

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

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**MOTION RECORD
(Sale Approval and Ancillary Matters)
Returnable May 24, 2022**

May 13, 2022

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

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MOTION RECORD

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TAB 1

Court File No. CV-21-00664273-00CL

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**NOTICE OF MOTION
(Sale Approval and Ancillary Matters)
Returnable May 24, 2022**

KPMG INC., in its capacity as the receiver and manager (in such capacity, the “**Receiver**”), without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule “A” (the “**Real Property**”) of the appointment order of Mr. Justice Dunphy granted on June 29, 2021 (the “**Appointment Order**”) of (i) Southmount Healthcare Centre Inc. (“**Southmount**”), 180 Vine Inc. (“**Vine**”), 2478658 Ontario Ltd. (“**247**”), 2009 Long Lake Holdings Inc. (“**2009 Long Lake**”), 65 Larch Holdings Inc. (“**65 Larch**”), 100 Colborne Holdings Inc. (“**100 Colborne**”), and 240 Old Penetanguish Holdings Inc. (“**240 Old Penetang**”) (collectively, the “**Legal Owners**”) acquired

for, or used in relation to the Legal Owners' business, including any interest held by Vine to which Her Majesty the Queen in Right of Ontario (the "**Crown**") may have rights and any interest in the applicable Real Property (the "**Vine Real Property**") conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the "**Legal Owners' Property**"), and (ii) 180 Vine Purchaser Inc. ("**Vine Purchaser**"), Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "**Beneficial Owners**"), but solely in respect of all of the Beneficial Owners' right, title and interest in and to the Legal Owners' Property, including the Real Property 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**"), will make a motion to Madam Justice Gilmore on **Tuesday, May 24, 2022 at 1:00 p.m. (Toronto time)**, or as soon after that time as the motion can be heard.

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

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

at the following location:

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

Please advise if you plan to attend the motion by emailing Alexia Parente, at alexia.parente@blakes.com.

THE MOTION IS FOR:

(a) Orders substantially in the form of the six (6) draft Orders included in the Motion Record of the Receiver, *inter alia*:

- (i) approving the six (6) asset purchase agreements (the “**APAs**”) entered into by the Receiver and five (5) separate purchasers (the “**Purchasers**”) and each of the transactions contemplated thereby (the “**Proposed Transactions**”);
- (ii) vesting title in and to the applicable Real Property Assets (as defined herein) in the applicable Purchaser, free and clear of all liens, claims and encumbrances, except the Permitted Encumbrances;

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

- (i) authorizing the Receiver to pay the Commissions (as defined herein) to CBRE Limited (the “**Broker**”);
- (ii) authorizing the Receiver to make the repayment of the Receiver’s Borrowings and Distribution(s) (each as defined herein);
- (iii) approving the activities of the Receiver, as set out in the Receiver’s First Report to the Court dated October 21, 2021 (the “**First Report**”) and the Receiver’s Second Report to the Court dated May 13, 2022 (the “**Second Report**”);

- (iv) authorizing the Receiver to make an assignment in bankruptcy on behalf of Vine Purchaser and to procedurally consolidate the proposed bankruptcies of certain of the Legal Owners with Vine Purchaser and Victoria Avenue North Holdings Inc. (“**Victoria Avenue**”);
- (v) sealing confidential appendices to the Second Report (the “**Confidential Appendices**”); and
- (c) such further and other relief as counsel may request and this Honourable court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

1. Pursuant to the Appointment Order, KPMG Inc. was appointed as Receiver of all of the Property, which primarily consist of interests in seven (7) medical office buildings (the “**Buildings**”) and one (1) associated parking lot located across Ontario (the parking lot, together with the Buildings, their related real property leases and the interests of the Beneficial Owners therein, the “**Real Property Assets**”).
2. On October 29, 2021, the Court granted an Order (the “**Sale Process Order**”) approving, among other things:
 - (a) the broker listing agreement dated October 20, 2021 (the “**Broker Engagement Agreement**”) and the engagement of Broker as exclusive real estate broker for the Real Property Assets; and

(b) a sale process (the “**Sale Process**”) described in the First Report in these receivership proceedings (the “**Proceedings**”).

3. On August 3, 2021, KPMG Inc. was appointed as receiver and manager of, among other things, the properties of Victoria Avenue pursuant to an order of this Court (“**Victoria Avenue Proceedings**”). The primary respondent in the Victoria Avenue Proceedings is Victoria Avenue, the legal owner of two (2) medical office buildings in the same asset class as the Real Property subject to these Proceedings (the “**Victoria Avenue Real Property Assets**”). Victoria Avenue is affiliated with the Legal Owners, 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.

4. Also on October 29, 2021, the Court granted an order approving a sale process for the Victoria Avenue Real Property Assets that would be run by the Receiver in conjunction with the Sale Process.

5. Details of the conduct of the Sale Process by the Receiver and the Broker are set out in the Second Report.

6. The initial bid deadline under the Sale Process was January 25, 2022 (the “**Initial Bid Deadline**”). However, due to significant demand from potential purchasers for physical inspections and site tours of the Real Property Assets, the Broker recommended to extend the Initial Bid Deadline to February 8, 2022 (the “**Revised Bid Deadline**”), which was communicated to all potential and known purchasers on January 20, 2022.

Sale Process Results

7. A summary of the Sale Process results, including the results from the processes conducted by the Broker, is set out in the Second Report. Ultimately, thirty four (34) parties submitted non-binding letters of intent in advance of the Revised Bid Deadline, fourteen (14) parties submitted revised non-binding letters of intent on a “best and final” basis, and eight (8) parties submitted binding offers (a “**Binding Offer**”) by March 7, 2022, the qualified bid deadline.

8. Following receipt of the Binding Offers, the highest Binding Offer for each Building was selected, and the Receiver negotiated and entered into six (6) separate APAs with five (5) separate Purchasers for certain of the Real Property Assets, each of which are subject to Court approval.

9. The Proposed Transactions are in respect of the Real Property Assets owned by Vine, 247, 2009 Long Lake, 65 Larch, 100 Colborne, and 240 Old Penetang. The Binding Offer selected by the Receiver in respect of the Real Property Assets owned by Southmount ultimately did not result in a viable transaction, and negotiations in respect of these assets are ongoing.

10. The Receiver recommends the Court approve the Proposed Transactions for, among others, the following reasons:

(a) the Proposed Transactions are the result of 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 and competition amongst same;

(b) the Proposed Transactions are the result of extensive negotiations and represent the highest and best offers for the Real Property Assets;

- (c) the Proposed Transactions contemplate the sale of the Real Property Assets on an ‘as is where is’ basis, by which the Real Property Assets will be transferred to the Purchasers free and clear (with certain limited exceptions);
- (d) the closing conditions are limited and customary in the circumstances, and the Receiver is not currently aware of any information to suggest that such conditions will not be met;
- (e) prior to entering into the Proposed Transactions, the Receiver consulted with the Applicants and the secured mortgagees of certain of the Real Property Assets; and
- (f) the Applicants support the Proposed Transactions.

11. Pursuant to the Court-approved Broker Engagement Agreement, the Broker is entitled to commissions, in the amounts as set out in the Broker Engagement Agreement, which are only due and payable for each Proposed Transaction, should it close (the “**Commissions**”). Brokerage commissions earned by any cooperating brokers in the Proposed Transactions are paid out of the Commissions.

Town Hall

12. The Receiver has scheduled a virtual informational meeting to provide an overview of the Proposed Transactions and to address any questions in respect of the status of these Proceedings, to be held virtually on May 18, 2022, at 3:00 p.m. Eastern Time (the “**Town Hall**”).

13. Notice of the Town Hall will be given to all parties known to the Receiver claiming a beneficial interest in and to the Legal Owners' Property and the Service List in these Proceedings, and will also be posted on the Receiver's website.

Distributions

14. As of the date of the Second Report, the Receiver has borrowed \$500,000 (the "**Receiver's Borrowings**"). The Receiver is seeking the Court's approval to fully repay the Receiver's Borrowings, should the Proposed Transactions be approved by the Court and close.

15. The Receiver has obtained an independent legal opinion from Norton Rose Fulbright Canada LLP ("**Norton Rose**") which concludes 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.

16. The Receiver is not aware of any potential priority claims that would rank ahead of the Applicants at the time of a Distribution, with the exception of one potential lien claim which, subject to Norton Rose making a final determination on priority, the Receiver will maintain a holdback for prior to any Distribution.

17. Following closing of the Proposed Transactions, the Receiver will be in possession of the anticipated Net Proceeds of Sale. The Receiver is seeking an order authorizing one or more distributions to the Applicants of Net Proceeds of Sale and cash on hand as they become available (each a "**Distribution**"), subject to a holdback for estimated costs to complete remaining administration of these Proceedings.

Consolidation of Bankruptcy Estates

18. The Receiver proposes to proceed with an assignment of each of the Legal Owners that are vendors in the Proposed Transactions into bankruptcy pursuant to its authority in the Appointment Order, prior to any Distributions. The Appointment Order provided the Receiver with the authority to make assignments in bankruptcy on behalf of Legal Owners, but not Beneficial Owners, including Vine Purchaser, owner of the Vine Real Property.

19. Pursuant to the Appointment Order, the Receiver is receiver and manager over the Legal Owners' Property, including the Vine Real Property, and the Receiver requests the authorization and empowerment to assign Vine Purchaser into bankruptcy alongside the Legal Owners.

20. The Receiver further requests that the estates of the bankrupted Legal Owners, Vine Purchaser, and Victoria Avenue be consolidated for procedural and administrative purposes (and not substantively) in the bankruptcy proceedings. The purpose of this consolidation is to avoid duplicative steps across multiple estates, including in relation to notices and creditors' meetings. This will add efficiency to the proceedings, conserve resources, and will not prejudice any stakeholder.

Approval of the Receiver's Activities

21. The Receiver's activities to the date of the First Report are detailed in the First Report. The activities of the Receiver since the date of the First Report are set out in the Second Report, and have primarily consisted of, (i) conducting and facilitating the Court-approved Sale Process; (ii) corresponding with the Purchasers and their counsel regarding the Debtors' affairs and these proceedings; (iii) liaising with counsel in respect of advancing certain litigation; (iv) securing

various short-term extensions of insurance coverage from the Debtors' insurance provider; (v) attending to various banking and tax matters; and (vi) preparing the Second Report.

22. In the Receiver's view, these activities have been necessary, consistent with the Receiver's duties and powers in the Appointment Order, and undertaken with efficiency and reasonableness, in the interests of the Debtors generally. Accordingly, they ought to be approved.

Sealing Order

23. The Confidential Appendices contain (a) a summary of the key economic terms redacted from the APAs that have been included in the Second Report, and (b) a summary of the material terms of each Binding Offer. The Receiver requests that the Confidential Appendices be filed with the Court on a confidential basis and be sealed. The Confidential Appendices contain confidential information, including with respect to value. If these documents are not sealed, the information may negatively impact realizations on the Property if the Proposed Transactions do not close. The Receiver is not aware of any party that will be prejudiced if the information is sealed. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances.

24. Accordingly, in the Receiver's view, it is necessary and appropriate for the Confidential Appendices to be sealed.

Additional Grounds

25. The grounds as more particularly set out in the Second Report, filed;

26. Rules 1.04, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg 194, as amended; and

27. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Second Report filed;

2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

May 13, 2022

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TO: SERVICE LIST

Court File No.: CV-21-00664273-00CL

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

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

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

NOTICE OF MOTION
(Sale Approval and Ancillary Matters.)
Returnable May 24, 2022

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TAB 2

Court File No.: CV-21-00664273-00CL

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

Southmount Healthcare Centre Inc. *et al.*

MAY 13, 2022

Court File No.: CV-21-00664273-00CL

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

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

Applicants

AND

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

Respondents

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

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

DATED MAY 13, 2022

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CONFIDENTIAL APPENDIX “A” – Summary of commercially sensitive information redacted from APAs

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

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I. INTRODUCTION

1. On June 29, 2021 (the “**Receivership Date**”), upon application by American General Life Insurance Company, Lexington Insurance Company, and The Variable Annuity Life Insurance Company (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, without security, of all of the assets, undertakings and properties, including the real property described in Schedule “A” to the Appointment Order (the “**Real Property**”) of (i) Southmount Healthcare Centre Inc. (“**Southmount**”), 180 Vine Inc. (“**Vine**”), 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc. (“**65 Larch**”), 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the “**Legal Owners**”) acquired for, or used in relation to the Legal Owners’ business, including any interest held by Vine to which Her Majesty the Queen in Right of Ontario (the “**Crown**”) may have rights and any interest in the applicable Real Property (the “**Vine Real Property**”) conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the “**Legal Owners’ Property**”), and (ii) 180 Vine Purchaser Inc. (“**Vine Purchaser**”), Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”) but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owners’ Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (collectively and together with the Legal Owners’ Property, the “**Property**”).
2. Prior to its appointment as Receiver, KPMG filed a report dated June 18, 2021 (the “**Pre-Filing Report**”) to provide information to the Court in connection with the Applicants’ application for the Appointment Order (the “**Application**”).
3. On October 29, 2021, the Court granted an order (the “**Sale Process Order**”) approving, among other things:
 - (a) the broker listing agreement dated October 20, 2021 (the “**Broker Engagement Agreement**”), and the engagement of CBRE Limited (“**CBRE**”) as exclusive real estate broker for the Real Property Assets (as defined herein);
 - (b) a sale process for the Real Property Assets, as appended to the Sale Process Order (the “**Sale Process**”) in these receivership proceedings (the “**Proceedings**”);

- (c) the sealing of the confidential appendices to the Receiver’s first report dated October 21, 2021 (the “**First Report**”);
 - (d) the Lease Termination Settlement (as defined herein); and
 - (e) the extension of the Receiver’s borrowings, pursuant to a term sheet dated June 18, 2021 (the “**Receiver Term Sheet**”), to June 30, 2022.
4. As detailed in the First Report, on August 3, 2021, upon application by American General Life Insurance Company and an affiliated secured lender, KPMG was appointed as receiver and manager of, among other things, the properties of Victoria Avenue North Holdings Inc. (“**Victoria Avenue**”), pursuant to an order of this Court (Court file no. CV-21-00665375-00CL) (such proceedings being the “**Victoria Avenue Proceedings**”). The primary respondent in the Victoria Avenue Proceedings is Victoria Avenue, the legal owner of two (2) medical office buildings in the same asset class as the Real Property subject to these Proceedings (the “**Victoria Avenue Real Property Assets**”). Victoria Avenue is affiliated with the Legal Owners, and they are all indirect subsidiaries of Gross Capital Inc. (“**Gross Capital**”), which as detailed in the First Report, was assigned into bankruptcy on June 25, 2021. The Receiver understands that historically the Legal Owners and Victoria Avenue were each managed by representatives of Gross Capital.
 5. Also on October 29, 2021, the Court granted an order approving a substantially similar sale process for, and the engagement of CBRE in respect of, the Victoria Avenue Real Property Assets. As detailed in the First Report, the Victoria Avenue Real Property Assets were intended to be marketed alongside the Real Property Assets in these Proceedings.
 6. Electronic copies of the Pre-Filing Report and the First Report (together, the “**Reports**”) are available on the Receiver’s website at: home.kpmg/ca/SouthmountEtAl (the “**Receiver’s Website**”).

II. PURPOSE OF REPORT

7. The purpose of this second report of the Receiver (the “**Second Report**”) is to provide this Court with information pertaining to:
 - (a) the conduct and results of the Sale Process;
 - (b) details pertaining to the Proposed Transactions (as defined herein) the Receiver is proposing to pursue should the Court grant orders approving same;

- (c) the activities of the Receiver since the date of the First Report, including actions undertaken with respect to Non-Performing Leases (as defined herein) of certain of the Legal Owners;
- (d) the Receiver's interim statement of receipts and disbursements (the "**Interim SRD**") for the period from the Receivership Date to and including March 31, 2022 (the "**Period**");
- (e) the Receiver's proposed distribution(s) to the Applicants of, among other things, available funds from the net proceeds of the Proposed Transactions;
- (f) the Receiver's intention to bankrupt certain of the Legal Owners, and certain procedural matters related to same; and
- (g) the Receiver's recommendation that this Court grant orders:
 - (i) approving the APAs (as defined herein) and the Proposed Transactions, and authorizing and directing the Receiver to take such steps as necessary to complete the Proposed Transactions;
 - (ii) vesting title in and to the applicable Real Property Assets in the applicable Purchaser, free and clear of all liens, claims encumbrances, except the Permitted Encumbrances, upon the Receiver filing a certificate confirming, among other things, completion of each of the Proposed Transactions;
 - (iii) authorizing and directing the Receiver to pay the Commissions (as defined herein);
 - (iv) authorizing the Receiver to make the repayment of the Receiver's Borrowings and the Distribution(s) (each as defined herein);
 - (v) approving the activities of the Receiver as set out in the First Report and this Second Report;
 - (vi) authorizing the Receiver to make an assignment in bankruptcy on behalf of Vine Purchaser, a Beneficial Owner;
 - (vii) procedurally consolidating the proposed bankruptcies of the Legal Owners, Vine Purchaser and Victoria Avenue; and
 - (viii) sealing the confidential appendices to this Second Report.

III. QUALIFICATIONS & TERMS OF REFERENCE

8. In preparing this Second 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 Owners' 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.
9. Some of the Information referred to in this Second 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.
10. Certain Information referred to in this Second 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.
11. The Receiver has prepared this Second Report in connection with the motion to be heard by the Court on May 24, 2022 (the "**May 24th Motion**") or as soon after that time as the May 24th Motion can be heard. This Second Report should not be relied on for other purposes.
12. The information contained in this Second Report is not intended to be relied upon by any prospective purchaser in any transaction with the Receiver.
13. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. BACKGROUND ON THE REAL PROPERTY ASSETS

14. As detailed in the Reports, prior to the appointment of the Receiver, the Legal Owners operated the following seven (7) medical office buildings (collectively, the "**Buildings**") located in various municipalities across Ontario:

Legal Owner	Location	Address
Southmount Healthcare Centre Inc.	Stoney Creek	35 Upper Centennial Parkway (the “ Southmount Building ”)
180 Vine Inc.	St. Catharines	180 Vine Street South (the “ Vine Building ”)
2478658 Ontario Ltd.	Peterborough	849 Alexander Court
2009 Long Lake Holdings Inc.	Sudbury	2009 Long Lake Road
65 Larch Holdings Inc.	Sudbury	65 Larch Street
100 Colborne Holdings Inc.	Orillia	100 Colborne Street West
240 Old Penetanguish Holdings Inc.	Midland	240 Penetanguishene Road

15. 100 Colborne Holdings Inc. also owns and operates a parking lot adjacent to the 100 Colborne Street West Building located at 77 Wyandotte Street, Orillia (and together with the Buildings, their related real property leases and the interests of the Beneficial Owners therein, the “**Real Property Assets**”).

V. SALE PROCESS

Marketing Period

16. Promptly following the issuance of the Sale Process Order, the Receiver, with the assistance of CBRE, began implementing the Sale Process. The Victoria Avenue Real Property Assets were included along with the Real Property Assets (together, the “**Entire Portfolio**”) in the marketing materials.
17. As detailed in the First Report, the Receiver anticipated that there may be interest from parties seeking to purchase the Real Property Assets on (i) an individual Building basis, (ii) a regional sub-portfolio basis, and/or (iii) an Entire Portfolio basis. As such, the Sale Process contemplated a two-phase marketing approach, with the first phase primarily targeting parties who were likely to be interested in purchasing the Entire Portfolio and interested parties who had already contacted the Receiver (the “**Phase I Marketing Period**”), and the second phase focusing on those parties who were likely to be interested in purchasing a sub-portfolio of Buildings, or individual Buildings (the “**Phase II Marketing Period**” and together with the Phase I Marketing Period, the “**Marketing Period**”).
18. The Phase I Marketing Period commenced on November 8, 2021, with CBRE issuing direct emails to 2,171 potential interested parties from within CBRE’s contact database, as well as to those parties that had expressed to the Receiver an interest in purchasing some or all of the Real Property Assets (and/or the Victoria Avenue Real Property Assets) (together, the “**Known Buyers**”). The direct email campaign included a marketing brochure document (i.e., a teaser) containing details about the Real

Property Assets and the Entire Portfolio, that was also posted on LinkedIn by CBRE's accounts and the account of several of CBRE's brokers, at the commencement of the Phase I Marketing Period.

19. The Phase II Marketing Period commenced during the week of December 6, 2021, and key marketing activities included listing the Real Property Assets on the Multiple Listing Service ("**MLS**") and posting local signage on the Building sites.
20. Parties interested in participating in the Sale Process were asked to deliver to the Receiver an executed confidentiality agreement ("**CA**"), at which point, such parties (the "**Potential Bidders**") were granted access to an electronic dataroom (the "**Dataroom**") containing confidential financial and other information concerning the Real Property Assets.
21. Based on the level of interest and activity of the Potential Bidders during the early stages of the Marketing Period, CBRE recommended setting an initial bid deadline of January 25, 2022 (the "**Initial Bid Deadline**"), by which date Potential Bidders were required to deliver a non-binding letter of intent (a "**Non-Binding LOI**") to CBRE and the Receiver. The Sale Process contemplated that the Initial Bid Deadline was to be communicated on no less than 30 days' notice, and on December 15, 2021, it was communicated by the following means:
 - (a) email and/or telephone to all Potential Bidders;
 - (b) email to all Known Buyers;
 - (c) updating all social media and MLS listings; and
 - (d) publication in the Dataroom and on the Receiver's Website.
22. As the Initial Bid Deadline approached, it became clear that there was significant demand from Potential Bidders for physical inspections and site tours of the Real Property Assets, which necessitated additional time to accommodate safely given the surge in Covid-19 cases in Ontario at the time. Accordingly, at the recommendation of CBRE, the Initial Bid Deadline was extended to February 8, 2022 (the "**Revised Initial Bid Deadline**"), and the Revised Initial Bid Deadline was communicated to all Potential Bidders and Known Buyers on January 20, 2022.

Results of the Sale Process

23. During the Marketing Period, one hundred and sixteen (116) Potential Bidders executed CAs in connection with the Sale Process. Thirty-four (34) Non-Binding LOIs were received from twenty-six (26) separate bidders in advance of the Revised Initial Bid Deadline, consisting of bids for (i) the Entire Portfolio, (ii) regional sub-portfolios of Buildings, and (iii) individual Buildings. Each Building received no fewer than three (3) Non-Binding LOIs (either on a regional sub-portfolio basis, or individual Building basis), in addition to six (6) Non-Binding LOIs received for the Entire Portfolio.
24. The Receiver, in consultation with CBRE, reviewed each Non-Binding LOI submitted. Given the number of competing bids received for the Real Property Assets, the Receiver, at the recommendation of CBRE, requested that the parties who submitted Non-Binding LOIs resubmit Non-Binding LOIs on a “best and final” basis (the “**Revised Non-Binding LOIs**”) and, in certain circumstances, clarify certain terms contained in their original Non-Binding LOIs. This resulted in fourteen (14) Revised Non-Binding LOIs being received (including three (3) in respect of the Entire Portfolio), a number of which included improvements in pricing and other key terms.
25. Bidders that submitted Non-Binding LOIs which were not economically competitive were advised as such, and in some cases, did not submit a Revised Non-Binding LOI. In particular, none of the six (6) Non-Binding LOIs submitted in respect of the Entire Portfolio were competitive. Certain of the Non-Binding LOIs submitted in respect of the Entire Portfolio were competitive as it related to only certain of the Buildings (either on an individual Building basis and/or regional sub-portfolio basis). These bidders were advised as such, and continued to participate in the Sale Process, submitting Revised Non-Binding LOIs in respect of the individual Buildings and/or regional sub-portfolios of Buildings on which their Non-Binding LOIs were competitive.
26. The Receiver, in consultation with CBRE, reviewed each of the Revised Non-Binding LOIs and invited the eight (8) bidders (the “**Bidders**”) who had submitted the most competitive bids to submit binding offers in the form of a markup of a form of an asset purchase agreement prepared by the Receiver (a “**Binding Offer**”), by no later than March 7, 2022 (the “**Qualified Bid Deadline**”). All Bidders (i) submitted the information requested by CBRE in order to each be determined a “**Qualified Bidder**” by the Receiver in consultation with CBRE, and (ii) submitted Binding Offers, prior to the Qualified Bid Deadline.
27. All eight (8) Binding Offers received were in respect of either an individual Building, or a regional sub-portfolio of Buildings.

28. Certain of the Binding Offers were for overlapping Buildings. CBRE and the Receiver negotiated with the Qualified Bidders that submitted Binding Offers for overlapping Buildings and each such Qualified Bidder agreed to revise its respective Binding Offer (each being a “**Revised Binding Offer**”) to make an offer to purchase only for those Buildings where its Binding Offer was most economically competitive.

VI. PROPOSED TRANSACTIONS

29. Following receipt of the Revised Binding Offers, the highest Binding Offer for each of the Real Property Assets was selected. The Receiver has negotiated and entered into six (6) separate asset purchase agreements (the “**APAs**”) with five (5) separate purchasers (each a “**Purchaser**” and collectively, the “**Purchasers**”) for certain of the Real Property Assets, each of which are subject to Court approval (each, a “**Proposed Transaction**” and collectively, the “**Proposed Transactions**”). Copies of each of the executed APAs, redacted for confidential and commercially sensitive financial information, are included in **Appendices “A”** through “**F**” appended hereto. A summary of the commercially sensitive information redacted from the APAs attached 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 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 any of the Proposed Transactions 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.
30. The Proposed Transactions are in respect of the Real Property Assets listed in the table at paragraph 32, and exclude the Southmount Building. The Receiver is continuing discussions in respect of the sale of the Southmount Building, and intends to appear before this Court to seek approval of a transaction in respect of the Southmount Building at a later date.
31. The key terms of each of the APAs are substantially similar to one another, and are generally as follows (all capitalized terms in this paragraph 31 are as defined in each of the APAs):
- (a) Vendors: The applicable Legal Owners and Beneficial Owners of the Real Property Assets, in each case by the Receiver.
 - (b) Purchased Assets: Each applicable Vendor’s right, title and interest in the assets, property and undertaking used in connection with the business of such Vendor (including the

applicable Real Property Assets), in each case other than the Excluded Assets. The Purchased Assets are to be purchased on an 'as is, where is' basis, and transferred free and clear of encumbrances other than the Permitted Encumbrances.

- (c) Assumed Liabilities: Include all obligations related to the Assigned Contracts, permits and licenses, the Purchased Assets or related business, tax liabilities for post-closing tax periods, trade payables accrued after the Closing Date, environmental claims and liabilities, and all liabilities of each Vendor to its tenants in respect of any tenant inducements or other incentives given by the Vendor to its tenants in the ordinary course of business.
- (d) Assigned Contracts: Each applicable Purchaser is assuming: (i) all of the real property leases in respect of the Real Property Assets, (ii) any applicable and valid leases related to lighting and safety devices installed at the Buildings, and (iii) those other contracts specifically scheduled in each APA.
- (e) Cure Costs: With respect to any Assigned Contract for which a consent to assignment is required, any amounts required to be paid in respect of the Vendors' monetary defaults thereunder as at the Closing Date, are to be paid by the applicable Purchaser on Closing.
- (f) Deposits: All Proposed Transactions contemplate the payment of a Deposit upon the execution of the APA. The Deposits range from 5% to 13% of the Purchase Price, and in certain cases, are payable in two installments, with the second installment (where applicable) being payable upon expiry of the Due Diligence Period. All Deposit installments which are due and payable as at the date of this Second Report have 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 (as defined in each APA); and
 - (iii) assumption of the Assumed Liabilities.
- (h) Excluded Assets: Include all receivables which are due, accrued or have become owing immediately prior to the Closing, trade accounts, bank accounts, book debts, insurance

claims, insurance contracts or policies, bills, credits, rebates, deposits, prepaid expenses, prepaid rent, prepayments, holdbacks, funds, cash and cash equivalents, marketable securities, short-term investments, intercompany claims, tax credits, including without limitation, tax returns, tax installments paid by or on behalf of each Vendor or any of its 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 each Vendor or any of its affiliates, all minute books and other corporate records of the Vendor, 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. The Excluded Assets include any outstanding amounts in connection with the Non-Performing Lease Settlement and the Lease Arrears Settlement (each as defined herein).

- (i) Excluded Liabilities: Include taxes (including municipal taxes) payable by each of 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) Closing Dates: Vary by APA, but are generally targeted to occur between late May, 2022 and mid-June, 2022 (see table below).
- (k) Closing Adjustments: Any rents, realty taxes including local improvement rates, unmetered public or private utility charges, unmetered cost of fuel, and personal property taxes and similar *ad valorem* obligations levied with respect to the Purchased Assets, in each case as applicable and for a period that includes (but does not end on) the closing date shall be apportioned and adjusted between the Vendors and the Purchaser based on the number of days of such period up to the Closing Date.
- (l) Transfer Taxes: In addition to the Purchase Price, the Purchaser shall, at Closing, pay all applicable Transfer Taxes.
- (m) Due Diligence Period: The majority of the Proposed Transactions provide the Purchaser with a period from the date of execution of the applicable APA, to conduct its due diligence. The Due Diligence Periods vary depending on the Proposed Transaction, with the longest period being 60 days (see table below). If prior to the end of the Due Diligence Period, the Purchaser advises each applicable Vendor that it does not wish to complete the transaction,

the APA is terminated and the Deposit is returned to the Purchaser. If, at an earlier date, prior to the expiry of the Due Diligence Period, the Purchaser advises each applicable Vendor that it has completed its due diligence and will be proceeding with the applicable transaction, then the Due Diligence Period expires on such earlier date. If the Purchasers do not advise the Vendors before the expiration of the Due Diligence Period that they will be proceeding with the Proposed Transaction, the Purchasers shall be deemed to have advised the Vendors and the Receiver that they will not be proceeding with the Proposed Transaction, and the APA is terminated.

