE "A"**PURCHASED ASSETS**

"Purchased Assets" means, other than Excluded Assets, collectively the following assets of the Vendors (or any of them):

- i.** The Assigned Contracts;
- ii.** Any Personal Property or fixtures that are Related to the Business and located upon the Real Property Assets;
- iii.** All Real Property Assets;
- iv.** The Permits and Licences; and
- v.** The Books and Records that are Related to the Business;

all proceeds of any or all of the foregoing received or receivable after the Closing Time.

SCHEDULE "B"**REAL PROPERTY ASSETS**

The Real Property Assets included in this Agreement are more particularly described as follows:

304 Victoria Ave N, Hamilton, ON, L8L 5G4:

LT 7, PL 33 ; LTS 1, 2, 3, 4, 5, 6, 7 & 8, PL 137; HAMILTON

SCHEDULE “C”
ASSIGNED CONTRACTS

Critical Contracts: Nil.

Real Property Leases:

1. Lease dated March 1, 2008 related to Suite 100 between Bird-Mor Drugs Limited, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as amended pursuant to an Amending Agreement dated October 2, 2012 and as further amended pursuant to an Amending Agreement dated March 27, 2017.
2. Lease dated September 29, 2014 related to Suite 302 between 1543730 Ontario Inc., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, and Walter Paliga as indemnifier, as amended pursuant to an Amending Agreement dated October 25, 2015 and as further amended pursuant to an Amending Agreement dated February 27, 2017 and as further amended pursuant to an Amending Agreement dated January 1, 2022.
3. Lease dated August 13, 2010 related to Suite 402 between Dr. William A. Fulton, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, now on a month-to-month basis.
4. Lease dated July 1, 2003 related to Suite 501 between Dr. Amin Mulji, as tenant and 304 Victoria Avenue North Holdings Ltd., as landlord, now on a month-to-month basis.
5. Lease dated October 7, 2008 related to Suite 502 between Dr. Taiwo Aderibigbe, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, as amended pursuant to an Amending Agreement dated May 31, 2013, now on a month-to-month basis.
6. Lease dated November 14, 2011 related to Suite 503 between WEMS Inc., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, and Dr. Anne Beattie, as indemnifier.
7. Lease dated December 1, 2008 related to Suite 504 between Dr. Arianna Dal Cin, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, as amended pursuant to an Amending Agreement dated October 11, 2013, now, on a month-to-month basis.

Personal Property Leases:

1. Equipment Lease Agreement dated August 24, 2020 between Meridian OneCap Credit Corp. and Victoria Avenue Holdings Inc. and Gross Capital Inc.
2. Equipment Lease Agreement dated April 1, 2020 between Blue Chip Financial Solutions and Victoria Avenue North Holdings Inc.

Other Contracts:

1. Elevator Maintenance Agreement dated February 25, 2015 between Brock Elevator Limited and Prime Real Estate Group.
2. Landscaping Agreement dated March 30, 2022 between White Start Cleaning Services Inc. and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver).
3. Parking Lease dated October 15, 2018 between Medpark Solutions Inc., as tenant and Victoria Avenue North Holdings, as landlord.

SCHEDULE "D"
ALLOCATION OF PURCHASE PRICE

ASSET(S)	Purchase Price
Real Property Assets	\$ [REDACTED]
Total:	\$ [REDACTED]

SCHEDULE "E"**GST/HST CERTIFICATE AND INDEMNITY****DATE:** _____, 2022**TO:** **Victoria Avenue North Holdings Inc. by KPMG Inc. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity and Beneficial Owners by KPMG Inc. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (the "Vendors")****FROM:** **1000301029 Ontario Limited (the "Purchaser")****RE:** **Asset Purchase Agreement dated as of September 1, 2022 (the "APA") between the Vendors and the Purchaser in respect of the Purchased Assets**

The capitalized expressions used but not otherwise defined herein shall have the meaning ascribed thereto in the APA.

