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

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

Southmount Healthcare Centre Inc. *et al*.

JUNE 26, 2023

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 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

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

DATED JUNE 26, 2023

TABLE OF CONTENTS

I. INTRODUCTION 1
II. PURPOSE OF REPORT 6
III. QUALIFICATIONS & TERMS OF REFERENCE 7
IV. ACTIVITIES OF THE RECEIVER 8
V. OTHER RECEIVERSHIP MATTERS 9
VI. INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS 13
VII. DISTRIBUTIONS 15
VIII. FEES AND DISBURSEMENTS OF THE RECEIVER AND ITS COUNSEL 17
IX. REMAINING ACTIVITIES AND DISCHARGE OF THE RECEIVER 19
X. RECEIVER'S CONCLUSION AND RECOMMENDATION 20

APPENDICES

APPENDIX "A" – 100 Colborne APA (Redacted)

APPENDIX "B" – Letter from Receiver's Counsel to Colborne Purchaser's counsel dated November 24, 2022

APPENDIX "C" – Letter from Receiver's Counsel to Colborne Purchaser's counsel dated January 19, 2023

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., 2478658 Ontario Ltd., 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. (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 conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the "**Legal Owners' Property**"), and (ii) 180 Vine Purchaser Inc. ("**Vine Purchaser Co.**"), Gross Properties Inc. ("**Gross Properties**") 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. Pursuant to the Appointment Order, the Court, among other things (i) approved a term sheet dated June 18, 2021 among the Receiver and the Applicants (the "**Receiver Term Sheet**"), pursuant to which the Applicants advanced funding for these proceedings (the "**Proceedings**"), and (ii) authorized (but did not obligate) the Receiver to assign each of the Legal Owners into bankruptcy.

3. The Real Property primarily comprised seven (7) medical office buildings located in various municipalities across Ontario housing more than 310,000 square feet of rentable space in aggregate, each of which, as set out in greater detail below, has been sold pursuant to transactions approved by this Court.

4. 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.

5. On October 29, 2021, the Court granted an order (the "**Sale Process Order**") in these Proceedings approving, among other things:

   (a) the broker listing agreement dated October 20, 2021, and the engagement of CBRE Limited ("**CBRE**") as exclusive real estate broker for the properties owned by the Legal Owners and the leases related thereto (the "**Real Property Assets**"); and

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

6. As detailed in the Receiver's first report dated October 21, 2021 (the "**First Report**"), on August 3, 2021, upon application by American General Life Insurance Company and an affiliated secured lender, KPMG was also 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 "**Gross Capital Proceedings**"). The Receiver understands that historically the Legal Owners and Victoria Avenue were each managed by representatives of Gross Capital.

7. 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 Second Report (defined herein), the Victoria Avenue Real Property Assets were marketed alongside the Real Property Assets that are the subject of these Proceedings.

8. At a hearing before the Court on May 24, 2022 (the "**May 24 Hearing**"), the Court granted five (5) approval and vesting orders in these Proceedings, each, among other things:

(a) approving sale transactions (the "**May 24 Transactions**") in respect of certain of the Real Property Assets, and authorizing and directing the Receiver to take such steps as necessary to complete same; and

(b) vesting title in and to the applicable Real Property Assets in each applicable Purchaser, free and clear of all liens, claims and encumbrances, except certain permitted encumbrances, upon the Receiver delivering a certificate confirming, among other things, completion of each of the May 24 Transactions.

9. Also at the May 24 Hearing, the Court granted an order (the "**May 24 Distribution & Ancillary Relief Order**") in these Proceedings, among other things:

(a) authorizing and directing the Receiver to pay the brokerage commissions in connection with the May 24 Transactions upon closing thereof;

(b) authorizing KPMG, in its capacity as bankruptcy trustee of Victoria Avenue and the Legal Owners (other than Southmount and Vine Purchaser Co.) to administer the procedural matters relating to the bankruptcy proceedings of Victoria Avenue and the Legal Owners (other than Southmount and Vine Purchaser Co.) on a consolidated basis;

(c) authorizing the Receiver to:

(i) transfer funding for costs associated with the bankruptcy proceedings of the Legal Owners (other than Southmount and Vine Purchaser Co.) as determined by the Receiver in consultation with the Applicants, to KPMG, in its capacity as bankruptcy trustee;

(ii) repay the indebtedness owing to the Applicants pursuant to the Receiver Term Sheet; and

(iii) make one or more distributions to the Applicants from the net proceeds of the May 24 Transactions and any other funds in the possession of the Receiver, less a reserve to be determined and held back by the Receiver to fund, among other things, the costs of these Proceedings and ongoing operating expenses.

(d) authorizing (but not obligating) the Receiver to file an assignment in bankruptcy on behalf of Vine Purchaser Co.;

(e) approving the First Report and the Second Report, and the Receiver's activities described therein; and

(f) sealing the confidential appendices to the Second Report and the Supplemental Report (as defined herein).

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

11. As detailed in the Third Report (as defined herein), subsequent to the May 24 Hearing, three (3) of the May 24 Transactions closed. Subsequent to the May 24 Hearing and prior to the expiry of its due diligence period, the purchaser of the Real Property Assets owned by 2009 Long Lake and 65 Larch declined to waive its due diligence conditions and proceed towards closing the respective May 24 Transactions on the terms approved at the May 24 Hearing.