(n) Termination: The APAs can also 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, prior to the expiration of the Due Diligence Period (where applicable);
- (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 Vendors' Conditions, impossible by the Outside Date, provided that at the time of providing such notice of termination, the Vendors are not in breach of any of their obligations under the APA; and
- (v) Outside Date: the APA may be terminated by either the Vendors or the Purchaser if Closing has not occurred before the Outside Date. The Outside Dates for each of the Proposed Transactions are outlined below.

(o) Other:

- (i) the representations and warranties of the Vendors are limited and generally consistent with "as-is, where-is" transactions of this type;

- (ii) the Vendors' Closing deliveries include providing a copy of an 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;
- (iii) the Purchasers' Closing deliveries include providing the GST/HST Certificate and Indemnity, duly executed by the Purchaser;
- (iv) such other agreements, documents and instruments as may be reasonably required by the Vendors to complete the transactions provided for in each APA, or as are required to be delivered by the Purchaser or the Purchaser's counsel under the APA, all of which shall be in form and substance satisfactory to the Parties, acting reasonably; and
- (v) each of the Proposed Transactions are 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).

32. The table below outlines the Due Diligence Periods, estimated Target Closing Dates and Outside Dates of the Proposed Transactions:

Proposed Transactions Summary of Key Dates			
Building	Expiry of Due Diligence Period	Estimated Target Closing Date	Outside Date
1. 240 Old Penetang	No Due Diligence Period	June 1, 2022 ⁽¹⁾	June 2, 2022
2. 100 Colborne	Expired	May 31, 2022 ⁽¹⁾	June 2, 2022
3. 849 Alexander	May 20, 2022	May 31, 2022 ⁽¹⁾	June 2, 2022
4. 180 Vine	May 30, 2022	May 31, 2022 ⁽¹⁾	June 2, 2022
5. 2009 Long Lake	June 6, 2022	June 14, 2022 ⁽²⁾	June 22, 2022
6. 65 Larch	June 6, 2022 ⁽³⁾	June 14, 2022 ⁽³⁾	July 6, 2022

Notes:

(1) Date dependent on timing of AVO issuance.

(2) Date dependent on timing of due diligence period expiry.

(3) The due diligence period is the earlier of 45 calendar days from the date of execution of the APA, or such other date agreed to by the parties no later than 60 calendar days from the date of execution of the APA. Therefore, the expiry of the due diligence period is between June 6, 2022 and June 20, 2022. The target closing date is the 6th business day following expiry of the due diligence period, therefore the estimated target closing date is between June 14, 2022 and June 28, 2022.

33. As of the date of this Second Report, four (4) of the Proposed Transactions remain subject to due diligence, while the remaining two (2) Proposed Transactions are now firm. Rather than wait until the conclusion of due diligence on all Proposed Transactions, the Receiver is seeking approval from this Court, by way of approval and vesting orders, of each of the Proposed Transactions (with such minor amendments as the Receiver may deem necessary to complete same) at this time in order to (i) accommodate those Purchasers that have either made unconditional offers or whose Due Diligence Periods have expired and who wish to close on their respective transactions forthwith, and to (ii) avoid the incremental professional costs which would be associated with multiple Court hearings in respect of the Proposed Transactions.
34. The Receiver is recommending that this Court approve the Proposed Transactions for the following reasons:
- (a) the Proposed Transactions are the result of 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 and competition amongst same;

- (b) the Proposed Transactions are the result of extensive negotiations of the terms of each of the APAs, and represent the highest and best offers for applicable the Real Property Assets;
 - (c) the Proposed Transactions contemplate the sale of the applicable Real Property Assets on an ‘as is, where is’ basis, by which those Real Property Assets will be transferred to the Purchasers free and clear (with certain limited exceptions). The Receiver is of the view, informed by consultation with CBRE, that the due diligence conditions and timelines of the Proposed Transactions are market and typical in real estate transactions of this type;
 - (d) the Purchasers’ 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;
 - (e) prior to entering into the Proposed Transactions, the Receiver consulted with the Applicants, and the following secured mortgagees of certain of the Real Property Assets: (i) Cannect International Mortgage Corporation (“**Cannect**”), and (ii) KSV Restructuring Inc., in its capacity as bankruptcy trustee of Gross Capital (the “**Gross Capital Bankruptcy Trustee**”); and
 - (f) the Applicants support the Proposed Transactions.
35. CBRE earns commissions in the amounts as set out in the Broker Engagement Agreement, which are only due and payable for each Proposed Transaction, should it close (the “**Commissions**”). Brokerage commissions earned by any cooperating brokers in the Proposed Transactions are paid out of the Commissions.

VII. TOWN HALL

36. Given the number of parties purporting to have an interest in these Proceedings who have expressed an interest in the status and outcome of these Proceedings to date, the Receiver has scheduled a virtual informational meeting to provide an overview of the Proposed Transactions and to address any questions in respect of the status of these Proceedings and the status of the Victoria Avenue Proceedings, to be held virtually on May 18, 2022 at 3:00 p.m. Eastern Time (the “**Town Hall**”).
37. Coordinates of the Town Hall are attached hereto as **Appendix “G”**. Notice of the Town Hall will be given to all parties known to the Receiver claiming a beneficial interest in and to the Legal Owners’

Property,¹ and the Service List in these Proceedings, and will also be posted on the Receiver's Website. While the Town Hall is intended to be a venue for self-represented parties claiming to have an interest in the Buildings to raise questions and concerns, the Receiver does not intend to seek proof of a valid claim in these Proceedings in order to attend the Town Hall. Attendees will be asked to register, so that the Receiver can keep track of who has attended. The Receiver intends to request at the beginning of the Town Hall that any media identify themselves and disconnect. Receipt of notice of the Town Hall, and attendance thereat, is not an indication or agreement by the Receiver that the applicable attendee has a valid claim in these Proceedings.

38. It is the Receiver's intention that the Town Hall will provide a venue for interested parties to ask questions and provide input, which the Receiver may answer, address, and consider, respectively, in the context of administering these Proceedings. The Receiver furthermore intends that by holding the Town Hall, the May 24th Motion may be run more efficiently, and interested parties are encouraged to attend the Town Hall to raise questions, rather than doing so in an informal way at the hearing of the May 24th Motion.

VIII. ACTIVITIES OF THE RECEIVER

39. The Receiver's activities from the Receivership Date to the date of the First Report are detailed in the First Report. The Receiver's activities since the date of the First Report have included:

Operations

- (a) liaising with Prime Real Estate Group Inc. ("**Prime**") in respect of various operational matters, including repairs and maintenance requirements, leasing and other tenant-related matters at each of the Buildings;
- (b) liaising with an environmental consultant in respect of a scope of work to determine the extent, if any, of environmental remediation work that may be necessary or advisable at one of the Buildings;
- (c) liaising with tenants in respect of lease extensions, renewals, and new lease arrangements;

¹ As discussed in Paragraph 34 of the First Report, the Receiver's understanding is that there are only three parties claiming a beneficial ownership interest in the Property: 180 Vine Purchaser Inc., Gross Properties Inc. and 2413667 Ontario Inc. There are substantially more parties claiming a beneficial ownership interest in properties subject to the Victoria Avenue Proceedings. Notice to these parties is addressed by the Victoria Receiver in its Third Report to the Court in the Victoria Avenue Proceedings, which will be served in the Victoria Avenue Proceedings at the same time as this Second Report.

- (d) reviewing and signing cheques for vendor payments;
- (e) collecting rents and outstanding accounts receivable from tenants;
- (f) securing various short-term extensions of insurance coverage from the Legal Owners' insurance provider, as evidenced by binder letters from the Legal Owners' insurance broker. The most recent of such extensions is set to expire on May 31, 2022;
- (g) reviewing 2021 common area maintenance and municipal realty tax schedules, invoicing tenants for same, and reviewing common area maintenance and municipal realty tax budgets for 2022;
- (h) monitoring cash flows and liquidity;
- (i) attending to various banking matters including reviewing monthly bank reconciliations;

Sale Process

- (j) assisting CBRE in populating the Dataroom with financial and other information as it relates to the Real Property Assets, and reviewing and executing non-disclosure agreements to allow Potential Bidders access to the Dataroom;
- (k) reviewing reconciliations of lease documentation to rent rolls and liaising with Prime and Potential Bidders in respect of same;
- (l) reviewing building condition assessments and Phase I environmental site assessments for each of the Buildings, and liaising with Prime and Potential Bidders in respect of same;
- (m) reviewing and approving CBRE's marketing materials distributed during the Marketing Period, including a teaser document and confidential information memorandum;
- (n) reviewing and executing MLS listing agreements;
- (o) with the assistance of Prime, coordinating in-person site visits of the Building with various Potential Bidders;

- (p) in consultation with its counsel, Blake, Cassels & Graydon LLP (“**Blakes**”) preparing a memorandum providing guidelines to Potential Bidders in respect of the submission of Binding Offers to the Receiver;
- (q) in consultation with Blakes, preparing a form of purchase and sale agreement for use by Potential Bidders when submitting Binding Offers;
- (r) reviewing the Non-Binding LOIs, Revised Non-Binding LOIs, Binding Offers, and Revised Binding Offers, and engaging in ongoing consultation and collaboration with CBRE and Blakes in respect of same, and the Sale Process generally;
- (s) with the assistance of Blakes, negotiating, finalizing and executing APAs with the Purchasers as it relates to each of the Proposed Transactions, including preparing and finalizing schedules of assigned contracts and other transaction details, and discussing same with each of the Purchasers;
- (t) facilitating payment of the Deposits from the Purchasers to the Receiver in trust;
- (u) facilitating due diligence information requests from the Purchasers and liaising with Prime in respect of same, as necessary;
- (v) providing updates to and consulting with secured creditors in these Proceedings, including consulting with the Applicants, Connect, and the Gross Capital Bankruptcy Trustee, in respect of the Sale Process and the Proposed Transactions;

Tax Matters

- (w) reviewing and filing quarterly HST returns with Canada Revenue Agency (“**CRA**”);
- (x) preparing 2021 NR4 tax forms and mailing same to parties claiming an interest in the Buildings so as to permit them to comply with the *Income Tax Act*;
- (y) preparing and distributing financial and other information to parties claiming an interest in the Buildings, to be used for the completion of their 2021 tax returns;

Statutory & Other Duties

- (z) attending the Court hearing on October 29, 2021 in respect of the Receiver's motion seeking approval of the Sale Process and other ancillary matters;
- (aa) preparing the First Interim Report of the Receiver pursuant to subsection 246(2) of the BIA, and filing same with the Office of the Superintendent of Bankruptcy;
- (bb) maintaining and updating the Receiver's Website where copies of all Court and other statutory materials are available in electronic format;
- (cc) preparing and reviewing Court materials, including this Second Report, in connection with the May 24th Motion;

Litigation

- (dd) liaising with Lax O'Sullivan Lisus Gottlieb LLP, counsel to 65 Larch in respect of advancing certain litigation commenced by 65 Larch prior to the Receivership Date against a party in connection with the condition of the 65 Larch Building at the time that it was acquired by the Legal Owner;
- (ee) corresponding, through its independent counsel, Norton Rose Fulbright Canada LLP ("**Norton Rose**"), with a party that has asserted a lien claim in respect of the 65 Larch Building regarding the validity, scope and priority of such lien claim;
- (ff) engaging with counsel for the plaintiff and counsel to certain co-defendants in respect of a statement of claim issued in September 2021 but not served on the Receiver, that names certain Legal Owners as defendants;
- (gg) coordinating with counsel to the plaintiff, applicable insurer and the Gross Capital Bankruptcy Trustee regarding consenting to a conditional lift-stay for an outstanding personal injury claim related to 65 Larch;

Other

- (hh) attending the first meeting of creditors in the bankruptcy of Sheldon Gross Limited ("**SGL**"), an equity holder of Gross Capital (the latter being the ultimate parent of the Legal

Owners), and reviewing the books and records of the Legal Owners and determining that the Legal Owners do not have any known claims against the estate of SGL at this time;

- (ii) with the assistance of Blakes, negotiating and executing the Non-Performing Lease Settlement and the Lease Arrears Settlement and liaising with the applicable tenants and their counsels in respect of same;
- (jj) coordinating and preparing for the Town Hall;

Stakeholder Communications

- (kk) communicating with the Applicants and Connect in respect of the Non-Performing Lease Settlement;
- (ll) communicating with the Applicants and Connect in respect of the Lease Arrears Settlement;
- (mm) communicating with the Applicants, Connect, and the Gross Capital Bankruptcy Trustee in respect of the Sale Process and the Proposed Transactions;
- (nn) communicating with the Gross Capital Bankruptcy Trustee, in respect of the Gross Capital bankruptcy proceedings, and these Proceedings;
- (oo) communicating with Blakes and Norton Rose, in respect of various aspects of these Proceedings;
- (pp) communicating with the Applicants in respect of various aspects of these Proceedings; and
- (qq) communicating with vendors, creditors, parties purporting to have an interest in the Property and other stakeholders in respect of various aspects of these Proceedings.

IX. NON-PERFORMING LEASES

Resolution of Non-Performing Leases

40. As noted in the First Report, the Receiver, with the assistance of Prime, identified several non-performing leases, including twenty-two (22) non-performing leases primarily at the Southmount Building and Vine Building (the “**Non-Performing Leases**”), for which tenants had not been remitting

the full amounts of monthly rents payable pursuant to the terms of their respective lease agreements, and where there were substantial rent arrears outstanding, in the amount of approximately \$3.7 million in aggregate (the “**Non-Performing Lease Arrears**”).

41. The head tenants to the Non-Performing Leases (the “**Head Tenants**”) are affiliated with each other and subleased their respective leased premises to subtenants. The Head Tenants (or controlling shareholders thereof) appeared to be affiliated with the Legal Owners (or the controlling shareholders thereof), and also managed the Southmount Building, either directly or through an affiliate. Certain of the Non-Performing Leases were also executed by controlling shareholders of the Head Tenants, on behalf of the respective landlord.
42. Following the Receivership Date, the Receiver determined that the Legal Owners’ financial records in respect of the Non-Performing Leases were inaccurate or incomplete in certain instances, and certain of the Non-Performing Lease Arrears existing at the Receivership Date dated back to 2015. Further, the financial wherewithal of the Head Tenants, and thus their ability to repay the Non-Performing Lease Arrears, was unclear to the Receiver. The Receiver subsequently engaged with a number of the Head Tenants to attempt to reconcile the records it had been provided with, and the records of the Head Tenants. In many cases, this allowed the Receiver and the Head Tenants to come to an agreement regarding the quantum of the applicable Non-Performing Lease Arrears.
43. In its discussions with Head Tenants, it became apparent to the Receiver that a number of Head Tenants were suffering atypical revenue loss as a result of Covid-19 and related public health restrictions, and that some had purportedly been given verbal assurances by representatives of the Legal Owners prior to the Receivership Date that they would be given rent abatements. The Receiver requested documentary support for rent abatement arrangements, but none were provided.
44. In the interest of facilitating the Sale Process, the Receiver determined the best course of action to improve the marketability of the affected Buildings was to terminate the Non-Performing Leases, and enter into direct leases (“**Direct Leases**”) with the occupants of the related suites on market rates, with a view to maintaining the occupancy levels, normalizing commercial lease documentation with tenants, and retaining key tenants that drive patient traffic in the Buildings and in many cases are sources of referrals to other existing tenants. In some cases, the occupants approached by the Receiver to enter into Direct Leases were Head Tenants, and in some cases they were unrelated third parties that had previously occupied the Buildings but had no contractual arrangements directly with the Legal Owners.

45. In consultation with the Applicants and Cannect, the Receiver entered into a settlement agreement (the “**Non-Performing Lease Settlement**”) with a majority of the Head Tenants, with key terms as follows:
- (a) the Non-Performing Leases were terminated, and six (6) new leases (the “**New Leases**”) were entered into between the Receiver and new entities controlled by the applicable Head Tenants at the Southmount and Vine Buildings, each with 5-year initial terms, at rental rates commensurate with the market, and otherwise on terms acceptable to the Receiver;
 - (b) a collateral indemnity agreement was executed, whereby cash was left in trust with the Receiver for a limited period in the event of a payment default, to secure the term-limited rent indemnity given by a principal of the tenants under the New Leases (the “**New Tenants**”). This was done given that the New Tenants were newly-formed entities, with little or no historical financial performance; and
 - (c) the Non-Performing Lease Arrears owing by the Head Tenants party to the Non-Performing Lease Settlement were settled for a specified amount, to be funded in installment payments between December 2021 and June 2022 (the “**Settlement Payments**”), in full and final settlement of the Non-Performing Lease Arrears, a summary of which is included in **Confidential Appendix “C”** appended hereto. As of the date of this Second Report, the vast majority of Settlement Payments have been received the Receiver, with two remaining installments to be paid on May 15, 2022 and June 15, 2022.
46. As a result of the Non-Performing Lease Settlement, the Receiver was able to communicate with subtenants of those Non-Performing Leases where New Leases had not been entered into, and to negotiate new Direct Leases on terms acceptable to the Receiver. The Receiver negotiated Direct Leases in nearly all cases.
47. The Receiver is of the view that the New Leases and the Non-Performing Lease Settlement were beneficial to the estate for the following reasons:
- (a) the New Leases resulted in the long-term retention of key anchor tenants which drive patient traffic, and which are a significant source of revenue to other tenants, and whose occupancy is critical to the continued operating stability of these Buildings;

- (b) the Receiver’s view, following consultation with CBRE, was that most bidders in the Sale Process were likely to attribute significant value to the New Leases and the Direct Leases as compared to the Non-Performing Leases, resulting in improved sale prices for the Southmount Building and Vine Building. The New Leases and the Direct Leases were executed and made available to Potential Bidders well in advance of the Initial Bid Deadline, so as to allow ample time for bids to reflect same; and
- (c) The Settlement Payments provided immediate recoveries for the estate, while avoiding litigation and collection risks in connection with attempts to litigate the collection of the entirety of the Non-Performing Lease Arrears.

48. The Applicants and Cconnect (as secured mortgagee of the Southmount Building and the Vine Building) were consulted in respect of the Non-Performing Lease Settlement. The Applicants advised the Receiver that they supported, and Cconnect advised the Receiver that it did not oppose, the Non-Performing Lease Settlement.

Lease Arrears Settlement

- 49. The Receiver has also entered into a settlement (the “**Lease Arrears Settlement**”) with a former tenant of the Southmount and Vine Buildings, by which approximately \$146,000 of lease arrears (the “**Lease Arrears**”) owing in connection with two leases (the “**Leases**”) was settled pursuant to a series of installment payments. As of the date of this Second Report, most of the payments have been delivered to the Receiver, with a final installment of \$5,000 payable on May 16, 2022. The Leases expired on December 31, 2021 at which time the tenant vacated the premises.
- 50. The Receiver is of the view that the Lease Arrears Settlement was beneficial as it provided immediate recoveries for the estate, while avoiding litigation and collection risks in connection with attempts to litigate the collection of the entirety of the Lease Arrears.

X. INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

- 51. As shown in the Interim SRD below, during the Period, the Receiver had cash receipts (including borrowings) of approximately \$6.7 million, and cash disbursements of approximately \$3.7 million. As at March 31, 2022, the Receiver’s cash on hand was approximately \$3.0 million.

Interim Statement of Receipts and Disbursements
For the period June 29, 2021 to March 31, 2022
(C\$, unaudited)

Receipts	
Rent receipts ¹	3,984,936
Other receipts ²	1,193,040
HST collected	521,564
Receiver's borrowings ³	500,000
Pre-filing bank balance ⁴	488,067
Collection of other receivables ⁵	26,510
Total Receipts	6,714,116
Disbursements	
Property operating costs ⁶	1,474,195
Professional fees and disbursements	1,414,300
HST paid	415,605
Property management fees ⁷	379,150
Environmental and building condition reports	31,111
Critical vendor payments ⁸	25,563
Total disbursements	3,739,923
Balance in Receiver's accounts	2,974,193

Notes:

- (1) Monthly rent collections from tenants.
- (2) Receipts related to various settlement agreements.
- (3) Borrowings in accordance with Receiver Term Sheet.
- (4) Cash transferred to the Receiver's estate bank accounts from the Legal Owners' bank accounts upon commencement of the receivership proceedings.
- (5) Collections of deferred rent arrears and outstanding common area maintenance.
- (6) General operating costs such as utilities, maintenance, insurance, etc.
- (7) Includes monthly property management fees paid to Prime for managing the properties, and leasing commissions for assisting the Receiver in negotiating new leases and lease extensions with existing tenants.
- (8) Payments to certain critical vendors for pre-receivership amounts owing.

52. As detailed in the Pre-Filing Report, prior to its appointment as Receiver, KPMG had prepared a cash flow forecast (the “**Cash Flow Forecast**”) for the purpose of projecting the Legal Owners’ estimated liquidity needs during the Proceedings. The significant amount of cash on hand is primarily a result of favourable variances to the Cash Flow Forecast, including (i) a receipt of \$800,000 related to the Lease Termination Settlement (as defined and described in the First Report) that was not included in the Cash Flow Forecast, (ii) receipts in connection with the Non-Performing Lease Settlement and the Lease Arrears Settlement, and (iii) favourable timing differences in disbursements as compared to the

Cash Flow Forecast, the majority of which relate to payments of professional fees and property operating costs. As at March 31, 2022, the Receiver had accrued and unpaid expenses in the amount of approximately \$0.7 million.

XI. FUNDING OF THE RECEIVERSHIP PROCEEDINGS

53. As detailed in the First Report, pursuant to the terms of the Appointment Order, the Receiver was authorized to borrow up to \$750,000 from the Applicants pursuant to the Receiver Term Sheet, and the Applicants were granted a Receiver's Borrowings Charge (as defined in the Appointment Order) as security for such borrowings, which charge has customary super-priority to other liens and encumbrances, as set out in the Appointment Order. As authorized by the Sale Process Order, the term of the Receiver Term Sheet was extended to June 30, 2022.
54. As of the date of this Second Report, the Receiver has borrowed \$500,000 (the "**Receiver's Borrowings**") pursuant to the Receiver Term Sheet. The Receiver is seeking the Court's approval to fully repay the Receiver's Borrowings (including accrued interest thereon) and intends to do so prior to the June 30, 2022 expiry of the Receiver Term Sheet.

XII. DISTRIBUTIONS

Applicants' Security

55. As detailed in the First 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 included 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.
56. A copy of the Norton Rose legal opinion has been made available to certain stakeholders on appropriate arrangements regarding confidentiality, reliance and privilege.
57. The balance of the Applicants' secured debt (excluding the Receiver's Borrowings) is estimated to be approximately \$70.0 million as at June 30, 2022, as follows:

- (a) principal: ~\$64.1 million;
- (b) accrued interest: ~\$5.4 million;

- (c) other costs added to the Applicants' secured debt: ~\$0.5 million; plus
- (d) other amounts that may be claimable in connection therewith, including yield maintenance amounts.

58. The Net Proceeds of Sale (as defined herein) will not be sufficient to fully repay the Receiver's Borrowings, and the principal and interest owing to the Applicants (without accounting for their costs and any other amounts that may be claimable by the Applicants pursuant to their loan and security documents, including yield maintenance amounts).

Potential Priority Claims

59. The Legal Owners 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.
60. Payment of any outstanding municipal realty tax arrears of the Legal Owners is a closing condition of each Proposed Transaction and shall be satisfied prior to any Distribution (as defined herein).
61. Certain of the Legal Owners have outstanding HST arrears related to the period prior to the Receivership Date (the "**Pre-Filing Period**"), as evidenced by documentation obtained from CRA. Inquiries made by Prime suggest that certain other Legal Owners may also have outstanding HST arrears related to the Pre-Filing Period; however, there are currently no records to ascertain if HST arrears are outstanding in respect of such Legal Owners.
62. 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 Owners, should the Receiver consider it necessary or desirable. Following the closing of each of the Proposed Transactions, and prior to issuing any Distribution, the Receiver intends to file an assignment in bankruptcy on behalf of each of the applicable Legal Owners. The Receiver also intends to file an assignment in bankruptcy on behalf of Southmount upon the completion of a sale transaction of the Southmount Building. In the Receiver's view, bankrupting the Legal Owners will provide finality to claims and may crystallize certain investment losses for parties claiming an ownership interest in the Buildings.
63. The Receiver is aware of one party who has registered a construction lien against the 65 Larch property. The lien was registered in the amount of \$160,252 on June 26, 2021. Norton Rose has requested documentation supporting this lien claim from counsel to the claimant, but has not received

further information on this matter at this time. Subject to Norton Rose making a final determination on priority, the Receiver will maintain a holdback in respect of this lien claim. This lien claim will be vested out by the proposed Approval and Vesting Order in respect of the 65 Larch property.

64. The Receiver is not aware of any priority claims (other than potentially the lien claim on the 65 Larch property) that would rank ahead of the Applicants at the time of a Distribution.

Distributions

65. Following the closing of the Proposed Transactions, the Receiver will be in possession of the anticipated net sale proceeds from the Proposed Transactions (the “**Net Proceeds of Sale**”).
66. Once an asset purchase agreement is negotiated in respect of a potential transaction for the sale of the Southmount Building, the Receiver intends to appear before this Court to seek approval of such transaction.
67. The Receiver is seeking an order authorizing one or more distributions to the Applicants of Net Proceeds of Sale and cash on hand as they become available (each a “**Distribution**”). The Receiver intends to estimate costs to complete the administration of the estate and to retain a holdback in respect of such costs prior to any Distribution.

XIII. CONSOLIDATION OF BANKRUPTCY ESTATES

68. As noted above, the Receiver proposes to proceed with an assignment of Vine Purchaser and each of the Legal Owners that are parties to the Proposed Transactions into bankruptcy pursuant to its authority in the Appointment Order prior to any Distributions. As noted in the Application materials, as Vine was dissolved prior to the Receivership Date, the applicable Legal Owners’ Property escheated to the Crown, and the Crown conveyed the Vine Real Property to Vine Purchaser, a Beneficial Owner. The Appointment Order provided the Receiver with the authority to make assignments in bankruptcy on behalf of the Legal Owners, but not the Beneficial Owners.
69. The Receiver is not aware of Vine Purchaser owning any assets other than the Vine Real Property, and an Ontario *Personal Property Security Act* search against the Vine Purchaser run by the Receiver’s counsel on May 4, 2022 disclosed that the only registered secured creditors of Vine Purchaser are (i) the Applicants, (ii) De Lage Landen Financial Service Canada Inc, (iii) Blue Chip Leasing Corporation and (iv) Cconnect International Mortgage Corporation, each of whom are on the Service List in these Proceedings.

70. Pursuant to the Appointment Order, the Receiver is receiver and manager over the Legal Owners' Property, including the Vine Real Property, and the Receiver requests the authorization and empowerment to assign Vine Purchaser into bankruptcy alongside the applicable Legal Owners, for the same reasons as set out earlier in this Second Report.
71. The Receiver further requests that the estates of the bankrupted Legal Owners, Vine Purchaser, and Victoria Avenue be consolidated for procedural and administrative purposes (and not substantively) in the bankruptcy proceedings. The purpose of this consolidation is to avoid duplicative steps across multiple estates, including in relation to notices and creditors' meetings. This will add efficiency to the proceedings, conserve resources, and will not prejudice any stakeholder. The Receiver believes such consolidation for procedural and administrative purposes is in the best interests of the Legal Owners, Vine Purchaser and Victoria Avenue, and their respective stakeholders in a circumstance where creditors of the various estates are likely to have many common or overlapping issues and questions to resolve, and where information relevant to one of the bankruptcy estates is likely to be relevant to the other bankruptcy estates as well. The Receiver may seek further consolidation order in respect of the Legal Owner of the Southmount Building when a transaction is available for approval.

XIV. RECEIVER'S CONCLUSION AND RECOMMENDATION

72. Based on the forgoing, the Receiver respectfully requests that the Court grant the relief referenced in paragraph 7(g) herein.

All of which is respectfully submitted this 13th day of May, 2022.

KPMG Inc.

In its capacity as Receiver of

**Southmount Healthcare Centre Inc.
180 Vine Inc.
2478658 Ontario Ltd.,
2009 Long Lake Holdings Inc.
65 Larch Holdings Inc.
100 Colborne Holdings Inc.
240 Old Penetanguish Holdings Inc.
Gross Properties Inc.
180 Vine Purchaser Inc.
2413667 Ontario Inc.**

And not in its personal or corporate capacity

Per:

Katherine Forbes

Katherine Forbes
CPA, CA, CIRP, LIT
President

George Bourikas

George Bourikas
CPA, CA, CIRP, LIT
Vice President

APPENDIX “A”

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

- and -

**GROSS PROPERTIES INC. AND 2413667 ONTARIO INC. BY KPMG INC. IN ITS CAPACITY
AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

- and -

**DR. SAMUEL PETERS, MR. NIRAJ PARIKH, MR. SURESH MADAN AND DR. PAUL
KANNAMPUZHA**

- and -

1000151410 ONTARIO LIMITED

ASSET PURCHASE AGREEMENT

DATED AS OF APRIL 21, 2022

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of April 21, 2022 is made by and between:

65 LARCH 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 -

GROSS PROPERTIES INC. and 2413667 ONTARIO INC. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal or corporate capacity

(collectively, the “**Beneficial Owners**” and together with the Legal Owner, the “**Vendors**”)

- and -

DR. SAMUEL PETERS, MR. NIRAJ PARIKH , MR. SURESH MADAN AND DR. PAUL KANNAMPUZHA

(the “**Guarantors**”)

- and -

1000151410 ONTARIO LIMITED (the “Purchaser”)

RECITALS:

- A. The Legal Owner is the legal owner of and in the business of operating the Real Property Assets (the “Business”).
- B. The Beneficial Owners hold all beneficial ownership interests in the Real Property Assets, whether directly or indirectly for themselves or for others.
- C. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) granted on June 29, 2021 in the proceedings bearing Court File No. CV-21-00664273-00CL (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) the Beneficial Owners, but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owner’s assets and undertakings, including the Real Property Assets (in such capacity and not in its personal or corporate capacity, the “Receiver”).
- D. 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”).
- E. 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.

