

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

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

**Victoria Avenue North Holdings Inc.**

**MAY 18, 2023**

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

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

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

**Applicants**

**AND**

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

**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**

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

**DATED MAY 18, 2023**

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

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## 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**” and together with the Legal Owner, the “**Debtors**”) 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 comprised the real property assets consisting of two (2) medical office buildings, located at 304 Victoria Avenue North in Hamilton, Ontario (the “**304 Victoria Building**”) and 414 Victoria Avenue North in Hamilton, Ontario (the “**414 Victoria Building**”) and together with the 304 Victoria Building, the “**Buildings**”) and their related real property leases (the “**304 Victoria Real Property Assets**” and the “**414 Victoria Real Property Assets**”, respectively, and collectively, the “**Real Property Assets**”).
3. Prior to its appointment as Receiver in these receivership proceedings (the “**Proceedings**”), KPMG filed a report dated July 26, 2021 (the “**Pre-Filing Report**”) to provide information to the Court in connection with the Applicants’ application for the Appointment Order.
4. On September 7, 2021, the Receiver filed a report (the “**First Report**”) with the Court in support of the Beneficial Owner Notification & Service Order (as defined below) and to provide an update on the status of these Proceedings generally.
5. On September 14, 2021, the Court granted an order (the “**Beneficial Owner Notification & Service Order**”): (i) authorizing and directing the Receiver to undertake the Notification Procedure (as defined in the First Report) to obtain contact information for Beneficial Owners, and (ii) approving a service protocol in respect of the Beneficial Owners, effective as of

September 24, 2021.

6. On October 29, 2021, the Court granted an order (the “**Sale Process Order**”) approving, among other things:
  - (a) the engagement of CBRE Limited (the “**Broker**”) as exclusive real estate broker for the Real Property Assets and the broker listing agreement dated October 20, 2021 (as amended from time to time, the “**Broker Listing Agreement**”);
  - (b) a sale process for the Real Property Assets, as appended to the Sale Process Order;
  - (c) the sealing of the confidential appendices to the Receiver’s second report dated October 22, 2021 (the “**Second Report**”); and
  - (d) the extension of the term of the Receiver’s term sheet dated as of July 9, 2021 (the “**Receiver Term Sheet**”), pursuant to which the Receiver had borrowed funds 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 of, among other things, the properties of Southmount Healthcare Centre Inc. and certain other entities (collectively, “**Southmount Et Al.**”), pursuant to an order of this Court granted in proceedings bearing Court file no. CV-21-00664273-00CL. The primary assets of the respondents in the Southmount Et Al. receivership proceedings were seven (7) medical office buildings in the same asset class as the Buildings subject to these Proceedings. 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 “**Gross Capital Proceedings**”). The Receiver understands that historically the Legal Owner and Southmount Et Al. were each managed by representatives of Gross Capital.
  
8. At a hearing before the Court on May 24, 2022 (the “**May 24 Hearing**”), the Court granted an approval and vesting order in these Proceedings, among other things, approving a sale transaction (the “**May 24 Transaction**”) in respect of the Real Property Assets, and authorizing and directing the Receiver to take such steps as necessary to complete same.
  
9. Also at the May 24 Hearing, the Court granted an order in these Proceedings (the “**May 24 Distribution and Ancillary Matters Order**”), among other things:

- (a) authorizing and directing the Receiver to pay the Broker 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;<sup>1</sup>
- (c) authorizing the Receiver to:
  - (i) transfer funding for costs associated with the bankruptcy proceedings of the Legal Owner to KPMG, in its capacity as bankruptcy trustee, as determined by the Receiver in consultation with the Applicants;
  - (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;
- (e) dispensing with the requirement that the Receiver and its counsel, Blake, Cassels & Graydon LLP (“**Blakes**”) and independent counsel, Norton Rose Fulbright Canada LLP (“**Norton Rose**” and together with Blakes, the “**Receiver’s Counsel**”), obtain Court approval of their fees and disbursements, provided such fees and disbursements are disclosed to and approved by the Applicants; and
- (f) sealing the confidential appendices to the Third Report (as defined herein).

10. The Receiver filed a report dated May 13, 2022 (the “**Third Report**”) and a supplemental report dated May 20, 2022 (the “**Supplemental Report**”), in support of the relief sought at the May 24

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

Hearing.

11. The May 24 Transaction did not close.
12. At a hearing before the Court on October 14, 2022 (the “**October 14 Hearing**”), the Court granted an approval and vesting order in these Proceedings, among other things, approving a sale transaction (the “**October 14 Transaction**”) in respect of the 304 Victoria Real Property Assets, and authorizing and directing the Receiver to take such steps as necessary to complete same.
13. Also at the October 14 Hearing, the Court granted an order in these Proceedings, among other things:
  - (a) authorizing the Receiver to:
    - (i) extend the initial term under the Receiver Term Sheet to December 31, 2022; and
    - (ii) repay the indebtedness owing to the Applicants pursuant to the Receiver Term Sheet from the net proceeds of the October 14 Transaction and any other funds in the possession of the Receiver;
  - (b) authorizing and directing the Receiver to pay the Broker its brokerage commission in connection with the October 14 Transaction, upon closing thereof;
  - (c) approving the Supplemental Report and the Fourth Report (defined herein), and the Receiver’s activities described therein; and
  - (d) sealing the confidential appendices to the Fourth Report.
14. The Receiver filed a report dated October 4, 2022 (the “**Fourth Report**”) in support of the relief sought at the October 14 Hearing.
15. The October 14 Transaction proceeded to close.
16. At a hearing before the Court on February 8, 2023 (the “**February 8 Hearing**”), the Court granted an order (the “**Lift Stay Order**”) in various proceedings, including these Proceedings, the Southmount Et Al. Proceedings, and the Gross Capital Proceedings, declaring (among other things) that:

- (a) the stay of proceedings pursuant to the Appointment Order shall no longer operate in respect of the Action (as defined in the Lift Stay Order), which is based upon certain alleged false representations by Sheldon Gross and Mark Gross (former principals of Gross Capital) that allegedly induced the Moving Parties (as defined in the Lift Stay Order) to invest in certain entities affiliated with Gross Capital; and
  - (b) the right of the Moving Parties to commence and continue to prosecute that action as against the Bankrupts or Receivership Respondents (each as defined in the Lift Stay Order) shall be for the purpose only of establishing the amount for which the Moving Parties are entitled to prove in the bankrupt estates or these Proceedings as an unsecured claim, such that, the enforcement of any judgement obtained by the Moving Parties against the Bankrupts or Receivership Respondents (each as defined in the Lift Stay Order) or their respective property remains stayed pending further Order of the Court.
17. The Receiver filed a report dated January 23, 2023 (the “**Responding Report**”) to provide the Court with information pertaining to the motion heard during the February 8 Hearing.
18. At the most recent hearing in these Proceedings before the Court on March 2, 2023 (the “**March 2 Hearing**”), the Court granted an order in these Proceedings, among other things:
- (a) authorizing the Receiver to distribute funds in an amount up to \$5.7 million to the Applicants, on account of the outstanding indebtedness owing to the Applicants by the Debtors; and
  - (b) approving the Fifth Report (defined herein) and the activities of the Receiver described therein.
19. The Receiver filed a report dated February 23, 2023 (the “**Fifth Report**”, and together with the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Supplemental Report, the Fourth Report, and the Responding Report, the “**Prior Reports**”) in support of the relief sought at the March 2 Hearing.
20. Electronic copies of the Prior Reports are available on the Receiver’s Website at: [home.kpmg/ca/VictoriaHoldings](http://home.kpmg/ca/VictoriaHoldings) (the “**Receiver’s Website**”).



## II. PURPOSE OF REPORT

21. The purpose of this sixth report of the Receiver (the “**Sixth Report**”) is to provide this Court with information pertaining to:
- (a) the Proposed Transaction (as defined herein) relating to the sale of the 414 Victoria Real Property Assets, which the Receiver is proposing to pursue should the Court grant an order approving same;
  - (b) the Receiver’s activities since the date of the Fifth Report;
  - (c) the Receiver’s interim statement of receipts and disbursements (the “**Interim SRD**”) for the period from the Receivership Date to and including April 30, 2023 (the “**Period**”);
  - (d) the Receiver’s proposed distributions to the Applicants of, among other things, available funds from the Net Sale Proceeds (as defined herein) of the Proposed Transaction;
  - (e) the Receiver’s intention to bankrupt the Legal Owner following closing of the Proposed Transaction;
  - (f) an update on the fees and disbursements of the Receiver and the Receiver’s Counsel;
  - (g) the remaining tasks to be completed by the Receiver in order to conclude the administration of these Proceedings; and
  - (h) the Receiver’s recommendation that this Court grant an order (the “**Approval and Vesting Order**”):
    - (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 414 Victoria Real Property Assets in the Purchaser (as defined herein), free and clear of all liens, claims encumbrances, except certain permitted encumbrances, upon the Receiver filing a certificate confirming, among other things, the completion of the Proposed Transaction;

- (i) the Receiver’s recommendation that this Court grant an order (the “**Discharge, Distribution and Ancillary Matters Order**”):
  - (i) authorizing and directing the Receiver to pay the Broker its brokerage commission in connection with the Proposed Transaction, upon closing thereof (the “**Commission**”);
  - (ii) authorizing the Receiver to issue the Interim Distribution and the Final Distribution (each as defined herein) to the Applicants;
  - (iii) discharging KPMG Inc. as Receiver effective upon the filing of the Receiver’s discharge certificate, certifying that, to the best of the knowledge and belief of the Receiver, all matters to be attended to in connection with these Proceedings have been completed to the satisfaction of the Receiver (the “**Discharge Certificate**”);
  - (iv) approving this Sixth Report and the activities of the Receiver since the date of the Fifth Report, as set out in this Sixth Report;
  - (v) granting certain customary releases in favour of the Receiver and the Receiver’s Counsel;
  - (vi) sealing the confidential appendices to this Sixth Report; and
  - (vii) unsealing the confidential appendices to this Sixth Report and the confidential appendices to the Fourth Report, which were sealed pursuant to the Order of the Honourable Justice Cavanagh dated October 14, 2022, upon the closing of the Proposed Transaction.

### III. QUALIFICATIONS & TERMS OF REFERENCE

22. In preparing this Sixth 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.

23. Some of the Information referred to in this Sixth 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.
24. Certain Information referred to in this Sixth 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.
25. The Receiver has prepared this Sixth Report in connection with a motion currently scheduled to be heard on May 30, 2023 (the “**May 30 Hearing**”). This Sixth Report should not be relied on for other purposes.
26. The information contained in this Sixth Report is not intended to be relied upon by any prospective purchaser in any transaction with the Receiver.
27. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