12. At a hearing before the Court on July 15, 2022 (the "**July 15 Hearing**"), the Court granted four (4) approval and vesting orders in these Proceedings (the "**July 15 AVOs**"), each, among other things:

(a) approving sale transactions (the "**July 15 Transactions**", and together with the May 24 Transactions, the "**Southmount Transactions**") in respect of certain of the Real Property Assets of Southmount, 65 Larch, 2009 Long Lake and Vine Purchaser Co, and authorizing and directing the Receiver to take such steps as necessary to complete same; and

(b) vesting title in and to the applicable Real Property Assets in each applicable Purchaser, free and clear of all liens, claims and encumbrances, except certain permitted encumbrances, upon the Receiver delivering a certificate confirming, among other things, completion of each of the July 15 Transactions.

13. Also at the July 15 Hearing, the Court granted an order in these Proceedings (the "**July 15 Distribution & Ancillary Relief Order**"), among other things:

(a) authorizing the Receiver to:

(i) pay the brokerage commissions in connection with the July 15 Transactions upon closing thereof;

(ii) make one or more interim distributions to the Applicants from the net proceeds of sale from the July 15 Transactions and other available cash on hand, subject to the maintenance of a reserve sufficient to fund, among other things, the Construction Lien Reserve (defined herein); and

(iii) procedurally consolidate the bankruptcy proceedings of Southmount and Vine Purchaser Co. with the bankruptcy proceedings of the other Legal Owners and Victoria Avenue.

(b) approving the activities of the Receiver, as set out in the Supplemental Report and the Third Report; and

(c) sealing Confidential Appendices "A" and "B" to the Third Report.

14. The Receiver filed a report dated July 5, 2022 (the "**Third Report**") in support of the relief sought at the July 15 Hearing.

15. At a hearing before the Court on February 8, 2023 (the "**February 8 Hearing**"), the Court granted an order (the "**Lift Stay Order**") in various proceedings, including these Proceedings, the Victoria Avenue Proceedings, and the Gross Capital Proceedings, declaring (among other things) that:

(a) the stay of proceedings pursuant to the Appointment Order shall no longer operate in respect of the Action (as defined in the Lift Stay Order), which is based upon certain alleged false representations by Sheldon Gross and Mark Gross (former principals of Gross Capital) that allegedly induced the Moving Parties (as defined in the Lift Stay Order) to invest in certain entities affiliated with Gross Capital; and

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

16. The Receiver filed a report dated January 23, 2023 (the "**Responding Report**") to provide the Court with information pertaining to the motion heard during the February 8 Hearing.

17. Electronic copies of the Pre-Filing Report, the First Report, the Second Report, the Supplemental Report, the Third Report, and the Responding Report (together, the "**Prior Reports**") and other statutory materials are available on the Receiver's website at: home.kpmg/ca/SouthmountEtAl (the "**Receiver's Website**").

II. PURPOSE OF REPORT

18. The purpose of this fourth report of the Receiver (the "**Fourth Report**") is to provide this Court with information pertaining to:

    (a) the Receiver's activities since the date of the Third Report;

    (b) the Receiver's interim statement of receipts and disbursements (the "**Interim SRD**") for the period from the Receivership Date to and including May 31, 2023 (the "**SRD Period**");

    (c) the Receiver's proposed distributions to the Applicants of, among other things, available funds from the Receiver's cash on hand;

    (d) the fees and disbursements of the Receiver, its counsel, Blake, Cassels & Graydon LLP ("**Blakes**"), and its independent counsel, Norton Rose Fulbright Canada LLP ("**Norton Rose**", and together with Blakes, the "**Receiver's Counsel**");

    (e) the remaining tasks to be completed by the Receiver in order to conclude the administration of these Proceedings; and

    (f) the Receiver's recommendation that this Court grant an order (the "**Discharge, Distribution and Ancillary Matters Order**"):

        (i) authorizing the Receiver to release the Construction Lien Reserve, by issuing the Interim Distribution and the Final Distribution (each as defined herein) to the Applicants;

        (ii) discharging KPMG Inc. as Receiver effective upon the filing of the Receiver's discharge certificate, certifying that, to the best of the knowledge and belief of the

Receiver, all matters to be attended to in connection with these Proceedings have been completed to the satisfaction of the Receiver (the "**Discharge Certificate**");

(iii) approving this Fourth Report and the activities of the Receiver since the date of the Third Report, as set out in this Fourth Report;

(iv) dispensing with the requirement that the Receiver and the Receiver's Counsel obtain Court approval of their Accounts for the Fee Period (defined herein) and thereafter unless requested by the Applicants; and

(v) granting certain customary releases in favour of the Receiver, and the Receiver's Counsel.

III. QUALIFICATIONS & TERMS OF REFERENCE

19. In preparing this Fourth Report and making the comments herein, the Receiver has been provided with, or has relied upon certain unaudited, draft, and/or internal financial information, the Legal 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.

20. Some of the Information referred to in this Fourth Report consists of financial forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.

21. Certain Information referred to in this Fourth Report is based on estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and, as a consequence, no assurance can be provided regarding the forecasted or projected results. The reader is cautioned that the actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant.

22. The Receiver has prepared this Fourth Report in connection with the motion to be heard by the Court on July 5, 2023 (the "**July 5 Hearing**") or as soon after that time as the July 5 Hearing can be heard. This Fourth Report should not be relied on for other purposes.