- F. 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.

“Beneficial Owners” has the meaning set out in the preamble hereto.

“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 the Parties intend to 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 the applicable 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 the applicable 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).

"Due Diligence Period" means the period from the date of execution of this Agreement and terminating at 5:00 p.m. Toronto time on (i) the day that is forty-five (45) calendar days after the date of execution of this Agreement or, (ii) such other date that is no later than sixty (60) calendar days after the date of execution of this Agreement and is agreed to in writing by the Parties.

"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, 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.

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

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

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

“Guarantors” has the meaning set forth in the preamble hereto.

“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 (1st Supp.).

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

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

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

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

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

“Legal 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.

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

“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.

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

“Outside Date” means July 6, 2022 or 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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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, any Taxes payable respect of any Real Property Assets, in respect of the period from and after the Closing Date which shall be calculated on a pro-rata basis on the basis of a 365 day year.

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

“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 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.

“Second Deposit” has the meaning set forth in Section 3.2(2).

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

“Target Closing Date” means the sixth (6th) Business Day following the expiry of the Due Diligence Period.

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

“Taxes” means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, *ad valorem* taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, government pension plan premiums and contributions, social security premiums, workers’ compensation premiums, employment/unemployment insurance or compensation premiums and contributions, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority and any instalments in respect thereof of another taxpayer or entity, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties, and whether disputed or not, and “Tax” means any one of such Taxes.

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

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

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

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

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

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

Business Day, the period shall be deemed to expire at 5:00 p.m. Toronto time on the next succeeding Business Day.

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

1.6 Additional Rules of Interpretation.

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

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

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

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

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

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

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

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

SCHEDULES

<u>Schedule “A”</u>	Purchased Assets
<u>Schedule “B”</u>	Real Property Assets
<u>Schedule “C”</u>	Assigned Contracts

<u>Schedule "D"</u>	Allocation of Purchase Price
<u>Schedule "E"</u>	GST/HST Certificate and Indemnity

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

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

2.2 Assumption of Assumed Liabilities. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the 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; 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 "First 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) a deposit in the amount of \$ [REDACTED] (the "Second Deposit") which shall be paid by the Purchaser to the Receiver upon expiry of the Due Diligence Period or such earlier date upon which the Purchaser advises the Vendors and the Receiver that it will be proceeding with the transactions contemplated by this Agreement, which Second Deposit shall be applied against the Cash Purchase Price on Closing. The Purchaser agrees that the Second Deposit shall be deposited into a non-interest-bearing account of the Receiver (the First Deposit and the Second Deposit shall be collectively referred to as the "Deposit");

(3) the balance of the Cash Purchase Price, after crediting the Deposit in Section 3.2, shall be paid by the Purchaser to the Receiver on behalf of the Vendors at Closing;

(4) 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

(5) 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 held by each Vendor 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, (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**").

3.6 Taxes and GST/HST Gross Up. In the event that any payment made by any Vendor or the 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.

3.7 Tax Elections.

(1) *Section 22 Tax Election.* If available and requested by any Vendor, the Purchaser and such Vendor shall elect jointly in the prescribed form under section 22 of the ITA and the corresponding provisions of any other applicable Tax statute as to the sale of the Receivables and designate in such election an amount equal to the portion of the Purchase Price allocated to the Receivables pursuant to Section 3.3. This election, or these elections, shall be made within the time prescribed for such elections.

(2) *Subsection 20(24) Tax Election.* The Purchaser and each of the Vendors shall, if applicable, jointly execute and file an election under subsection 20(24) of the ITA in the manner required by subsection 20(25) of the ITA and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the ITA and under any other applicable provincial or territorial statute, as to such amount paid by the applicable Vendors to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendors acknowledge that a portion of the Purchased Assets transferred by the Vendors pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the ITA and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the applicable Vendors as a payment for the assumption of such future obligations by the Purchaser.

(3) *Section 56.4 Tax Election.* At the request of the Vendors and to the extent permitted by the ITA, the Parties shall make, and each of the Vendors shall file, any election or amended election in prescribed form (or such other form as the Purchaser or the Vendors may reasonably request) and within the prescribed time limits pursuant to subsection 56.4(7) of the ITA proposed by the Minister of Finance (Canada) as it reads on the date of this Agreement or any amended or successor provision thereto, and any analogous provision of provincial or territorial Tax legislation.

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 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, or upon Closing shall be, registered for GST/HST purposes under Part IX of the *ETA*, and shall provide its registration number to the Vendors at or prior to Closing.

(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 Vendors are corporations 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 bring a motion seeking the Court's issuance of the Approval and Vesting Order at least five (5) Business Days prior to the Closing 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 Purchaser's 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 Purchaser's 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 Guarantee.

- (1) *Guarantee.* The Guarantors hereby each, jointly and severally, absolutely, unconditionally and irrevocably guarantee to each of the Vendors the due, complete and punctual observance and performance of each and every obligation of the Purchaser under this Agreement that exists up to Closing (the “**Guaranteed Obligations**”). The guarantee hereinbefore referred to is called the “**Guarantee**”;
- (2) *Guarantee Unaffected by Judgment or Bankruptcy.* None of the Guaranteed Obligations shall be limited, lessened or released, nor shall the Guarantee be discharged, by the recovery of any judgment against the Purchaser;
- (3) *No Requirement to Exhaust Recourse.* The Vendors shall not be bound to seek or exhaust recourse against the Purchaser before being entitled to payment under the Guarantee;
- (4) *Survival of Guarantee.* The Guaranteed Obligations shall continue unaffected by any change in the name of the Purchaser or by any change whatsoever in the objects, capital structure or constitution of the Purchaser, or by the Purchaser being amalgamated, merged or otherwise combined with another corporation or by any defect in the authorization, execution or delivery by the Purchaser of this Agreement or any other agreement or instrument executed and delivered by the Purchaser pursuant to this Agreement which may result in unenforceability of any of the Obligations;
- (5) *Dealing with Guaranteed Obligations.* Subject to the other terms and conditions of this Agreement, the Vendors may:
 - (i) grant or allow any waiver, consent, extension, indulgence or other act or omission in respect of this Agreement, any other agreement or instrument executed and delivered pursuant to this Agreement;
 - (ii) do, or omit to do, anything to enforce the payment or performance of this Agreement or any other agreement or instrument executed and delivered pursuant to this Agreement;
 - (iii) vary, compromise, exchange, renew, discharge, release, subordinate, postpone or abandon any Guaranteed Obligations of the Purchaser hereunder, or under any agreement or instrument executed and delivered pursuant to this Agreement; and

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

- (6) *Guarantee in Addition.* The rights and remedies of the Vendors hereunder are in addition to and not in substitution for any other rights or remedies which the Vendors have at any time respecting the Guaranteed Obligations;
- (7) *Consideration.* Each of the Guarantors acknowledges that each of the Vendors has required, as a condition for its entry into this Agreement, that such Guarantor executes this Agreement and be bound by the terms of this Section 5.13; and

- (8) *Termination.* The Parties agree that upon Closing, the Guarantee (including all obligations, covenants and undertakings of the Guarantors under this Section 5.13) shall terminate.

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

ARTICLE 7 CONDITIONS OF CLOSING

7.1 Due Diligence Period. The Purchaser shall have until the end of the Due Diligence Period to conduct, investigate and inspect (at the Purchaser's sole cost and expense) the legal, physical, economic, and environmental condition of the Purchased Assets, and the suitability of the Purchased Assets for Purchaser's intended use thereof. If, prior to the end of the Due Diligence Period the Purchaser advises the Vendors that it does not wish to complete the transactions contemplated by this Agreement, this Agreement shall be terminated and of no further force or effect and the Deposit, together with any interest earned thereon, shall be returned to the Purchaser. If, prior to the expiry of the Due Diligence Period, the Purchaser advises the Vendors that it will be proceeding with the transactions contemplated by this Agreement, the Due Diligence Period shall be deemed to expire on such date. If the Purchaser does not advise the Vendors before the expiration of the Due Diligence Period that it will not be proceeding with the transactions contemplated by this Agreement, the Purchaser shall be deemed to have advised the Vendors and the Receiver that it will be proceeding with the Transaction.

7.2 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 7.2 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.

7.3 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 7.3 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.

7.4 Receiver's Certificate. When the conditions to Closing set out in Section 7.2 and Section 7.3, 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, prior to the expiration of the Due Diligence Period, in accordance with Section 7.1.
- (4) by written notice from the Purchaser to the Vendors if there has been a material breach by the Vendors of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchaser, and such breach is not curable and has rendered the satisfaction of any condition in Section 7.1 impossible by the Outside Date, provided that at the time of providing such notice of termination, the Purchaser is not in breach of any of its obligations under this Agreement;
- (5) by written notice from the Vendors to the Purchaser if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendors and such breach is not curable and has rendered the satisfaction of any condition in

Section 7.3 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

- (6) by the Purchaser, on the one hand, or by the Vendors, on the other hand, upon written notice to the other Party if the Closing has not occurred by the Outside Date, provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(6) shall not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in the Closing not occurring by the Outside Date.

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

(2) *Return of Deposit.* In the event that this Agreement is terminated (i) by the Purchaser prior to the expiration of the Due Diligence Period in accordance with Section 7.1, or (ii) pursuant to any Section of this Agreement other than (A) Section 8.1(5), or (B) Section 8.1(6) and the reason that Closing did not occur by the Outside Date was not the result of a breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, then in each such case the Deposit and any interest earned thereon shall be promptly returned to the Purchaser by the Receiver. The return of the Deposit 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 (GST/HST Gross Up), 3.7 (*Tax Elections*), 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), 7.4 (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 / gbourikas@kpmg.ca

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

Blake, Cassels & Graydon LLP

Attention: Aryo Shalviri / Chris Burr

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

(3) if to the Purchaser, to:

2009 Long Lake Road, Suite 205, Sudbury, Ontario P3E 6C3
Attention: Samuel Peters / Suresh Madan / Niraj Parikh / Paul
Kannampuzha

Email: sapeters@nosm.ca / suresh.madan@gmail.com /
nirajparikh33@yahoo.com / paul.kannampuzha@myhealthcentre.ca

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

Moutsatsos Laakso Alexander LLP
33 Mackenzie Street, Sudbury, ON P3C 4Y1

Attention: Sheena Alexander
Email: salexander@mlalaw.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). 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.

65 LARCH 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: President

GROSS PROPERTIES 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: President

2413667 ONTARIO 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: President

1000151410 ONTARIO LIMITED

By: _____
 Name:
 Title:

SAMUEL PETERS

NIRAJ PARIKH

PAUL KANNAMPUZHA

SURESH MADAN

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

65 LARCH 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:


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

By: _____
Name:
Title:

2413667 ONTARIO INC. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

By: _____
Name:
Title:

1000151410 ONTARIO LIMITED

By:  _____
Name: Sam Peters
Title: Director and Signing Officer



SAMUEL PETERS



NIRAJ PARIKH



PAUL KANNAMPUZHA

Suresh Madan

SURESH MADAN

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 Permits and Licences;
- vi. The Books and Records that are Related to the Business;
- vii. All goodwill Related to the Business; and

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

SCHEDULE "B"**REAL PROPERTY ASSETS**

Municipal Address: 65 Larch Street, Sudbury, ON

Legal Descriptions:

PIN 73584-0077(LT): LT 23 BLK A PL 3SA MCKIM; GREATER SUDBURY;

and

PIN 73584-0078(LT): LT 20-22 BLK A PL 3SA MCKIM; GREATER SUDBURY;

and

PIN 73584-0097(LT): PT N1/2 LT 5 CON 3 MCKIM AS IN S81426 (SECONDLY & THIRDLY);
GREATER SUDBURY

SCHEDULE "C"
ASSIGNED CONTRACTS

Critical Contracts:

None.

Real Property Leases:

1. Lease dated August 13, 2013 related to Suite 100 between LifeLabs LP by its General Partner LifeLabs Inc., as tenant and GT Sudbury Holding Inc. (predecessor-in-interest to 65 Larch Holdings Inc.) as landlord, as extended pursuant to a Lease Extension Agreement dated February 14, 2018.
2. Lease dated August 22, 2019 related to Suite 101 between Arthur McKay, as tenant and 65 Larch Holdings Inc., as landlord.
3. Lease dated June 25, 2014 related to Suite 103 between 2376440 Ontario Inc., as tenant and GT Sudbury Holding Inc. (predecessor-in-interest to 65 Larch Holdings Inc.), as landlord, as amended pursuant to a Lease Amending Agreement dated August 25, 2014 and as further amended pursuant to a Lease Amending Agreement dated August 7, 2015.
4. Lease dated September 30, 2014 related to Suite 200A between Dr. Solieman Bilgasem, as tenant and GT Sudbury Holding Inc. (predecessor-in-interest to 65 Larch Holdings Inc.), as landlord, as extended pursuant to an Extension of Lease dated November 18, 2019.
5. Lease dated May 10, 2018 related to Suite 202 between Dr. Alescia Linda Azzola Medical Professional Corporation, as tenant and 65 Larch Holdings Inc., as landlord.
6. Lease dated May 27, 2013 related to Suite 207 between Dr. G. Swatton Dentistry Professional Corporation, as tenant and GT Sudbury Holding Inc. (predecessor-in-interest to 65 Larch Holdings Inc.), as landlord, as extended and amended pursuant to an Lease Extension and Amending Agreement dated October 1, 2018.
7. Lease dated September 10, 2013 related to Suite 212 between Dr. E. W. Azzola Optometry Professional Corporation, as tenant and GT Sudbury Holding Inc., as landlord, and Dr. Edward W. Azzola, as indemnifier.
8. Lease dated January 1, 2017 related to Suite 300A between David Huneault Medicine Professional Corporation, as tenant and 65 Larch Holdings Inc. (by KPMG Inc. as receiver), as landlord, as amended and extended pursuant to a Lease Amending and Extension Agreement dated January 1, 2022.
9. Lease dated May 23, 2014 related to Suite 306 between Dr. Kandiah Vijaykanthan Medicine Professional Corporation, as tenant and GT Sudbury Holding Inc., as landlord, now on a month-to-month basis.

10. Lease dated June 25, 2021 related to Suite 308 between Dr. John Lanthier, as tenant and 65 Larch Holdings Inc., as landlord.
11. Lease dated February 10, 2016 related to Suite 309 between Dr. Stephen Morris, as tenant and 65 Larch Holdings Inc., as landlord, now on a month-to-month basis.
12. Lease dated November 30, 2009 related to Suite 310 between Dr. John Provatopoulos, as tenant and Sudbury Medical Holdings Ltd., as landlord, now on a month-to-month basis.
13. Lease dated August 28, 2014 related to Suite 400 between Roxanne Righi & Dr. Sarah Wallace as tenant and GT Sudbury Holding Inc. (predecessor-in-interest to 65 Larch Holdings Inc.), as extended pursuant to an Extension of Lease dated December 20, 2019 and as further amended pursuant to a Lease Assignment and Amending Agreement dated January 1, 2021.
14. Lease dated November 11, 2014 related to Suite 401 between Rachelle Paradis Medicine Professional Corporation and M. Brule Medicine Professional Corporation as tenants and GT Sudbury Holding Inc. (predecessor-in-interest to 65 Larch Holdings Inc.), as landlord and Dr. Rachelle Paradis and Dr. Michelle Brule as indemnifier, as extended pursuant to an Extension of Lease dated November 25, 2019.
15. Lease dated March 15, 2018 related to Suite 402, 407, and 410 between Barclay Diagnostic Imaging Inc., as Tenant and 65 Larch Holdings Inc., as Landlord.

Personal Property Leases:

1. Equipment Leasing Agreement dated July 1, 2020 between ADD Capital Corp. and 65 Larch Holdings Inc.

Other Contracts:

1. Elevator Maintenance Agreement dated April 22, 2016 between Thyssen Elevator Approval and 65 Larch Holdings Inc.
2. Parking Agreement dated October 25, 2018 between MedPark Solutions Inc. and 65 Larch Holdings Inc.

SCHEDULE "D"

ALLOCATION OF PURCHASE PRICE

ASSETS	
Real Property Assets	<p data-bbox="367 394 516 426">\$ [REDACTED]</p> <ul data-bbox="367 464 860 640" style="list-style-type: none"><li data-bbox="367 464 621 495">• Land: \$ [REDACTED]<li data-bbox="367 533 860 564">• Parking (\$ [REDACTED]/space): \$ [REDACTED]<li data-bbox="367 602 686 634">• Building: \$ [REDACTED]
Total:	\$ [REDACTED]

SCHEDULE “E”

GST/HST CERTIFICATE AND INDEMNITY

DATE: _____, 2022

TO: **65 LARCH HOLDINGS INC. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (the “Legal Owner”) and GROSS PROPERTIES INC. and 2413667 ONTARIO INC. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (collectively the “Beneficial Owners” and together with the Legal Owner, the “Vendors”)**

FROM: **1000151410 ONTARIO LIMITED (the “Purchaser”)**

RE: **Asset Purchase Agreement dated as of April 21, 2022 (the “APA”) between the Vendors and the Purchaser in respect of the Purchased Assets**

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

1. The Purchaser hereby declares and certifies as follows:
 - (a) the Purchased Assets are being purchased by the Purchaser as principal for its own account and not as an agent, trustee or otherwise on behalf of or for another person;
 - (b) the Purchaser is registered under Subdivision d of Division V of Part IX of the ETA for the collection and remittance of GST/HST and its registration number is [●], and such registrations are 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 Vendor 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 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 agreement; and

- (b) by the Purchaser to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser in connection with any GST/HST in connection with the conveyance or transfer of the Purchased Assets.
3. It is agreed that this certificate and indemnity agreement shall survive the closing of the above-noted transaction.

DATED this ____ day of _____, 2022.

1000151410 ONTARIO LIMITED

Per: _____
Name:
Title:

APPENDIX “B”

**2009 LONG LAKE HOLDINGS INC. BY KPMG INC. IN ITS CAPACITY AS COURT-
APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE
CAPACITY**

- and -

**GROSS PROPERTIES INC. AND 2413667 ONTARIO INC. BY KPMG INC. IN ITS CAPACITY
AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

- and -

**DR. SAMUEL PETERS, MR. NIRAJ PARIKH, MR. SURESH MADAN AND DR. PAUL
KANNAMPUZHA**

- and -

1000151410 ONTARIO LIMITED

ASSET PURCHASE AGREEMENT

DATED AS OF APRIL 21, 2022

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of April 21, 2022 is made by and between:

2009 LONG LAKE 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 –

GROSS PROPERTIES INC. and 2413667 ONTARIO INC. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal or corporate capacity

(collectively, the “**Beneficial Owners**” and together with the Legal Owner, the “**Vendors**”)

- and -

DR. SAMUEL PETERS, MR. NIRAJ PARIKH, MR. SURESH MADAN AND DR. PAUL KANNAMPUZHA

(the “**Guarantors**”)

- and -

1000151410 ONTARIO LIMITED (the “Purchaser”)

RECITALS:

- A. The Legal Owner is the legal owner of and in the business of operating the Real Property Assets (the “**Business**”).
- B. The Beneficial Owners hold all beneficial ownership interests in the Real Property Assets, whether directly or indirectly for themselves or for others.
- C. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on June 29, 2021 in the proceedings bearing Court File No. CV-21-00664273-00CL (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) the Beneficial Owners, but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owner’s assets and undertakings, including the Real Property Assets (in such capacity and not in its personal or corporate capacity, the “**Receiver**”).
- D. 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**”).
- E. 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.

- F. 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.

“Beneficial Owners” has the meaning set out in the preamble hereto.

“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 the Parties intend to 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 the applicable 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 the applicable 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).

"Due Diligence Period" means the period from the date of execution of this Agreement and terminating at 5:00 p.m. Toronto time on the day that is forty-five (45) calendar days after the date of execution of this Agreement.

"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, 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.

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

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

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

“Guarantors” has the meaning set forth in the preamble hereto.

“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 (1st Supp.).

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

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

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

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

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

“Legal 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.

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

“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.

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

“Outside Date” means June 22, 2022 or 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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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, any Taxes payable respect of any Real Property Assets, in respect of the period from and after the Closing Date which shall be calculated on a pro-rata basis on the basis of a 365 day year.

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

“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 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.

“Second Deposit” has the meaning set forth in Section 3.2(2).

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

“Target Closing Date” means the sixth (6th) Business Day following the expiry of the Due Diligence Period.

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

“Taxes” means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, *ad valorem* taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes,

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

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

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

"**Vendors**" has the meaning set out in the preamble hereto.

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

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

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

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

1.6 Additional Rules of Interpretation.

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

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

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

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

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

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

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

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

SCHEDULES

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

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

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

2.2 Assumption of Assumed Liabilities. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the 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; 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 "First 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) a deposit in the amount of \$ [REDACTED] (the "Second Deposit") which shall be paid by the Purchaser to the Receiver upon expiry of the Due Diligence Period or such earlier date upon which the Purchaser advises the Vendors and the Receiver that it will be proceeding with the transactions contemplated by this Agreement, which Second Deposit shall be applied against the Cash Purchase Price on Closing. The Purchaser agrees that the Second Deposit

shall be deposited into a non-interest-bearing account of the Receiver (the First Deposit and the Second Deposit shall be collectively referred to as the “**Deposit**”);

(3) the balance of the Cash Purchase Price, after crediting the Deposit in Section 3.2, shall be paid by the Purchaser to the Receiver on behalf of the Vendors at Closing;

(4) 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

(5) 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 held by each Vendor 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, (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”).

3.6 Taxes and GST/HST Gross Up. In the event that any payment made by any Vendor or the 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.

3.7 Tax Elections.

(1) *Section 22 Tax Election.* If available and requested by any Vendor, the Purchaser and such Vendor shall elect jointly in the prescribed form under section 22 of the ITA and the corresponding provisions of any other applicable Tax statute as to the sale of the Receivables and designate in such election an amount equal to the portion of the Purchase Price allocated to the Receivables pursuant to Section 3.3. This election, or these elections, shall be made within the time prescribed for such elections.

(2) *Subsection 20(24) Tax Election.* The Purchaser and each of the Vendors shall, if applicable, jointly execute and file an election under subsection 20(24) of the ITA in the manner required by subsection 20(25) of the ITA and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the ITA and under any other applicable provincial or territorial statute, as to such amount paid by the applicable Vendors to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendors acknowledge that a portion of the Purchased Assets transferred by the Vendors pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the ITA and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the applicable Vendors as a payment for the assumption of such future obligations by the Purchaser.

(3) *Section 56.4 Tax Election.* At the request of the Vendors and to the extent permitted by the ITA, the Parties shall make, and each of the Vendors shall file, any election or amended election in prescribed form (or such other form as the Purchaser or the Vendors may reasonably request) and within the prescribed time limits pursuant to subsection 56.4(7) of the ITA proposed by the Minister of Finance (Canada) as it reads on the date of this Agreement or any amended or successor provision thereto, and any analogous provision of provincial or territorial Tax legislation.

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 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, or upon Closing shall be, registered for GST/HST purposes under Part IX of the *ETA*, and shall provide its registration number to the Vendors at or prior to Closing.

(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 Vendors are corporations 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 bring a motion seeking the Court's issuance of the Approval and Vesting Order at least five (5) Business Days prior to the Closing 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 Purchaser's 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 Purchaser's 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 Guarantee.

- (1) *Guarantee.* The Guarantors hereby each, jointly and severally, absolutely, unconditionally and irrevocably guarantee to each of the Vendors the due, complete and punctual observance and performance of each and every obligation of the Purchaser under this Agreement that exists up to Closing (the

“Guaranteed Obligations”). The guarantee hereinbefore referred to is called the **“Guarantee”**;

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

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

- (6) *Guarantee in Addition.* The rights and remedies of the Vendors hereunder are in addition to and not in substitution for any other rights or remedies which the Vendors have at any time respecting the Guaranteed Obligations;
- (7) *Consideration.* Each of the Guarantors acknowledges that each of the Vendors has required, as a condition for its entry into this Agreement, that such Guarantor executes this Agreement and be bound by the terms of this Section 5.13; and
- (8) *Termination.* The Parties agree that upon Closing, the Guarantee (including all obligations, covenants and undertakings of the Guarantors under this Section 5.13 shall terminate.

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) 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; and
- (8) 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 to the Receiver;

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

ARTICLE 7 CONDITIONS OF CLOSING

7.1 Due Diligence Period. The Purchaser shall have until the end of the Due Diligence Period to conduct, investigate and inspect (at the Purchaser's sole cost and expense) the legal, physical, economic, and environmental condition of the Purchased Assets, and the suitability of the Purchased Assets for Purchaser's intended use thereof. If, prior to the end of the Due Diligence Period the Purchaser advises the Vendors that it does not wish to complete the transactions contemplated by this Agreement, this Agreement shall be terminated and of no further force or effect and the Deposit, together with any interest earned thereon, shall be returned to the Purchaser. If, prior to the expiry of the Due Diligence Period, the Purchaser advises the Vendors that it will be proceeding with the transactions contemplated by this Agreement, the Due Diligence Period shall be deemed to expire on such date. If the Purchaser does not advise the Vendors before the expiration of the Due Diligence Period that it will not be proceeding with the transactions contemplated by this Agreement, the Purchaser shall be deemed to have advised the Vendors and the Receiver that it will be proceeding with the Transaction.

7.2 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 7.2 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.

7.3 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 7.3 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.

7.4 Receiver's Certificate. When the conditions to Closing set out in Section 7.2 and Section 7.3, 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, prior to the expiration of the Due Diligence Period, in accordance with Section 7.1.
- (4) by written notice from the Purchaser to the Vendors if there has been a material breach by the Vendors of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchaser, and such breach is not curable and has rendered the satisfaction of any condition in Section 7.1 impossible by the Outside Date, provided that at the time of providing such notice of termination, the Purchaser is not in breach of any of its obligations under this Agreement;
- (5) by written notice from the Vendors to the Purchaser if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendors and such breach is not curable and has rendered the satisfaction of any condition in Section 7.3 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

- (6) by the Purchaser, on the one hand, or by the Vendors, on the other hand, upon written notice to the other Party if the Closing has not occurred by the Outside Date, provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(6) shall not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in the Closing not occurring by the Outside Date.

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

(2) *Return of Deposit.* In the event that this Agreement is terminated (i) by the Purchaser prior to the expiration of the Due Diligence Period in accordance with Section 7.1, or (ii) pursuant to any Section of this Agreement other than (A) Section 8.1(5), or (B) Section 8.1(6) and the reason that Closing did not occur by the Outside Date was not the result of a breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, then in each such case the Deposit and any interest earned thereon shall be promptly returned to the Purchaser by the Receiver. The return of the Deposit 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 (GST/HST Gross Up), 3.7 (*Tax Elections*), 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*), 7.4 (*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 / gbourikas@kpmg.ca

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

Blake, Cassels & Graydon LLP

Attention: Aryo Shalviri / Chris Burr
Email: aryo.shalviri@blakes.com / chris.burr@blakes.com

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

2009 Long Lake Road, Suite 205, Sudbury, Ontario P3E 6C3

Attention: Samuel Peters / Suresh Madan / Niraj Parikh / Paul
Kannampuzha

Email: sapeters@nosm.ca / suresh.madan@gmail.com /
nirajparikh33@yahoo.com / paul.kannampuzha@myhealthcentre.ca

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

Moutsatsos Laakso Alexander LLP

33 Mackenzie Street, Sudbury, ON P3C 4Y1

Attention: Sheena Alexander

Email: salexander@mlalaw.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). 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]

SAMUEL PETERS

NIRAJ PARIKH

PAUL KANNAMPUZHA

SURESH MADAN

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

2009 LONG LAKE 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:


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

By: _____
Name:
Title:

2413667 ONTARIO INC. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

By: _____
Name:
Title:

1000151410 ONTARIO LIMITED

By:  _____
Name: Sam Peters
Title: Director and Signing Officer



SAMUEL PETERS



NIRAJ PARIKH



PAUL KANNAMPUZHA

Suresh Madan

SURESH MADAN

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 Permits and Licences;
- vi. The Books and Records that are Related to the Business;
- vii. All goodwill Related to the Business; and

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

SCHEDULE "B"**REAL PROPERTY ASSETS**

Municipal Address: 2009 Long Lake Road, Sudbury, ON, P3E 6C3

Legally Description: PIN 73595-0102(LT): PCL 8259 SEC SES; PT LT 6 CON 1 MCKIM EXCEPT LT52588, LT53059, LT109847, PT 7 53R4520 & PT 4 53R13501; S/T LT25019; GREATER SUDBURY;

and

PIN 73595-0174(LT): PCL 39445 SEC SES; PT LT 6 CON 1 MCKIM PT 3 TO 7 & 12 TO 15 53R5036; PT LT 6 CON 1 MCKIM PT 5 53R13501; S/T PT 2 & 3 53R13501 AS IN LT717184; S/T LT25019, LT735739; GREATER SUDBURY;

and

PIN 73595-0333 (LT): PCL 39000 SEC SES; PT LT 6 CON 1 MCKIM PT 9 TO 11 53R5036; T/W A ROW OVER PT 1 & 2 53R5036; S/T LT25019; GREATER SUDBURY

SCHEDULE "C"**ASSIGNED CONTRACTS****Critical Contracts:**

None.