1. The Purchaser hereby declares and certifies as follows:
 - (a) the Purchased Assets are being purchased by the Purchaser as principal for its own account and not as an agent, trustee or otherwise on behalf of or for another person;
 - (b) the Purchaser is registered under Subdivision d of Division V of Part IX of the ETA for the collection and remittance of GST/HST and its registration number is [●], and such registration is in good standing and have not been varied, cancelled or revoked;
 - (c) the Purchaser shall, in accordance with subsections 221(2) and 228(4) of the ETA, self-assess the GST/HST payable in respect of the sale of the Purchased Assets, thus relieving the Vendors from any requirement to collect the GST/HST payable in respect thereof. The Purchaser represents and warrants that such GST/HST shall be accounted for, in accordance with the ETA, in its GST/HST return for the reporting period during which such tax became payable, which return shall be filed, along with all required remittances, on or before the statutory deadline for filing such return.
2. The Purchaser shall jointly and severally indemnify and save harmless the Vendors from and against any and all GST/HST, penalties, interest and/or other costs which may become payable by or be assessed against the Vendors or any and all claims incurred, suffered or sustained by the Vendors as a result of any failure:
 - (a) by the Vendors to collect and remit any GST/HST applicable on the sale and conveyance of the Purchased Assets by the Vendors to the Purchaser or as a

result of any failure by the Purchaser to comply with the provisions of this certificate and indemnity; and

- (b) by the Purchaser to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser in connection with any GST/HST in connection with the conveyance or transfer of the Purchased Assets.

3. It is agreed that this certificate and indemnity agreement shall survive the closing of the above-noted transaction.

DATED this ____ day of _____, 2022.

1000301029 ONTARIO LIMITED

Name: Allen Greenspoon
Title:

CONFIDENTIAL APPENDIX “A”

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

B E T W E E N:

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"

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

CONFIDENTIAL APPENDIX

**CONFIDENTIAL APPENDIX "A" –
Summary of Redacted Commercially Sensitive Information
TO THE FOURTH REPORT OF THE RECEIVER
DATED OCTOBER 4, 2022**

TO BE FILED SEPARATELY WITH THE COURT

7 CB: ~~89BH5~~ @APPENDIX "B"

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

B E T W E E N:

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

Applicants

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

CONFIDENTIAL APPENDIX

**CONFIDENTIAL APPENDIX "B" –
Summary of Material Terms of Binding Offers
TO THE FOURTH REPORT OF THE RECEIVER
DATED OCTOBER 4, 2022**

TO BE FILED SEPARATELY WITH THE COURT

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	FRIDAY, THE 14th
)	
JUSTICE MCEWEN)	DAY OF OCTOBER, 2022

B E T W E E N:

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"

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

**APPROVAL AND VESTING ORDER
304 Victoria Ave. North, Hamilton, Ontario**

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 property with legal descriptions set out in **Schedule "C"** hereto (the "**Real Property**") of (i) 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) the beneficial owners of the Legal Owner's Property (collectively, the "**Beneficial**

- 2 -

Owners”, and together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and 1000301029 Ontario Limited (the “**Purchaser**”), dated September 1, 2022 and appended to the Fourth Report of the Receiver dated October 4, 2022 (the “**Fourth Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets set out in **Schedule “D”** hereof (the “**Purchased Assets**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver’s Notice of Motion, the Third Report of the Receiver dated May 13, 2022, the Fourth Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser 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 affidavit of service of Nancy Thompson sworn **[1]**, 2022 (the “**Thompson Affidavit**”):

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver’s Notice of Motion and Motion Record as set out in the Thompson Affidavit is hereby abridged, and the method of service validated pursuant to the Order of Mr. Justice Koehnen granted on September 14, 2021, so that this motion is properly returnable today.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby

- 3 -

authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "B"** hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in **Schedule "D"**, including without limitation the Real Property, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Mr. Justice Koehnen dated August 3, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "E"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "F"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Hamilton Wentworth (No. 62) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land

- 4 -

Registrar is hereby directed to enter 1000301029 Ontario Limited as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “E”** hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all Personal Information in the Books and Records (each as defined in the Sale Agreement) of the Debtors. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

- 5 -

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any Debtor and shall not be void or voidable by creditors of such Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents 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 an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

SCHEDULE A

Individuals
Allan Gross
Errol Yim and Andrea Yim, jointly
Ava Gross
Karen Nakagawa and Calvin Nakagawa, jointly
Carol Jaxon
Carole Kai Onouye
Diane Curtis
Dwight Otani and Theresa Otani, jointly
Edward Bugarin
Ellen Fleishman
Gemie Arakawa
George Tamashiro
Guy Pace and Caroline Berdusco, jointly
Heidi Berger
Henry Ko
Hongwei Su
James Brand
Janis L. Lai Trustee
Jean Morel
Jian Zhang
Johann Strasser
John Dattomo and Daniela Dattomo
Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly
Randall Y.C. Ho
Robert Atkinson
Roberta Sunahara and Paul Sunahara, jointly
Seymour Kazimirski
Stanley Salcedo