#### **IV. PROPOSED TRANSACTION**

28. Following the termination of the May 24 Transaction asset purchase agreement, the Broker commenced remarketing efforts in respect of the Real Property Assets, which remarketing efforts included (i) engaging with parties that had previously submitted bids for the 414 Victoria Real Property Assets or who had otherwise expressed interest in purchasing same, and (ii) relisting the 414 Victoria Real Property Assets on the Multiple Listing Service (MLS), first on an unpriced basis, and subsequently on or about November 7, 2022, on a priced basis.
29. While certain interest was expressed from time to time by several parties since remarketing commenced in June 2022, no formal offers with respect to the 414 Victoria Real Property Assets were received by the Receiver until March 2023, when the Receiver received offers (including one binding offer, being an offer without due diligence or other conditions) from three separate bidders (the “**Bidders**”), to acquire the 414 Victoria Real Property Assets. Following receipt of these offers, the Receiver, in consultation with the Broker and the Applicants, decided to conduct

a second round of bidding, providing the Bidders with an opportunity improve on their initial offers and submit revised bids (the “**Second Round**”). Each of the Bidders participated in the Second Round, and all three bids received (one of which was binding) were competitive from a purchase price perspective. As such, the Receiver provided the Bidders with a final opportunity to submit revised bids on a ‘best and final’ and binding basis on the Receiver’s form of asset purchase agreement. All Bidders subsequently submitted binding offers (the “**Binding Offers**”). The Receiver, in consultation with the Broker and the Applicants, reviewed the Binding Offers and selected the highest and, in the Receiver’s view, best offer in the circumstances (taking into account, among other things, closing certainty and timing) and proceeded to finalize a definitive purchase agreement with the respective Bidder (the “**Selected Bidder**”).

30. On April 28, 2023, the Receiver entered into an asset purchase agreement (the “**APA**”) with the Selected Bidder (now, the “**Purchaser**”).
31. The unsuccessful Bidders were advised of the selection of the Purchaser, and as at the date hereof, none of the other Bidders have submitted any improved Binding Offers.
32. A copy of the executed APA, redacted for confidential and commercially sensitive financial information is included in **Appendix “A”** appended hereto. A summary of the commercially sensitive information redacted from the APA appended hereto is included in **Confidential Appendix “A”** appended hereto, and a summary of the material terms of each of the Binding Offers received in respect of the 414 Victoria Real Property Assets is included in **Confidential Appendix “B”** appended hereto (collectively, the “**Confidential Information**”). The Confidential Information has been kept confidential at this time, as should the Proposed Transaction not be approved or not close as anticipated, the disclosure of the Confidential Information would, in the Receiver’s view, be prejudicial to future negotiations or marketing efforts in respect of the 414 Victoria Real Property Assets.
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 414 Victoria Real Property Assets, in each case by the Receiver.
  - (b) Purchased Assets: Comprise the Vendors’ right, title and interest in and to the 414 Victoria Building, all real property leases related thereto 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 (i) assigned contracts, permits and licenses arising on or after the Closing Date, (ii) the Purchased Assets or the Business arising on or after the Closing Date, (iii) tax liabilities for post-closing tax periods, (iv) trade payables accrued after the Closing Date, (v) environmental claims and liabilities, and (vi) 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 414 Victoria Building, (ii) all of the personal property leases related to the 414 Victoria Building, which are in respect of lighting and safety devices installed at the 414 Victoria Building, and (iii) those other contracts specifically scheduled in the APA.
- (e) Cure Costs: With respect to any Assigned Contracts 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 8% 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 Time (including receivables derived from parking revenue for services provided 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 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 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 as soon as reasonably practicable following the issuance of the Approval and Vesting Order.
- (l) Closing Adjustments: Any rents and deposits, 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) Due Diligence: The APA is not subject to a due diligence condition in favour of the Purchaser.
- (o) Outside Date: The later of: (i) the first Business Day that is at least 10 calendar days from the issuance of the Approval and Vesting Order, (ii) June 16, 2023, or (iii) such later date as the Parties may mutually agree.

- (p) Termination: The APA can generally be terminated as follows:
- (i) by the mutual agreement of the Vendors and the Purchaser;
  - (ii) by written notice from the Purchaser to the Vendors, in the event that the Purchased Assets are destroyed, lost, or materially damaged;
  - (iii) 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;
  - (iv) 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 Vendor's 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
  - (v) by either the Vendors or the Purchaser if Closing has not occurred before the Outside Date.
- (q) 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 414 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 negotiation of the terms of the APA, and represents the highest and best offer for the 414 Victoria Real Property Assets;
- (c) the Proposed Transaction contemplates the sale of the 414 Victoria Real Property Assets on an 'as is, where is' basis;
- (d) the Receiver is of the view, informed by consultation with the Broker, that the amount of the Deposit is at least commensurate with the market, and the timeline of the Proposed Transaction is 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; and
- (g) the Applicants, who as noted in the Fourth Report, are the only creditors anticipated to realize a recovery in these Proceedings, support the Proposed Transaction.

## V. ACTIVITIES OF THE RECEIVER

35. The Receiver's activities from the Receivership Date to the date of the Fifth Report are detailed in certain of the Prior Reports. The Receiver's activities since the date of the Fifth Report have included:

- (a) liaising with the property manager for the 414 Victoria Building, Prime Real Estate Group Inc. ("**Prime**"), in respect of various operational matters, including repairs and maintenance requirements, leasing and other tenant-related matters at the 414 Victoria Building;
- (b) liaising with tenants of the 414 Victoria Building in respect of lease extensions, renewals, and new lease arrangements;
- (c) reviewing and signing cheques for vendor payments;
- (d) collecting rents from tenants of the 414 Victoria Building;



- (e) 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 May 31, 2023 and for which a further extension has been requested and is expected to be received;
- (f) monitoring cash flows and liquidity, and attending to various banking matters including monthly bank reconciliations;
- (g) reviewing and filing quarterly HST returns with Canada Revenue Agency ("CRA"), and responding to HST return examination requests from CRA;
- (h) engaging with the Broker in respect of the marketing of the 414 Victoria Real Property Assets, including evaluating and considering offers received from interested parties;
- (i) assisting the Broker in updating the purchaser data room with current financial and other information relating to the 414 Victoria Real Property Assets, and reviewing and executing non-disclosure agreements to allow interested parties to access the data room;
- (j) with the assistance of Prime, coordinating in-person site visits of the 414 Victoria Building with various interested parties;
- (k) reviewing various offers received from the Bidders, including both non-binding and binding offers, and engaging in ongoing consultation and collaboration with the Broker and the Applicants in respect of same;
- (l) with the assistance of Blakes, negotiating, finalizing and executing the APA with the Purchaser as it relates to the Proposed Transaction, including preparing and finalizing the schedule of assigned contracts and other transaction details, and discussing same with the Purchaser;
- (m) facilitating payment of the Deposit by the Purchaser to the Receiver in trust;
- (n) maintaining and updating the Receiver's Website where copies of all Court and other statutory materials are available in electronic format;
- (o) preparing and reviewing Court materials, including this Sixth Report, in connection with the May 30 Hearing;