23. The information contained in this Fourth Report is not intended to be relied upon by any counterparty in any transaction with the Receiver**.**

24. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. ACTIVITIES OF THE RECEIVER

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

    (a) liaising with the property manager, Prime Real Estate Group Inc., in respect of various operational matters, including repairs and maintenance requirements, leasing, and other tenant-related matters related to those properties of the Legal Owners which remained in the possession of the Receiver;

    (b) liaising with tenants in respect of lease extensions, renewals, and new lease agreements;

    (c) reviewing and signing cheques for vendor payments;

    (d) collecting rents from tenants;

    (e) 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, and liaising with the Legal Owners' insurance broker to terminate insurance coverage upon closing of each of the Southmount Transactions;

    (f) monitoring cash flows and liquidity, and attending to various banking matters including monthly bank reconciliations;

    (g) reviewing and filing quarterly HST returns with Canada Revenue Agency ("**CRA**"), and responding to HST return examination requests from CRA;

    (h) closing the July 15 Transactions, paying the brokerage commissions in connection with same to CBRE, and issuing distributions to the Applicants from the net proceeds of sale of

the July 15 Transactions, pursuant to the terms of the July 15 AVOs and the July 15 Distribution & Ancillary Relief Order;

(i) bankrupting Southmount, Vine Purchaser Co., 2009 Long Lake, and 65 Larch following closing of the respective July 15 Transactions, and providing funding to such bankruptcy proceedings pursuant to the May 24 Distribution & Ancillary Relief Order and the July 15 Distribution & Ancillary Relief Order;

(j) preparing and reviewing Court materials, including the Responding Report, in connection with the February 8 Hearing, and attending the February 8 Hearing;

(k) preparing and reviewing Court materials, including this Fourth Report, in connection with the July 5 Hearing;

(l) responding to inquiries from the trustee in bankruptcy for Gross Capital;

(m) responding to tax related and other inquiries from purported Beneficial Owners;

(n) engaging with the Receiver's Counsel in respect of the completion of the July 15 Transactions, the Larch Litigation and the Tax Appeal (each as defined herein), and other matters in these Proceedings;

(o) providing updates to and consulting with the Applicants in respect of various aspects of these Proceedings;

(p) maintaining and updating the Receiver's Website where copies of all Court and other statutory materials are available in an electronic format; and

(q) communicating with vendors, creditors, parties purporting to have an interest in the Property, and other stakeholders in respect of various aspects of these Proceedings.

V. OTHER RECEIVERSHIP MATTERS

65 Larch Litigation

26. As detailed in the First Report and the Second Report, the Receiver has been liaising with Lax O'Sullivan Lisus Gottieb LLP, counsel to 65 Larch, in respect of advancing certain litigation (the "**Larch Litigation**") commenced by 65 Larch prior to the Receivership Date against a counterparty

(the "**Larch Defendant**") to a purchase and sale agreement in connection with the condition of the building owned by 65 Larch at the time that it was acquired by the Legal Owner.

27. The Receiver with the assistance of its counsel and in consultation with the Applicants engaged in settlement discussions with the Larch Defendant but no resolution was achieved that would provide recoveries to 65 Larch. The Receiver considered the merits of proceeding to trial to continue its pursuit of the Larch Litigation, and consulted with the Applicants, who advised that they did not support funding the continuation of the Larch Litigation.

28. The Receiver (through Norton Rose) subsequently notified the other secured creditors of 65 Larch, being Cannect International Mortgage Corporation, Gross Capital Inc., Enersavings Inc., and Add Capital Corp (collectively, the "**Larch** Subordinate **Secured Creditors**") of the Larch Litigation and the Applicants' position and requested that any party interested in funding and pursuing the Larch Litigation notify the Receiver of same. The Larch Subordinate Secured Creditors were given approximately two weeks to respond to the Receiver's letter to indicate if they were interested in funding and pursuing the Larch Litigation (which two-week period expired on March 14, 2023). None of the Larch Secured Creditors responded to the Receiver by March 14, 2023, and as at the date of this Fourth Report, there has been no interest expressed by the Larch Subordinate Secured Creditors in this matter.

29. Subsequently on or about March 21, 2023, KPMG, in its capacity as bankruptcy trustee of 65 Larch (the "**Larch Trustee**"), notified all known unsecured creditors in the 65 Larch bankruptcy estate (the "**Larch Unsecured Creditors**") of the Larch Litigation, and requested that any party interested in funding and pursuing the Larch Litigation pursuant to Section 38 of the BIA notify the Larch Trustee. Creditors were given approximately 30 days to respond to the Larch Trustee if they were interested in funding and pursuing the Larch Litigation (which 30-day period expired on April 20, 2023). None of the Larch Unsecured Creditors responded to the Larch Trustee by April 20, 2023, and as at the date of this Fourth Report, there has been no interest expressed in the Larch Litigation by the Larch Unsecured Creditors.

30. As neither the Larch Subordinate Secured Creditors nor the Larch Unsecured Creditors expressed an interest in funding and pursuing the Larch Litigation, KPMG, in its capacity as Receiver of certain assets, property and undertaking of Gross Properties, and its capacity as trustee in bankruptcy of 65 Larch, proceeded to enter into a full and final release of the Larch Litigation (the "**Larch Release**") without admission of liability by any party. The Receiver is of the view that the Larch Release was

appropriate in the circumstances, and necessary to provide finality to the Larch Litigation and avoid any further costs being incurred in connection with same for which funding would otherwise need to be reserved.