Trusts
Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Fleishman Family Trust, by and through its trustee(s)
J. Zachery Jones Trust, by and through its trustee(s)
Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Jasen Takei Revocable Living Trust, by and through its trustee(s)
Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Ruth Hisaye Honda Trust, by and through its trustee(s)
S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Wallace K. Tsuha Trust, by and through its trustee(s)
Corporations / Partnerships
1236068 Ontario Limited
1649750 Ontario Inc.
1818019 Ontario Limited
Citydrill Inc.
Gross Capital Inc.
Dirk and Dale IRA LLC
Gross Medical Opportunities Fund LP
Hybrid Activities Inc.
Mark Craig Gross Holdings Inc.
Randy 88, LLC
Rastogi Medicine Professional Corporation
RMK IRA LLC

SCHEDULE B

Form of Receiver's Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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"

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**

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of Mr. Justice Koehnen of the Ontario Superior Court of Justice (the "**Court**") dated August 3, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the 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" to the Appointment Order (the "**Real Property**") of, among other parties, (i) 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) the beneficial

- 2 -

owners of the Legal Owner's Property (collectively, the "**Beneficial Owners**"), and together with the Legal Owner, the "**Debtors**"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated October 14, 2022, the Court approved the agreement of purchase and sale made as of September 1, 2022 (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and 1000301029 Ontario Limited (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 7.1 and 7.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 7.1 and 7.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.

- 3 -

4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KPMG Inc., in its capacity as Receiver of the
undertaking, property and assets of the
Debtors and not in its personal capacity**

Per: _____

Name:

Title:

SCHEDULE A TO RECEIVER'S CERTIFICATE

Individuals
Allan Gross
Errol Yim and Andrea Yim, jointly
Ava Gross
Karen Nakagawa and Calvin Nakagawa, jointly
Carol Jaxon
Carole Kai Onouye
Diane Curtis
Dwight Otani and Theresa Otani, jointly
Edward Bugarin
Ellen Fleishman
Gemie Arakawa
George Tamashiro
Guy Pace and Caroline Berdusco, jointly
Heidi Berger
Henry Ko
Hongwei Su
James Brand
Janis L. Lai Trustee
Jean Morel
Jian Zhang
Johann Strasser
John Dattomo and Daniela Dattomo
Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly
Randall Y.C. Ho
Robert Atkinson
Roberta Sunahara and Paul Sunahara, jointly
Seymour Kazimirski
Stanley Salcedo

Trusts
Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Fleishman Family Trust, by and through its trustee(s)
J. Zachery Jones Trust, by and through its trustee(s)
Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Jasen Takei Revocable Living Trust, by and through its trustee(s)
Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Ruth Hisaye Honda Trust, by and through its trustee(s)
S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Wallace K. Tsuha Trust, by and through its trustee(s)
Corporations / Partnerships
1236068 Ontario Limited
1649750 Ontario Inc.
1818019 Ontario Limited
Citydrill Inc.
Gross Capital Inc.
Dirk and Dale IRA LLC
Gross Medical Opportunities Fund LP
Hybrid Activities Inc.
Mark Craig Gross Holdings Inc.
Randy 88, LLC
Rastogi Medicine Professional Corporation
RMK IRA LLC

SCHEDULE C**Real Property**

304 Victoria Ave N, Hamilton, ON, L8L 5G4:

PIN 17187-0013 (LT): LT 7, PL 33; LTS 1, 2, 3, 4, 5, 6, 7 & 8, PL 137; HAMILTON

SCHEDULE D**Purchased Assets**

- (1) The Assigned Contracts;
- (2) Any Personal Property or fixtures that are Related to the Business and located upon the Real Property Assets;
- (3) All Real Property Assets;
- (4) The Permits and Licenses; and
- (5) The Books and Records that are Related to the Business;

all proceeds of any or all of the foregoing received or receivable after the Closing Time.

Capitalized terms used in this Schedule shall have the meanings given to them in the Sale Agreement.

SCHEDULE E

Claims to be deleted and expunged from title to the Real Property

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
WE1027848	March 31, 2015	Charge	\$24,500,000	Victoria Avenue North Holdings Inc.	American General Life Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA
WE1027849	March 31, 2015	Notice of Assignment of Rents General		Victoria Avenue North Holdings Inc.	American General Life Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA
WE1371410	August 1, 2019	Charge	\$3,600,000	Victoria Avenue North Holdings Inc.	1012689 Ontario Limited
WE1392369	November 5, 2019	Notice of Security Interest	\$150,036	De Lage Landen Financial Services Canada Inc.	
WE1403562	December 19, 2019	Charge	\$1,600,000	Victoria Avenue North Holdings Inc.	1012689 Ontario Limited
WE1535741	August 6, 2021	Application to register Court Order		Ontario Superior Court of Justice (Commercial List)	KPMG Inc.