- (p) responding to tax related and other inquiries from purported Beneficial Owners;
- (q) providing updates to and consulting with the Applicants in respect of the ongoing marketing of the 414 Victoria Real Property Assets and the Proposed Transaction, and various aspects of these Proceedings;
- (r) communicating with the Receiver's Counsel, in respect of various aspects of these Proceedings; and
- (s) communicating with vendors, creditors, parties purporting to have an interest in the Property and other stakeholders in respect of various aspects of these Proceedings.

## **VI. INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

36. As shown in the Interim SRD below, during the Period (being August 3, 2021 to April 30, 2023), the Receiver had cash receipts (including borrowings) of approximately \$10.7 million, and cash disbursements (including repayment of borrowings) of approximately \$9.6 million. As at April 30, 2023, the Receiver's cash on hand was approximately \$1.1 million.

**Interim Statement of Receipts and Disbursements**  
**For the period August 3, 2021 to April 30, 2023**  
**(C\$, unaudited)**

<b>Receipts</b>	
Net sale proceeds <sup>1</sup>	7,544,436
Rent and other receipts <sup>2</sup>	2,414,179
Receiver's borrowings <sup>3</sup>	300,000
HST collected	309,906
Pre-filing bank balance <sup>4</sup>	165,920
<b>Total Receipts</b>	<b><u>10,734,440</u></b>
<b>Disbursements</b>	
Distributions to secured lenders <sup>5</sup>	5,700,000
Professional fees and disbursements	1,299,392
Property operating costs <sup>6</sup>	1,256,360
HST paid	372,147
Receiver's borrowings repayment <sup>3</sup>	336,119
Municipal realty taxes <sup>7</sup>	233,548
Broker commissions <sup>8</sup>	225,900
Property management fees <sup>9</sup>	165,110
Environmental and building condition reports	7,681
<b>Total disbursements</b>	<b><u>9,596,257</u></b>
<b>Balance in Receiver's accounts</b>	<b><u>1,138,184</u></b>

**Notes:**

(1) Sale proceeds in connection with sale of 304 Victoria Real Property Assets, net of closing adjustments.

(2) Includes monthly rent collections from tenants and other miscellaneous receipts.

(3) Borrowings in accordance with Receiver Term Sheet. Principal and interest repaid in December 2022.

(4) Cash transferred to the Receiver's estate bank account from the Legal Owner's bank account upon commencement of the Proceedings.

(5) Distributions to secured creditors of available proceeds from sale of Real Property Assets.

(6) General operating costs such as utilities, maintenance, insurance, etc.

(7) Payment of municipal taxes following sale of Real Property Assets.

(8) Broker commissions paid to CBRE in connection with sale of Real Property Assets.

(9) Includes third party property management fees and leasing commissions for assisting the Receiver in negotiating new leases and lease extensions with existing tenants.

37. As at April 30, 2023, the Receiver had accrued and unpaid expenses in the amount of approximately \$114,000, consisting of (i) \$41,000 of accrued operating costs in respect of the 414 Victoria Building, and (ii) \$73,000 of accrued fees of the Receiver and the Receiver's

Counsel (the “**Accrued Obligations**”).

## **VII. DISTRIBUTIONS**

### *Applicants’ Security*

38. As detailed in the Second Report, the Receiver has obtained an independent legal opinion from Norton Rose, with respect to the validity and enforceability of the security granted in favour of the Applicants under the laws of the Province of Ontario, concluding (subject to the qualifications, assumptions and limitations therein) that the Applicants’ security is valid and enforceable against the Property and that first in time registrations of the Applicants’ security have been made against the Property.
39. The balance of the Applicants’ secured debt is estimated to be approximately \$18.7 million as at April 30, 2023, composed of the following:
  - (a) principal: \$16.0 million;
  - (b) accrued interest: \$2.7 million; and
  - (c) other costs and other amounts that may be claimable by the Applicants in connection therewith, including yield maintenance amounts.
40. The proceeds of sale of the 414 Victoria Real Property Assets, net of taxes, closing adjustments, the Commission, and any other amounts payable by the Receiver on closing (the “**Net Sale Proceeds**”) will not be sufficient to repay the remaining principal and interest owing to the Applicants (without accounting for their costs and any other amounts that may be claimable by the Applicants pursuant to their loan and security documents, including yield maintenance amounts).

### *Potential Priority Claims*

41. 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.
42. Payment of municipal realty tax arrears of the Legal Owner in connection with the 304 Victoria Building was made in connection with the closing of the October 14 Transaction, and payment

of any outstanding municipal realty tax arrears of the Legal Owner in connection with the 414 Victoria Building will be made as a condition of closing of the Proposed Transaction.

43. The Legal Owner appears to have outstanding HST arrears related to the period after the Applicants advanced the loan to the Legal Owner but prior to the Receivership Date, as evidenced by documentation obtained from CRA. Pursuant to the Appointment Order, the Receiver was empowered and authorized to, among other things, file an assignment in bankruptcy on behalf of the Legal Owner, should the Receiver consider it necessary or desirable. Following the closing of the Proposed Transaction, and prior to issuing the Interim Distribution and the Final Distribution, the Receiver intends to file an assignment in bankruptcy on behalf of the Legal Owner (the “**Victoria Bankruptcy Proceedings**”). In the Receiver’s view, bankrupting the Legal Owner will provide finality to claims and may crystalize investment losses for the Beneficial Owners.
44. As such, the Receiver is not aware of any priority claims that would rank ahead of the Applicants at the time of the Interim Distribution or the Final Distribution.