100 Colborne Property Tax Appeal

31. The Real Property Assets owned by 100 Colborne, being primarily composed of a medical office building located at 100 Colborne Street West, Orillia and the real property leases related thereto (collectively, the "**100 Colborne Real Property**") were sold pursuant to one of the May 24 Transactions (the "**Colborne Transaction**") that closed on June 6, 2022 (the "**Colborne Closing Date**"). Following the Colborne Closing Date, the Receiver was made aware by the purchaser of the 100 Colborne Real Property (the "**Colborne Purchaser**") that prior to the Receivership Date, 100 Colborne had engaged the Altus Group, a municipal property tax consultant, to commence a municipal property tax assessment appeal with the City of Orillia with respect to the assessed value of the 100 Colborne Real Property (the "**Tax Appeal**") which informed the determination of municipal property taxes payable by the owner of such property (the "**Assessed Value**"). The Tax Appeal aimed to result in a lower Assessed Value (which reduction would be applied both retroactively and prospectively, beginning with the 2017 tax year), ultimately resulting in (i) reduced municipal property taxes payable by the owner of such property from and after the Colborne Closing Date (the benefit of which would accrue to the Colborne Purchaser), and (ii) a tax refund in respect of each of the tax years from 2017 to 2022 up to the Colborne Closing Date, which would accrue to the benefit of 100 Colborne.

32. On August 3, 2022 and August 17, 2022, a representative of the Receiver and a representative of Colborne Purchaser discussed the details of the Tax Appeal. The Colborne Purchaser advised that it had been in discussions with the Altus Group with respect to advancing the Tax Appeal, and the Receiver advised that pursuant to the terms of the asset purchase agreement in the Colborne Transaction (the "**100 Colborne APA**", a redacted copy of which is appended as **Appendix "A"** hereto), any rebates, refunds and/or credits received as a result of the Tax Appeal which relate to the period prior to the Colborne Closing Date did not form part of the assets acquired by the Colborne Purchaser in the Colborne Transaction, and would be required to be remitted to the Receiver. The Colborne Purchaser requested to be compensated for the time and costs it would incur in connection with advancing the Tax Appeal. The Receiver and the Colborne Purchaser engaged in non-binding commercial discussions on whether the Receiver was prepared to relinquish carriage of the Tax Appeal to the Colborne Purchaser, in exchange for a potential sharing of any proceeds thereof. No such agreement was reached at that time.

33. During the period of August 2022 and November 2022, counsel to the Receiver attempted, on numerous occasions, to reach a potential consensual arrangement with the Colborne Purchaser (through its counsel) regarding the Tax Appeal and any refunds that could be derived therefrom. Despite numerous follow-up attempts, the Colborne Purchaser did not engage, culminating in a letter from counsel to the Receiver to (then) counsel for the Colborne Purchaser on November 24, 2022, a copy of which is appended as **Appendix "B"** hereto (the "**November 2022 Letter**").

34. In the November 2022 Letter, counsel to the Receiver outlined the Receiver's position that any amounts received in respect of the Tax Appeal relating to the period prior to the Colborne Closing Date would be an "Excluded Asset" pursuant to the 100 Colborne APA which has not been acquired by the Colborne Purchaser.

35. On December 2, 2022, the Receiver received *without prejudice* correspondence from new counsel to the Colborne Purchaser and during the course of the following month, the Receiver sought to engage in *without prejudice* negotiations with the Colborne Purchaser, with a view to reaching a consensual outcome in connection with the Tax Appeal. These efforts proved unsuccessful.

36. On January 19, 2023, counsel to the Receiver sent a letter to counsel for the 100 Colborne Purchaser, a copy of which is appended as **Appendix "C**" hereto (the "**January 2023 Letter**").

37. The January 2023 Letter sets out, on the record, the position of the Receiver in respect of the Tax Appeal and the numerous failed attempts by the Receiver to advance commercial discussions with the Colborne Purchaser, as a result of the Colborne Purchaser's failure to engage with the Receiver.

38. On January 26, 2023, a representative from the City of Orillia contacted the Receiver explaining that a settlement had been reached between the Altus Group (representing 100 Colborne) and the City of Orillia in respect of the Tax Appeal (the "**Colborne Settlement**"), and that the City of Orillia would be issuing a municipal property tax refund to the Receiver pursuant to the Colborne Settlement. The Receiver requested that the City of Orillia provide a breakdown of the Colborne Settlement refund amount by year and directed the City of Orillia that all funds related to the period prior to the Colborne Closing Date were property over which the Receiver was appointed.

39. On February 3, 2023, a *without prejudice* conference call took place between the Receiver and its counsel, Blakes, and the 100 Colborne Purchaser and its counsel. This call did not result in any settlement being reached.

40. On or around March 23, 2023, the Receiver received a cheque from the City of Orillia in the amount of $293,548.91, representing the portion of the Colborne Settlement that related to the period prior to the Colborne Closing Date (the "**100 Colborne Tax Refund**"). The Receiver deposited this cheque into the Receiver's estate trust account and as at the date of this Fourth Report is holding those funds.

41. Since February 3, 2023 and as of the date of this Fourth Report, the Receiver has received no further communication or correspondence whatsoever from the Colborne Purchaser.

42. In the Receiver's view, the 100 Colborne Tax Refund is expressly an "Excluded Asset" under the Colborne Transaction, forms the property of 100 Colborne and ought to be distributed to the Applicants in its entirety.

VI. INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

43. As shown in the Interim SRD below, during the SRD Period (being June 29, 2021 to May 31, 2023), the Receiver had cash receipts of approximately $62.5 million (including borrowings in the amount of approximately $0.5 million), and cash disbursements of approximately $61.4 million (including repayment of borrowings). As at May 31, 2023, the Receiver's cash on hand was approximately $1.0 million.