Real Property Leases:

1. Lease dated November 21, 2007 related to Suite B3 between CML Healthcare Imaging Inc., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as landlord, as amended pursuant to a Lease Amending Agreement dated November 20, 2009 and as further amended pursuant to a Lease Amending Agreement dated April 13, 2011 and as assigned pursuant to a Consent to Assignment of Lease dated October 1, 2013 and as further amended pursuant to a Lease Amending Agreement dated June 25, 2014.
2. Lease dated March 9, 2010 related to Suite 101 between Four Corners Medical Clinic Inc., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as landlord.
3. Lease dated March 9, 2010 related to Suite 103 between Dr. Dennis Reich, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as landlord.
4. Lease dated February 11, 2016 related to Suite 104 between Arthur McKay, as tenant and 2009 Long Lake Holdings Inc., as landlord, as amended pursuant to an Extension of Lease dated May 1, 2021.
5. Lease dated August 22, 2011 related to Suites 105 between Dr. David J. Chisholm, as tenant and 2009 Long Lake Holdings Inc. (by KPMG Inc. as receiver), as landlord, as amended and extended pursuant to a Lease Amending and Extension Agreement dated October 6, 2021.
6. Lease dated September 9, 2002 related to Suite 107 between Pharmx Rexall Drug Stores Ltd., as tenant and Integrated Health Investments Corporation (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as landlord, as extended pursuant to a Lease Renewal dated December 9, 2005 and as amended pursuant to a Lease Amending Agreement dated June 1, 2009 and as further amended pursuant to a Lease Amending Agreement dated May 23, 2014.
7. Lease dated May 5, 2009 related to Suites 201 and 204 between Dr. Ross E. Mantle, as tenant and 2009 Long Lake Holdings Inc., as landlord, as amended pursuant to a Lease Amending Agreement dated May 7, 2013 and as extended pursuant to an Extension of Lease dated January 1, 2020.
8. Lease dated February 25, 2013 related to Suite 202 between Lifemark Health Management Inc., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as landlord.

9. Lease dated February 15, 2022 related to Suite 205 between 2606333 Ontario Limited, as tenant and 2009 Long Lake Holdings Inc. (by KPMG Inc. as receiver), as landlord, now on a month-to-month basis.
10. Lease dated March 31, 2009 related to Suite 301 between Dr. Riaz Bagha, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as landlord, as amended pursuant to a Lease Amending Agreement dated June 22, 2012 and as further amended pursuant to a Lease Amending Agreement dated March 23, 2016 and as extended pursuant to an Extension of Lease dated May 14, 2021.
11. Lease dated August 31, 2021 related to Suite 302 between Salil Gupta Medicine Professional Corporation, as tenant and 2009 Long Lake Holdings Inc. (by KPMG Inc. as receiver), as landlord.
12. Lease dated June 2, 2014 related to Suites 303 between Wirta Home Care Ltd., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as landlord and Lisette Wirta, as indemnifier, as amended and extended pursuant to a Lease Amending and Extension Agreement dated September 23, 2021.
13. Lease dated March 24, 2003 related to Suite 304 between Dr. Lawrence Schonberger, as tenant and Integrated Health Investments Corporation Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as landlord, and as amended pursuant to a Lease Amending Agreement dated March 12, 2012 and as extended pursuant to a Lease Extension Agreement dated June 14, 2017 and as further extended pursuant to an Extension of Lease dated February 14, 2020.
14. Lease dated September 18, 2009 related to Suite 305 between Zdyb and Nam Audiology Professional Corporation, as tenant, and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as landlord and Michael G. Zdyb and Hyung-Eun Nam, as indemnifier, and as amended pursuant to a Lease Amending Agreement dated April 1, 2014 and as extended pursuant to an Extension of Lease dated November 27, 2019.
15. Lease dated March 9, 2010, related to Suite 306 between Dr. Peter Villa, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as amended pursuant to a Lease amending Agreement dated January 28, 2013 and as extended pursuant to an Extension of Lease dated September 29, 2021.
16. Lease dated February 14, 2011 related to Suite 307 between Dr. Avinash Garg, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as amended pursuant to a Lease Amending Agreement dated April 18, 2016 and as extended pursuant to an Extension of Lease dated October 2, 2019.
17. Lease dated March 30, 2017 related to Suite 310 between John Snider Professional Medicine Corporation and Dr. P. Bhatia Medicine Professional Corporation, as tenant and 65 Larch Holdings Inc., as current landlord and 2009 Long Lake Holdings Inc., as future landlord and John Snider and Pankaj Bhatia, as indemnifier.

18. Lease dated September 5, 2007 related to Suite 402 between Dr. Fabio Luison, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as amended pursuant to a Lease Amending Agreement dated August 28, 2012 and as extended pursuant to an Extension of Lease dated October 2, 2019.
19. Lease dated August 22, 2016 related to Suite 403 between Mornear Shepell Ltd., as tenant and 2009 Long Lake Holdings Inc. (by KPMG Inc. as receiver), as landlord, as amended and extended pursuant to a Lease Amending and Extension Agreement dated November 1, 2021.
20. Lease dated May 6, 2019 related to Suite 404 between Dr. Stephen E. Kosar, as tenant and 2009 Long Lake Holdings Inc., as landlord.
21. Lease dated May 14, 2019 related to Suites 405, 406, and 407 between Wellington-Altus Private Wealth Inc., as tenant and 2009 Long Lake Holdings Inc., as landlord.
22. Lease dated February 6, 2007 related to Suite 408 between Dr. Vjiay Kumar, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as amended pursuant to a Lease Amending Agreement dated March 15, 2012 and as further amended pursuant to a Lease Amending Agreement dated August 14, 2015 and as extended pursuant to an Extension of Lease dated May 28, 2019.
23. Lease dated October 10, 2014 related to Suite 409 between Dr. Kristina Sutherland, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as extended pursuant to an Extension of Lease dated October 11, 2019.
24. Lease dated July 11, 2003 related to Suite 410 between Dr. Boji Varghese & Dr. Cizy Matthew, as tenant and Integrated Health Investments Corporation (predecessor-in-interest to 2009 Long Lake Holdings Inc.), as landlord, as extended pursuant to an Extension of Lease dated November 12, 2019.

Personal Property Leases:

1. Equipment Leasing Agreement dated September 15, 2020 between ADD Capital Corp. and 2009 Long Lake Holdings Inc.
2. Equipment Leasing Agreement dated July 1, 2020 between ADD Capital Corp. and 2009 Long Lake Holdings Inc.

Other Contracts:

1. Elevator Maintenance Agreement dated September 7, 2016 between Otis Canada Inc. and Prime Real Estate Group Inc. c/o 2009 Long Lake Holdings Inc.

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

ASSETS	
Real Property Assets	\$ [REDACTED] <ul style="list-style-type: none"><li data-bbox="410 457 662 499">• Land: \$ [REDACTED]<li data-bbox="410 527 971 569">• Parking Lot (\$ [REDACTED]): \$ [REDACTED]<li data-bbox="410 596 727 638">• Building: \$ [REDACTED]
Total:	\$ [REDACTED]

SCHEDULE "E"**GST/HST CERTIFICATE AND INDEMNITY****DATE:** _____, 2022**TO:** **2009 LONG LAKE HOLDINGS INC. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (the "Legal Owner") and GROSS PROPERTIES INC. and 2413667 ONTARIO INC. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (collectively the "Beneficial Owners" and together with the Legal Owner, the "Vendors")****FROM:** **1000151410 ONTARIO LIMITED (the "Purchaser")****RE:** **Asset Purchase Agreement dated as of April 21, 2022 (the "APA") between the Vendors and the Purchaser in respect of the Purchased Assets**

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

1. The Purchaser hereby declares and certifies as follows:
 - (a) the Purchased Assets are being purchased by the Purchaser as principal for its own account and not as an agent, trustee or otherwise on behalf of or for another person;
 - (b) the Purchaser is registered under Subdivision d of Division V of Part IX of the ETA for the collection and remittance of GST/HST and its registration number is [●], and such registrations are 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 Vendor 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 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 agreement; and

- (b) by the Purchaser to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser in connection with any GST/HST in connection with the conveyance or transfer of the Purchased Assets.
3. It is agreed that this certificate and indemnity agreement shall survive the closing of the above-noted transaction.

DATED this ____ day of _____, 2022.

1000151410 ONTARIO LIMITED

Per: _____
Name:
Title:

APPENDIX “C”

EXECUTION VERSION

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

- and -

**GROSS PROPERTIES INC. AND 2413667 ONTARIO INC. BY KPMG INC. IN ITS CAPACITY
AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

- and -

ACCUTRAC PROPERTY MANAGEMENT INC.

ASSET PURCHASE AGREEMENT

DATED AS OF APRIL 14, 2022

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of April 14, 2022 is made by and between:

100 COLBORNE 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 -

GROSS PROPERTIES INC. and 2413667 ONTARIO INC. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal or corporate capacity

(collectively, the “**Beneficial Owners**” and together with the Legal Owner, the “**Vendors**”)

- and -

ACCUTRAC PROPERTY MANAGEMENT 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. The Beneficial Owners hold all beneficial ownership interests in the Real Property Assets, whether directly or indirectly for themselves or for others.
- C. Pursuant to an **Order** of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on **June 29, 2021** in the proceedings bearing Court File No. CV-21-00664273-00CL (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) the Beneficial Owners, but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owner’s assets and undertakings, including the Real Property Assets (in such capacity and not in its personal or corporate capacity, the “**Receiver**”).
- D. 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**”).
- E. 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.
- F. 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.

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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.

"Beneficial Owner" has the meaning set out in the preamble hereto.

"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 the applicable 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 the applicable 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).

“**[REDACTED]**”

“**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).

"Due Diligence Period" means the period from the date of execution of this Agreement and terminating at 5:00 p.m. Toronto time on the day that is three (3) Business Days after the date of execution of this Agreement.

"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, 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 (1st Supp.).

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

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

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

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

"Law" has the meaning set out in the definition of "Applicable Law".

"Legal Owner" has the meaning set out in the preamble hereto.

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

"Liability" means, with respect to any Person, any liability, cost, expense, debt, dues, guarantee, surety, indemnity obligation, or other obligation of such Person of any kind, character or description, whether legal, beneficial or equitable, known or unknown, present or future, direct, indirect, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to

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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 (i) in respect of all or substantially all of the Purchased Assets, or (ii) which exceeds an aggregate total of \$ [REDACTED]

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

"Outside Date" means June 2, 2022 or 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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;

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- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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, any Taxes payable respect of any Real Property Assets, in respect of the period from and after the Closing Date which shall be calculated on a pro-rata basis on the basis of a 365 day year.

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

"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 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.

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

"Sale Process" has the meaning set out in Recital B.

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

"Successful Bid" has the meaning set out in the Sale Process.

"Target Closing Date" means the fifth Business Day following the issuance of the Approval and Vesting Order.

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

"Taxes" means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, *ad valorem* taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, government pension plan premiums and contributions, social security premiums, workers' compensation premiums, employment/unemployment insurance or compensation premiums and contributions, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority and any instalments in respect thereof of another taxpayer or entity, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties, and whether disputed or not, and **"Tax"** means any one of such Taxes.

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

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

"Vendors" has the meaning set out in the preamble hereto.

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

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

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

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

1.6 Additional Rules of Interpretation.

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

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

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

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

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

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

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

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

SCHEDULES

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

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

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

2.2 Assumption of Assumed Liabilities. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the 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, [REDACTED] and (ii) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay all such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty, [REDACTED]

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

(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, at the Purchaser's expense. 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 or Licence, shall not be a condition to Closing, (iv) the Purchase Price shall not be subject to adjustment, and (v) the Closing shall not be delayed.

(5) *Obtaining Replacement Permits and Licenses.* To the extent that a Permit and Licence is not assignable or otherwise transferrable by the Vendors to 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; and
- (3) the agreed value of the Assumed Liabilities, which is estimated to be \$ [REDACTED].

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 2.3(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 held by each Vendor 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, (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**").

3.6 Taxes and GST/HST Gross Up. In the event that any payment made by any Vendor or the 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.

3.7 Tax Elections.

(1) *Section 22 Tax Election.* If available and requested by any Vendor, the Purchaser and such Vendor shall elect jointly in the prescribed form under section 22 of the ITA and the corresponding provisions of any other applicable Tax statute as to the sale of the Receivables and designate in such election an amount equal to the portion of the Purchase Price allocated to the Receivables pursuant to Section 3.3. This election, or these elections, shall be made within the time prescribed for such elections.

(2) *Subsection 20(24) Tax Election.* The Purchaser and each of the Vendors shall, if applicable, jointly execute and file an election under subsection 20(24) of the ITA in the manner required by subsection 20(25) of the ITA and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the ITA and under any other applicable provincial or territorial statute, as to such amount paid by the applicable Vendors to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendors acknowledge that a portion of the Purchased Assets transferred by the Vendors pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the ITA and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the applicable Vendors as a payment for the assumption of such future obligations by the Purchaser.

(3) *Section 56.4 Tax Election.* At the request of the Vendors and to the extent permitted by the ITA, the Parties shall make, and each of the Vendors shall file, any election or amended election in prescribed form (or such other form as the Purchaser or the Vendors may reasonably request) and within the prescribed time limits pursuant to subsection 56.4(7) of the ITA proposed by the Minister of Finance (Canada) as it reads on the date of this Agreement or any amended or successor provision thereto, and any analogous provision of provincial or territorial Tax legislation.

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, or upon Closing shall be, registered for GST/HST purposes under Part IX of the ETA, and shall provide its registration number to the Vendors at or prior to Closing.

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

(8) *Sufficient Funds.* The Purchaser has sufficient financial resources or 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 Vendors are corporations 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;

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(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

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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 bring a motion seeking the Court's issuance of the Approval and Vesting Order at least five (5) Business Days prior to the Closing 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 Interim Period. During the Interim Period, the Legal Owner shall:

(1) 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 Legal Owner 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;

(2) continue to manage the Real Property Assets in the ordinary course and generally consistent with the manner in which they were managed immediately prior to the execution of this Agreement;

(3) forthwith upon receipt, provide the Purchaser with notice of any notice or claim by any person which could or with the passage of time may, result in a material negative effect to the value of the Purchased Assets;

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(4) without the consent of the Purchaser, not enter into any contract relating to the Purchased Assets which may not be terminated on or prior to Closing in accordance with its terms; and

(5) upon the reasonable request of the Purchaser, provide the Purchaser, any Governmental Authority and/or any other Person, a signed confirmation, in form and substance satisfactory to the Parties, that the Purchaser and its Representatives are authorized to receive information relating to the Purchased Assets, provided that a copy of any such information is concurrently provided to the Legal Owner.

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 Purchaser's 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 Purchaser's 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.

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;

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- (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) 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;
- (8) to the extent readily available to the Receiver, contact information relating to all parties providing normal course services in respect of the Real Property Assets, including snow removal, landscape maintenance, HVAC, elevator, security and cleaning services; and
- (9) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the transactions provided for in this Agreement, or as are required to be delivered by the Vendors or Receiver's counsel under this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

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

- (1) the payment referred to in Section 3.2(2), which shall be made to the Receiver for and on behalf of the Vendors;
- (2) the payment of all Transfer Taxes (if any) required to be paid on Closing, which shall be made to the Receiver;
- (3) to the extent payable on Closing and provided that the total amount of Cure Costs payable in respect of all the Assigned Contracts [REDACTED] [REDACTED] evidence that Cure Costs (if any) in respect of each Assigned Contract have been paid in accordance with: (i) the Assignment Order where such Assigned Contract is assigned pursuant to an Assignment Order; and (ii) the consent of the applicable counterparty or as otherwise agreed upon by 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

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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;

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

ARTICLE 7 CONDITIONS OF CLOSING

7.1 Due Diligence Period. The Purchaser shall have until the end of the Due Diligence Period to conduct due diligence on all aspects of the transactions contemplated by this Agreement. If, prior to the end of the Due Diligence Period the Purchaser advises the Vendors that it does not wish to complete the transactions contemplated by this Agreement, this Agreement shall be terminated and of no further force or effect and the Deposit, together with any interest earned thereon, shall be returned to the Purchaser. If the Purchaser does not advise the Vendors before the expiration of the Due Diligence Period that it will be proceeding with the transactions contemplated by this Agreement, the Purchaser shall be deemed to have advised the Vendors and the Receiver that it will be proceeding with the Transaction.

7.2 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 7.2 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.

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(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.

7.3 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 7.3 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.

7.4 Receiver's Certificate. When the conditions to Closing set out in Section 7.2 and Section 7.3, 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, prior to the expiration of the Due Diligence Period, in accordance with Section 7.1.
- (4) by the Vendors on the one hand, or by the Purchaser, on the other hand, upon written notice to the other Party if (i) the total amount of Cure Costs payable in respect of all of the Assigned Contracts [REDACTED] and (ii) one or more of the Vendors have not determined, in their sole and absolute discretion, to pay the portion of the aggregate total amount of Cure Costs [REDACTED] [REDACTED]. For greater certainty, the Vendors shall be under no obligation to pay any Cure Costs to pay any Cure Costs (or portion thereof) in respect of any Assigned Contracts [REDACTED] [REDACTED].
- (5) 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;
- (6) 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
- (7) by the Purchaser, on the one hand, or by the Vendors, on the other hand, upon written notice to the other Party if the Closing has not occurred by the Outside Date, provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(6) shall not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in the Closing not occurring by the Outside Date.

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

(2) *Return of Deposit.* In the event that this Agreement is terminated (i) by the Purchaser prior to the expiration of the Due Diligence Period in accordance with Section 7.1, or (ii) pursuant to any Section of this Agreement other than (A) Section 8.1(5), or (B) Section 8.1(6) and the reason that Closing did not occur by the Outside Date was not the result of a breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, then in each such case the Deposit and any interest earned thereon shall be promptly returned to the Purchaser by the Receiver. The return of the Deposit 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 (*GST/HST Gross Up*), 3.7 (*Tax Elections*), 4.2(6) (*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*), 7.4 (*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 / gbourikas@kpmg.ca

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

Blake, Cassels & Graydon LLP

Attention: Aryo Shalviri / Chris Burr
 Email: aryo.shalviri@blakes.com / chris.burr@blakes.com

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

ACCUTRAC PROPERTY MANAGEMENT INC.

Attention: Ken Judd
 Email: ken.judd@ecapital.com

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

Attention: William Lang
 Email: blang@barristonlaw.com

(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). 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

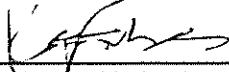
- 33 -

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. The parties hereto consent and agree to the use of electronic signature pursuant to the *Electronic Commerce Act, 2000*, S.O. 2000, c. 17, as amended from time to time with respect to this Agreement and any other documents relating to the transactions contemplated herein.

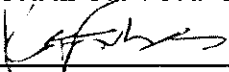
[SIGNATURE PAGE TO FOLLOW]

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

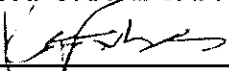
**100 COLBORNE HOLDINGS INC. BY KPMG INC.
IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER AND MANAGER AND NOT IN ITS
PERSONAL OR CORPORATE CAPACITY**

By: 
Name: Katherine Forbes
Title: President

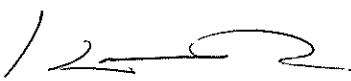
**GROSS PROPERTIES INC. BY KPMG INC. IN
ITS CAPACITY AS COURT-APPOINTED
RECEIVER AND MANAGER AND NOT IN ITS
PERSONAL OR CORPORATE CAPACITY**

By: 
Name: Katherine Forbes
Title: President

**2413667 ONTARIO INC. BY KPMG INC. IN ITS
CAPACITY AS COURT-APPOINTED RECEIVER
AND MANAGER AND NOT IN ITS PERSONAL
OR CORPORATE CAPACITY**

By: 
Name: Katherine Forbes
Title: President

ACCUTRAC PROPERTY MANAGEMENT INC.

By: 
Name: KEN JUDD.
Title: PRESIDENT.

SCHEDULE "A"**PURCHASED ASSETS**

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

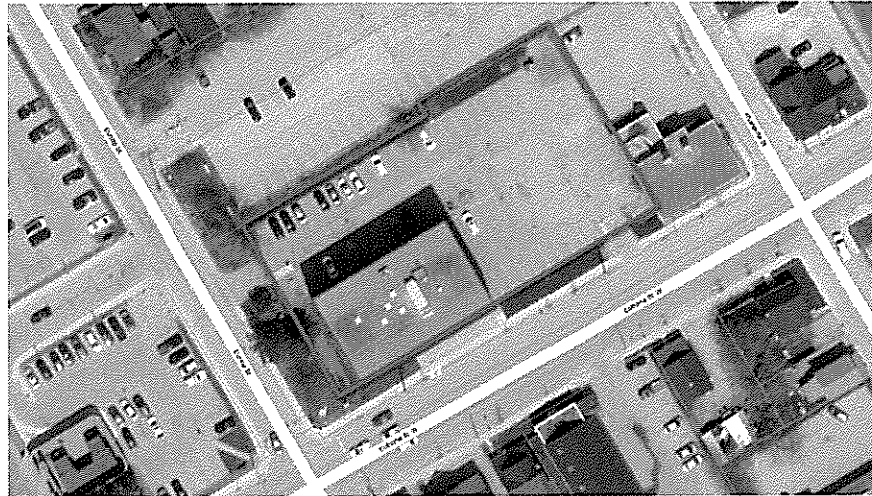
- i. The Assigned Contracts;
- ii. Any Personal Property or fixtures that are Related to the Business and located upon the Real Property Assets;
- iii. All Real Property Assets;
- iv. The Receivables of each of the Vendors which are derived from the Real Property Assets and are Related to the Business and become due from and after the Closing Time;
- v. The Permits and Licences;
- vi. The Books and Records that are Related to the Business;
- vii. All goodwill Related to the Business; and

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

SCHEDULE "B"

REAL PROPERTY ASSETS

100 Colborne Street West
PT LT 10-15, 17 BLK C PL 228 ORILLIA PT
3, 4 & 5, 51R10372; ORILLIA



77 Wyandotte Street
LT 16 BLK G PL 228 ORILLIA; PT LT 15 BLK
G PL 228 ORILLIA AS IN R01453448; ORILLIA



SCHEDULE "C"
ASSIGNED CONTRACTS

Critical Contracts: Nil.

Real Property Leases:

1. Lease dated August 12, 2021 related to Suite 101 between Lovell Drugs Limited, as tenant and 100 Colborne Holdings Inc. (by KPMG Inc. as receiver), as landlord, now on a month-to-month basis.
2. Lease dated February 24, 2014 related to Suite 203 between Dr. Marc Italiano, as tenant and GT Orillia Holdings Inc. (predecessor-in-interest to 100 Colborne Holdings Inc.), as landlord, as extended pursuant to an Extension of Lease dated November 14, 2019.
3. Lease dated August 12, 2013 related to Suite 303 between Dr. V Pouloupoulos Medicine Professional Corporation, as tenant and GT Orillia Holding Inc. (predecessor-in-interest to 100 Colborne Holdings Inc.) as landlord, and Dr. Vassilios Pouloupoulos, as indemnifier, as extended pursuant to an Extension of Lease dated October 17, 2019, as further extended pursuant to an Extension of Lease dated November 2, 2020, as further amended and further extended pursuant to a Lease Amending and Extension Agreement dated November 11, 2021.
4. Lease related to Suite 305 between Dr. Stephen Craig-Paul, as tenant and 100 Colborne Holdings Inc., as landlord.
5. Lease dated May 17, 2013 related to Suites 306 between Dr. David J. Alexander, as tenant and GT Orillia Holding Inc. (predecessor-in-interest to 100 Colborne Holdings Inc.), as landlord, as extended pursuant to an Extension of Lease dated November 4, 2020.
6. Lease dated December 17, 2021 related to Suite 400 between Karim Dharssi Medicine Professional Corporation, as tenant and 100 Colborne Holdings Inc. (by KPMG Inc. as receiver), as landlord.
7. Lease dated December 1, 2021 related to Suite 401 between Lam Medical Services Inc., as tenant and 100 Colborne Holdings Inc. (by KPMG Inc. as Receiver), as landlord, and Dr. Leo Lam, as indemnifier.

Personal Property Leases:

1. Equipment Leasing Agreement dated April 1, 2020 between Blue Chip Financial Solutions and 100 Colborne Holdings Inc.
2. Equipment Leasing Agreement between De Lage Landen Financial Services Canada Inc. and 100 Colborne Holdings Inc.

Other Contracts:

1. Elevator Maintenance Agreement dated March 21, 2016 between Elevator One Inc. and 100 Colborne Holdings Inc.
2. Management Parking Agreement dated January 25, 2019 between MedPark Solutions Inc. and 100 Colborne Holdings Inc.

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

ASSETS	Vendor	Value Allocation
100 Colborne Street, Orillia	100 Colborne Holdings Inc.	\$ [REDACTED]
77 Wyandotte Street, Orillia	100 Colborne Holdings Inc.	\$ [REDACTED]
Total:		\$ [REDACTED]

SCHEDULE "E"

GST/HST CERTIFICATE AND INDEMNITY

DATE: 4/18, 2022

TO: 100 Colborne Holdings Inc. by KPMG INC. in its capacity as Court appointed Receiver and Manager and not in its personal capacity or corporate capacity (the "Legal Owner") and Gross Properties Inc. and 2413667 Ontario Inc. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (collectively the "Beneficial Owners" and together with the Legal Owner, the "Vendors")

FROM: Accutrac Property Management Inc. (the "Purchaser")

RE: Asset Purchase Agreement dated as of April 14, 2022 (the "APA") between the Vendors and the Purchaser in respect of the Purchased Assets

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

1. The Purchaser hereby declares and certifies as follows:
 - (a) the Purchased Assets are being purchased by the Purchaser as principal for its own account and not as an agent, trustee or otherwise on behalf of or for another person;
 - (b) the Purchaser is registered under Subdivision d of Division V of Part IX of the ETA for the collection and remittance of GST/HST and its registration number is 827215427 ^{RTCCO}, and such registrations are 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 Vendor 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 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

- 2 -

result of any failure by the Purchaser to comply with the provisions of this certificate and indemnity agreement; 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 18 day of April, 2022.

**ACCUTRAC PROPERTY
MANAGEMENT INC.**

Per: 

Name: KEN JUDD.
Title: PRESIDENT

APPENDIX “D”

**180 VINE PURCHASER INC. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

- and -

**2413667 ONTARIO INC. BY KPMG INC. ITS CAPACITY AS COURT-APPOINTED
RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

- and -

SYMMBAN GROUP INC.

- and -

SYMMBAN VINE INC.

ASSET PURCHASE AGREEMENT

DATED AS OF APRIL 13, 2022

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of April 13, 2022 is made by and between:

180 VINE PURCHASER 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 -

2413667 ONTARIO INC. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

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

- and –

SYMMBAN GROUP INC.

(the “**Guarantor**”)

- and -

SYMMBAN VINE 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. The Legal Owner and Beneficial Owner hold all beneficial ownership interests in the Real Property Assets, whether directly or indirectly for themselves or for others.
- C. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on June 29, 2021 in the proceedings bearing Court File No. CV-21-00664273- (the “**Receivership Proceedings**”), KPMG Inc. was appointed as receiver and manager of, among other things, all of the assets and undertakings of the Vendors (in such capacity and not in its personal or corporate capacity, the “**Receiver**”).
- D. 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**”).
- E. 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.

- F. 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”. For greater certainty, to the extent any of the foregoing (other than Real Property Leases) are not listed on Schedule “C”, they shall not be included in or considered as Assigned Contracts hereunder.

“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 Environmental Claims and all Environmental Liabilities; and
- (d) 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.

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

“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(a).

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

“Claims” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Vendors or the Purchased Assets, and **“Claim”** means any one of them;

“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 the Parties intend to 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 the applicable 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 the applicable 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(2).

"Due Diligence Period" means the period from the date of execution of this Agreement and terminating at 5:00 p.m. Toronto time on the day that is forty-five (45) calendar days after the date of execution of this Agreement.

"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, 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”.

“Excluded Liabilities” means any Liabilities, obligations or commitments of the Vendors or of any other Person, which are not Assumed Liabilities, including the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Vendors arising with respect to any period prior to the Closing Date and any others Taxes which do not relate to the Purchased Assets;
- (b) any Liability, obligation or commitment of the Vendors which are incurred in connection with the Business under any Contract that is not an Assigned Contract;
- (c) any Liability, obligation or commitment by the Vendors to any employees;
- (d) any Liability, obligation or commitment by the Vendors to any contractor pursuant to any Contract that is not an Assigned Contract; and
- (e) any Liability, obligation or commitment arising from or related to any of the Excluded 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.

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

“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.

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

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

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

“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 (1st Supp.).

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

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

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

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

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

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

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

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

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

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

“Outside Date” means June 2, 2022 or 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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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, any Taxes payable respect of any Real Property Assets, in respect of the period from and after the Closing Date which shall be calculated on a pro-rata basis on the basis of a 365 day year.

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

“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 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.

“Second Deposit” has the meaning set forth in Section 3.2(2).

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

“Target Closing Date” means the fifth (5th) Business Day following the issuance of the Approval and Vesting Order.

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

“Taxes” means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, *ad valorem* taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, government pension plan premiums and contributions, social security premiums, workers’ compensation premiums, employment/unemployment insurance or compensation premiums and contributions, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority and any instalments in respect thereof of another taxpayer or entity, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties, and whether disputed or not, and “Tax” means any one of such Taxes.

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

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

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

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

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

cheque or by any other method that provides immediately available funds as agreed to by the Receiver.

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

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

1.6 Additional Rules of Interpretation.

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

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

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

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

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

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

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

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

SCHEDULES

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

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

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

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. For greater certainty, the Purchaser shall not assume any Excluded Liabilities.

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. For greater certainty, to the extent that any Contracts (other than Real Property Leases) are not listed in Schedule "C" hereto, the Purchaser shall not be obligated to assume such Contracts.

(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. For greater certainty, to the extent that any Contracts (other than Real Property Leases) are not listed in Schedule "C" hereto, the Purchaser shall not be obligated to pay any Cure Costs in respect of such Contracts.