SCHEDULE F

Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

(Unaffected by the Approval and Vesting Order)

- (1) Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested;
- (2) construction, mechanics', carriers', workers', repairers', storers' or other similar Encumbrances (inchoate or otherwise) if individually or in the aggregate: (i) they are not material; (ii) they arose or were incurred in the ordinary course of business; (iii) they have not been filed, recorded or registered in accordance with Applicable Law; (iv) notice of them has not been given to the Vendors; and (v) the indebtedness secured by them is not in arrears;
- (3) title defects or irregularities, unregistered easements or rights of way, and other unregistered restrictions or discrepancies affecting the use of real property if such title defects, irregularities or restrictions would be disclosed by an up-to-date survey of such real property or, if not, are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (4) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (5) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (6) registered easements on real property for the supply of utilities or telephone services and for drainage, storm or sanitary sewers, public utilities lines, telephone lines, cable television lines or other services, provided such easements have been complied with in all material respects;
- (7) registered easements or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Real Property Assets, provided such easements or rights-of-way have been complied with in all material respects;
- (8) facility cost sharing, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or any Governmental Authority in respect of the

- 2 -

Real Property Assets, provided such agreements have been complied with in all material respects;

- (9) any minor encroachments by any structure located on the Real Property Assets onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Real Property Assets;
- (10) the Real Property Leases, any registered notices of leases and all other encumbrances and instruments registered against title to the Real Property Assets by reason of any tenant of a Real Property Lease having encumbered such Real Property Lease; and
- (11) in respect of the Real Property Assets and the Real Property Leases, the provisions of any Applicable Law, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning, and any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent.

Capitalized terms used in this Schedule shall have the meanings given to them in the Sale Agreement.

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

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

- and -

VICTORIA AVENUE NORTH HOLDINGS INC., *et al.*
Respondents

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

APPROVAL AND VESTING ORDER
304 Victoria Ave. North, Hamilton, Ontario

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Pamela L.J. Huff, LSO #27344V

Tel: 416-863-2958

Email: pamela.huff@blakes.com

Aryo Shalviri, LSO #63867A

Tel: 416-863-2962

Email: aryo.shalviri@blakes.com

Chris Burr, LSO #55172H

Tel: 416-863-3261

Email: chris.burr@blakes.com

Alexia Parente, LSO #81927G

Tel: 416-863-2417

Fax: 416-863-2653

Email: alexia.parente@blakes.com

Lawyers for the Receiver

TAB 4

Revised: January 21, 2014

Court File No. ~~_____~~ CV-21-00665375-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ~~_____~~ MR.) ~~WEEKDAY~~ FRIDAY, THE # 14th
JUSTICE ~~_____~~ MCEWEN) DAY OF ~~MONTH~~ OCTOBER, ~~20YR~~ 2022

B E T W E E N:

~~PLAINTIFF~~

~~Plaintiff~~

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

Applicants

- and -

~~DEFENDANT~~

~~Defendant~~

VICTORIA AVENUE NORTH HOLDINGS INC.
and THE PARTIES LISTED ON SCHEDULE "A"

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

**APPROVAL AND VESTING ORDER
304 Victoria Ave. North, Hamilton, Ontario**

THIS MOTION, made by ~~{RECEIVER'S NAME}~~ KPMG Inc., in its capacity as ~~the~~ Court-appointed receiver and manager (the "~~Receiver~~") without security of the ~~undertaking~~.

~~-2-~~

~~property and assets of [DEBTOR] (the "Debtor")~~ assets, undertakings and properties, including, without limitation, the real property with legal descriptions set out in Schedule "C" hereto (the "Real Property") of (i) 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) the beneficial owners of the Legal Owner's Property (collectively, the "Beneficial Owners", and together with the Legal Owner, the **"Debtors"**), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the **"Transaction"**) contemplated by an agreement of purchase and sale (the **"Sale Agreement"**) between the Debtors (acting by the Receiver) and ~~[NAME OF PURCHASER]~~ 1000301029 Ontario Limited (the **"Purchaser"**), dated ~~[DATE]~~ September 1, 2022 and appended to the Fourth Report of the Receiver dated [DATE] October 4, 2022 (the **"Fourth Report"**), and vesting in the Purchaser the ~~Debtor~~ Debtors's right, title and interest in and to the assets ~~described~~ set out in the Sale Agreement Schedule "D" hereof (the **"Purchased Assets"**), was heard this day ~~at 330 University Avenue,~~ by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the ~~Report~~ Receiver's Notice of Motion, the Third Report of the Receiver dated May 13, 2022, the Fourth Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing ~~for any other person on the service list,~~ although