#### *Distributions*

45. The Receiver notes that distributions to the Applicants from the proceeds of sale of the Real Property Assets were previously approved by the Court in connection with the May 24 Transaction, though the May 24 Transaction was not subsequently completed and such distributions did not proceed as a result. The Court subsequently approved distributions to the Applicants in connection with the October 14 Transaction from the proceeds of sale of the 304 Victoria Real Property Assets, which distributions were issued by the Receiver.
46. Following the closing of the Proposed Transaction, the Receiver will be in possession of the Net Sale Proceeds, and the Receiver is seeking an order authorizing a distribution (the “**Interim Distribution**”) of the Net Sale Proceeds, and cash on hand, less a reserve to be held back by the Receiver to fund, among other things, (i) the remaining costs of these Proceedings, (ii) ongoing operating expenses of the 414 Victoria Building prior to closing of the Proposed Transaction, and (iii) the Victoria Bankruptcy Proceedings. The Receiver has consulted with the Applicants in respect of the Interim Distribution and related reserve and they are supportive of same.
47. The Receiver is seeking an order authorizing a distribution (the “**Final Distribution**”) from any remaining available cash on hand, following completion of the Remaining Activities (as defined

herein) and prior to filing its Discharge Certificate with the Court.

## **IX. FEES AND DISBURSEMENTS OF THE RECEIVER AND ITS COUNSEL**

48. Pursuant to the May 24 Distribution and Ancillary Matters Order, the requirement of the Receiver and the Receiver's Counsel to continue passing their accounts (the "**Accounts**") was waived and dispensed with, provided that the Receiver provides the Applicants with the quantum of the Accounts, and that none of the Applicants request that the Receiver or its counsel pass their Accounts. The fees and disbursements of the Receiver and the Receiver's Counsel for the period from the Receivership Date to March 31, 2022 were summarized in the Third Report. The fees and disbursements of the Receiver, Blakes and Norton Rose for the period from April 1, 2022 to April 30, 2023 (the "**Fee Period**") are summarized below.
49. The Accounts for the Fee Period have been disclosed to the Applicants and the Applicants have advised the Receiver that they consent to such fees. Accordingly, the Receiver has summarized, but is not seeking further Court approval of the Accounts for the Fee Period.
50. Professional fees and disbursements of the Receiver, for the Fee Period total \$345,839.90, including fees and disbursements in the amount of \$306,053.00 and HST in the amount of \$39,786.90. As set out above, summaries of the Receiver's invoices have been provided to the Applicants, as fulcrum creditor having the only economic interest in these invoiced amounts.
51. Professional fees and disbursements of Blakes for the Fee Period total \$388,062.95, including fees and disbursements in the amount of \$343,542.79 and HST in the amount of \$44,520.16. As set out above, summaries of Blakes' invoices have been provided to the Applicants, as fulcrum creditor having the only economic interest in these invoiced amounts.
52. Professional fees and disbursements of Norton Rose for the Fee Period total \$29,091.90, including fees and disbursements in the amount of \$25,745.00 and HST in the amount of \$3,346.90. As set out above, summaries of Norton Rose's invoices have been provided to the Applicants, as fulcrum creditor having the only economic interest in these invoiced amounts.
53. Assuming that the Proposed Transaction closes as anticipated, and that there are otherwise no delays, disputes or unforeseen developments in connection with these Proceedings, including as it relates to the Remaining Activities, the Receiver has estimated remaining operating costs of \$41,000 in respect of the 414 Victoria Building up to the Closing Date, and remaining professional fees and disbursements (in addition to the fees incurred by the Receiver and the

Receiver's Counsel noted above) in the amount of \$125,000 as follows: (i) \$65,000 for the Receiver, and (ii) \$60,000 for the Receiver's Counsel (all amounts excluding HST) (collectively the "**Remaining Costs**"). These amounts represent the Receiver's best estimate of the 414 Victoria Building operating costs and professional and legal fees required to complete the administration of these Proceedings.

## VIII. REMAINING ACTIVITIES AND DISCHARGE OF THE RECEIVER

54. Should the Proposed Transaction proceed to close as anticipated, the Receiver will have realized on substantially all assets of the Legal Owner and will have concluded the majority of its administration of these Proceedings. As such, the remaining tasks to conclude the Receiver's administration (the "**Remaining Activities**") are primarily anticipated to be as follows:
- (a) close the Proposed Transaction, should it be approved by the Court, and file the Receiver's certificate confirming same with the Court;
  - (b) pay the Commission to the Broker and any other amounts payable by the Receiver on closing of the Proposed Transaction;
  - (c) make an assignment in bankruptcy on behalf of the Legal Owner, and fund the Victoria Bankruptcy Proceedings pursuant to the terms of the May 24 Distribution and Ancillary Matters Order;
  - (d) attend to various outstanding tax-related matters, including filing outstanding returns in compliance with the *Excise Tax Act* and the *Income Tax Act*, which is anticipated to result in a net refund to the receivership estate;
  - (e) prepare and file the Receiver's final report as required under Section 246(3) of the BIA;
  - (f) pay the Accrued Obligations and the Remaining Costs, including the fees of the Receiver and the Receiver's Counsel;
  - (g) issue the Interim Distribution and the Final Distribution to the Applicants;
  - (h) close the Receiver's estate trust account; and
  - (i) any incidental tasks that may be required in connection with concluding these Proceedings, including without limitation, the filing of the Discharge Certificate, upon completion of the Remaining Activities.