(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:

- (a) \$ [REDACTED] (the "Cash Purchase Price");
- (b) the Cure Costs to be determined during the Due Diligence Period; and

(c) the agreed value of the Assumed Liabilities, which is estimated to be \$■

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

(1) a deposit in the amount of \$■ (the “**First Deposit**”) which shall be paid by the Purchaser to the Receiver within 48 hours of 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) a deposit in the amount of \$■ (the “**Second Deposit**”) which shall be paid by the Purchaser to the Receiver within 48 hours of the expiry of the Due Diligence Period or such earlier date upon which the Purchaser advises the Vendors and the Receiver that it will be proceeding with the transactions contemplated by this Agreement, which Second Deposit shall be applied against the Cash Purchase Price on Closing. The Purchaser agrees that the Second Deposit shall be deposited into a non-interest-bearing account of the Receiver (the First Deposit and the Second Deposit shall be collectively referred to as the “**Deposit**”);

(1) 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;

(2) 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(c); and

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

3.4 Closing Adjustments. Any (i) rents, prepaid rents and interest thereon (if any), key deposits (if any) and security deposits and interest thereon (if any), (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**").

3.6 Taxes and GST/HST Gross Up. In the event that any payment made by any Vendor or the 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.

3.7 Tax Elections.

(1) *Section 22 Tax Election.* If available and requested by any Vendor or the Purchaser, the Purchaser and such Vendor shall elect jointly in the prescribed form under section 22 of the ITA and the corresponding provisions of any other applicable Tax statute as to the sale of the Receivables and designate in such election an amount equal to the portion of the Purchase Price allocated to the Receivables pursuant to Section 3.3. This election, or these elections, shall be made within the time prescribed for such elections.

(2) *Subsection 20(24) Tax Election.* The Purchaser and each of the Vendors shall, if applicable, jointly execute and file an election under subsection 20(24) of the ITA in the manner required by subsection 20(25) of the ITA and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the ITA and under any other applicable provincial or territorial statute, as to such amount paid by the applicable Vendors to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendors acknowledge that a portion of the Purchased Assets transferred by the Vendors pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the ITA and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the applicable Vendors as a payment for the assumption of such future obligations by the Purchaser.

(3) *Section 56.4 Tax Election.* At the request of the Vendors or the Purchaser and to the extent permitted by the ITA, the Parties shall make, and each of the Vendors shall file, any election or amended election in prescribed form (or such other form as the Purchaser or the Vendors may reasonably request) and within the prescribed time limits pursuant to subsection 56.4(7) of the ITA proposed by the Minister of Finance (Canada) as it reads on the date of this Agreement or any amended or successor provision thereto, and any analogous provision of provincial or territorial Tax legislation.

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, or upon Closing shall be, registered for GST/HST purposes under Part IX of the *ETA*, and shall provide its registration number to the Vendors at or prior to Closing.

(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 Vendors are corporations 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, as soon as reasonably practicable following (i) execution and delivery of this Agreement, and (ii) the expiry of the Due Diligence Period or such earlier date upon which the Purchaser advises the Vendors and the Receiver that it will be proceeding with the transactions contemplated by this Agreement. 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:

- (a) any Transfer Taxes (including penalties and interest) which may be assessed against any of the Vendors;
- (b) the Purchaser’s access in accordance with Section 5.1;
- (c) the collection, use or disclosure of Transaction Personal Information by the Purchaser and its Representatives; and
- (d) 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 relating to the period prior to Closing and 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 Purchaser's 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 Purchaser's 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 Guarantee.

(1) *Guarantee.* The Guarantor hereby absolutely, unconditionally and irrevocably guarantees to each of the Vendors the due, complete and punctual obligation of the Purchaser to close the transactions contemplated by this Agreement upon the satisfaction of the conditions to Closing set out in Section 7.2 and 7.3 (the "**Guaranteed Obligations**"). The guarantee hereinbefore referred to is called the "**Guarantee**";

(2) *Guarantee Unaffected by Judgment or Bankruptcy.* None of the Guaranteed Obligations shall be limited, lessened or released, nor shall the Guarantee be discharged, by the recovery of any judgment against the Purchaser;

(3) *No Requirement to Exhaust Recourse.* The Vendors shall not be bound to seek or exhaust recourse against the Purchaser or to enforce or value any security before being entitled to payment under the Guarantee;

(4) *Survival of Guarantee.* The Guaranteed Obligations shall continue unaffected by any change in the name of the Purchaser or by any change whatsoever in the objects, capital structure or constitution of the Purchaser, or by the Purchaser being amalgamated, merged or otherwise combined with another corporation or by any defect in the authorization, execution or delivery by the Purchaser of this Agreement or any other agreement or instrument executed and delivered by the Purchaser pursuant to this Agreement which may result in unenforceability of any Liabilities in respect of which the Guarantee is provided pursuant to this Section 5.13 against the Purchaser;

(5) *Dealing with Guaranteed Obligations.* Subject to the other terms and conditions of this Agreement, the Vendors may:

- (i) grant or allow any waiver, consent, extension, indulgence or other act or omission in respect of this Agreement, any other agreement or instrument executed and delivered pursuant to this Agreement;
- (ii) do, or omit to do, anything to enforce the payment or performance of this Agreement or any other agreement or instrument executed and delivered pursuant to this Agreement;
- (iii) vary, compromise, exchange, renew, discharge, release, subordinate, postpone or abandon any Guaranteed Obligations of the Purchaser

hereunder, or under any agreement or instrument executed and delivered pursuant to this Agreement; and

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

(6) *Guarantee in Addition.* The rights and remedies of the Vendors hereunder are in addition to and not in substitution for any other rights or remedies which the Vendors have at any time respecting the Guaranteed Obligations; and

(7) *Consideration.* The Guarantor acknowledges that each of the Vendors has required, as a condition for its entry into this Agreement, that such Guarantor executes this Agreement and be bound by the terms of this Section 5.13.

(8) *Termination.* The Parties agree that upon Closing, the Guarantee (including all obligations, covenants and undertakings of the Guarantor under this Section 5.13) shall terminate.

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:

- (a) the Purchased Assets, with delivery to occur *in situ* wherever such Purchased Assets are located at the Closing Time;
- (b) keys and access cards required to gain access to the Real Property Assets;
- (c) a copy of the Approval and Vesting Order, which shall be a Final Order;
- (d) 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;
- (e) the Assignment and Assumption Agreement, duly executed by the Vendors;
- (f) 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;

- (g) 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; and
- (h) 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:

- (a) the payment referred to in Section 3.2(2)(1), which shall be made to the Receiver for and on behalf of the Vendors;
- (b) the payment of all Transfer Taxes (if any) required to be paid on Closing, which shall be made to the Receiver;
- (c) 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;
- (d) the Assignment and Assumption Agreement, duly executed by the Purchaser;
- (e) 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;
- (f) the GST/HST Certificate and Indemnity; and
- (g) 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 Due Diligence Period. The Purchaser shall have until the end of the Due Diligence Period to conduct, investigate and inspect (at the Purchaser's sole cost and expense) the legal, physical, economic, and environmental condition of the Real Property Assets. If, prior to the end

of the Due Diligence Period the Purchaser advises the Vendors that it does not wish to complete the transactions contemplated by this Agreement, this Agreement shall be terminated and of no further force or effect and the Deposit, together with any interest earned thereon, shall be returned to the Purchaser. If, prior to the expiry of the Due Diligence Period, the Purchaser advises the Vendors that it will be proceeding with the transactions contemplated by this Agreement, the Due Diligence Period shall be deemed to expire on such date. If the Purchaser does not advise the Vendors before the expiration of the Due Diligence Period that it will not be proceeding with the transactions contemplated by this Agreement, the Purchaser shall be deemed to have advised the Vendors and the Receiver that it will be proceeding with the transactions contemplated by this Agreement. In order to facilitate the completion of the Purchaser's diligence, the Legal Owner will, at the reasonable request of the Purchaser, provide the Purchaser with appropriate consent letters and authorizations (in form and substance satisfactory to the Vendors) to allow the Purchaser to communicate with Governmental Authorities and tenants of the Real Property Assets regarding the Purchased Assets, provided that in each such case, the Receiver shall be copied on any such correspondence with such entities and permitted to attend any call or discussion with any such entities.

7.2 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 7.2 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.

7.3 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 7.3 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.

7.4 Receiver's Certificate. When the conditions to Closing set out in Section 7.2 and Section 7.3, 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:

- (a) by the mutual written agreement of the Vendors and the Purchaser;

- (b) by written notice from the Purchaser to the Vendors in accordance with Section 5.4;
- (c) by written notice from the Purchaser to the Vendors, prior to the expiration of the Due Diligence Period, in accordance with Section 7.1.
- (d) 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;
- (e) 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
- (f) 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(f) 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(e), or (ii) Section 8.1(f) 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 (i) by the Purchaser prior to the expiration of the Due Diligence Period in accordance with Section 7.1, or (ii) pursuant to any Section of this Agreement other than (A) Section 8.1(e), or (B) Section 8.1(f) 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 (*GST/HST Gross Up*), 3.7 (*Tax Elections*), 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*), 7.4 (*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 / gbourikas@kpmg.ca

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

Blake, Cassels & Graydon LLP

Attention: Aryo Shalviri / Chris Burr
 Email: aryo.shalviri@blakes.com / chris.burr@blakes.com

(3) if to the Purchaser, to:

E- 1225 Kennedy Road, Toronto, ON M1P 4Y1

Attention: Shakir Mohammed
 Email: shakir@symmban.com

Attention: Sun Quach
 Email: squach@symmban.com

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

Gardiner Roberts LLP
 Bay Adelaide Centre – East Tower
 22 Adelaide Street West, Suite 3600
 Toronto, Ontario M5H 4E3

Attention: Zev Zlotnick
 Email: zzlotnick@grllp.com

(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). 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.

180 VINE PURCHASER 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: President

2413667 ONTARIO 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: President

SYMMBAN VINE INC.

By: Shaw
Name: Mohammed Shakir
Title: President

SYMMBAN GROUP INC.

By: Shaw
Name: Mohammed Shakir
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 Permits and Licences;
- vi. The Books and Records that are Related to the Business;
- vii. All goodwill Related to the Business;
- viii. Any "as built" plans, specifications and appraisals, and any plans for mechanical, electrical and structural systems of the Real Property Assets; and

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

SCHEDULE "B"**REAL PROPERTY ASSETS**

180 Vine Street S | St. Catherines, ON L2R 7P3 (hereinafter "180 Vine") with its Legal Description being: PIN 46272-0086 (LT): PT LT 7, 9-10 BLK D CY PL 46 GRANTHAM; PT BLK A CY PL 79 GRANTHAM; PT BLK A, B CY PL 80 GRANTHAM; PT UNNAMED ST CY PL 46 GRANTHAM, CLOSED BY RO407053, PT 1 30R2209 EXCEPT PT 1 30R3734, PT 1 30R6493, & PT 1 30R7456 CITY OF ST. CATHARINES

SCHEDULE “C”
ASSIGNED CONTRACTS

Critical Contracts: Nil.

Real Property Leases:

1. Lease dated January 1, 2022 related to Suite 103 between G. Beiko Medicine Professional Corporation, as tenant and 180 Vine Purchaser Inc. (by KPMG Inc. as receiver), as landlord.
2. Lease dated January 1, 2022 related to Suite 104 between 1000064027 Ontario Corp, as tenant and 180 Vine Purchaser Inc. (by KPMG Inc. as receiver), as landlord, and Fausto Carnicelli, as indemnifier.
3. Lease dated March 5, 2003 related to Suite 105 between S.M. Pharmacy Consulting Inc., as tenant and 810782 Ontario Inc. (predecessor-in-interest to 180 Vine Inc.), as landlord, and Sameh Awad, as covenantor, as amended and extended pursuant to Extension and Amending Agreement dated February 1, 2013 and as further amended and extended pursuant to an Extending and Amending Agreement June 15, 2018.
4. Lease dated June 1, 2021 related to Suite 105B between One Vascular Corporation, as tenant and 180 Vine Purchaser Inc., as landlord, and One Vascular Corporation, as indemnifier, now on a month-to-month basis.
5. Lease dated October 31, 2018 related to Suites 106, 107, and 108 between KMH Cardiology and Diagnostic Centres, as tenant and 180 Vine Inc., as landlord.
6. Lease dated January 1, 2022 related to Suite 201 between 1000064009 Ontario Inc., as tenant and 180 Vine Purchaser Inc. (by KPMG Inc. as receiver), as landlord, and Fausto Carnicelli, as indemnifier.
7. Lease dated May 11, 2021 related to Suite 202 between Dianne M. Heritz Medicine Professional Corporation and Dr. Britton Tisdale, as tenants and 180 Vine Purchaser Inc., as landlord.
8. Lease dated December 9, 2021 related to Suite 207 between Shirley Lo Medicine Professional Corporation, as tenant and 180 Vine Purchaser Inc. (by KPMG Inc. as receiver), as landlord.
9. Lease commencing on January 1, 2022 related to Suite 301 between Michael Burger Medicine Professional Corporation, as tenant and 180 Vine Purchaser Inc. (by KPMG Inc. as receiver).

Personal Property Leases:

1. Equipment Leasing Agreement between De Lage Landen Financial Services Canada Inc. and 180 Vine Purchaser Inc.
2. Equipment Leasing Agreement dated April 1, 2020 between Blue Chip Financial Solutions and 180 Vine Purchaser Inc.

Other Contacts:

1. Maintenance Parking Agreement dated June 25, 2018 between MedPark Solutions Inc. and 180 Vine St. Purchaser Inc.
2. Janitorial Service Agreement dated July 21, 2020 between Universal Cleaners Inc. and 180 Vine Purchaser Inc.
3. HVAC Maintenance Agreement dated September 1, 2021 between Forecast Mechanical Air Systems Inc. and 180 Vine Purchaser Inc., by the Receiver.
4. Elevator Maintenance Agreement between Brock Elevator Limited and Prime Real Estate Group Inc.
5. Landscaping Agreement between All Care Landscape and 180 Vine Purchaser Inc., by the Receiver.

SCHEDULE "D"
ALLOCATION OF PURCHASE PRICE

ASSETS	
180 Vine St S	\$ [REDACTED]
Total:	\$ [REDACTED]

SCHEDULE “E”

GST/HST CERTIFICATE AND INDEMNITY

DATE: _____, 2022

TO: **180 Vine Purchaser Inc. by KPMG Inc. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (the “Legal Owner”) and 2413667 Ontario Inc. by KPMG Inc. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (the “Beneficial Owner”) and together with the Legal Owner, the “Vendors”)**

FROM: **Symmban Vine Inc. (the “Purchaser”)**

RE: **Asset Purchase Agreement dated as of April 13, 2022 (the “APA”) between the Vendors and the Purchaser in respect of the Purchased Assets**

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

1. The Purchaser hereby declares and certifies as follows:
 - (a) the Purchased Assets are being purchased by the Purchaser as principal for its own account and not as an agent, trustee or otherwise on behalf of or for another person;
 - (b) the Purchaser is registered under Subdivision d of Division V of Part IX of the ETA for the collection and remittance of GST/HST and its registration number is [●], and such registrations are 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 Vendor 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 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 agreement; and

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

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

DATED this ____ day of _____, 2022.

SYMMBAN VINE INC.

Per: _____
Name:
Title:

APPENDIX “E”

240 OLD PENETANGUIH HOLDINGS INC. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

- and -

GROSS PROPERTIES INC. AND 2413667 ONTARIO INC. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

- and -

2848414 ONTARIO INC.

- and -

MIDLAND TOWN CENTRE INC.

ASSET PURCHASE AGREEMENT

DATED AS OF APRIL 19, 2022

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of April 19, 2022 is made by and between:

240 OLD PENETANGUISH 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 –

GROSS PROPERTIES INC. and 2413667 ONTARIO INC. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal or corporate capacity

(collectively, the “**Beneficial Owners**” and together with the Legal Owner, the “**Vendors**”)

- and -

2848414 ONTARIO INC. (the “Guarantor”)

- and -

MIDLAND TOWN CENTRE 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. The Beneficial Owners hold all beneficial ownership interests in the Real Property Assets, whether directly or indirectly for themselves or for others.
- C. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on June 29, 2021 in the proceedings bearing Court File No. **Court File No. CV-21-00664273-00CL** (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) the Beneficial Owners, but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owner’s assets and undertakings, including the Real Property Assets (in such capacity and not in its personal or corporate capacity, the “**Receiver**”).
- D. 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**”).
- E. 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.

- F. 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 Environmental Claims and all Environmental Liabilities; and
- (d) without limiting foregoing clause (a), all Liabilities of the Vendor to any of the Vendors’ tenants of the Real Property Assets in respect of any tenant inducements or other incentives given by any of the Vendors to such tenants in the ordinary course of business.

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

“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 the Parties intend to 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 the applicable 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 the applicable 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, 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.

“Guarantee” has the meaning set forth in Section 5.11(1).

“Guaranteed Obligations” has the meaning set forth in Section 5.11(1).

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

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

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

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

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

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

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

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

“Legal 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.

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

“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.

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

“Outside Date” means June 2, 2022 or 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, including, without limitation, all applicable elevator permits.

“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;
- (b) construction, mechanics’, carriers’, workers’, repairers’, storers’ or other similar Encumbrances (inchoate or otherwise), but only if and to the extent that individually or in the aggregate: (i) they are not in respect of indebtedness [REDACTED]; (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 or restricting 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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect or restrict 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;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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, any Taxes payable respect of any Real Property Assets, in respect of the period from and after the Closing Date which shall be calculated on a pro-rata basis on the basis of a 365 day year.

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

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

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

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

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

“Real Property Leases” means all of the real property leases in respect of the Real Property Assets, including those listed and specified as “Real Property Leases” on Schedule “C”. For greater certainty, “Real Property Leases” do not include any leases which have, as at the Closing Date, expired or been terminated in accordance with their terms and the tenants thereunder have vacated the Real Property Assets.

“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 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 the earlier of (i) the first Business Day after sixty (60) calendar days following the due execution of this Agreement, and (ii) the sixth (6th) Business Day following the issuance of the Approval and Vesting Order and receipt of a copy of same by the Purchaser.

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

“Taxes” means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, *ad valorem* taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, government pension plan premiums and contributions, social security premiums, workers’ compensation premiums, employment/unemployment insurance or compensation premiums and contributions, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority and any instalments in respect thereof of another taxpayer or entity, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties, and whether disputed or not, and **“Tax”** means any one of such Taxes.

“Transaction Personal Information” means any Personal Information (i) in the possession, custody or control of any member of the Sale Process Team at the Closing Time, including Personal Information about tenants, former employees, suppliers, customers, directors, officers, beneficial owners or shareholders that is disclosed to the Purchaser or any Representative of the Purchaser prior to the Closing Time by any

member of the Sale Process Team or their Representatives, or (ii) collected by the Purchaser or any Representative of the Purchaser prior to the Closing Time from any member of Sale Process Team or their Representatives, in either case in connection with the transactions contemplated by this Agreement.

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

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

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

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

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

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

1.6 Additional Rules of Interpretation.

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

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

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

(4) *Words of Inclusion.* Wherever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”

and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

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

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

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

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

SCHEDULES

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

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

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

2.2 Assumption of Assumed Liabilities. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the 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, [REDACTED] and (ii) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay all such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty, [REDACTED]

(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 pay any third party costs and/or any costs payable to Governmental Authorities that are incurred in connection with obtaining the assignment or transfer of any Permit and Licence to the Purchaser or obtaining any Replacement Permits and Licence. Notwithstanding anything contained in this Agreement to the contrary, if the consent 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) neither Party shall be considered to be in breach of this Agreement, (ii) failure to assign or otherwise transfer such Permit and Licence or obtain any Replacement Permit and License shall not be considered to be a condition to Closing, (iii) the Purchase Price shall not be subject to adjustment, and (iv) the Closing shall not be delayed.

(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) *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.

ARTICLE 3 PURCHASE PRICE & TAXES

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

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

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 3.1(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(2); 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 held by each Vendor 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, (ii) realty Taxes including local improvement rates, (iii) unmetered public or private utility charges, and (iv) unmetered cost of fuel 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. All security deposits paid by tenants of the Vendors located at the Real Property Assets are to be credited to the Purchaser on the statement of adjustments.

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**”).

3.6 Taxes and GST/HST Gross Up. In the event that any payment made by any Vendor or the 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. For greater certainty, no HST shall be payable by the Purchaser to the Vendors on Closing, provided that the Purchaser delivers a duly executed GST/HST Certificate and Indemnity in accordance with Section 3.5.

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) *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.

(7) *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 Vendors are corporations 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 bring a motion seeking the Court's issuance of the Approval and Vesting Order by no later than May 18, 2022. 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 5.2;
- (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 Regulatory Approvals. The Purchaser, with the assistance of the Vendors shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions, as applicable, required under any Law applicable to such Party or any of its Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement. The Vendors shall cooperate reasonably with the Purchaser and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders, approvals and clearance certificates. The Parties shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

5.9 Cooperation and Consultation with Governmental Authorities. All meetings, submissions, filings, and proposals made by or on behalf of either Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the consummation of the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Vendors or the Purchaser with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other Party hereunder in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such filings, meetings, submissions and proposals. Each Party shall give notice to the other Party with respect to any meeting, submission, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact (except where such Governmental Authority expressly requests that such Party not attend or participate in such meeting, discussion, appearance or contact). Notwithstanding any requirement under this Section 5.9, a Party shall not be required to provide the other Party with any information

required to be provided under this Section 5.9 where the information is confidential and competitively sensitive, in which case the supplying Party shall provide a redacted version to the requesting Party and shall provide the information on a non-redacted basis to the receiving Party's external counsel, and the receiving Party agrees that it shall neither request nor receive such non-redacted information from its external counsel.

5.10 Excluded Assets. Following the Closing Date, the Purchaser shall cooperate with the Receiver in its 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.

5.11 Guarantee.

- (1) *Guarantee.* The Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the Vendors the due, complete and punctual observance and performance of each and every obligation of the Purchaser under this Agreement that exists up to Closing (the "**Guaranteed Obligations**"). The guarantee hereinbefore referred to is called the "**Guarantee**";
- (2) *Guarantee Unaffected by Judgment or Bankruptcy.* None of the Guaranteed Obligations shall be limited, lessened or released, nor shall the Guarantee be discharged, by the recovery of any judgment against the Purchaser;
- (3) *No Requirement to Exhaust Recourse.* The Vendors shall not be bound to seek or exhaust recourse against the Purchaser or to enforce or value any security before being entitled to payment under the Guarantee;
- (4) *Survival of Guarantee.* The Guaranteed Obligations shall continue unaffected by any change in the name of the Purchaser or by any change whatsoever in the objects, capital structure or constitution of the Purchaser, or by the Purchaser being amalgamated, merged or otherwise combined with another corporation or by any defect in the authorization, execution or delivery by the Purchaser of this Agreement or any other agreement or instrument executed and delivered by the Purchaser pursuant to this Agreement which may result in unenforceability of any of the Guaranteed Obligations;
- (5) *Dealing with Guaranteed Obligations.* Subject to the other terms and conditions of this Agreement, the Vendors may:
 - (i) grant or allow any waiver, consent, extension, indulgence or other act or omission in respect of this Agreement, any other agreement or instrument executed and delivered pursuant to this Agreement;
 - (ii) do, or omit to do, anything to enforce the payment or performance of this Agreement or any other agreement or instrument executed and delivered pursuant to this Agreement;
 - (iii) vary, compromise, exchange, renew, discharge, release, subordinate, postpone or abandon any Guaranteed Obligations of the Purchaser

hereunder, or under any agreement or instrument executed and delivered pursuant to this Agreement; and

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

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

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) transfers of title to the Real Property Assets in registrable form, which transfers shall be prepared by the Vendors' solicitor;
- (8) an executed 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 future rents to the Purchaser;
- (9) a statement of adjustment reflecting the Closing Adjustments set out in Section 3.4, in form and substance satisfactory to the Parties; 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 by the Purchaser on Closing, which shall be made to (i) the Receiver, or (ii) directly to the applicable Governmental Authorities together with evidence of payment of such Transfer Taxes;
- (3) to the extent payable on Closing and provided that the total amount of Cure Costs payable in respect of all of the Assigned Contracts [REDACTED] [REDACTED] evidence that Cure Costs (if any) in respect of each Assigned Contract have been paid in accordance with: (i) the Assignment Order where such Assigned Contract is assigned pursuant to an Assignment Order; and (ii) the consent of the applicable counterparty or as otherwise agreed upon by 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;
- (6) the GST/HST Certificate and Indemnity; and

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

ARTICLE 7 CONDITIONS OF CLOSING

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

(1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court 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 9.4;
- (3) by the Vendors on the one hand, or by the Purchaser, on the other hand, upon written notice to the other Party [REDACTED] and (ii) one or more of the Vendors have not determined, in their sole and absolute discretion, to pay the portion of the aggregate total amount of Cure Costs [REDACTED]

[REDACTED] For greater certainty, the Vendors shall be under no obligation to pay any Cure Costs to pay any Cure Costs (or portion thereof) in respect of any Assigned Contracts [REDACTED]

- (4) by written notice from the Purchaser to the Vendors if there has been a material breach by the Vendors of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchaser, and such breach is not curable and has rendered the satisfaction of any condition in Section 7.2 impossible by the Outside Date, provided that at the time of providing such notice of termination, the Purchaser is not in breach of any of its obligations under this Agreement;
- (5) by written notice from the Vendors to the Purchaser if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendors and such breach is not curable and has rendered the satisfaction of any condition in Section 7.2 impossible by the Outside Date, provided that at the time of providing such notice of termination, the Vendors are not in breach of any of their obligations under this Agreement; and
- (6) by the Purchaser, on the one hand, or by the Vendors, on the other hand, upon written notice to the other Party if the Closing has not occurred by the Outside Date, provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(6) shall not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in the Closing not occurring by the Outside Date.

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

(2) *Return of Deposit.* In the event that this Agreement is terminated pursuant to any Section of this Agreement other than Section 8.1(5) or Section 8.1(6), and the reason that Closing did not occur by the Outside Date was the result of a breach by the Vendors 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*), 3.3 (*Allocation of Purchase Price*), 3.4 (*Closing Adjustments*), 3.5 (*Taxes*), 3.6 (*GST/HST Gross Up*), 4.2(5) (*Commissions*), 4.3 (*As is, Where is*), 5.3 (*Transaction Personal Information*); 5.5 (*Indemnity*), 5.6 (*Environmental Liabilities*), 5.7 (*Books and Record*), 5.10 (*Excluded Assets*), 7.3 (*Receiver's Certificate*), 8.3 (*Treatment of Deposit*), 9.1 (*Survival*), 9.2 (*Expenses*), 9.3 (*Public Announcements*), 9.4 (*Notices*), 9.5 (*Time of Essence*), 9.6 (*Further Assurances*), 9.7 (*Post-Closing Wind-Up of Receivership Proceedings*), 9.8 (*Entire Agreement*), 9.9 (*Amendment*), 9.10 (*Waiver*), 9.11 (*Severability*), 9.12 (*Remedies Cumulative*), 9.13 (*Governing Law*), 9.14 (*Dispute Resolution*), 9.15 (*Attornment*), 9.16 (*Successors and Assigns*), 9.17 (*Assignment*), 9.18 (*Receiver's Capacity*) and 9.19 (*Third Party Beneficiaries*).

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

9.3 Public Announcements. The Receiver and Vendors shall be entitled to disclose this Agreement (on an unredacted basis) and all information provided by the Purchaser in connection herewith to the Court and any mortgagee of the Real Property Assets that is not participating in the Sale Process, and a copy of this Agreement may be posted on the Receiver's website maintained in connection with the Receivership Proceedings. Notwithstanding any other provision of this Agreement, unless such information is otherwise publicly disclosed or, upon the advice of counsel, required by Applicable Law or by any Governmental Authority to be disclosed (including in any Tax Returns), the Purchaser shall not disclose the quantum of 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 / gbourikas@kpmg.ca

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

Blake, Cassels & Graydon LLP

Attention: Aryo Shalviri / Chris Burr
Email: aryo.shalviri@blakes.com / chris.burr@blakes.com

(3) if to the Purchaser, to:

Midland Town Centre Inc.

Attention: Robert Colagiacomo
Email: robert@tripar.ca

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

Soppelsa Miceli Professional Corporation

Attention: Frank A. Soppelsa
Email: fsoppelsa@westonlaw.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). 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.

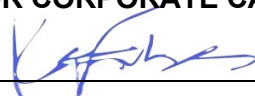
[SIGNATURE PAGE TO FOLLOW]

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

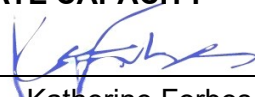
240 OLD PENETANGUIH HOLDINGS INC. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

By: 
Name: Katherine Forbes
Title: President

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

By: 
Name: Katherine Forbes
Title: President

2413667 ONTARIO INC. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

By: 
Name: Katherine Forbes
Title: President

2848414 ONTARIO INC.

By: _____
Name: Robert Colagiacomo
Title: President

MIDLAND TOWN CENTRE INC.

By: _____
Name: Robert Colagiacomo
Title: Director

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

240 OLD PENETANGUIH 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:

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

By: _____
Name:
Title:

2413667 ONTARIO INC. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

By: _____
Name:
Title:

2848414 ONTARIO INC.

By:  _____
Name: Robert Colagiacomo
Title: President

MIDLAND TOWN CENTRE INC.