-3-

properly served with the Receiver's Motion Record as appears from the affidavit of ~~[NAME]~~ service of Nancy Thompson sworn ~~[DATE] filed¹~~, 2022 (the "Thompson Affidavit"):

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit is hereby abridged, and the method of service validated pursuant to the Order of Mr. Justice Koehnen granted on September 14, 2021, so that this motion is properly returnable today.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule A~~'B'~~** hereto (the "**Receiver's Certificate**"), all of the ~~Debtor's~~ Debtors' right, title and interest in and to the Purchased Assets described in ~~the Sale Agreement [and listed on Schedule B hereto]~~⁴ **D'** including without limitation the Real Property, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise),

¹ ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

² ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³ ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

⁴ ~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

-44-

hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of ~~the Honourable~~ Mr. Justice [NAME] Koehnen dated ~~[DATE]~~ August 3, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C** ~~E~~ hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D** ~~F~~) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. ~~3.~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~ Land Titles Division of ~~{LOCATION}~~ Hamilton Wentworth (No. 62) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*⁶, the Land Registrar is hereby directed to enter ~~the Purchaser~~ 1000301029 Ontario Limited as the owner of the ~~subject real property identified in Schedule B hereto (the "Real Property")~~ in fee simple, and is hereby

⁵ ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

⁶ ~~Select the language appropriate to the land registry system (Registry vs. Land Titles).~~

~~-5-~~

directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule E** hereto.

5. ~~4.~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. ~~5.~~ **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. ~~6.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all ~~human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "•"~~ Personal Information in the Books and Records (each as defined in the Sale Agreement) of the Debtors. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~ Debtors.

⁷ ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

⁸ ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

~~-6-~~

8. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of ~~the~~any Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of ~~the~~any Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of ~~the~~any Debtor and shall not be void or voidable by creditors of ~~the~~such Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. — THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents 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 an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

-7-

Revised: January 21, 2014

Schedule SCHEDULE A —

<u>Individuals</u>
<u>Allan Gross</u>
<u>Errol Yim and Andrea Yim, jointly</u>
<u>Ava Gross</u>
<u>Karen Nakagawa and Calvin Nakagawa, jointly</u>
<u>Carol Jaxon</u>
<u>Carole Kai Onouye</u>
<u>Diane Curtis</u>
<u>Dwight Otani and Theresa Otani, jointly</u>
<u>Edward Bugarin</u>
<u>Ellen Fleishman</u>
<u>Gemie Arakawa</u>
<u>George Tamashiro</u>
<u>Guy Pace and Caroline Berdusco, jointly</u>
<u>Heidi Berger</u>
<u>Henry Ko</u>
<u>Hongwei Su</u>
<u>James Brand</u>
<u>Janis L. Lai Trustee</u>
<u>Jean Morel</u>
<u>Jian Zhang</u>
<u>Johann Strasser</u>
<u>John Dattomo and Daniela Dattomo</u>
<u>Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly</u>
<u>Randall Y.C. Ho</u>
<u>Robert Atkinson</u>
<u>Roberta Sunahara and Paul Sunahara, jointly</u>
<u>Seymour Kazimirski</u>
<u>Stanley Salcedo</u>
<u>Trusts</u>
<u>Charlyn Shizue Honda Masini Trust, by and through its trustee(s)</u>
<u>Fleishman Family Trust, by and through its trustee(s)</u>
<u>J. Zachery Jones Trust, by and through its trustee(s)</u>
<u>Jane Shigeta Revocable Living Trust, by and through its trustee(s)</u>
<u>Jasen Takei Revocable Living Trust, by and through its trustee(s)</u>

<u>Melvin Shigeta Revocable Living Trust, by and through its trustee(s)</u>
<u>Ruth Hisaye Honda Trust, by and through its trustee(s)</u>
<u>S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)</u>
<u>Wallace K. Tsuha Trust, by and through its trustee(s)</u>
<u>Corporations / Partnerships</u>
<u>1236068 Ontario Limited</u>
<u>1649750 Ontario Inc.</u>
<u>1818019 Ontario Limited</u>
<u>Citydrill Inc.</u>
<u>Gross Capital Inc.</u>
<u>Dirk and Dale IRA LLC</u>
<u>Gross Medical Opportunities Fund LP</u>
<u>Hybrid Activities Inc.</u>
<u>Mark Craig Gross Holdings Inc.</u>
<u>Randy 88, LLC</u>
<u>Rastogi Medicine Professional Corporation</u>
<u>RMK IRA LLC</u>