55. Other than the Remaining Activities, the Receiver has completed its administration of the estate in accordance with the terms of the Appointment Order and the various other orders rendered by the Court in the course of these Proceedings.
56. The proposed Discharge, Distribution and Ancillary Matters Order contemplates certain releases effective to the date thereof if granted (the “**Releases**”) and separate releases for the period between the date of the Discharge, Distribution and Ancillary Matters Order and the date of the termination of these Proceedings (the “**Subsequent Releases**”). The proposed Discharge, Distribution and Ancillary Matters Order provides that the Receiver shall, at least seven calendar days prior to the filing of the Discharge Certificate, provide notice to the Service List in order to provide an opportunity for any party with an interest to object to the Subsequent Releases.
57. If no objections are received before the proposed Discharge Certificate filing date, the Subsequent Releases shall become effective on the date that the Discharge Certificate is filed. If any objection is received within the seven-day period, the Subsequent Releases shall only become effective if the objection is resolved consensually or upon further Order of the Court.
58. The Receiver recommends that it be discharged pursuant to the terms of the proposed Discharge, Distribution and Ancillary Matters Order and that the releases provided for therein be granted.

#### **IX. RECEIVER’S CONCLUSION AND RECOMMENDATION**

59. Based on the forgoing, the Receiver respectfully requests that the Court grant the relief referenced in paragraph 21(h) and paragraph 21(i) herein.



All of which is respectfully submitted this 18<sup>th</sup> day of May, 2023.

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

**And not in its personal or corporate capacity**

Per:



---

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



---

**George Bourikas**  
**CPA, CA, CIRP, LIT**  
Vice President

# **APPENDIX “A”**

**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 -

**BOU-ZAID GENERAL CONTRACTING INC.**

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**ASSET PURCHASE AGREEMENT**

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**DATED AS OF APRIL 28, 2023**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of April 28, 2023 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 -

**BOU-ZAID GENERAL CONTRACTING INC. (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 Owner’s 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.

**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:

**“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.

**“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 the Purchaser of all of the Assumed Liabilities under or in respect of the 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:

- (a) 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;
- (b) 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;
- (c) all Liabilities on account of the trade accounts, payables and other current accounts payable, in each case incurred or accrued by any of the Vendors on or after the Closing Date in the ordinary course of business and Related to the Business;
- (d) all Environmental Claims and all Environmental Liabilities; and
- (e) without limiting foregoing clause (a), 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.

**“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.

**“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 amount shall be set out on the form of contractual consent agreed to by the Purchaser and the counterparty to such Assigned Contract).

**“Damages”** means any loss, cost, Liability, claim, interest, fine, penalty, assessment, Taxes, damages available at Law or in equity (including incidental, consequential, special, aggravated, exemplary or punitive damages unless paid to a third party), expense (including consultant’s and expert’s fees and expenses and reasonable costs, fees and expenses of legal counsel on a full indemnity basis, without reduction for tariff rates or similar reductions and reasonable costs, fees and expenses of investigation, defence or settlement) or diminution in value.

**“Data”** means any information or data collected or received by, processed by, or output from software (including reports, analytics, and alerts), and any other information or data Related to the Business, including information and data contained in any databases.

**“Deposit”** has the meaning set forth in Section 3.2(1).

**“Encumbrances”** means all claims, Liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, liens, security interests, floating charges, mortgages, pledges, assignments, conditional sales, warrants, adverse claims, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer, rights of first opportunity or any other pre-emptive contractual rights), encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise.

**“Environmental Claim”** means any Action, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom whether incurred or arising before or after Closing by or from any Person alleging potential or actual Liability of whatever kind or nature (including Liability or responsibility for the costs of any enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources Damages, property Damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (i) the presence, Environmental Release of, or exposure to, any Hazardous Materials; or (ii) any potential, actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

**“Environmental Law”** means any Applicable Law or binding agreement with any Governmental Authority: (i) relating to pollution (or the investigation or cleanup thereof), the management or protection of natural resources, endangered or threatened species, human health or safety, or the protection or quality of the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (ii) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

**“Environmental Liabilities”** means all past, present and future obligations and Liabilities of whatsoever nature or kind arising from or relating to, directly or indirectly to any Environmental Claim applicable to or otherwise involving the Purchased Assets or 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 (including, without limitation, Receivables derived from parking revenue for services provided 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:

- (a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);
- (b) 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;
- (c) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and
- (d) 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.

“**Hardware**” has the meaning set forth in Section 5.8.

“**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 (1<sup>st</sup> 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 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 first Business Day following thirty (30) calendar days following after the 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 later of: (i) the first Business Day that is at least 10 calendar days from the date of the issuance of the Approval and Vesting Order, (ii) June 16, 2023, or (iii) such later date as the Parties may mutually agree.

**“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:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) registered restrictive covenants, leases and notices of lease, easements, covenants, rights of way and other restrictions, including without limitation: (i) 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, and (ii) registered easements or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Real Property Assets;

- (e) registered agreements with municipalities or public utilities;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) all encumbrances and instruments registered against title to the Real Property Assets and the property that is the subject of the Real Property Leases; and
- (k) 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, (i) any Taxes payable in respect of any Real Property Assets as a result of any reassessment following the Closing Date, and (ii) any Taxes payable in 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.

**“Proprietary Marks”** has the meaning set out in Section 5.9.

**“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 leases in respect of the Real Property Assets, including those listed and specified as “Real Property Leases” 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 “A” to the Approval and Vesting Order and Schedule “F” to this Agreement 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 (as applicable) 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 as soon as reasonably practicable 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 (including the 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
<u>Schedule “F”</u>	Receiver’s Certificate

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 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 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.

(3) *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, 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. The Cure Costs as paid by the Purchaser shall be in addition to the Cash Purchase Price received by the Vendors for the Purchased Assets.