By: 
Name: Robert Colagiacomo
Title: Director

SCHEDULE "A"**PURCHASED ASSETS**

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

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

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

SCHEDULE "B"**REAL PROPERTY ASSETS**

Part E ½ Lot 106 Conc 1 WPR Tiny; Part Lot 107 Conc 1 WPR Tiny Part 3 & 4 51R18477 and Part 4, 5, 6, 7 and 10 R1026 Except 51R3985, T/W & S/T R01045345; Midland – PIN 58454-0029(LT)

SCHEDULE "C"**ASSIGNED CONTRACTS****Critical Contracts:****Real Property Leases:**

1. Lease dated October 20, 2016 related to Suite 100B between Dynacare-Gamma Laboratory Partnership, as tenant and 240 Old Penetanguish Holdings Inc., as landlord.
2. Lease dated March 1, 2007 related to Suite 101 between Dr. Douglas Nugent Donald, as tenant and 622681 Ontario Limited (predecessor-in-interest to 240 Old Penetanguish Holdings Inc.), as landlord, as amended pursuant to a Lease Amending Agreement dated August 30, 2011 and as further extended pursuant to a Lease Agreement dated January 27, 2017, now on a month-to-month basis.
3. Lease dated June 1, 2013 related to Suite 102 between Midland Apothecaries Ltd., as tenant, GT Midland Holdings Inc. (predecessor-in-interest to 240 Old Penetanguish Holdings Inc.), as landlord, as amended pursuant to a Consent, Assumption and Assignment Agreement dated March 28, 2017.
4. Lease dated August 28, 2014 related to Suite 103A between Dr. Jeffrey M. Golisky Medicine Professional Corporation, as tenant, GT Midland Holdings Inc. (predecessor-in-interest to 40 Old Penetanguish Holdings Inc.), as landlord, and Dr. Jeffrey M. Golisky as indemnifier, as amended pursuant to a Lease Amending Agreement dated June 28, 2019.
5. Lease dated September 10, 2014 related to Suite 103B between Dr. Anne Gannon Medicine Professional Corporation, as tenant, GT Midland Holdings Inc. (predecessor-in-interest to 240 Old Penetanguish Holdings Inc.), as landlord, and Dr. Anne Gannon as indemnifier, as amended pursuant to a Lease Amending Agreement dated July 2, 2019 and as further amended pursuant to a Lease Amending Agreement dated March 8, 2022.
6. Lease dated March 8, 2022 related to Suite 103C between Dr. Anne Gannon Medicine Professional Corporation, as tenant, and 240 Old Penetanguish Holdings Inc. (by KPMG Inc. as Receiver).
7. Lease dated February 22, 2021 related to Suite 103D between Sean Robinson Medicine Professional Corporation & Jamileh Shaffaf Medicine Professional Corporation, as tenant, and 240 Old Penetanguish Holdings Inc., as landlord.
8. Lease dated March 1, 2007 related to Suites 200 and 202 between Dr. Richard Coutts, Dr. Robert Archer and Dr. Mark Grundmanis, as tenant, and 622681 Ontario Ltd. (predecessor-in-interest to) 240 Old Penetanguish Holdings Inc., as landlord, as amended pursuant to a Lease Amending Agreement dated August 30, 2011 and as further extended pursuant to a Lease Extension Agreement dated January 27, 2017 and assigned to Dr. Mark Grundmanis, Dr. Blake, Dr. McCann, Dr. Darwish and Dr. Cuttini, as tenant, as tenants, now on a month-to-month basis.

9. Lease dated August 11, 2021 related to Suite 203 between Erica Reynolds, as tenant, and 240 Old Penetanguish Holdings Inc. (by KPMG Inc. as Receiver), as landlord.
10. Lease dated November 16, 2020 related to Suite 205 between Eileen Sacks Medicine Professional Corporation, as tenant, and 240 Old Penetanguish Holdings Inc. (by KPMG Inc. as Receiver), as landlord, as amended and extended pursuant to a Lease Amending and Extension Agreement dated October 29, 2021.
11. Lease dated September 23, 2021 related to Suite 207 between Dr. Fakh and Cho Dentistry Professional Corporation, as tenant, and 240 Old Penetanguish Holdings Inc. (by KPMG Inc. as Receiver), as landlord.
12. Lease dated September 16, 2011 related to Suite 208 between Audia Hearing Aid Centre Inc., as tenant, and GT Midland Holdings Inc. (predecessor-in-interest to 240 Old Penetanguish Holdings Inc.), as landlord, as amended pursuant to a Lease Agreement dated January 13, 2017, now on a month-to-month basis.
13. Lease dated August 1, 1996 related to Suite 210 between Sylvanbrook Holdings Ltd., as tenant, Thornley Holdings Limited, as landlord, and Dr. E. Orfi as Covenantor, now on a month-to-month basis.
14. Lease dated March 1, 2007 related to Suite 212 between The Huronia Partnership, as tenant, and 622681 Ontario Limited (predecessor-in-interest to 240 Old Penetanguish Holdings Inc.), as landlord, as amended pursuant to a Lease Amending Agreement dated August 30, 2011, now on a month-to-month basis.

Personal Property Leases:

1. Equipment Leasing Agreement dated April 1, 2020 between Blue Chip Financial Solutions and 240 Old Penetanguish Holdings Inc.
2. Equipment Leasing Agreement between De Lage Landen Financial Services Canada Inc. and 240 Old Penetanguish Holdings Inc.

Other Contracts:

1. Maintenance quote dated as of August 25, 2020 related to HVAC services between Triple Tech Heating, Air Conditioning and Refrigeration Inc. and 240 Old Penetanguish Holdings Inc.
2. Landscaping Agreement dated as of April 1, 2022 between Huronia Property Maintenance and 240 Old Penetanguish Holdings Inc., by KPMG Inc. the receiver.
3. Elevator Maintenance Agreement related to elevator services dated April 13, 2016 between Elevator One Inc. and 240 Old Penetanguish Holdings Inc.

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

ASSETS	
Real Property Assets	\$ [REDACTED]
Total:	\$ [REDACTED]

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

DATE: _____, 2022

TO: **240 Old Penetanguish Holdings Inc. by KPMG Inc. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (the "Legal Owner") and Gross Properties Inc. and 2413667 Ontario Inc. by KPMG Inc. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (collectively the "Beneficial Owners" and together with the Legal Owner, the "Vendors")**

FROM: **Midland Town Centre Inc. (the "Purchaser")**

RE: **Asset Purchase Agreement dated as of April 19, 2022 (the "APA") between the Vendors and the Purchaser in respect of the Purchased Assets**

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

1. The Purchaser hereby declares and certifies as follows:
 - (a) the Purchased Assets are being purchased by the Purchaser as principal for its own account and not as an agent, trustee or otherwise on behalf of or for another person;
 - (b) the Purchaser is registered under Subdivision d of Division V of Part IX of the ETA for the collection and remittance of GST/HST and its registration number is [●], and such registrations are 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 Vendor 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 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 agreement; and

- (b) by the Purchaser to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser in connection with any GST/HST in connection with the conveyance or transfer of the Purchased Assets.
3. It is agreed that this certificate and indemnity agreement shall survive the closing of the above-noted transaction.

DATED this ____ day of _____, 2022.

MIDLAND TOWN CENTRE INC.

Per: _____
Name: Robert Colagiacomo
Title: Director

APPENDIX “F”

**2478658 ONTARIO LTD. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

- and -

**GROSS PROPERTIES INC. AND 2413667 ONTARIO INC. BY KPMG INC. IN ITS CAPACITY
AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

- and -

SEVEN HILLS DEVELOPMENTS INC.

ASSET PURCHASE AGREEMENT

DATED AS OF APRIL 14, 2022

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of April 14, 2022 is made by and between:

2478658 Ontario Ltd. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal or corporate capacity

(the “**Legal Owner**”)

- and –

Gross Properties Inc. And 2413667 Ontario Inc. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal or corporate capacity

(collectively, the “**Beneficial Owners**” and together with the Legal Owner, the “**Vendors**”)

- and -

Seven Hills Developments 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. The Beneficial Owners hold all beneficial ownership interests in the Real Property Assets, whether directly or indirectly for themselves or for others.
- C. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on June 29, 2021 in the proceedings bearing Court File No. CV-21-0064273-00CL (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) the Beneficial Owners, but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owner’s assets and undertakings, including the Real Property Assets (in such capacity and not in its personal or corporate capacity, the “**Receiver**”).
- D. 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**”).
- E. 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.
- F. 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, (i) approving the transactions contemplated by this Agreement, (ii) vesting in the Purchaser (a) title to the Real Property Assets in fee simple, and (b) all of the Vendors’ right, title and interest in and to the Purchased Assets, in each case 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 (but for greater certainty, excluding those Liabilities set out in foregoing clause (a)) that arise on or after the Closing Date, including any Post-Closing Real Property Taxes;
- (c) all Environmental Claims and all Environmental Liabilities, in each case relating to the Purchased Assets or Related to the Business; and
- (d) without limiting foregoing clause (a), all Liabilities of the Vendors to any of the Vendors’ tenants of the Real Property Assets in respect of any tenant inducements or other incentives given by any of the Vendors to such tenants in the ordinary course of business.

“Beneficial Owners” has the meaning set out in the preamble hereto.

“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 surveys (to the extent available), 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 the applicable 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 the applicable 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).

“Due Diligence Period” means the period from the date of execution of this Agreement and terminating at 5:00 p.m. Toronto time on the day that is 25 Business Days after the date of execution of this Agreement.

“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) (including, without limitation, deemed trust claims by Governmental Authorities under legislation such as the *ETA* and the *ITA*, as well as any lien or potential lien under the *Construction Act* (Ontario), or any like statute, related to work, labour, materials, or services provided in relation to the Purchased Assets), 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, trade accounts, bank accounts, book debts, insurance claims, insurance Contracts or policies, bills, credits, rebates, deposits, prepaid expenses, 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 (1st Supp.).

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

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

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

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

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

“Legal 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.

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

“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.

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

“Outside Date” means June 2, 2022 or 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 real property taxes for municipal and school purposes 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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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, and in each case so long as they are registered on title or have been made available to the Purchaser prior to the expiry of the Due Diligence Period;
- (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, other than financing-related Encumbrances, which will be discharged on Closing pursuant to the Approval and Vesting Order; 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, any Taxes payable respect of any Real Property Assets, in respect of the period from and after the Closing Date which shall be calculated on a pro-rata basis on the basis of a 365 day year.

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

“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 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.

“Target Closing Date” means the fifth Business Day following the issuance of the Approval and Vesting Order.

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

“Taxes” means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, *ad valorem* taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, government pension plan premiums and contributions, social security premiums, workers’ compensation premiums, employment/unemployment insurance or compensation premiums and contributions, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority and any instalments in respect thereof of another taxpayer

or entity, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties, and whether disputed or not, and “**Tax**” means any one of such Taxes.

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

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

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

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

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

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

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

1.6 Additional Rules of Interpretation.

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

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

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

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

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

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

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

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

SCHEDULES

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

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

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

2.2 Assumption of Assumed Liabilities. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the 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, 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, [REDACTED] (ii) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay all such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty, [REDACTED]

(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 Permit 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:

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

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(4); 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 held by each Vendor 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 tenant deposits, (ii) operating costs paid by tenants, (iii) realty Taxes including local improvement rates, (iv) public or private utility charges, (v) cost of fuel, and (vi) 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. In the event any amounts subject to adjustment are not precisely known at Closing or are subject to change, the Closing adjustments contemplated by this Section 3.4 shall be based on reasonable estimates to by the Parties.

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**").

3.6 Taxes and GST/HST Gross Up. In the event that any payment made by any Vendor or the 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.

3.7 Tax Elections.

(1) *Section 22 Tax Election.* If available and requested by any Vendor, the Purchaser and such Vendor shall elect jointly in the prescribed form under section 22 of the ITA

and the corresponding provisions of any other applicable Tax statute as to the sale of the Receivables and designate in such election an amount equal to the portion of the Purchase Price allocated to the Receivables pursuant to Section 3.3. This election, or these elections, shall be made within the time prescribed for such elections.

(2) *Subsection 20(24) Tax Election.* The Purchaser and each of the Vendors shall, if applicable, jointly execute and file an election under subsection 20(24) of the *ITA* in the manner required by subsection 20(25) of the *ITA* and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the *ITA* and under any other applicable provincial or territorial statute, as to such amount paid by the applicable Vendors to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendors acknowledge that a portion of the Purchased Assets transferred by the Vendors pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the *ITA* and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the applicable Vendors as a payment for the assumption of such future obligations by the Purchaser.

(3) *Section 56.4 Tax Election.* At the request of the Vendors and to the extent permitted by the *ITA*, the Parties shall make, and each of the Vendors shall file, any election or amended election in prescribed form (or such other form as the Purchaser or the Vendors may reasonably request) and within the prescribed time limits pursuant to subsection 56.4(7) of the *ITA* proposed by the Minister of Finance (Canada) as it reads on the date of this Agreement or any amended or successor provision thereto, and any analogous provision of provincial or territorial Tax legislation.

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, or upon Closing shall be, registered for GST/HST purposes under Part IX of the *ETA*, and shall provide its registration number to the Vendors at or prior to Closing.

(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 Vendors are corporations 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) *Environmental Liabilities.* To the best of the Vendors' knowledge, no actions, proceedings or prosecutions have been commenced or threatened against any of the Vendors or in respect of the Real Property Assets pursuant to any Environmental Law or in respect of any Environmental Liabilities.

(4) *Municipal Real Property Tax Appeals.* To the best of the Vendors' knowledge, there are no pending appeals of real property taxes for municipal purposes relating to the Real Property Assets.

(5) *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.

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

(7) *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.

(8) *Construction Act.* To the best of the Vendors' knowledge, there are no circumstances which would give rise to a lien under the *Construction Act*, or any like statute, capable of being registered against title to the Real Property Assets, by reason of work, labour, materials, or service provided in relation to the Purchased Assets.

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 or will, prior to the expiry of the Due Diligence Period, conduct 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 in respect of any such breach; 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 May 25, 2022. 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, so long as (i) the Vendors carry all-risk replacement cost insurance against the peril that causes the Casualty and business interruption insurance covering the full amount of any rents that are abated as a result, (ii) the Vendors pay the applicable deductible, and (iii) no tenant of the Real Property Assets has terminated or has provided notice to terminate its respective Real Property Lease as a result of such 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. Notwithstanding any other provision of this Agreement, nothing in this Section 5.6 is intended to or shall confer upon any Person other than the Vendors, the Receiver and their respective Representatives, any legal or equitable right, benefit or remedy of any nature whatsoever.

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. At the Vendors’ election, 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 Post-Closing Receipt of Excluded Assets and Purchased Assets. Following the Closing Date:

(1) 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; and

(2) to the extent that any Receivables that become due on or after the Closing Date (but excluding any Receivables relating to rents in respect of the period prior to the Closing Date) are received by the Vendors following the Closing Date, the Vendors shall, as soon as reasonably practicable and in any event no later than 3 Business Days following such receipt, remit such Receivables to the Purchaser.

**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) a statement of adjustment, in form and substance satisfactory to the Parties;
- (2) the Purchased Assets, with delivery to occur *in situ* wherever such Purchased Assets are located at the Closing Time;
- (3) keys and access cards required to gain access to the Real Property Assets;
- (4) a copy of the Approval and Vesting Order, which shall be a Final Order;
- (5) 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;
- (6) the Assignment and Assumption Agreement, duly executed by the Vendors;
- (7) 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;

- (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) a bill of sale for the Purchased Assets comprised of any Personal Property;
- (10) an assignment agreement duly executed by the Vendors, in form and substance satisfactory to the Parties, assigning all of the Vendors' right, title and interest in the name "Alexander Medical Building" and derivatives thereof;
- (11) directions to tenants under the Real Property Leases, in a form provided by the Purchaser and approved by the Vendors, notifying them of the assignment of their applicable Real Property Leases to the Purchaser on Closing and directing them to pay all rent that become due and owing from and after the Closing Date to the Purchaser; and
- (12) 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) a statement of adjustment, in form and substance satisfactory to the Parties;
- (2) the payment referred to in Section 3.2(2), which shall be made to the Receiver for and on behalf of the Vendors;
- (3) the payment of all Transfer Taxes (if any) required to be paid on Closing, which shall be made to the Receiver;
- (4) to the extent payable on Closing and provided that the total amount of Cure Costs payable in respect of all the Assigned Contracts [REDACTED] [REDACTED] evidence that Cure Costs (if any) in respect of each Assigned Contract have been paid in accordance with: (i) the Assignment Order where such Assigned Contract is assigned pursuant to an Assignment Order; and (ii) the consent of the applicable counterparty or as otherwise agreed upon by the Purchaser and such counterparty, where such Assigned Contract is not assigned pursuant to an Assignment Order;
- (5) the Assignment and Assumption Agreement, duly executed by the Purchaser;
- (6) 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

- (7) the GST/HST Certificate and Indemnity, duly executed by the Purchaser; and
- (8) 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 Due Diligence Period. The Purchaser shall have until the end of the Due Diligence Period to conduct due diligence and satisfy itself with respect to (i) title to the Purchased Assets, (ii) the terms of the Permitted Encumbrances, including that they obligations related thereto are in good standing, (iii) the absence of any outstanding work orders or open building permits of any Governmental Authority relating to the Real Property Assets, (iv) the terms of the Real Property Leases, and (v) the physical and financial condition of the Real Property Assets being consistent with the building conditions and environmental reports and other information made available to the Purchaser. If, prior to the end of the Due Diligence Period the Purchaser advises the Vendors that it does not wish to complete the transactions contemplated by this Agreement, this Agreement shall be terminated and of no further force or effect and the Deposit, together with any interest earned thereon, shall be returned to the Purchaser. If, prior to the expiry of the Due Diligence Period, the Purchaser advises the Vendors that it will be proceeding with the transactions contemplated by this Agreement, the Due Diligence Period shall be deemed to expire on such date. If the Purchaser does not advise the Vendors before the expiration of the Due Diligence Period that it will not be proceeding with the transactions contemplated by this Agreement, the Purchaser shall be deemed to have advised the Vendors and the Receiver that it will be proceeding with the Transaction. In order to facilitate the completion of the Purchaser's diligence, the Legal Owner will, at the reasonable request of the Purchaser, provide the Purchaser with appropriate consent letters and authorizations (in form and substance satisfactory to the Vendors) to allow the Purchaser to communicate with (i) Governmental Authorities regarding the Purchased Assets, (ii) maintenance contractors and other vendors providing services in respect of the Purchased Assets, (iii) the authors of any building condition or environmental reports which have been made available to the Purchaser by the Broker, and (iv) tenants of the Real Property Assets, provided that in each such case, the Receiver shall be copied on any such correspondence with such entities and permitted to attend any call or discussion with any such entities.

7.2 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 7.2 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) *Interim Period.* The Vendors shall not have entered into any Contract relating to the Purchased Assets or the Business or amended or terminated any Assigned Contract during the Interim Period, unless such Contract, amendment or termination is disclosed to the Purchaser and, in respect of any such Contract, amendment or termination occurring after the end of the Due Diligence Period, the Purchaser's consent to such Contract, amendment or termination is first obtained.

7.3 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 7.3 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) *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.

(3) *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.

(4) *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.

(5) *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.

7.4 Receiver's Certificate. When the conditions to Closing set out in Section 7.2 and Section 7.3, 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 the Vendors on the one hand, or by the Purchaser, on the other hand, upon written notice to the other Party [REDACTED]
[REDACTED] (ii) one or more of the Vendors have not determined, in their sole and absolute discretion, to pay the portion of the aggregate total amount of Cure Costs [REDACTED] For greater certainty, the Vendors shall be under no obligation to pay any Cure Costs (or portion thereof) in respect of any Assigned Contracts [REDACTED]
[REDACTED]
- (4) by written notice from the Purchaser to the Vendors, prior to the expiration of the Due Diligence Period, in accordance with Section 7.1.
- (5) 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;

- (6) 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
- (7) 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(7) 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(6), or (ii) Section 8.1(7) 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 (i) by the Purchaser prior to the expiration of the Due Diligence Period in accordance with Section 7.1, or (ii) pursuant to any Section of this Agreement other than (A) Section 8.1(6), or (B) Section 8.1(7) 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 (*GST/HST Gross Up*), 3.7 (*Tax Elections*), 4.2(6) (*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*), 7.4 (*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 / gbourikas@kpmg.ca

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

Blake, Cassels & Graydon LLP

Attention: Aryo Shalviri / Chris Burr

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

(3) if to the Purchaser, to:

Seven Hills Developments Inc.

Attention: Randy Northey

Email: rnorthey@hcrmoves.com

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

LLF Lawyers LLP

Attention: Peter Lawless

Email: plawless@llf.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). 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.

**2478658 ONTARIO LTD. 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: President

**GROSS PROPERTIES 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: President

**2413667 ONTARIO 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: President

SEVEN HILLS DEVELOPMENTS INC.

By: _____
Name:
Title:

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

2478658 ONTARIO LTD. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

By: _____
Name:
Title:


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

By: _____
Name:
Title:

2413667 ONTARIO INC. BY KPMG INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

By: _____
Name:
Title:

SEVEN HILLS DEVELOPMENTS INC.

By:  _____
Name: Randy Northey
Title: Vice-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 Permits and Licences;
- vi. The Books and Records that are Related to the Business;
- vii. All goodwill Related to the Business, including in the name Alexander Medical Building and derivatives thereof; and

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

SCHEDULE "B"**REAL PROPERTY ASSETS**

PT LTS 3 & 4, PL23Q, designated as Parts 1 & 2 on Plan 45R647, North Monaghan;
Peterborough Land Registry Office #45, as described in PIN 28061-0157 (LT)

SCHEDULE "C"**ASSIGNED CONTRACTS**

Critical Contracts: Nil

Real Property Leases:

1. Lease dated May 12, 2011 related to Suite 101 between Vitalaire Canada Inc., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2478658 Ontario Ltd.) as landlord, as extended pursuant to Extension of Lease dated August 21, 2017 and as amended pursuant to Amending Agreement dated February 22, 2018.
2. Lease dated March 1, 2015 related to Suite 105 between LifeLabs LP by its General Partner LifeLabs Inc., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2478658 Ontario Ltd.) as landlord.
3. Lease dated October 20, 2014 related to Suite 111 between Innomar Strategies Inc., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2478658 Ontario Ltd.) as landlord.
4. Lease dated March 16, 2021 related to Suite 202 between Dr. Ahmad Shahbaz Sheikh, as tenant and 2478658 Ontario Ltd., as landlord.
5. Lease dated March 14, 2019 related to Suite 204 between Dr. Muhammad Asim Medicine Professional Corporation, as tenant and 2478658 Ontario Ltd., as landlord.
6. Lease dated December 2021 related to Suite 204A between Dr. Faiza Shahbaz, as tenant and 2478658 Ontario Ltd. (by KPMG Inc. as receiver), as landlord.
7. Lease dated January 3, 2019 related to Suite 207 between Dr. Santhosh Kumar Narayanan Lakshmi Medicine Professional Corporation, as tenant and 2478658 Ontario Ltd., as landlord, as extended pursuant to Extension of Lease dated December 28, 2020.
8. Lease dated January 31, 2014 related to Suite 208, 208B, 208Bi & 208Bii between Dr. Robert Semmler & Trent Regional Sleep Clinic Inc., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2478658 Ontario Ltd.) as landlord, as amended pursuant to Amending Agreement dated July 19, 2016 and as extended pursuant to Extension of Lease dated February 5, 2019.
9. Lease dated March 20, 2014 related to Suite 210 between Webster Auyeung Medicine Professional Corporation, as tenant and 2478658 Ontario Ltd., as landlord, and Dr. James Webster and Dr. Grace C.Y. Auyeung, as Indemnifier, as extended pursuant to Extension of Lease dated April 25, 2019.
10. Lease dated May 23, 2014 related to Suite 214 between Dr. Anthony J. Petrasek Medicine Professional Corporation and Susan Tainsh Medicine Professional Corporation, as tenants and Healthcare Properties Holdings Ltd. (predecessor-in-interest to 2478658 Ontario Ltd.) as landlord, and Dr. Anthony J. Petrasek and Susan Tainsh, as Indemnifier now on a month-to-month basis.

Personal Property Leases: Nil**Other Contracts:**

1. Management Parking Agreement dated January 25, 2019 between MedPark Solutions Inc. and 2478658 Ontario Ltd., by the Receiver.
2. Preventive Maintenance Agreement dated January 3, 2022 between Forecast Mechanical Air Systems Inc. and 2748658 Ontario Ltd., by the Receiver.
3. Landscaping Agreement between J. Byrne Enterprises Ltd. and 2478658 Ontario Ltd., by the Receiver.

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

Building	\$ [REDACTED]
Land	\$ [REDACTED]
Total:	\$ [REDACTED]

SCHEDULE "E"**GST/HST CERTIFICATE AND INDEMNITY****DATE:** _____, 2022**TO:** 2478658 Ontario Ltd. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (the "Legal Owner") and GROSS PROPERTIES INC. and 2413667 ONTARIO INC. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (collectively the "Beneficial Owners" and together with the Legal Owner, the "Vendors")**FROM:** Seven Hills Developments Inc. (the "Purchaser")**RE:** Asset Purchase Agreement dated as of April 14, 2022 (the "APA") between the Vendors and the Purchaser in respect of the Purchased Assets

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

1. The Purchaser hereby declares and certifies as follows:
 - (a) the Purchased Assets are being purchased by the Purchaser as principal for its own account and not as an agent, trustee or otherwise on behalf of or for another person;
 - (b) the Purchaser is registered under Subdivision d of Division V of Part IX of the ETA for the collection and remittance of GST/HST and its registration number is [●], and such registrations are 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 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 agreement; and

- (b) by the Purchaser to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser in connection with any GST/HST in connection with the conveyance or transfer of the Purchased Assets.
3. It is agreed that this certificate and indemnity agreement shall survive the closing of the above-noted transaction.

DATED this ____ day of _____, 2022.

SEVEN HILLS DEVELOPMENTS INC.

Per: _____
Name:
Title:

APPENDIX “G”



KPMG Inc.
333 Bay Street
Toronto, ON, M5H 2S5

Telephone: (416) 777 8500
Fax: (416) 777 8462
www.kpmg.ca

**In the Matter of the Receivership of
Southmount Healthcare Centre Inc., 180 Vine Inc., 2478658 Ontario Ltd., 2009 Long Lake
Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., 240 Old Penetanguish
Holdings Inc., Gross Properties Inc., 180 Vine Purchaser Inc., and 2413667 Ontario Inc.**

-AND-

In the Matter of the Receivership of Victoria Avenue North Holdings Inc.

(together, the “Proceedings”)

NOTICE OF TOWN HALL

The purpose of the meeting is to provide parties claiming a beneficial ownership interest in the properties subject to the Proceedings an update on the Proceedings and the anticipated net proceeds of same, and to offer an opportunity for parties to raise questions directly with the Receiver.

The meeting will be held virtually at the following date, time and location:

Date: May 18, 2022

Time: 3:00 p.m. (Eastern Time)

Location: Videoconference via Microsoft Teams

- Join by link: [Click here to join the meeting](#)
- Join by phone:

Call-in: 647-794-1236

Meeting ID: 620 423 341#

Parties who wish to join to the meeting must register with the Receiver at southmountetal@kpmg.ca or victoriaholdings@kpmg.ca. Should you have any questions in connection with this notice or the Proceedings generally, please contact the Receiver by email or by phone at 416.777.8214. All Court orders and materials in connection with these proceedings can be found at the Receiver’s websites: home.kpmg.ca/SouthmountEtAl and home.kpmg.ca/VictoriaHoldings.

KPMG Inc., in its capacity as Receiver of:

Southmount Healthcare Centre Inc.
180 Vine Inc.
2478658 Ontario Ltd.
2009 Long Lake Holdings Inc.

65 Larch Holdings Inc.
100 Colborne Holdings Inc.
240 Old Penetanguish Holdings Inc.
Victoria Avenue North Holdings Inc.

(and not in its personal or corporate capacity)

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

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

CONFIDENTIAL APPENDIX

**CONFIDENTIAL APPENDIX “A” –
Summary of Redacted Commercially Sensitive Information
TO THE SECOND REPORT OF THE RECEIVER
DATED MAY 13, 2022**

TO BE FILED SEPARATELY WITH THE COURT

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

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

CONFIDENTIAL APPENDIX

**CONFIDENTIAL APPENDIX “B” –
Summary of Material Terms of Binding Offers
TO THE SECOND REPORT OF THE RECEIVER
DATED MAY 13, 2022**

TO BE FILED SEPARATELY WITH THE COURT

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

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

CONFIDENTIAL APPENDIX

**CONFIDENTIAL APPENDIX “C” –
Summary of Settlement of the Non-Performing Leases Arrears
TO THE SECOND REPORT OF THE RECEIVER
DATED MAY 13, 2022**

TO BE FILED SEPARATELY WITH THE COURT

TAB 3

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM	)	TUESDAY, THE 24th
)	
JUSTICE GILMORE	)	DAY OF MAY, 2022

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER
65 Larch Street, Sudbury, Ontario**

THIS MOTION, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “B”** hereto (the “**Real Property**”) of (i) 65 Larch Holdings Inc. (the “**Legal Owner**”) acquired for, or used in

- 2 -

relation to the Legal Owner's business, (collectively, the "**Legal Owner's Property**"), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "**Beneficial Owners**", and together with the Legal Owner, the "**Debtors**"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property, and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and 1000151410 Ontario Limited (the "**Purchaser**") dated April 21, 2022 and appended to the Second Report of the Receiver dated May 13, 2022 (the "**Second Report**"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets set out in **Schedule "C"** hereof (the "**Purchased Assets**"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver's Notice of Motion, the Second Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver's Motion Record as appears from the affidavit of Nancy Thompson sworn May [*], 2022 (the "**Thompson Affidavit**"):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby

- 3 -

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

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in **Schedule "C"**, including without limitation the Real Property, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Mr. Justice Dunphy dated June 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "D"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Sudbury (No. 53) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is

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hereby directed to enter 1000151410 Ontario Limited as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

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

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

- (a) the pendency of these proceedings;

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

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

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

SCHEDULE A

Form of Receiver's Certificate

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 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 (collectively with the leases

- 2 -

related thereto, the “**Real Property**”) of, among other parties, (i) 65 Larch 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) Gross Properties Inc. and 2413667 Ontario Inc. (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 May 24, 2022, the Court approved the agreement of purchase and sale made as of April 21, 2022 (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and 1000151410 Ontario Limited (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 7.2 and 7.3 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 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

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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 B**Real Property**

65 Larch Street, Sudbury

PIN 73584-0077(LT): LT 23 BLK A PL 3SA MCKIM; GREATER SUDBURY

PIN 73584-0078(LT): LT 20-22 BLK A PL 3SA MCKIM; GREATER SUDBURY

PIN 73584-0097(LT): PT N1/2 LT 5 CON 3 MCKIM AS IN S81426 (SECONDLY & THIRDLY); GREATER SUDBURY

SCHEDULE C

Purchased Assets

- 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 Permits and Licences;
- vi. The Books and Records that are Related to the Business;
- vii. All goodwill Related to the Business; and
- viii. All proceeds of any or all of the foregoing received or receivable after the Closing Time.