SCHEDULE B**Form of Receiver's Certificate**Court File No. ~~_____~~ CV-21-00665375-00CL**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

~~PLAINTIFF~~**Plaintiff**AMERICAN GENERAL LIFE INSURANCE COMPANY and
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.Applicants

- and -

~~DEFENDANT~~**Defendant**VICTORIA AVENUE NORTH HOLDINGS INC.
and THE PARTIES LISTED ON SCHEDULE "A"RespondentsAPPLICATION 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**RECEIVER'S CERTIFICATE****RECITALS**

A. Pursuant to an Order of ~~the Honourable [NAME OF JUDGE]~~ Mr. Justice Koehnen of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER], [NAME OF RECEIVER]~~ August 3, 2021 (the "Appointment Order"), KPMG Inc. was appointed as the

- 2 -

receiver and manager (the "**Receiver**") without security of the ~~undertaking, property and~~ assets of ~~[DEBTOR] (the "Debtor")~~, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (the "Real Property") of, among other parties, (i) 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) the beneficial owners of the Legal Owner's Property (collectively, the "**Beneficial Owners**", and together with the Legal Owner, the "**Debtors**"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated ~~[DATE]~~ October 14, 2022, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ September 1, 2022 (the "**Sale Agreement**") between the Debtors (acting by the Receiver ~~[Debtor]~~) and ~~[NAME OF PURCHASER]~~ 1000301029 Ontario Limited (the "**Purchaser**") and provided for the vesting in the Purchaser of the ~~Debtor~~ Debtors's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ sections 7.1 and 7.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

- 3 -

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in ~~section~~ sections 7.1 and 7.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

~~[NAME OF RECEIVER]~~ **KPMG Inc.**, in its capacity as Receiver of the undertaking, property and assets of ~~[DEBTOR]~~, the Debtors and not in its personal capacity

Per: _____

Name:

Title:

Revised: January 21, 2014

SCHEDULE A TO RECEIVER'S CERTIFICATE

<u>Individuals</u>
<u>Allan Gross</u>
<u>Errol Yim and Andrea Yim, jointly</u>
<u>Ava Gross</u>
<u>Karen Nakagawa and Calvin Nakagawa, jointly</u>
<u>Carol Jaxon</u>
<u>Carole Kai Onouye</u>
<u>Diane Curtis</u>
<u>Dwight Otani and Theresa Otani, jointly</u>
<u>Edward Bugarin</u>
<u>Ellen Fleishman</u>
<u>Gemie Arakawa</u>
<u>George Tamashiro</u>
<u>Guy Pace and Caroline Berdusco, jointly</u>
<u>Heidi Berger</u>
<u>Henry Ko</u>
<u>Hongwei Su</u>
<u>James Brand</u>
<u>Janis L. Lai Trustee</u>
<u>Jean Morel</u>
<u>Jian Zhang</u>
<u>Johann Strasser</u>
<u>John Dattomo and Daniela Dattomo</u>
<u>Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly</u>
<u>Randall Y.C. Ho</u>
<u>Robert Atkinson</u>
<u>Roberta Sunahara and Paul Sunahara, jointly</u>
<u>Seymour Kazimirski</u>
<u>Stanley Salcedo</u>

[Redacted]

<u>Trusts</u>
<u>Charlyn Shizue Honda Masini Trust, by and through its trustee(s)</u>
<u>Fleishman Family Trust, by and through its trustee(s)</u>
<u>J. Zachery Jones Trust, by and through its trustee(s)</u>
<u>Jane Shigeta Revocable Living Trust, by and through its trustee(s)</u>
<u>Jasen Takei Revocable Living Trust, by and through its trustee(s)</u>
<u>Melvin Shigeta Revocable Living Trust, by and through its trustee(s)</u>
<u>Ruth Hisaye Honda Trust, by and through its trustee(s)</u>
<u>S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)</u>
<u>Wallace K. Tsuha Trust, by and through its trustee(s)</u>
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<u>Citydrill Inc.</u>
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<u>Gross Medical Opportunities Fund LP</u>
<u>Hybrid Activities Inc.</u>
<u>Mark Craig Gross Holdings Inc.</u>
<u>Randy 88, LLC</u>
<u>Rastogi Medicine Professional Corporation</u>
<u>RMK IRA LLC</u>