Interim Statement of Receipts and Disbursements
For the period June 29, 2021 to May 31, 2023
(C$, unaudited)

Receipts	
Net sale proceeds [1]	52,335,317
Rent receipts [2]	6,688,448
Other receipts [3]	1,544,143
HST collected	873,066
Receiver's borrowings [4]	500,000
Pre-filing bank balance [5]	488,067
Collection of other receivables [6]	26,510
Total Receipts	**62,455,549**
Disbursements	
Distributions to secured lenders [7]	49,200,000
Professional fees and disbursements	3,175,740
Property operating costs [8]	3,087,094
Municipal realty taxes [9]	2,027,686
Broker commissions [10]	1,646,950
HST paid	1,108,614
Property management fees [11]	560,890
Receiver's borrowings repayment [4]	541,072
Critical vendor payments [12]	51,126
Environmental and building condition reports	31,111
Total disbursements	**61,430,283**
Balance in Receiver's accounts	**1,025,267**

Notes:

(1) Sale proceeds in connection with sale of Real Property Assets, net of closing adjustments.
(2) Includes monthly rent collections from tenants and other miscellaneous receipts.
(3) Receipts related to various settlement agreements, realty tax refunds, and returned vendor deposits.
(4) Borrowings in accordance with Receiver Term Sheet. Principal and interest repaid in June 2022.
(5) Cash transferred to the Receiver's estate bank accounts from the Legal Owners' bank accounts upon commencement of the receivership proceedings.
(6) Collections of deferred rent arrears and outstanding common area maintenance.
(7) Distributions to secured creditors of available proceeds from sale of Real Property Assets.
(8) General operating costs such as utilities, maintenance, insurance, etc.
(9) Payment of municipal taxes following sale of Real Property Assets.
(10) Broker commissions paid to CBRE in connection with sale of Real Property Assets.
(11) 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.
(12) Payments to certain critical vendors for pre-receivership amounts owing.

44. As at May 31, 2023, the Receiver had accrued and unpaid fees and disbursements of the Receiver and the Receiver's Counsel in the amount of approximately $12,950 (the "**Accrued Obligations**").

VII. DISTRIBUTIONS

Applicants' Security

45. 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.

46. The balance of the Applicants' secured debt is estimated to be approximately $21.1 million as at May 31, 2023, composed of the following:

    (a) principal: $14.9 million;

    (b) accrued interest: $6.2 million; and

    (c) other costs and other amounts that may be claimable by the Applicants in connection therewith, including yield maintenance amounts.

47. Following the completion of the July 15 Transactions as described previously herein, the Real Property Assets have been fully realized upon. The Receiver's remaining cash on hand, and any additional realizations on other remaining Property in these Proceedings are anticipated to be modest and will not be nearly sufficient to repay the remaining principal and interest owing to the Applicants (without accounting for their costs and any other amounts that may be claimable by the Applicants pursuant to their loan and security documents, including yield maintenance amounts).

Construction Lien Reserve

48. As described in the Second Report, on June 26, 2021, prior to the Receivership Date, Enersavings Inc. (the "**Construction Lien Claimant**") registered a construction lien against the 65 Larch Real Property in the amount of $160,252.

49. Pursuant to the July 15 Distribution & Ancillary Relief Order, the Receiver was required to maintain a reserve, among other things, to satisfy any claim of the Construction Lien Claimant in respect of the

65 Larch Construction Lien (as defined in the Third Report) to the extent that such claims rank senior to the claims of the Applicants, in an amount not to exceed $160,252 (the "**Construction Lien Reserve**").

50. Following the granting of the July 15 Distribution & Ancillary Relief Order, the Receiver's counsel, Norton Rose, contacted counsel to the Construction Lien Claimant to seek information in support of the alleged priority of the 65 Larch Construction Lien over the secured debt owing to the Applicants. Norton Rose has responded to certain requests for information from counsel to the Construction Lien Claimant. As at the date of this Fourth Report, no further information has been received from the Construction Lien Claimant to suggest a potential priority of the claim which would rank ahead of the Applicants' secured debt. As a result, the Receiver is respectfully recommending that this Court authorize and direct the release of the Construction Lien Reserve for distribution to the Applicants.

Other Potential Priority Claims

51. The Legal Owners did not have any employees and 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.

52. Payment of municipal realty tax arrears of each of the Real Property Assets were made by the Receiver following the closing of each of the Southmount Transactions, for amounts owing up to the respective closing dates of each of the Southmount Transactions.

53. The Legal Owners appear to have outstanding HST arrears related to the period after the Applicants advanced the loan to the Legal Owners but prior to the Receivership Date, as evidenced by documentation obtained from CRA. Pursuant to the Appointment Order, the Receiver was empowered and authorized to, among other things, file an assignment in bankruptcy on behalf of the Legal Owners, should the Receiver consider it necessary or desirable. Following the closing of the various Southmount Transactions, the Receiver filed an assignment in bankruptcy on behalf of each of the Legal Owners (excluding 180 Vine Inc.), and Vine Purchaser Co. (the "**Southmount et al Bankruptcy Proceedings**"). In the Receiver's view, the Southmount et al Bankruptcy Proceedings have provided finality to claims and may crystalize investment losses for the Beneficial Owners.

54. As such, the Receiver is not aware of any priority claims that would rank ahead of the Applicants at the time of the Interim Distribution or thereafter.

Distributions

55. The Receiver notes that distributions to the Applicants from the proceeds of sale of the Real Property Assets were previously approved by the Court in connection with the Southmount Transactions, which distributions have been issued by the Receiver.

56. As detailed in the Interim SRD, the Receiver remains in possession of cash on hand in the amount of approximately $1.0 million. The Receiver is seeking an order authorizing a distribution in the amount of $750,000 (the "**Interim Distribution**") from such cash on hand. At this time the Receiver intends to maintain a reserve of cash on hand in the amount of approximately $270,000 (the "**Reserve**") to be released at the Receiver's sole discretion to fund, among other things, (i) the remaining costs of these Proceedings, and (ii) the balance of the Southmount et al Bankruptcy Proceedings. The Receiver has consulted with the Applicants in respect of the proposed Interim Distribution and the Reserve, and they are supportive of same.