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement.

SCHEDULE D**Claims to be deleted and expunged from title to Real Property****PIN 73584-0077(LT):**

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SD309725	January 26, 2016	Charge	\$70,000,000	65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309726	January 26, 2016	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD352590	March 2, 2018	Charge	\$1,600,000	65 Larch Holdings Inc.	Gross Capital Inc.
SD379370	July 19, 2019	Charge	\$6,250,000	65 Larch Holdings Inc.	1592106 Ontario Inc.
SD379371	July 19, 2019	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	1592106 Ontario Inc.
SD379375	July 19, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.

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SD381950	August 29, 2019	Notice	\$2	65 Larch Holdings Inc.	1592106 Ontario Inc.
SD381951	August 29, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD425022	June 28, 2021	Construction Lien	\$160,252	Enersavings Inc.	
SD433191	September 30, 2021	Certificate		Enersavings Inc.	

PIN 73584-0078(LT):

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SD309725	January 26, 2016	Charge	\$70,000,000	65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309726	January 26, 2016	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD352590	March 2, 2018	Charge	\$1,600,000	65 Larch Holdings Inc.	Gross Capital Inc.
SD379370	July 19, 2019	Charge	\$6,250,000	65 Larch Holdings Inc.	1592106 Ontario Inc.

- 3 -

SD379371	July 19, 2019	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	1592106 Ontario Inc.
SD379375	July 19, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD381950	August 29, 2019	Notice	\$2	65 Larch Holdings Inc.	1592106 Ontario Inc.
SD381951	August 29, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD425022	June 28, 2021	Construction Lien	\$160,252	Enersavings Inc.	
SD433191	September 30, 2021	Certificate		Enersavings Inc.	

PIN 73584-0097(LT):

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SD309725	January 26, 2016	Charge	\$70,000,000	65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309726	January 26, 2016	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and

- 4 -

					Lexington Insurance Company
SD352590	March 2, 2018	Charge	\$1,600,000	65 Larch Holdings Inc.	Gross Capital Inc.
SD379370	July 19, 2019	Charge	\$6,250,000	65 Larch Holdings Inc.	1592106 Ontario Inc.
SD379371	July 19, 2019	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	1592106 Ontario Inc.
SD379375	July 19, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD381950	August 29, 2019	Notice	\$2	65 Larch Holdings Inc.	1592106 Ontario Inc.
SD381951	August 29, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.

SCHEDULE E

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

(Unaffected by the Vesting Order)

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement

- (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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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;

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- (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.

Court File No.: CV-21-00664273-00CL

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

- and -

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

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

APPROVAL AND VESTING ORDER
65 Larch Street, Sudbury, Ontario

BLAKE, CASSELS & GRAYDON LLP

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

Pamela L.J. Huff, LSO #27344V

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Tel: 416-863-3261

Email: chris.burr@blakes.com

Alexia Parente, LSO #81927G

Tel: 416-863-2417

Fax: 416-863-2653

Email: alexia.parente@blakes.com

Lawyers for the Receiver

TAB 4

Revised: January 21, 2014

Court File No. ~~---~~ CY-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ~~---~~ MADAM) ~~WEEKDAY~~ TUESDAY, THE #24th
JUSTICE ~~---~~ GILMORE) DAY OF ~~MONTH~~ MAY, ~~20YR~~ 2022

B E T W E E N:

~~PLAINTIFF~~

Plaintiff

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

Applicants

- and -

~~DEFENDANT~~

Defendant

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

Respondents

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

**APPROVAL AND VESTING ORDER
65 Larch Street, Sudbury, Ontario**

13143037.1

DOCSTOR:120192714

~~-2-~~

THIS MOTION, made by ~~[RECEIVER'S NAME]~~KPMG Inc., in its capacity as ~~the~~ Court-appointed receiver and manager (the "~~Receiver~~") without security of the ~~undertaking, property and~~ assets of ~~[DEBTOR]~~ (the "~~Debtor~~"), undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "B" hereto (the "Real Property") of (i) 65 Larch 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) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "**Beneficial Owners**", and together with the Legal Owner, the "**Debtors**"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property, and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and ~~[NAME OF PURCHASER]~~1000151410 Ontario Limited (the "**Purchaser**") dated ~~[DATE]~~April 21, 2022 and appended to the Second Report of the Receiver dated ~~[DATE]~~May 13, 2022 (the "**Second Report**"), and vesting in the Purchaser the ~~Debtor~~Debtors's right, title and interest in and to the assets ~~described~~set out in ~~the Sale Agreement~~Schedule "C" hereof (the "**Purchased Assets**"), was heard this day ~~at 330 University Avenue,~~by judicial videoconference via Zoom in Toronto, Ontario.

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

~~13143037.1~~

~~-3-~~

~~list~~, although properly served with the Receiver's Motion Record as appears from the affidavit of ~~[NAME]~~ Nancy Thompson sworn May [DATE] filed^{1*}, 2022 (the "Thompson Affidavit):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.

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

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

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

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

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

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

13143037.1

~~-44 -~~

liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of ~~the Honourable~~ Mr. Justice [NAME] Dunphy dated ~~[DATE]~~ June 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C~~"D"~~** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D~~"E"~~**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. ~~3.~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~ Land Titles Division of ~~{LOCATION}~~ Sudbury (No. 53) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*⁶, the Land Registrar is hereby directed to enter ~~the Purchaser~~ 1000151410 Ontario Limited as the owner of the ~~subject real property identified in Schedule B hereto (the "Real Property")~~ in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule C~~"D"~~** hereto.

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

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

13143037.1

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

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

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

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

- (a) the pendency of these proceedings;

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

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

~~-66-~~

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

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

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

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

-7-

Revised: January 21, 2014

~~Schedule~~ **SCHEDULE A** —

Form of Receiver's Certificate

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

~~PLAINTIFF~~

Plaintiff

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

Applicants

- and -

~~DEFENDANT~~

Defendant

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

13143037.1

~~-2-~~ 2

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ June 29, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the ~~undertaking, property and~~ assets of ~~[DEBTOR] (the "Debtor")~~, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases related thereto, the "Real Property") of, among other parties, (i) 65 Larch 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) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "Beneficial Owners", and together with the Legal Owner, the "Debtors"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated ~~[DATE]~~ May 24, 2022, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ April 21, 2022 (the "**Sale Agreement**") between the Debtors (acting by the Receiver ~~[Debtor]~~) and ~~[NAME OF PURCHASER]~~ 1000151410 Ontario Limited (the "**Purchaser**") and provided for the vesting in the Purchaser of the ~~Debtor~~ Debtors's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ sections 7.2 and 7.3 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.

~~13143037.1~~

~~-2-~~ 3

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 ~~section~~ sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

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

Per: _____

Name:

Title:

13143037.1

DOCSTOR: 1201927,14

Document comparison by Workshare 10.0 on Friday, May 13, 2022 11:23:10 AM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13143037/1
Description	TOR_2024-#13143037-v1-Model_Approval_and_Vesting_Order_(downloaded_on_May_4,_2022)
Document 2 ID	PowerDocs://TOR_2528/24433002/3
Description	TOR_2528-#24433002-v3-KPMG_-_Gross_-_AVO_(65_Larch)
Rendering set	Standard

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

Statistics:	
	Count
Insertions	388
Deletions	123
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	511

TAB 5

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM	)	TUESDAY, THE 24th
)	
JUSTICE GILMORE	)	DAY OF MAY, 2022

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER
2009 Long Lake Road, Sudbury, Ontario**

THIS MOTION, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “B”** hereto (the “**Real Property**”) of (i) 2009 Long Lake Holdings Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”),

- 2 -

and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and 1000151410 Ontario Limited (the “**Purchaser**”) dated April 21, 2022 and appended to the Second Report of the Receiver dated May 13, 2022 (the “**Second Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets set out in **Schedule “C”** hereof (the “**Purchased Assets**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver’s Notice of Motion, the Second Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver’s Motion Record as appears from the affidavit of Nancy Thompson sworn May **[*]**, 2022 (the “**Thompson Affidavit**”):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver’s Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as

- 3 -

may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in **Schedule "C"**, including without limitation the Real Property, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Mr. Justice Dunphy dated June 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "D"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Sudbury (No. 53) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter 1000151410 Ontario Limited as the owner of the Real Property in fee

- 4 -

simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

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

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

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

- 5 -

(c) any assignment in bankruptcy made in respect of any Debtor;

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

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

SCHEDULE A

Form of Receiver's Certificate

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 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 (collectively with the leases

- 2 -

related thereto, the “**Real Property**”) of, among other parties, (i) 2009 Long Lake 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) Gross Properties Inc. and 2413667 Ontario Inc. (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 May 24, 2022, the Court approved the agreement of purchase and sale made as of April 21, 2022 (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and 1000151410 Ontario Limited (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 7.2 and 7.3 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 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

- 3 -

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 B**Real Property**2009 Long Lake Road, Sudbury

73595-0102(LT): PCL 8259 SEC SES; PT LT 6 CON 1 MCKIM EXCEPT LT52588, LT53059, LT109847, PT 7 53R4520 & PT 4 53R13501; S/T LT25019; GREATER SUDBURY

73595-0174(LT): PCL 39445 SEC SES; PT LT 6 CON 1 MCKIM PT 3 TO 7 & 12 TO 15 53R5036; PT LT 6 CON 1 MCKIM PT 5 53R13501; S/T PT 2 & 3 53R13501 AS IN LT717184; S/T LT25019, LT735739; GREATER SUDBURY

73595-0333(LT): PCL 39000 SEC SES; PT LT 6 CON 1 MCKIM PT 9 TO 11 53R5036; T/W A ROW OVER PT 1 & 2 53R5036; S/T LT25019; GREATER SUDBURY

SCHEDULE C

Purchased Assets

- 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 Permits and Licences;
- vi. The Books and Records that are Related to the Business;
- vii. All goodwill Related to the Business; and
- viii. All proceeds of any or all of the foregoing received or receivable after the Closing Time.

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement.

SCHEDULE D**Claims to be deleted and expunged from title to Real Property****PIN 73595-0102(LT):**

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SD309728	January 26, 2016	Charge	\$70,000,000	2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309729	January 26, 2016	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD352589	March 2, 2018	Charge	\$1,600,000	2009 Long Lake Holdings Inc.	Gross Capital Inc.
SD379372	July 19, 2019	Charge	\$6,250,000	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD379373	July 19, 2019	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD379376	July 19, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD381948	August 29, 2019	Notice	\$2	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD381949	August 29, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.

- 2 -

SD386442	November 5, 2019	Notice of Security Interest (LED Lighting Retrofit)	\$152,185	De Lage Landen Financial Services Canada Inc.	
SD393218	March 4, 2020	Notice of Security Interest	\$58,240	Blue Chip Leasing Corporation	

PIN 73595-0174(LT):

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SD309728	January 26, 2016	Charge	\$70,000,000	2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309729	January 26, 2016	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD352589	March 2, 2018	Charge	\$1,600,000	2009 Long Lake Holdings Inc.	Gross Capital Inc.
SD379372	July 19, 2019	Charge	\$6,250,000	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD379373	July 19, 2019	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD379376	July 19, 2019	Postpone-		Gross Capital	1592106 Ontario

- 3 -

		ment		Inc.	Inc.
SD381948	August 29, 2019	Notice	\$2	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD381949	August 29, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD386442	November 5, 2019	Notice of Security Interest	\$152,185	De Lage Landen Financial Services Canada Inc.	
SD393217	March 4, 2020	Notice of Security Interest	\$58,240	Blue Chip Leasing Corporation	

PIN 73595-0333(LT):

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SD309728	January 26, 2016	Charge	\$70,000,000	2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309729	January 26, 2016	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD352589	March 2, 2018	Charge	\$1,600,000	2009 Long Lake Holdings Inc.	Gross Capital Inc.
SD379372	July 19, 2019	Charge	\$6,250,000	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.

- 4 -

SD379373	July 19, 2019	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD379376	July 19, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD381948	August 29, 2019	Notice	\$2	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD381949	August 29, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD386442	November 5, 2019	Notice of Security Interest	\$152,185	De Lage Landen Financial Services Canada Inc.	
SD393216	March 4, 2020	Notice of Security Interest	\$58,240	Blue Chip Leasing Corporation	

SCHEDULE E

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

(Unaffected by the Vesting Order)

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement.

- (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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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;

- 2 -

- (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.

Court File No.: CV-21-00664273-00CL

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

- and -

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

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

APPROVAL AND VESTING ORDER
2009 Long Lake Road, Sudbury, Ontario

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Pamela L.J. Huff, LSO #27344V
Tel: 416-863-2958
Email: pamela.huff@blakes.com

Aryo Shalviri, LSO #63867A
Tel: 416-863-2962
Email: aryo.shalviri@blakes.com

Chris Burr, LSO #55172H
Tel: 416-863-3261
Email: chris.burr@blakes.com

Alexia Parente, LSO #81927G
Tel: 416-863-2417
Fax: 416-863-2653
Email: alexia.parente@blakes.com

Lawyers for the Receiver

TAB 6

Revised: January 21, 2014

Court File No. ~~_____~~ CY-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ~~_____~~ MADAM) ~~WEEKDAY~~ TUESDAY, THE #24th
 JUSTICE ~~_____~~ GILMORE) DAY OF ~~MONTH~~ MAY, ~~20YR~~ 2022

BETWEEN:

~~PLAINTIFF~~**Plaintiff**

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

Applicants

- and -

~~DEFENDANT~~**Defendant**

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

Respondents

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

**APPROVAL AND VESTING ORDER
2009 Long Lake Road, Sudbury, Ontario**

13143037.1 24433387.2

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-2-

THIS MOTION, made by ~~[RECEIVER'S NAME]~~KPMG Inc., in its capacity as ~~the~~ Court-appointed receiver and manager (the "**Receiver**") without security of the ~~undertaking, property and~~ assets of ~~[DEBTOR]~~ (the "**Debtor**"), undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "B" hereto (the "Real Property") of (i) 2009 Long Lake 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) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "Beneficial Owners", and together with the Legal Owner, the "Debtors"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and ~~[NAME OF PURCHASER]~~1000151410 Ontario Limited (the "**Purchaser**") dated ~~[DATE]~~April 21, 2022 and appended to the Second Report of the Receiver dated ~~[DATE]~~May 13, 2022 (the "**Second Report**"), and vesting in the Purchaser the ~~Debtor~~Debtors's right, title and interest in and to the assets ~~described~~set out in ~~the Sale Agreement~~Schedule "C" hereof (the "**Purchased Assets**"), was heard this day ~~at 330 University Avenue,~~by judicial videoconference via Zoom in Toronto, Ontario.

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

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~~list~~, although properly served with the Receiver's Motion Record as appears from the affidavit of ~~[NAME]~~ Nancy Thompson sworn May [DATE] filed^{1*}, 2022 (the "Thompson Affidavit):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.

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

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

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

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

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

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

liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of ~~the Honourable~~ [Mr. Justice \[NAME\] Dunphy](#) dated ~~[DATE]~~ [June 29, 2021](#); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C~~"D"~~** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D~~"E"~~**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. ~~3.~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~ Land Titles Division of ~~{LOCATION}~~ [Sudbury \(No. 53\)](#) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*⁶, the Land Registrar is hereby directed to enter ~~the Purchaser~~ [1000151410 Ontario Limited](#) as the owner of the ~~subject real property identified in Schedule B hereto (the "Real Property")~~ in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule C~~"D"~~** hereto.

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

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

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

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

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

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

- (a) the pendency of these proceedings;

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

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

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

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

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

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

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Revised: January 21, 2014

~~Schedule~~ **SCHEDULE A** —

Form of Receiver's Certificate

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

~~PLAINTIFF~~

Plaintiff

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

Applicants

- and -

~~DEFENDANT~~

Defendant

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

Respondents

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

RECEIVER'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Dunphy of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF~~

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~~RECEIVER~~ June 29, 2021 (the "Appointment Order"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the ~~undertaking, property and~~ assets of ~~[DEBTOR] (the "Debtor")~~, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases related thereto, the "Real Property") of, among other parties, (i) 2009 Long Lake 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) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "**Beneficial Owners**", and together with the Legal Owner, the "**Debtors**"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated ~~[DATE]~~ May 24, 2022, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ April 21, 2022 (the "**Sale Agreement**") between the Debtors (acting by the Receiver ~~[Debtor]~~) and ~~[NAME OF PURCHASER]~~ 1000151410 Ontario Limited (the "**Purchaser**") and provided for the vesting in the Purchaser of the ~~Debtor~~ Debtors's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ sections 7.2 and 7.3 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.

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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 ~~section~~ sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

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

Per: _____

Name:

Title:

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Document comparison by Workshare 10.0 on Friday, May 13, 2022 11:48:04 AM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13143037/1
Description	TOR_2024-#13143037-v1-Model_Approval_and_Vesting_Order_(downloaded_on_May_4,_2022)
Document 2 ID	PowerDocs://TOR_2528/24433387/2
Description	TOR_2528-#24433387-v2-KPMG_-_Gross_-_AVO_(2009_Long_Lake)
Rendering set	Standard

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

Padding cell	
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Statistics:	
	Count
Insertions	417
Deletions	123
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	540

TAB 7

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM	)	TUESDAY, THE 24th
)	
JUSTICE GILMORE	)	DAY OF MAY, 2022

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER
100 Colborne Street West & 77 Wyandotte Street, Orillia, Ontario**

THIS MOTION, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “B”** hereto (the “**Real Property**”) of (i) 100 Colborne 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)

- 2 -

Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and Accutrac Property Management Inc. (the “**Purchaser**”) dated April 14, 2022 and appended to the Second Report of the Receiver dated May 13, 2022 (the “**Second Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets set out in **Schedule “C”** hereof (the “**Purchased Assets**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver’s Notice of Motion, the Second Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver’s Motion Record as appears from the affidavit of Nancy Thompson sworn May **[*]**, 2022 (the “**Thompson Affidavit**”):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver’s Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as

- 3 -

may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in **Schedule "C"**, including without limitation the Real Property, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Mr. Justice Dunphy dated June 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "D"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Simcoe (No. 51) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter Accutrac Property Management Inc. as the owner of the Real Property in

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fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

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

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

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

- 5 -

(c) any assignment in bankruptcy made in respect of any Debtor;

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

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

SCHEDULE A

Form of Receiver's Certificate

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 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 (collectively with the leases

- 2 -

related thereto, the “**Real Property**”) of, among other parties, (i) 100 Colborne 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) Gross Properties Inc. and 2413667 Ontario Inc. (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 May 24, 2022, the Court approved the agreement of purchase and sale made as of April 14, 2022 (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and Accutrac Property Management 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 7.2 and 7.3 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;

- 3 -

2. The conditions to Closing as set out in sections 7.2 and 7.3 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 B**Real Property**100 Colborne Street West, Orillia

PIN 58650-0115(LT): PT LT 10-15, 17 BLK C PL 228 ORILLIA PT 3, 4 & 5, 51R10372;
ORILLIA

77 Wyandotte Street, Orillia

PIN 58644-0014(LT): LT 16 BLK G PL 228 ORILLIA; PT LT 15 BLK G PL 228 ORILLIA AS
IN RO1453448; ORILLIA

SCHEDULE C

Purchased Assets

- 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 Permits and Licences;
- vi. The Books and Records that are Related to the Business;
- vii. All goodwill Related to the Business; and
- viii. All proceeds of any or all of the foregoing received or receivable after the Closing Time.

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement.

SCHEDULE D

Claims to be deleted and expunged from title to Real Property

PIN 58650-0115(LT):

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SC1278217	January 26, 2016	Charge	\$70,000,000	100 Colborne Holdings Inc.	American General Life Insurance Company, The Variable Life Annuity Insurance Company, and Lexington Insurance Company
SC1278218	January 26, 2016	Notice of Assignment of Rents-General		100 Colborne Holdings Inc.	American General Life Insurance Company, The Variable Life Annuity Insurance Company, and Lexington Insurance Company
SC1609813	July 19, 2019	Charge	\$6,250,000	240 Old Penetanguish Holdings Inc., and 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1609814	July 19, 2019	Notice of Assignment of Rents-		240 Old Penetanguish Holdings Inc. and, 100	1592106 Ontario Inc.

- 2 -

		General		Colborne Holdings Inc.	
SC1619869	August 29, 2019	Notice		240 Old Penetanguish Holdings Inc. and, 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1689152	June 25, 2020	Application Change Name – Instrument		The Variable Life Annuity Insurance Company	The Variable Annuity Life Insurance Company

PIN 58644-0014(LT):

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SC1278217	January 26, 2016	Charge	\$70,000,000	100 Colborne Holdings Inc.	American General Life Insurance Company, The Variable Life Annuity Insurance Company, and Lexington Insurance Company
SC1278218	January 26, 2016	Notice of Assignment of Rents-General		100 Colborne Holdings Inc.	American General Life Insurance Company, The Variable Life Annuity Insurance Company, and Lexington

- 3 -

					Insurance Company
SC1609813	July 19, 2019	Charge	\$6,250,000	240 Old Penetanguish Holdings Inc., and 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1609814	July 19, 2019	Notice of Assignment of Rents-General		240 Old Penetanguish Holdings Inc. and, 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1619869	August 29, 2019	Notice		240 Old Penetanguish Holdings Inc. and, 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1689152	June 25, 2020	Application Change Name – Instrument		The Variable Life Annuity Insurance Company	The Variable Annuity Life Insurance Company

SCHEDULE E

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

(Unaffected by the Vesting Order)

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement.

- (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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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;

- 2 -

- (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.

Court File No.: CV-21-00664273-00CL

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

- and -

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

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

APPROVAL AND VESTING ORDER
100 Colborne Street West &
77 Wyandotte Street, Orillia, Ontario

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

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Chris Burr, LSO #55172H

Tel: 416-863-3261

Email: chris.burr@blakes.com

Alexia Parente, LSO #81927G

Tel: 416-863-2417

Fax: 416-863-2653

Email: alexia.parente@blakes.com

Lawyers for the Receiver

TAB 8

Revised: January 21, 2014

Court File No. ~~—~~ CY-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ~~—~~ MADAM) ~~WEEKDAY~~ TUESDAY, THE #24th
JUSTICE ~~—~~ GILMORE) DAY OF ~~MONTH~~ MAY, ~~20YR~~ 2022

B E T W E E N:

~~**PLAINTIFF**~~

~~Plaintiff~~

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

Applicants

- and -

~~**DEFENDANT**~~

~~Defendant~~

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

Respondents

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

APPROVAL AND VESTING ORDER
100 Colborne Street West & 77 Wyandotte Street, Orillia, Ontario

~~13143037.1~~ 24433017.2

DOCSTOR: 1201927\14

~~-2-~~

THIS MOTION, made by ~~{RECEIVER'S NAME}~~KPMG Inc., in its capacity as ~~the~~ Court-appointed receiver and manager (the "**Receiver**") ~~without security~~ of the ~~undertaking, property and~~ assets ~~of {DEBTOR} (the "Debtor")~~, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "B" hereto (the "Real Property") of (i) 100 Colborne 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) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "Beneficial Owners", and together with the Legal Owner, the "Debtors"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and ~~{NAME OF PURCHASER}~~Accutrac Property Management Inc. (the "**Purchaser**") dated ~~{DATE}~~April 14, 2022 and appended to the Second Report of the Receiver dated ~~{DATE}~~May 13, 2022 (the "**Second Report**"), and vesting in the Purchaser the ~~Debtor~~Debtors's right, title and interest in and to the assets ~~described~~set out in ~~the Sale Agreement~~Schedule "C" hereof (the "**Purchased Assets**"), was heard this day ~~at 330 University Avenue,~~by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver's Notice of Motion, the Second Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, ~~{NAMES OF OTHER PARTIES APPEARING}~~the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing ~~for any other person on the service~~

-3-

~~list~~, although properly served with the Receiver's Motion Record as appears from the affidavit of ~~[NAME]~~ Nancy Thompson sworn May [DATE] filed^{1*}, 2022 (the "Thompson Affidavit):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.

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

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

hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise),

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

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

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

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

~~-44 -~~

liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of ~~the Honourable~~ Mr. Justice [NAME] Dunphy dated ~~[DATE]~~ June 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C~~"D"~~** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D~~"E"~~**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. ~~3.~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~ Land Titles Division of ~~{LOCATION}~~ Simcoe (No. 51) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*⁶, the Land Registrar is hereby directed to enter ~~the Purchaser~~ Accutrac Property Management Inc. as the owner of the ~~subject real property identified in Schedule B hereto (the "Real Property")~~ in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule C~~"D"~~** hereto.

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

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

~~-5-~~

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

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

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

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

- (a) the pendency of these proceedings;

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

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

~~-66-~~

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

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

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

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

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Revised: January 21, 2014

~~Schedule~~ **SCHEDULE A** —

Form of Receiver's Certificate

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

~~PLAINTIFF~~

Plaintiff

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

Applicants

- and -

~~DEFENDANT~~

Defendant

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

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~~-2-~~ 2

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ June 29, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the ~~undertaking, property and~~ assets of ~~[DEBTOR] (the "Debtor")~~, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases related thereto, the "Real Property") of, among other parties, (i) 100 Colborne 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) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "Beneficial Owners", and together with the Legal Owner, the "Debtors"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated ~~[DATE]~~ May 24, 2022, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ April 14, 2022 (the "**Sale Agreement**") between the Debtors (acting by the Receiver ~~[Debtor]~~) and ~~[NAME OF PURCHASER]~~ Accutrac Property Management Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the ~~Debtor~~ Debtors's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ sections 7.2 and 7.3 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.

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~~-2-~~ 3

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 ~~section~~ sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

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

Per: _____

Name:

Title:

Document comparison by Workshare 10.0 on Friday, May 13, 2022 11:43:40 AM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13143037/1
Description	TOR_2024-#13143037-v1-Model_Approval_and_Vesting_Order_(downloaded_on_May_4,_2022)
Document 2 ID	PowerDocs://TOR_2528/24433017/2
Description	TOR_2528-#24433017-v2-KPMG_-_Gross_-_AVO_(100_Colborne)
Rendering set	Standard

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

Padding cell	
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Statistics:	
	Count
Insertions	292
Deletions	123
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	415

TAB 9

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM	)	TUESDAY, THE 24th
)	
JUSTICE GILMORE	)	DAY OF MAY, 2022

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER
180 Vine Street South, St. Catharines, Ontario**

THIS MOTION, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “B”** hereto (the “**Real Property**”) of (i) 180 Vine Purchaser Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business, including any interest held by the Legal Owner to which

- 2 -

Her Majesty the Queen in Right of Ontario (the “Crown”) may have rights and any interest in the applicable real property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the “**Legal Owner’s Property**”), and (ii) 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property, and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and Symmban Vine Inc. (the “**Purchaser**”) dated April 13, 2022 and appended to the Second Report of the Receiver dated May 13, 2022 (the “**Second Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets set out in **Schedule “C”** hereof (the “**Purchased Assets**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver’s Notice of Motion, the Second Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver’s Motion Record as appears from the affidavit of Nancy Thompson sworn May **[*]**, 2022 (the “**Thompson Affidavit**”):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver’s Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved,

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with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in **Schedule "C"**, including without limitation the Real Property, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Mr. Justice Dunphy dated June 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "D"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Niagara North/Niagara (No. 30) of an Application for Vesting Order in

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the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter Symmban Vine Inc. as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

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

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

(a) the pendency of these proceedings;

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

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

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

SCHEDULE A

Form of Receiver's Certificate

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 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 (collectively with the leases

- 2 -

related thereto, the “**Real Property**”) of, among other parties, (i) 180 Vine Purchaser Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business, including any interest held by the Legal Owner to which Her Majesty the Queen in Right of Ontario (the “**Crown**”) may have rights and any interest in the applicable real property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the “**Legal Owner’s Property**”), and (ii) 2413667 Ontario Inc. (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 May 24, 2022, the Court approved the agreement of purchase and sale made as of April 13, 2022 (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and Symmban Vine 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;

- 3 -

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 B**Real Property**

180 Vine Street South, St. Catharines

PIN 46272-0086 (LT): PT LT 7, 9-10 BLK D CY PL 46 GRANTHAM; PT BLK A CY PL 79 GRANTHAM; PT BLK A, B CY PL 80 GRANTHAM; PT UNNAMED ST CY PL 46 GRANTHAM , CLOSED BY RO407053, PT 1 30R2209 EXCEPT PT 1 30R3734, PT 1 30R6493, & PT 1 30R7456; CITY OF ST. CATHARINES

SCHEDULE C

Purchased Assets

- 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 Permits and Licences;
- vi. The Books and Records that are Related to the Business;
- vii. All goodwill Related to the Business;
- viii. Any “as built” plans, specifications and appraisals, and any plans for mechanical, electrical and structural systems of the Real Property Assets; and.
- ix. all proceeds of any or all of the foregoing received or receivable after the Closing Time.

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement.