SCHEDULE C

Real Property

304 Victoria Ave N, Hamilton, ON, L8L 5G4:

PIN 17187-0013 (LT): LT 7, PL 33; LTS 1, 2, 3, 4, 5, 6, 7 & 8, PL 137; HAMILTON

SCHEDULE D

Schedule B—Purchased Assets

- (1) The Assigned Contracts;
- (2) Any Personal Property or fixtures that are Related to the Business and located upon the Real Property Assets;
- (3) All Real Property Assets;
- (4) The Permits and Licenses; and
- (5) The Books and Records that are Related to the Business;

all proceeds of any or all of the foregoing received or receivable after the Closing Time.

Capitalized terms used in this Schedule shall have the meanings given to them in the Sale Agreement.

Revised: January 21, 2014

SCHEDULE E

Schedule C—Claims to be deleted and expunged from title to the Real Property

<u>Instrument No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
WE1027848	March 31, 2015	Charge	\$24,500,000	Victoria Avenue North Holdings Inc.	American General Life Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA
WE1027849	March 31, 2015	Notice of Assignment of Rents General		Victoria Avenue North Holdings Inc.	American General Life Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA
WE1371410	August 1, 2019	Charge	\$3,600,000	Victoria Avenue North Holdings Inc.	1012689 Ontario Limited
WE1392369	November 5, 2019	Notice of Security Interest	\$150,036	De Lage Landen Financial Services Canada Inc.	
WE1403562	December 19, 2019	Charge	\$1,600,000	Victoria Avenue North Holdings Inc.	1012689 Ontario Limited
WE1535741	August 6, 2021	Application to register Court Order		Ontario Superior Court of Justice (Commercial List)	KPMG Inc.

SCHEDULE F

- 2 -

**Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(~~unaffected~~ Unaffected by the Approval and Vesting Order)

- (1) Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested;
- (2) construction, mechanics', carriers', workers', repairers', storers' or other similar Encumbrances (inchoate or otherwise) if individually or in the aggregate: (i) they are not material; (ii) they arose or were incurred in the ordinary course of business; (iii) they have not been filed, recorded or registered in accordance with Applicable Law; (iv) notice of them has not been given to the Vendors; and (v) the indebtedness secured by them is not in arrears;
- (3) title defects or irregularities, unregistered easements or rights of way, and other unregistered restrictions or discrepancies affecting the use of real property if such title defects, irregularities or restrictions would be disclosed by an up-to-date survey of such real property or, if not, are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (4) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (5) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (6) registered easements on real property for the supply of utilities or telephone services and for drainage, storm or sanitary sewers, public utilities lines, telephone lines, cable television lines or other services, provided such easements have been complied with in all material respects;
- (7) registered easements or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Real Property Assets, provided such easements or rights-of-way have been complied with in all material respects;

- 3 -

- (8) facility cost sharing, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or any Governmental Authority in respect of the Real Property Assets, provided such agreements have been complied with in all material respects;
- (9) any minor encroachments by any structure located on the Real Property Assets onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Real Property Assets;
- (10) the Real Property Leases, any registered notices of leases and all other encumbrances and instruments registered against title to the Real Property Assets by reason of any tenant of a Real Property Lease having encumbered such Real Property Lease; and
- (11) in respect of the Real Property Assets and the Real Property Leases, the provisions of any Applicable Law, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning, and any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent.

Capitalized terms used in this Schedule shall have the meanings given to them in the Sale Agreement.

AMERICAN GENERAL LIFE INSURANCE COMPANY, et al.
Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC., et al.
Respondents

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

APPROVAL AND VESTING ORDER
304 Victoria Ave. North, Hamilton, Ontario

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

Pamela L.J. Huff, LSO #27344V

Tel: 416-863-2958

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Aryo Shalviri, LSO #63867A

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Tel: 416-863-3261

Email: chris.burr@blakes.com

Alexia Parente, LSO #81927G

Tel: 416-863-2417

Fax: 416-863-2653

Email: alexia.parente@blakes.com

Lawyers for the Receiver

Document comparison by Workshare 10.0 on Tuesday, October 4, 2022 2:03:52 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13160231/1
Description	TOR_2024-#13160231-v1-Model_Approval_and_Vesting_Order_(AVO)_-_downloaded_October_3,_2022
Document 2 ID	PowerDocs://TOR_2528/24541683/2
Description	TOR_2528-#24541683-v2-304_Victoria-AVO-October_14_2022
Rendering set	Standard