57. The Receiver is also seeking an order authorizing it to make one or more further distributions to the Applicants (collectively, the "**Final Distribution**") from any remaining available cash on hand, upon completion of the Remaining Activities (as defined herein) and prior to filing its Discharge Certificate with the Court.

VIII. FEES AND DISBURSEMENTS OF THE RECEIVER AND ITS COUNSEL

58. The Receiver, Blakes and Norton Rose have maintained records of their professional time and costs (the "**Accounts**"), which are summarized below.

59. Professional fees and disbursements of the Receiver, for the period from the Receivership Date to May 31, 2023 (the "**Fee Period**") total $1,737,811, including fees and disbursements in the amount of $1,537,886, and HST in the amount of $199,925. Summaries of the Receiver's invoices have been provided to the Applicants, as fulcrum creditor having the only economic interest in these invoiced amounts.

60. Professional fees and disbursements of Blakes for the Fee Period total $1,707,169, including fees and disbursements in the amount of $1,511,033, and HST in the amount of $196,136. Summaries of Blakes' invoices have been provided to the Applicants, as fulcrum creditor having the only economic interest in these invoiced amounts.

61. Professional fees and disbursements of the Norton Rose, for the Fee Period total $157,833, including fees and disbursements in the amount of $139,773, and HST in the amount of $18,060. Summaries of Norton Rose's invoices have been provided to the Applicants, as fulcrum creditor having the only economic interest in these invoiced amounts.

62. As discussed above, the Applicants are the only parties who will receive a monetary recovery in these Proceedings, based on the realizations of the Real Property Assets and the aggregate claims of the Applicants. The Receiver's independent counsel, Norton Rose, has opined on the validity and enforceability of the Applicants' security interest in the Property and has noted that the Applicants have made first in time registrations in respect of that security.

63. Accordingly, the Applicants are the only creditor with an economic interest in the quantum of the professional fees incurred by the Receiver and its counsel. As stated above, the fees and invoices have been disclosed to the Applicants, and the Applicants have advised the Receiver that they consent to such fees. Given that only the Applicants have an economic interest in the fees, and that they consent to them, in the Receiver's view it would not be a constructive use of judicial resources or estate funds to put the Receiver and its counsel to the task for preparing and filing fee affidavits and taking steps to proceed with a fee approval motion.

64. The Receiver respectfully requests that this Court dispense with the requirement that the Receiver, Blakes and Norton Rose obtain Court approval of the Accounts for the Fee Period, on the basis that the Applicants have consented to the fees for the Fee Period, and provided that the Applicants further consent to fees incurred after the Fee Period. The Receiver is aware of similar relief being granted in other insolvency proceedings in Ontario in the interests of efficiency, including in the affiliated Victoria Avenue Proceedings.

65. Should such approval be granted, the Receiver will provide the Applicants with a written statement of the quantum of such Accounts from time to time following the Fee period. The Receiver will seek approval from this Court of the Accounts (or a portion thereof) in the event that the Applicants request in writing that the Receiver do so, for any of the Accounts relating to the period after the Fee Period.

66. Assuming that there are no delays, disputes or unforeseen developments in connection with these Proceedings, including as it relates to the Remaining Activities, the Receiver has estimated remaining professional fees and disbursements (in addition to the Accounts noted above) in the amount of $145,000 as follows: (i) $85,000 for the Receiver, and (ii) $60,000 for the Receiver's Counsel (all

amounts excluding HST) (collectively the "**Remaining Costs**"). These amounts represent the Receiver's best estimate of the costs required to complete the administration of these Proceedings.

IX. REMAINING ACTIVITIES AND DISCHARGE OF THE RECEIVER

67. The Receiver has completed all of the Southmount Transactions, realized on substantially all assets of the Legal Owners and has concluded the majority of its administration of these Proceedings. As such, the remaining tasks to conclude the Receiver's administration (the "**Remaining Activities**") are primarily anticipated to be as follows:

    (a) attend to various outstanding tax-related matters, including filing outstanding returns in compliance with the *Excise Tax Act* and the *Income Tax Act*, which is anticipated to result in certain tax refunds to the receivership estate;

    (b) pay the Accrued Obligations and the Remaining Costs, including fees of the Receiver and the Receiver's Counsel;

    (c) continue to fund the Southmount et al Bankruptcy Proceedings pursuant to the terms of the July 15 Distribution & Ancillary Relief Order;

    (d) issue the Interim Distribution and the Final Distribution to the Applicants;

    (e) prepare and file the Receiver's final report as required under Section 246(3) of the BIA;

    (f) close the Receiver's estate trust account; and

    (g) any incidental tasks that may be required in connection with concluding these Proceedings, including without limitation, the filing of the Discharge Certificate, upon completion of the Remaining Activities.

68. Other than the Remaining Activities, the Receiver has completed its administration of the estate in accordance with the terms of the Appointment Order and the various other orders rendered by the Court in the course of these Proceedings.

69. The proposed Discharge, Distribution and Ancillary Matters Order contemplates certain releases effective to the date thereof, if granted, and separate releases for the period between the date of the Discharge, Distribution and Ancillary Matters Order and the date of the termination of these Proceedings (the "**Subsequent Releases**"). The proposed Discharge, Distribution and Ancillary

Matters Order provides that the Receiver shall, at least seven calendar days prior to the filing of the Discharge Certificate, provide notice to the Service List in order to provide an opportunity for any party with an interest to object to the Subsequent Releases.