(4) *Assignment.* At the Closing Time, on and subject to the terms and conditions of this Agreement (including Section 2.3(5) 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.

(5) *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.

(6) *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.

(7) *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 that it 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 Permit and Licence to the 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 Permit and Licence to the 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 the 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 their commercially reasonable efforts to obtain the necessary consents or approvals to the assignment or transfer of such Permit and Licence to the Purchaser or the 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 and 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 the Purchaser, the 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) [REDACTED] (the "**Cash Purchase Price**");
- (2) the Cure Costs, which are estimated to be \$ [REDACTED]; and
- (3) the agreed value of the Assumed Liabilities.

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

(1) a deposit in the amount of [REDACTED] (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 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 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 and rent deposits, (ii) realty Taxes including local improvement rates, (iii) unmetered public or private utility charges, (iv) unmetered cost of fuel, and (v) 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 (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.* The Purchaser is not a “non-Canadian” within the meaning of the *ICA*, or, if the Purchaser is a “non-Canadian”, the 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.

(8) *Sufficient Funds.* The Purchaser has sufficient financial resources or has arranged sufficient financing for it, 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 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 their 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:

(1) 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 the Purchaser;

(2) 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;

(3) 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 their entirety by the Purchaser;

(4) 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;

(5) 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;

(6) 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;

(7) 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;

(8) 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;

(9) 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

(10) 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 itself 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 their 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 their 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 it 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 Certain Information Technology Assets.** With respect to information technology assets primarily Related to the Business to be acquired by the Purchaser hereunder (such as desktops, laptops, mobile phones, servers and related hardware), if any (collectively, "**Hardware**"), the Purchaser will co-operate with the Vendors, at the Vendors' cost and expense, in causing data contained or stored in such Hardware (if any) not relating primarily to the Business, the Purchased Assets or the Assumed Liabilities to be removed from such Hardware (if any) in a manner reasonably satisfactory to the Vendors prior to the Closing Date or within a reasonable period of time thereafter, provided that such removal shall be carried out in a manner that does not damage or otherwise interfere with any data contained or stored in such Hardware (if any) primarily Related to the Business or the Purchased Assets. Any third party provider selected by the Purchaser and the Vendors to provide such services shall be agreed upon by the Purchaser and the Vendors, acting reasonably.

**5.9 Trademarked and Branded Assets.** With respect to any Purchased Assets to be acquired by the Purchaser hereunder bearing any trademarks, business names, logos or other branding and Intellectual Property associated therewith (collectively, "**Proprietary Marks**"), such Proprietary Marks, with the exception of Proprietary Marks relating to the branding of medical

centres located at the Real Property Assets, do not form part of the Purchased Assets. The Purchaser will co-operate with the Vendors, at the Vendors' reasonable cost and expense, in removing, dismantling and/or destroying such Proprietary Marks on or contained in any of the Purchased Assets, to the satisfaction of the Vendors, and nothing in this Agreement shall be construed as a licence by the Vendors to the Purchaser of any Intellectual Property that does not form a part of the Purchased Assets.

**5.10 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.

**5.11 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 5.11, a Party shall not be required to provide the other Party with any information required to be provided under this Section 5.11 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.

**5.12 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 3 Business Days following such receipt, remit such Receivables to the Receiver, for and on behalf of the Vendors.

**5.13 Consents & Certificates of Status.** During the Interim Period, (i) the Purchaser shall be permitted to communicate with tenants located at the Real Property Assets and seek

certificates of status or estoppel letters from them, provided that: (a) the receipt of any such certificates of status, estoppel letters or any other assurance from such tenants shall not be a condition precedent to Closing, and (b) the Receiver shall be copied on any correspondence or communication with such tenants and permitted to attend any calls or discussions with such tenants; and (ii) the Legal Owner shall, at the reasonable request of the Purchaser, request certificates of status and or estoppel certificates from tenants located at the Real Property Assets, provided that the receipt of any such certificates of status, estoppel letters or any other assurance from such tenants shall not be a condition precedent to Closing.

## 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 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 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;

(9) all available plans, specifications, surveys, reports, applications, environmental assessments or building condition reports for the Real Property Assets which have been made available to the Purchaser in the data-room prior to the date hereof, and written authorizations,

from the Receiver in favour of the Purchaser, authorizing the relevant parties authoring such documents to release them to the Purchaser; and

(10) 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, 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 the 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) a duly executed 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 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 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) 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;
- (4) 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 7.3 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; and
- (5) 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(5) 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.

**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*), 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(4), or (ii) Section 8.1(5) 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 (i) Section 8.1(4), or (ii) Section 8.1(5) 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 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(7) (*Intercompany Corporate Services*), 2.4(4) (*Post-Closing Assignment*), 3.3 (*Allocation of Purchase Price*), 3.4 (*Closing Adjustments*), 3.5 (*Taxes*), 3.6 (*Taxes and 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*), 5.12 (*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). Notwithstanding the forgoing, the cost of retaining a notary and a land surveyor, if necessary, in connection with the preparation of the legal descriptions of the Real Property Assets shall be borne by the Purchaser.

**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 the Purchase Price, Cash Purchase Price, Deposit, Assumed Liabilities 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](mailto:katherineforbes@kpmg.ca) / [gbourikas@kpmg.ca](mailto:gbourikas@kpmg.ca)

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

Blake, Cassels & Graydon LLP

Attention: Aryo Shalviri / Alexia Parente

Email: [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com) / [alexia.parente@blakes.com](mailto:alexia.parente@blakes.com)

(3) if to the Purchaser, to:

Bou-Zaid General Contracting Inc.