SCHEDULE D

Claims to be deleted and expunged from title to Real Property

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
NR403682	January 26, 2016	Charge	\$70,000,000	180 Vine Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
NR403683	January 26, 2016	Notice of Assignment of Rents - General		180 Vine Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
NR581119	June 28, 2021	Charge	\$6,250,000	180 Vine Purchaser Inc.	Cannect International Mortgage Corporation
NR581120	June 28, 2021	Notice of Assignment of Rents - General		180 Vine Purchaser Inc.	Cannect International Mortgage Corporation

SCHEDULE E

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

(Unaffected by the Vesting Order)

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement.

- (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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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;

- 2 -

- (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.

Court File No.: CV-21-00664273-00CL

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

- and -

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

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

APPROVAL AND VESTING ORDER
180 Vine Street South, St. Catharines, Ontario

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

Pamela L.J. Huff, LSO #27344V

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Tel: 416-863-3261

Email: chris.burr@blakes.com

Alexia Parente, LSO #81927G

Tel: 416-863-2417

Fax: 416-863-2653

Email: alexia.parente@blakes.com

Lawyers for the Receiver

TAB 10

Revised: January 21, 2014

Court File No. ~~_____~~ CY-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ~~_____~~ MADAM) ~~WEEKDAY~~ TUESDAY, THE #24th
 JUSTICE ~~_____~~ GILMORE) DAY OF ~~MONTH~~ MAY, ~~20YR~~ 2022

BETWEEN:

~~**PLAINTIFF**~~

Plaintiff

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

Applicants

- and -

~~**DEFENDANT**~~

Defendant

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

Respondents

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

APPROVAL AND VESTING ORDER
180 Vine Street South, St. Catharines, Ontario

13143037.124433019.2

DOCSTOR: 120192714

~~-2-~~

THIS MOTION, made by ~~[RECEIVER'S NAME]~~KPMG Inc., in its capacity as ~~the~~ Court-appointed receiver and manager (the "~~Receiver~~") without security of the ~~undertaking, property and assets of [DEBTOR] (the "Debtor")~~assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "B" hereto (the "Real Property") of (i) 180 Vine Purchaser Inc. (the "~~Legal Owner~~") acquired for, or used in relation to the Legal Owner's business, including any interest held by the Legal Owner to which Her Majesty the Queen in Right of Ontario (the "Crown") may have rights and any interest in the applicable real property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the "Legal Owner's Property"), and (ii) 2413667 Ontario Inc. (collectively, the "~~Beneficial Owners~~", and together with the Legal Owner, the "~~Debtors~~"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property, and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the "~~Transaction~~") contemplated by an agreement of purchase and sale (the "~~Sale Agreement~~") between the Debtors (acting by the Receiver) and ~~[NAME OF PURCHASER]~~Symbban Vine Inc. (the "~~Purchaser~~") dated ~~[DATE]~~April 13, 2022 and appended to the Second Report of the Receiver dated ~~[DATE]~~May 13, 2022 (the "~~Second Report~~"), and vesting in the Purchaser the ~~Debtor~~Debtors's right, title and interest in and to the assets ~~described~~set out in ~~the Sale Agreement~~Schedule "C" hereof (the "~~Purchased Assets~~"), was heard this day ~~at 330 University Avenue,~~by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver's Notice of Motion, the Second Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~the Applicants, the Purchaser and those other counsel and parties listed
~~13143037.1~~24433019.2

-3-

on the Participant Information Form, no one else appearing ~~for any other person on the service list~~, although properly served with the Receiver's Motion Record as appears from the affidavit of ~~[NAME]~~ Nancy Thompson sworn May [DATE] filed^{1*}, 2022 (the "Thompson Affidavit):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.

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

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

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

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

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

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

13143037.1 24433019.2

~~-44 -~~

hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of ~~the Honourable~~ Mr. Justice [NAME] Dunphy dated ~~[DATE]~~ June 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C** "**D**" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D** "**E**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. ~~3.~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver~~ [Land Titles Division of {LOCATION} Niagara North/Niagara (No. 30) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*]⁶, the Land Registrar is hereby directed to enter ~~the Purchaser~~ Symmaban Vine Inc. as the owner of the ~~subject real property identified in Schedule B hereto (the "Real Property")~~ in fee simple, and is hereby

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

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

~~13143037.1~~ 24433019.2

~~-5-~~

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

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

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

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

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

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

~~-6-~~

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

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

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

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

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

~~13143037.1~~24433019.2

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Revised: January 21, 2014

~~Schedule~~ **SCHEDULE A** —**Form of Receiver's Certificate**Court File No. CV-21-00664273-00CL**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

~~PLAINTIFF~~

Plaintiff

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

- and -

~~DEFENDANT~~

Defendant

SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658
ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH
HOLDINGS INC., 100 COLBORNE HOLDINGS INC., 240 OLD
PENETANGUISH HOLDINGS INC., GROSS PROPERTIES INC., 180 VINE
PURCHASER INC., AND 2413667 ONTARIO INC.RespondentsAPPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.
B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**RECEIVER'S CERTIFICATE****RECITALS**13143037.1 24433019.2

DOCSTOR: 1201927\14

~~-2-~~ 2

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Dunphy of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ June 29, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the ~~undertaking, property and assets of~~ ~~[DEBTOR]~~ (the "**Debtor**"). assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases related thereto, the "**Real Property**") of, among other parties, (i) 180 Vine Purchaser Inc. (the "**Legal Owner**") acquired for, or used in relation to the Legal Owner's business, including any interest held by the Legal Owner to which Her Majesty the Queen in Right of Ontario (the "**Crown**") may have rights and any interest in the applicable real property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the "**Legal Owner's Property**"), and (ii) 2413667 Ontario Inc. (collectively, the "**Beneficial Owners**", and together with the Legal Owner, the "**Debtors**"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated ~~[DATE]~~ May 24, 2022, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ April 13, 2022 (the "**Sale Agreement**") between the Debtors (acting by the Receiver ~~[Debtor]~~) and ~~[NAME OF PURCHASER]~~ Symmban Vine Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the ~~Debtor~~ Debtors's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ sections 7.1 and 13143037.1 ~~24433019.2~~

~~-2-~~ 3

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 ~~section~~ sections 7.1 and 7.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

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

Per: _____
 Name:
 Title:

Document comparison by Workshare 10.0 on Friday, May 13, 2022 11:30:21 AM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13143037/1
Description	TOR_2024-#13143037-v1-Model_Approval_and_Vesting_Order_(downloaded_on_May_4,_2022)
Document 2 ID	PowerDocs://TOR_2528/24433019/2
Description	TOR_2528-#24433019-v2-KPMG_-_Gross_-_AVO_(180_Vine)
Rendering set	Standard

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

Statistics:	
	Count
Insertions	236
Deletions	121
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	357

TAB 11

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM	)	TUESDAY, THE 24th
)	
JUSTICE GILMORE	)	DAY OF MAY, 2022

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER
240 Penetanguishene Road, Midland, Ontario**

THIS MOTION, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “B”** hereto (the “**Real Property**”) of (i) 240 Old Penetanguish Holdings Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”),

- 2 -

and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and Midland Town Centre Inc. (the “**Purchaser**”) dated April 19, 2022 and appended to the Second Report of the Receiver dated May 13, 2022 (the “**Second Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets set out in **Schedule “C”** hereof (the “**Purchased Assets**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver’s Notice of Motion, the Second Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver’s Motion Record as appears from the affidavit of Nancy Thompson sworn May **[*]**, 2022 (the “**Thompson Affidavit**”):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver’s Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as

- 3 -

may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in **Schedule "C"**, including without limitation the Real Property, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Mr. Justice Dunphy dated June 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "D"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Simcoe (No. 51) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter Midland Town Centre Inc. as the owner of the Real Property in fee

- 4 -

simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

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

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

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

- 5 -

(c) any assignment in bankruptcy made in respect of any Debtor;

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

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

SCHEDULE A

Form of Receiver's Certificate

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 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 (collectively with the leases

- 2 -

related thereto, the “**Real Property**”) of, among other parties, (i) 240 Old Penetanguish 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) Gross Properties Inc. and 2413667 Ontario Inc. (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 May 24, 2022, the Court approved the agreement of purchase and sale made as of April 19, 2022 (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and Midland Town Centre 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 -

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 B**Real Property**

240 Penetanguishene Road, Midland

PIN 58454-0029(LT): PT E1/2 LT 106 CON 1 WPR TINY; PT LT 107 CON 1 WPR TINY PT
3 & 4, 51R18477 & PT 4, 5, 6, 7 & 10 R1026 EXCEPT 51R3985; T/W & S/T RO1045345;
MIDLAND

SCHEDULE C

Purchased Assets

- i. The Assigned Contracts;
- ii. Any Personal Property or fixtures that are Related to the Business and located upon the Real Property Assets;
- iii. All Real Property Assets;
- iv. The Permits and Licences;
- v. The Books and Records that are Related to the Business;
- vi. All proceeds of any or all of the foregoing received or receivable after the Closing Time.

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement.

SCHEDULE D

Claims to be deleted and expunged from title to Real Property

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SC1278220	January 26, 2016	Charge	\$70,000,000	240 Old Penetanguish Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SC1278221	January 26, 2016	Notice of Assignment of Rents-General		240 Old Penetanguish Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SC1609813	July 19, 2019	Charge	\$6,250,000	240 Old Penetanguish Holdings Inc., and 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1609814	July 19, 2019	Notice of Assignment of Rents-General		240 Old Penetanguish Holdings Inc., and 100 Colborne	1592106 Ontario Inc.

- 2 -

				Holdings Inc.	
SC1619869	August 29, 2019	Notice		240 Old Penetanguish Holdings Inc., and 100 Colborne Holdings Inc.	1592106 Ontario Inc.

SCHEDULE E

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

(Unaffected by the Vesting Order)

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement

- (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;
- (b) construction, mechanics', carriers', workers', repairers', storers' or other similar Encumbrances (inchoate or otherwise), but only if and to the extent that individually or in the aggregate: (i) they are not in respect of indebtedness exceeding \$10,000; (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 or restricting 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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect or restrict 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;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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;

- 2 -

- (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.

Court File No.: CV-21-00664273-00CL

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

- and -

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

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

APPROVAL AND VESTING ORDER
240 Penetanguishene Road, Midland, Ontario

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

Pamela L.J. Huff, LSO #27344V

Tel: 416-863-2958

Email: pamela.huff@blakes.com

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Tel: 416-863-2962

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Chris Burr, LSO #55172H

Tel: 416-863-3261

Email: chris.burr@blakes.com

Alexia Parente, LSO #81927G

Tel: 416-863-2417

Fax: 416-863-2653

Email: alexia.parente@blakes.com

Lawyers for the Receiver

TAB 12

Revised: January 21, 2014

Court File No. ~~_____~~ CY-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ~~_____~~ MADAM) ~~WEEKDAY~~ TUESDAY, THE #24th
 JUSTICE ~~_____~~ GILMORE) DAY OF ~~MONTH~~ MAY, ~~20YR~~ 2022

BETWEEN:

~~PLAINTIFF~~**Plaintiff**

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

Applicants

- and -

~~DEFENDANT~~**Defendant**

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

Respondents

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

APPROVAL AND VESTING ORDER
240 Penetanguishene Road, Midland, Ontario

13143037.1 24433010.2

DOCSTOR: 1201927\14

~~-2-~~

THIS MOTION, made by ~~[RECEIVER'S NAME]~~KPMG Inc., in its capacity as ~~the~~ Court-appointed receiver and manager (the "~~Receiver~~") ~~without security~~ of the ~~undertaking, property and~~ assets of ~~[DEBTOR]~~ (the "~~Debtor~~"), undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "B" hereto (the "Real Property") of (i) 240 Old Penetanguish 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) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "Beneficial Owners", and together with the Legal Owner, the "Debtors"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and ~~[NAME OF PURCHASER]~~Midland Town Centre Inc. (the "**Purchaser**") dated ~~[DATE]~~April 19, 2022 and appended to the Second Report of the Receiver dated ~~[DATE]~~May 13, 2022 (the "**Second Report**"), and vesting in the Purchaser the ~~Debtor~~Debtors's right, title and interest in and to the assets ~~described~~set out in ~~the Sale Agreement~~Schedule "C" hereof (the "**Purchased Assets**"), was heard this day ~~at 330 University Avenue,~~by judicial videoconference via Zoom in Toronto, Ontario.

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

~~13143037.1~~24433010.2

DOCSTOR: 1201927\14

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~~list~~, although properly served with the Receiver's Motion Record as appears from the affidavit of ~~[NAME]~~ Nancy Thompson sworn May [DATE] filed^{1*}, 2022 (the "Thompson Affidavit):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.

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

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

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

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

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

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

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~~-44 -~~

liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of ~~the Honourable~~ Mr. Justice [NAME] Dunphy dated ~~[DATE]~~ June 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C** "**D**" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D** "**E**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. ~~3.~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~ Land Titles Division of ~~{LOCATION}~~ Simcoe (No. 51) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*⁶, the Land Registrar is hereby directed to enter ~~the Purchaser~~ Midland Town Centre Inc. as the owner of the ~~subject real property identified in Schedule B hereto (the "Real Property")~~ in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule C** "**D**" hereto.

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

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

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~~-5-~~

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

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

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

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

- (a) the pendency of these proceedings;

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

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

~~-66-~~

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

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

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

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

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Revised: January 21, 2014

~~Schedule~~ **SCHEDULE A** —**Form of Receiver's Certificate**Court File No. CV-21-00664273-00CL**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

~~**PLAINTIFF**~~**Plaintiff**AMERICAN GENERAL LIFE INSURANCE COMPANY,
LEXINGTON INSURANCE COMPANY, AND
THE VARIABLE ANNUITY LIFE INSURANCE COMPANYApplicants

- and -

~~**DEFENDANT**~~**Defendant**SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658
ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH
HOLDINGS INC., 100 COLBORNE HOLDINGS INC., 240 OLD
PENETANGUISH HOLDINGS INC., GROSS PROPERTIES INC., 180 VINE
PURCHASER INC., AND 2413667 ONTARIO INC.RespondentsAPPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.
B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**RECEIVER'S CERTIFICATE****RECITALS**13143037-1 24433010.2

DOCSTOR: 1201927\14

~~-2-~~ 2

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ June 29, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the ~~undertaking, property and~~ assets of ~~[DEBTOR] (the "Debtor").~~ undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases related thereto, the "Real Property") of, among other parties, (i) 240 Old Penetanguish 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) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "Beneficial Owners", and together with the Legal Owner, the "Debtors"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated ~~[DATE]~~ May 24, 2022, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ April 19, 2022 (the "**Sale Agreement**") between the Debtors (acting by the Receiver ~~[Debtor])~~ and ~~[NAME OF PURCHASER]~~ Midland Town Centre Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the ~~Debtor~~ Debtors's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ sections 7.1 and 7.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

~~13143037.1~~ 24433010.2

DOCSTOR: 120192714

~~-2-~~ 3

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 ~~section~~ sections 7.1 and 7.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

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

Per: _____

Name:

Title:

~~13143037.1~~ 24433010.2

DOCSTOR: 1201927\14

Document comparison by Workshare 10.0 on Friday, May 13, 2022 11:32:34 AM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13143037/1
Description	TOR_2024-#13143037-v1-Model_Approval_and_Vesting_Order_(downloaded_on_May_4,_2022)
Document 2 ID	PowerDocs://TOR_2528/24433010/2
Description	TOR_2528-#24433010-v2-KPMG_-_Gross_-_AVO_(240_Peneta nguish)
Rendering set	Standard

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

Padding cell	
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Statistics:	
	Count
Insertions	237
Deletions	123
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	360

TAB 13

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM	)	TUESDAY, THE 24th
)	
JUSTICE GILMORE	)	DAY OF MAY, 2022

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER
849 Alexander Court, Peterborough, Ontario**

THIS MOTION, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “B”** hereto (the “**Real Property**”) of (i) 2478658 Ontario Ltd. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”), and (ii)

- 2 -

Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and Seven Hills Developments Inc. (the “**Purchaser**”) dated April 14, 2022 and appended to the Second Report of the Receiver dated May 13, 2022 (the “**Second Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets set out in **Schedule “C”** hereof (the “**Purchased Assets**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver’s Notice of Motion, the Second Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver’s Motion Record as appears from the affidavit of Nancy Thompson sworn May [redacted], 2022 (the “**Thompson Affidavit**”):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver’s Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as

- 3 -

may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in **Schedule "C"**, including without limitation the Real Property, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Mr. Justice Dunphy dated June 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "D"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Peterborough (No. 45) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter Seven Hills Developments Inc. as the owner of the Real Property in fee

- 4 -

simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

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

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

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

- 5 -

(c) any assignment in bankruptcy made in respect of any Debtor;

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

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

SCHEDULE A

Form of Receiver's Certificate

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 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 (collectively with the leases related thereto, the "**Real Property**") of, among other parties, (i) 2478658 Ontario Ltd. (the

- 2 -

“**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (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 May 24, 2022, the Court approved the agreement of purchase and sale made as of April 14, 2022 (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and Seven Hills Developments 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 7.2 and 7.3 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 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.

- 3 -

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

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

Per: _____

Name:

Title:

SCHEDULE B**Real Property**

849 Alexander Court, Peterborough

PIN 28061-0157(LT): PT LTS 3 & 4, PL 23Q, PART 1&2, 45R647, NORTH MONAGHAN;
PETERBOROUGH

SCHEDULE C

Purchased Assets

- 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 Permits and Licences;
- vi. The Books and Records that are Related to the Business;
- vii. All goodwill Related to the Business; and
- viii. All proceeds of any or all of the foregoing received or receivable after the Closing Time.

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement.

SCHEDULE D**Claims to be deleted and expunged from title to Real Property**

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
PE239807	January 26, 2016	Charge	\$70,000,000	2478658 Ontario Ltd.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
PE239808	January 26, 2016	Notice of Assignment of Rents-General		2478658 Ontario Ltd.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
PE314057	July 19, 2019	Charge	\$6,250,000	2478658 Ontario Ltd.	1592106 Ontario Inc.
PE314058	July 19, 2019	Notice of Assignment of Rents-General		2478658 Ontario Ltd.	1592106 Ontario Inc.
PE316568	August 28, 2019	Notice	\$2	2478658 Ontario Ltd.	1592106 Ontario Inc.
PE324329	December 19, 2019	Charge	\$1,000,000	2478658 Ontario Ltd.	1012689 Ontario Limited

SCHEDULE E

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

(Unaffected by the Vesting Order)

Capitalized terms used but not otherwise defined in this Schedule shall have the meanings given to them in the Sale Agreement.

- (a) Encumbrances related to real property taxes for municipal and school purposes 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) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (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

- 2 -

respects, and in each case so long as they are registered on title or have been made available to the Purchaser prior to the expiry of the Due Diligence Period;

- (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, other than financing-related Encumbrances, which will be discharged on Closing pursuant to the Approval and Vesting Order; 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.

Court File No.: CV-21-00664273-00CL

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

- and -

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

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

APPROVAL AND VESTING ORDER
849 Alexander Court, Peterborough, Ontario

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

Pamela L.J. Huff, LSO #27344V

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Tel: 416-863-3261

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Tel: 416-863-2417

Fax: 416-863-2653

Email: alexia.parente@blakes.com

Lawyers for the Receiver

TAB 14

Revised: January 21, 2014

Court File No. ~~—~~ CY-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ~~—~~ MADAM) ~~WEEKDAY~~ TUESDAY, THE #24th
JUSTICE ~~—~~ GILMORE) DAY OF ~~MONTH~~ MAY, ~~20YR~~ 2022

B E T W E E N:

~~PLAINTIFF~~

~~Plaintiff~~

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

Applicants

- and -

~~DEFENDANT~~

~~Defendant~~

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

Respondents

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

APPROVAL AND VESTING ORDER
849 Alexander Court, Peterborough, Ontario

~~13143037.1~~ 24433409.2

DOCSTOR: 1201927\14

~~-2-~~

THIS MOTION, made by ~~[RECEIVER'S NAME]~~KPMG Inc., in its capacity as ~~the~~ Court-appointed receiver and manager (the "~~Receiver~~") without security of the ~~undertaking, property and~~ assets of ~~[DEBTOR]~~ (the "~~Debtor~~"), undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "B" hereto (the "Real Property") of (i) 2478658 Ontario Ltd. (the "Legal Owner") acquired for, or used in relation to the Legal Owner's business (collectively, the "Legal Owner's Property"), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "Beneficial Owners", and together with the Legal Owner, the "Debtors"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and ~~[NAME OF PURCHASER]~~Seven Hills Developments Inc. (the "**Purchaser**") dated ~~[DATE]~~April 14, 2022 and appended to the Second Report of the Receiver dated ~~[DATE]~~May 13, 2022 (the "**Second Report**"), and vesting in the Purchaser the ~~Debtor~~Debtors's right, title and interest in and to the assets ~~described~~set out in ~~the Sale Agreement~~Schedule "C" hereof (the "**Purchased Assets**"), was heard this day ~~at 330 University Avenue,~~by judicial videoconference via Zoom in Toronto, Ontario.

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

-3-

~~list~~, although properly served with the Receiver's Motion Record as appears from the affidavit of ~~[NAME]~~ Nancy Thompson sworn May [DATE] filed^{1*}, 2022 (the "Thompson Affidavit):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.

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

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

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

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

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

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

~~-41 -~~

liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of ~~the Honourable~~ Mr. Justice [NAME] Dunphy dated ~~[DATE]~~ June 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C~~"D"~~** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D~~"E"~~**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. ~~3.~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~ Land Titles Division of ~~{LOCATION}~~ Peterborough (No. 45) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*⁶, the Land Registrar is hereby directed to enter ~~the Purchaser~~ Seven Hills Developments Inc. as the owner of the ~~subject real property identified in Schedule B hereto (the "Real Property")~~ in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule C~~"D"~~** hereto.

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

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

~~-5-~~

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

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

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

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

- (a) the pendency of these proceedings;

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

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

~~-66-~~

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

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

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

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

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Revised: January 21, 2014

~~Schedule~~**SCHEDULE A**—

Form of Receiver's Certificate

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

~~PLAINTIFF~~

Plaintiff

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

Applicants

- and -

~~DEFENDANT~~

Defendant

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

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~Justice Dunphy of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF~~

~~13143037.1~~24433409.2

DOCSTOR: 120192714

~~-2-~~ 2

~~RECEIVER~~ June 29, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the ~~undertaking, property and~~ assets of ~~[DEBTOR] (the "Debtor")~~, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases related thereto, the "Real Property") of, among other parties, (i) 2478658 Ontario Ltd. (the "Legal Owner") acquired for, or used in relation to the Legal Owner's business (collectively, the "Legal Owner's Property"), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "Beneficial Owners", and together with the Legal Owner, the "Debtors"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated ~~[DATE]~~ May 24, 2022, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ April 14, 2022 (the "**Sale Agreement**") between the Debtors (acting by the Receiver ~~[Debtor]~~) and ~~[NAME OF PURCHASER]~~ Seven Hills Developments Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the ~~Debtor~~ Debtors's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ sections 7.2 and 7.3 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.

~~13143037.1~~ 24433409.2

~~DOCSTOR: 1201927~~ 14

~~-2-~~ 3

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 ~~section~~ sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

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

Per: _____

Name:

Title:

Document comparison by Workshare 10.0 on Friday, May 13, 2022 11:46:01 AM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13143037/1
Description	TOR_2024-#13143037-v1-Model_Approval_and_Vesting_Order_(downloaded_on_May_4,_2022)
Document 2 ID	PowerDocs://TOR_2528/24433409/2
Description	TOR_2528-#24433409-v2-KPMG_-_Gross_-_AVO_(849_Alexander)
Rendering set	Standard

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

Padding cell	
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Statistics:	
	Count
Insertions	244
Deletions	123
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	367

TAB 15

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM	)	TUESDAY, THE 24th
)	
JUSTICE GILMORE	)	DAY OF MAY, 2022

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

DISTRIBUTION AND ANCILLARY MATTERS ORDER

THIS MOTION, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “A”** (the “**Real Property**”) of the Appointment Order granted on June 29, 2021 (the “**Appointment Order**”) of:

(i) Southmount Healthcare Centre Inc. (formerly Carriage Gate Group Inc.) (“**Southmount**”),

- 2 -

180 Vine Inc. (“**Vine Co.**”), 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the “**Legal Owners**”) acquired for, or used in relation to the Legal Owners’ business, including any interest held by Vine Co. to which Her Majesty the Queen in Right of Ontario (the “**Crown**”) may have rights and any interest in the applicable real property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the “**Legal Owners’ Property**”), and (ii) 180 Vine Purchaser Inc., Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owners, the “**Debtors**”), but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owners’ Property, including the Real Property , and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (together with the Legal Owner’s Property, the “**Receivership Assets**”), for an Order, among other things:

- (i) authorizing the Receiver to pay commissions to CBRE Limited (the “**Broker**”);
- (ii) authorizing the Receiver to make distributions to the Applicants;
- (iii) procedurally consolidating the bankruptcy proceedings of the Legal Owners (other than Southmount) and certain related parties;
- (iv) approving the activities of the Receiver, as set out in the Receiver’s First Report to Court dated October 21, 2021 (the “**First Report**”) and the Receiver’s Second Report to the Court dated May 13, 2022 (the “**Second Report**”); and
- (v) sealing Confidential Appendices “A”, “B” and “C” to the Second Report (collectively, the “**Confidential Appendices**”).

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

- 3 -

ON READING the Receiver's Notice of Motion, the Second Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver's Motion Record as appears from the affidavit of Nancy Thompson sworn May [*], 2022 (the "**Thompson Affidavit**"):

SERVICE

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.

PAYMENT OF BROKER COMMISSIONS

2. **THIS COURT ORDERS AND DECLARES** that the Receiver is authorized and directed to pay the Commissions (as defined in the Second Report) to the Broker as and when applicable sale transactions close, out of the proceeds thereof, in each case in such amounts as are prescribed by the terms of the broker listing agreement dated as of October 20, 2021 among the Debtors and the Broker.

RESERVE AND DISTRIBUTIONS

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to:

- (a) repay all indebtedness outstanding under Receiver's Certificates (as defined in the Appointment Order) issued under the term sheet among the Applicants and the Receiver, dated June 18, 2021 from the Net Proceeds of Sale (as defined in the Second Report) and any other funds in the possession of the Receiver (the "**Receivership Cash**")

- 4 -

(b) distribute to the Applicants by way of one or more distributions from the Receivership Cash at the time or times determined by the Receiver, in its sole discretion, an amount not exceeding the maximum amount owed by the Debtors to the Applicants on account of principal, interest, fees and expenses, subject to the maintenance of a reserve, in an amount satisfactory to the Receiver, in consultation with the Applicants, or in an amount otherwise ordered by the Court, to: (i) fund the fees and disbursements of the Receiver and its counsel, (ii) fund operating costs and expenses of the Debtors incurred in relation to the Receivership Assets since the date of the Appointment Order, (iii) secure the obligations under the Receiver's Charge (as defined in the Appointment Order), and (iv) fund the Bankruptcy Costs (defined below).

BANKRUPTCY OF 180 VINE PURCHASER INC.

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to file and assignment in bankruptcy on behalf of 180 Vine Purchaser Inc. ("**Vine Purchaser**"), or to consent to the making of a bankruptcy order against Vine Purchaser.

PROCEDURAL CONSOLIDATION

5. THIS COURT ORDERS that following any assignment in bankruptcy by or on behalf of any of the Legal Owners other than Southmount (such bankrupt Legal Owners being the "**Bankruptcy Legal Owners**"), 180 Vine Purchaser Inc. ("**Vine Purchaser**") and Victoria Avenue North Holdings Inc. ("**Victoria**"), KPMG Inc., in its capacity as the bankruptcy trustee of the Bankruptcy Legal Owners, Vine Purchaser and Victoria (the "**Trustee**") shall be entitled to administer the procedural matters relating to those bankruptcy proceedings on a consolidated basis (the "**Consolidated Proceedings**") and a copy of this order will be filed in the court file for each of the estates of the Bankruptcy Legal Owners, Vine Purchaser and Victoria.

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6. **THIS COURT ORDERS** that the Trustee is authorized to carry out its administrative duties and responsibilities as trustee in bankruptcy as if the Consolidated Proceedings were a single proceeding under the *Bankruptcy and Insolvency Act* (Canada), including without limitation:

- a) the meetings of creditors of the Bankruptcy Legal Owners, Vine Purchaser and Victoria may be convened and conducted jointly,
- b) the Trustee is authorized to issue consolidated reports in respect of the Bankruptcy Legal Owners, Vine Purchaser and Victoria; and
- c) the Trustee is authorized to deal with all filings and notices relating to the bankruptcy on a consolidated basis

7. **THIS COURT ORDERS** that the Consolidated Proceeding will be in relation to procedural matters only and do not:

- a) affect the separate legal status of the corporate structure of the Bankruptcy Legal Owners, Vine Purchaser and Victoria;
- b) cause any of the Bankruptcy Legal Owners, Vine Purchaser or Victoria to be liable for any claim for which it is otherwise not liable, or cause any of the Bankruptcy Legal Owners, Vine Purchaser or Victoria to have any interest in any asset which it otherwise would not have; or
- c) affect the Bankruptcy Legal Owners', Vine Purchaser's or Victoria's filing obligations under the *Bankruptcy and Insolvency Act* (Canada).

8. **THIS COURT ORDERS** that the Receiver shall be permitted to transfer to the Trustee from time to time funding for costs associated with the bankruptcies of the Bankruptcy Legal

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Owners and Vine Purchaser, as determined by the Receiver in consultation with the Applicants (the “**Bankruptcy Costs**”).

APPROVAL OF REPORTS & ACTIVITIES

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

SEALING ORDER

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

MISCELLANEOUS

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

Court File No.: CV-21-00664273-00CL

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

- and -

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

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

DISTRIBUTION AND ANCILLARY
MATTERS ORDER

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

- and -

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

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

MOTION RECORD
(Sale Approval and Ancillary Matters)
Returnable May 24, 2022

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