70. If no objections are received before the proposed Discharge Certificate filing date, the Subsequent Releases shall become effective on the date that the Discharge Certificate is filed. If any objection is received within the seven-day period, the Subsequent Releases shall only become effective if the objection is resolved consensually or upon further Order of the Court.

71. The Receiver recommends that it be discharged pursuant to the terms of the proposed Discharge, Distribution and Ancillary Matters Order and that the releases provided for therein be granted.

X. RECEIVER'S CONCLUSION AND RECOMMENDATION

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

All of which is respectfully submitted this 26th day of June, 2023.

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

APPENDIX “A”

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

TABLE OF CONTENTS

Page

ARTICLE 1 INTERPRETATION **2**

1.1 Definitions 2
1.2 Actions on Non-Business Days 12
1.3 Currency and Payment Obligations 12
1.4 Calculation of Time 12
1.5 Tender 12
1.6 Additional Rules of Interpretation 12
1.7 Schedules 13

ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES **13**

2.1 Purchase and Sale of Purchased Assets 13
2.2 Assumption of Assumed Liabilities 13
2.3 Assignment of Contracts 13
2.4 Transfer and Assignment of Permits and Licences 15

ARTICLE 3 PURCHASE PRICE & TAXES **16**

3.1 Purchase Price 16
3.2 Satisfaction of Purchase Price 16
3.3 Allocation of Purchase Price 16
3.4 Closing Adjustments 16
3.5 Taxes 17
3.6 Taxes and GST/HST Gross Up 17
3.7 Tax Elections 17

ARTICLE 4 REPRESENTATIONS AND WARRANTIES **18**

4.1 Representations and Warranties of the Purchaser 18
4.2 Representations and Warranties of the Vendors 19
4.3 As is, Where is 19

ARTICLE 5 COVENANTS **21**

5.1 Motion for Approval and Vesting Order 21
5.2 Interim Period 21
5.3 Transaction Personal Information 22
5.4 Risk of Loss 22
5.5 Indemnity 22
5.6 Environmental Liabilities 23
5.7 Books and Records 23
5.8 Certain Information Technology Assets 23
5.9 Trademarked and Branded Assets 23
5.10 Regulatory Approvals 23
5.11 Cooperation and Consultation with Governmental Authorities 23
5.12 Excluded Assets 24

ARTICLE 6 CLOSING ARRANGEMENTS **24**

6.1 Closing 24
6.2 Vendors' Closing Deliveries 24
6.3 Purchaser's Closing Deliveries 25

ARTICLE 7 CONDITIONS OF CLOSING **26**

7.1 Due Diligence Period 26

TABLE OF CONTENTS
(continued)

Page

7.2 Purchaser's Conditions 26
7.3 Vendors' Conditions 27
7.4 Receiver's Certificate 27

ARTICLE 8 TERMINATION 28

8.1 Grounds for Termination 28
8.2 Effect of Termination 28
8.3 Treatment of Deposit 29

ARTICLE 9 GENERAL 29

9.1 Survival 29
9.2 Expenses 29
9.3 Public Announcements 30
9.4 Notices 30
9.5 Time of Essence 31
9.6 Further Assurances 31
9.7 Post-Closing Wind-Up of Receivership Proceedings 31
9.8 Entire Agreement 31
9.9 Amendment 31
9.10 Waiver 31
9.11 Severability 31
9.12 Remedies Cumulative 32
9.13 Governing Law 32
9.14 Dispute Resolution 32
9.15 Attornment 32
9.16 Successors and Assigns 32
9.17 Assignment 32
9.18 Receiver's Capacity 32
9.19 Third Party Beneficiaries 32
9.20 Counterparts 32

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.

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

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;

(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.

"**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

Schedule "A"	Purchased Assets
Schedule "B"	Real Property Assets
Schedule "C"	Assigned Contracts
Schedule "D"	Allocation of Purchase Price
Schedule "E"	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;

(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 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;

(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, of 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;

(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] 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 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.

(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] 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]

(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

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 TUDO.
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;

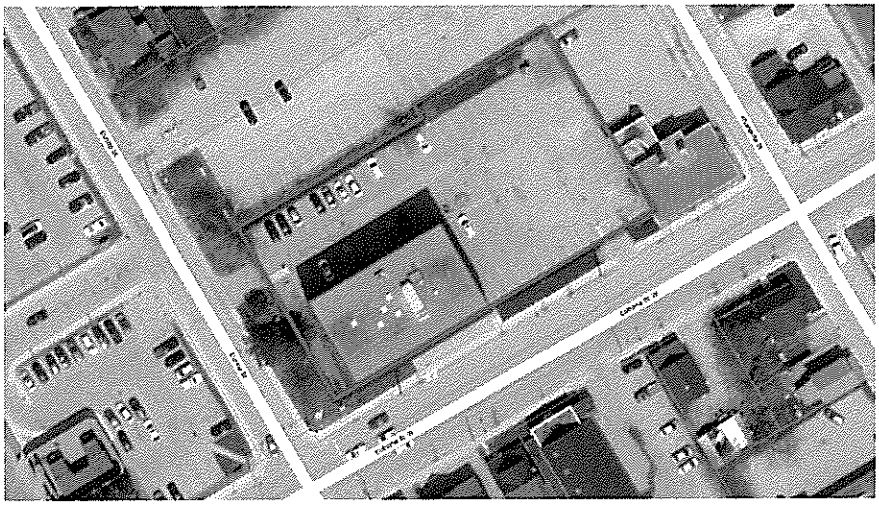
vii. All goodwill Related to the Business; and