Attention: Khalil Bou-Zaid

Email: [kbouzaid@kibrestitution.com](mailto:kbouzaid@kibrestitution.com)

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

Goldberg, Lamba & Ghannoum LLP

Attention: Elie Ghannoum

Email: [elie@glgllp.ca](mailto:elie@glgllp.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 the Purchaser or any Affiliates thereof). 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) the Purchaser shall remain liable to perform all of its obligations hereunder, and (ii) the 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 acknowledges 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: Katherine Forbes  
Name: Katherine Forbes  
Title: Senior Vice-President

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

By: Katherine Forbes  
Name: Katherine Forbes  
Title: Senior Vice-President

**BOU-ZAID GENERAL CONTRACTING INC.**

By: \_\_\_\_\_  
Name: Khalil Bou-Zaid  
Title: President

**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:

**BOU-ZAID GENERAL CONTRACTING INC.**

By:  \_\_\_\_\_  
3E68094012A742A  
Name: Khalil Bou-Zaid  
Title: President

**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 Receivables of each of the Vendors which are derived from the Real Property Assets and are Related to the Business and become due from and after the Closing Time;
- v.** The Receivables, if any, which are derived from parking revenue for the period from and after the Closing Time for services rendered from and after the Closing Date;
- vi.** The Permits and Licences;
- vii.** The Books and Records that are Related to the Business;
- viii.** All goodwill Related to the Business; and
- ix.** All proceeds of any or all of the foregoing received or receivable after the Closing Time.



**SCHEDULE "B"****REAL PROPERTY ASSETS****Real Property Assets**

414 Victoria Ave N, Hamilton ON, L8L 5G8:

17188-0018 (LT): LT 38, PL 254 ; PT LT 37, PL 254 ; PT LTS 8, 9, 10, 11 & 12, PL 288 ; PT ALLEYWAY, PL 288 , PART 1, 62R8027 ; HAMILTON

**SCHEDULE “C”**  
**ASSIGNED CONTRACTS**

**Critical Contracts:**

Nil.

**Real Property Leases:**

1. Lease dated February 1, 2022 related to Suite L1 between Wellington X-Ray & Ultra Sound Ltd., as tenant and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver), as landlord, on a month-to-month basis.
2. Lease dated November 1, 2014 related to Suite L2 between PT Healthcare Solutions Corp., as tenant, and 1333732 Ontario Inc. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord.
3. Lease dated July 1, 2014 related to Suite L3 between 952587 Ontario Ltd., as tenant and 1333732 Ontario Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord.
4. Lease dated February 1, 2022 related to Suite M1 between Dr. Allen Greenspoon and Dr. Joel Yellin, as tenant and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver), as landlord, on a month-to-month basis.
5. Amended and Restated Lease dated November 18, 2022 related to Suites M02, M10 and M12 between Victorian Order of Nurses for Canada – Ontario, as tenant and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver), as landlord.
6. Lease dated May 20, 2022 related to suite M04B between Dr. R. Devram as tenant and 414 Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver), as landlord, on a month-to-month basis.
7. Lease dated May 19, 2022 related to suite M5 between Dr. Krishan Rajaratnam, as tenant and 414 Victoria Avenue Holdings Inc. (by KPMG Inc. as receiver), as landlord, on a month-to-month basis.
8. Lease dated February 15, 2022 related to Suite M06 between Hometown Hearing Inc., as tenant and 414 Victoria Avenue Holdings Inc. (by KPMG Inc. as receiver), as landlord, on a month-to-month basis.
9. Lease dated May 18, 2022 related to Suite M14 between 2424565 Ontario Inc., as tenant and 414 Victoria Avenue Holdings Inc. (by KPMG Inc. as receiver), as landlord, on a month-to-month basis.
10. Lease dated September 1, 2009 related to Suite M15 between 1347878 Ontario Ltd., cob Hamilton Community Pharmacy, as tenant and 1333732 Ontario Inc. (predecessor-

in-interest to Victoria Avenue North Holdings Inc.), as landlord, as further amended pursuant to an Assignment and Amendment of Lease dated December 17, 2010.

11. Lease dated January 1, 2022 related to Suite M16 between Dr. Allen Greenspoon and Dr. Joel Yellin, as tenants, and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver), as landlord, on a month-to-month basis.
12. Lease dated February 1, 2022 related to Suite M18 between Dr. Allen Greenspoon and Dr. Joel Yellin, as tenant and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver), as landlord, on a month-to-month basis.
13. Lease dated May 17, 2022 related to suite M4 between Dr. G. Ifabiyi, as tenant and 414 Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver), as landlord, 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. Parking Agreement dated December 15, 2014 between Canada Wide Parking Inc. and 1333732 Ontario Ltd. (predecessor-in-interest to Victoria Avenue North Holdings), now on a month to month basis.
2. Landscaping Agreement dated March 30, 2022 between White Star Cleaning Services Inc. and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver), now on a month to month basis.

**SCHEDULE "D"**  
**ALLOCATION OF PURCHASE PRICE**

<b>ASSETS</b>	<b>Vendor</b>
Real Property Assets	\$ [REDACTED]
<b>Total:</b>	\$ [REDACTED]

**SCHEDULE "E"****GST/HST CERTIFICATE AND INDEMNITY**

**DATE:** May 11, 2023

**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:** BOU-ZAID GENERAL CONTRACTING INC. (the "Purchaser")

**RE:** Asset Purchase Agreement dated as of April 28, 2023 (the "APA") between the Vendors and the Purchaser in respect of the Purchased Assets

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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 123456789, 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 May, 2023.

**BOU-ZAID GENERAL CONTRACTING INC.**

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Name: Khalil Bou-Zaid  
Title: President

**SCHEDULE "F"****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 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 [●], 2023, the Court approved the agreement of purchase and sale made as of April [●], 2023 (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and Bou-Zaid General Contracting Inc. (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.



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**

<b>Individuals</b>
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

<b>Trusts</b>
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)
<b>Corporations / Partnerships</b>
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