Legend:	
	<u>Insertion</u>
	Deletion
	Moved from
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	Style change
	Format change
	Moved deletion
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:

	Count
Insertions	349
Deletions	123
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	472

TAB 5

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	FRIDAY, THE 14th
)	
JUSTICE MCEWEN)	DAY OF OCTOBER, 2022

B E T W E E N:

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"

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

DISTRIBUTION AND ANCILLARY MATTERS ORDER

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 "B"** (the "**Real Property**") of the Appointment Order granted on August 3, 2021 (the "**Appointment Order**"), of (i) 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) the beneficial owners of the Legal Owner's Property (collectively, the "**Beneficial Owners**", and

- 2 -

together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others (together with the Legal Owner’s Property, the “**Receivership Assets**”), for an order, among other things:

- (i) approving the extension of the term of the term sheet among the Applicants and the Receiver dated as of July 9, 2021 (the “**Receiver Term Sheet**”);
- (ii) authorizing the Receiver to pay the commission of CBRE Limited (the “**Broker**”);
- (iii) authorizing the Receiver to repay the indebtedness outstanding under the Receiver’s Certificates (as defined in the Appointment Order);
- (iv) approving the activities of the Receiver, as set out in the Receiver’s Supplement to the Third Report dated May 20, 2022 (the “**Supplemental Report**”) and the Receiver’s Fourth Report to the Court dated October 4, 2022 (the “**Fourth Report**”, together with the Supplemental Report, the “**Reports**”); and
- (v) sealing Confidential Appendix “A” and Confidential Appendix “B” to the Fourth Report (collectively, the “**Confidential Appendices**”)

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

ON READING the Receiver’s Notice of Motion, the Receiver’s Third Report dated May 13, 2022, the Reports and the appendices thereto, and on hearing the submissions of counsel for the Receiver, 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 affidavit of service of Nancy Thompson sworn [·], 2022 (the “**Thompson Affidavit**”):

- 3 -

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit is hereby abridged, and the method of service validated pursuant to the Order of Mr. Justice Koehnen granted on September 14, 2021, so that this motion is properly returnable today.

RECEIVER TERM SHEET

2. **THIS COURT ORDERS** that (i) the Receiver's execution of amending agreements with the Applicants dated as of June 22, 2022 and September 21, 2022, amending the definition of "Initial Term" under the Receiver's term sheet dated as of July 9, 2021 (as amended, the "**Receiver Term Sheet**") to "December 31, 2022" is authorized and approved, and (ii) 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.

REPAYMENT OF RECEIVER'S BORROWINGS

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to repay all indebtedness outstanding under the Receiver's Certificate (as defined in the Appointment Order) issued under the Receiver Term Sheet from the Net Proceeds (as defined in the Fourth Report).

PAYMENT OF BROKER COMMISSION

4. **THIS COURT ORDERS AND DECLARES** that the Receiver is authorized and directed to pay the Commission (as defined in the Fourth Report) to the Broker as and when the Proposed Transaction (as defined in the Fourth Report) closes, out of the Net Proceeds, in such amount as is prescribed by the terms of the Broker Engagement Agreement, as amended (as defined in the Fourth Report).

- 4 -

APPROVAL OF REPORT & ACTIVITIES

5. **THIS COURT ORDERS** that the Reports and the activities of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

SEALING ORDER

6. **THIS COURT ORDERS** that the Confidential Appendices are hereby sealed and shall not form part of the public record, pending further Order of this Court.

MISCELLANEOUS

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents 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 an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A

Individuals	Trusts
Allan Gross	Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Errol Yim and Andrea Yim, jointly	Fleishman Family Trust, by and through its trustee(s)
Ava Gross	J. Zachery Jones Trust, by and through its trustee(s)
Karen Nakagawa and Calvin Nakagawa, jointly	Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Carol Jaxon	Jasen Takei Revocable Living Trust, by and through its trustee(s)
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AMERICAN GENERAL LIFE INSURANCE COMPANY, *et al.*
Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC., *et al.*
Respondents

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

DISTRIBUTION AND ANCILLIARY
MATTERS ORDER

BLAKE, CASSELS & GRAYDON LLP

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Lawyers for the Receiver

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

- and -

VICTORIA AVENUE NORTH HOLDINGS INC., *et al.*
Respondents

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

MOTION RECORD
(Sale Approval and Ancillary Matters)
Returnable October 14, 2022

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

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