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

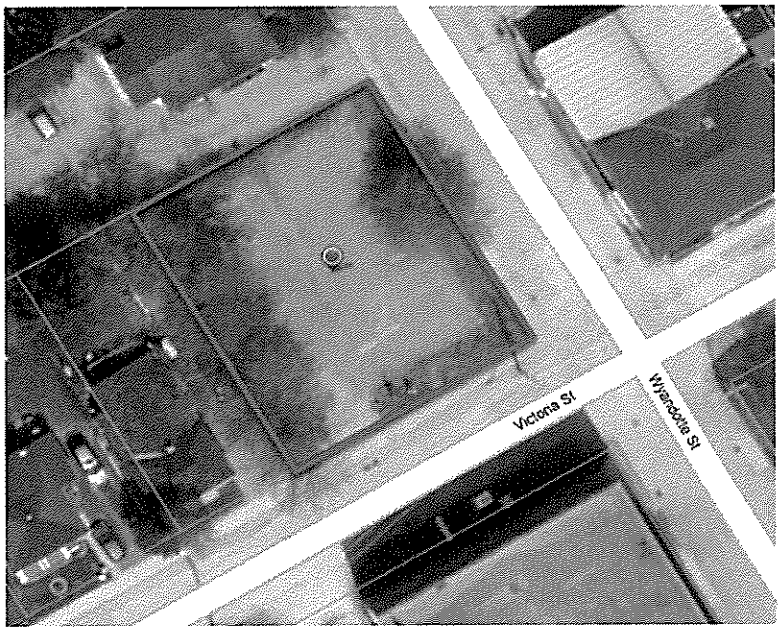
SCHEDULE "B"

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 RO1453448; 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 Poulopoulos Medicine Professional Corporation, as tenant and GT Orillia Holding Inc. (predecessor-in-interest to 100 Colborne Holdings Inc.) as landlord, and Dr. Vassilios Poulopoulos, 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 RT0001, 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 18 day of April, 2022.

ACCUTRAC PROPERTY MANAGEMENT INC.

Per: _____

Name: KEN FLUID.

Title: PRESIDENT

APPENDIX “B”

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Aryo Shalviri
Partner
Dir: 416-863-2962
aryo.shalviri@blakes.com

November 24, 2022

VIA E-MAIL

Reference: 00026466/000001

Barriston Law LLP
46A King William Street, PO Box 5500
Huntsville, ON P1H 2K8

Attention: William J. Lang
Email: blang@barristonlaw.com

Re: Receivership Proceedings of 100 Colborne Holdings Inc. ("100 Colborne"), *et al.* (Court File No. CV-21-00664273-00CL)

Re: Property Tax Assessment Involving 100 Colborne Holdings Inc.

Mr. Lang,

As you are aware, we are counsel to KPMG Inc. in its capacity as court-appointed receiver and manager (in such capacity, the "**Receiver**") of, among other things, all of the assets, undertakings and properties of, 100 Colborne (collectively, the "**100 Colborne Property**") pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) granted on June 29, 2021 (the "**Appointment Order**").

We hereby make reference to the Asset Purchase Agreement between, among others, 100 Colborne (by the Receiver) and your client Accutrac Property Management Inc. (the "**Purchaser**), dated April 14, 2022 (the "**APA**"), pursuant to which the Purchaser acquired the real property located at 100 Colborne Street West, Orillia, Ontario (the "**Colborne Real Property**") on June 6, 2022 (the "**Closing Date**").

Following the Closing Date, the Receiver has become aware that Altus Group was, prior to the appointment of the Receiver, engaged by 100 Colborne to commence a municipal tax property assessment appeal with respect to the 100 Colborne Real Property ("**Tax Appeal**").

This Letter is to put the Purchaser on notice that: (i) pursuant to the APA, any rebates, refunds and/or credits that are received or may be received in respect of the Tax Appeal form part of the 100 Colborne Property and are "Excluded Assets" under the APA, which have not been acquired by the Purchaser, (ii) the Purchaser has no authority to pursue the Tax Appeal and/or any settlement thereof as it relates to any 100 Colborne Property without the participation and consent of the Receiver; and (iii) pursuant to the Appointment Order, all persons are required to forthwith advise the Receiver of the existence of any 100 Colborne Property in their possession or control.

Blakes

We have previously discussed with you, on a preliminary and *without prejudice* basis, potential arrangements regarding the conduct of the Tax Appeal and any refunds, rebates and/or credits that may be derived therefrom. Following those preliminary discussions and despite multiple follow-up attempts, you have advised that you do not have instructions from your client to speak to this matter.

We continue to be available to discuss a potential consensual resolution of this matter. However, if we have not heard from you by December 2, 2022, we will be writing to the Altus Group and City of Orillia directly to set out the Receiver's views and considering what, additional steps the Receiver will take in respect of the Tax Appeal.

The Receiver expressly reserves and retains all rights and remedies pursuant to the APA, the Appointment Order and at law.

We look forward to hearing from you.

Yours truly,

Aryo

Aryo Shalviri

Cc: K. Forbes & G. Bourikas, *Receiver*
A. Parente, *Blakes*

13164190.2

APPENDIX “C”

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Aryo Shalviri
Partner
Dir: 416-863-2962
aryo.shalviri@blakes.com

January 19, 2023

Via E-mail to ccaruana@wvllp.ca

Christopher A.L. Caruana
Wilson Vukelich LLP
Barristers and Solicitors
60 Columbia Way, 7th Floor
Markham, ON L3R 0C9
Canada

Re: Receivership Proceedings of 100 Colborne Holdings Inc. ("100 Colborne"), *et al*.

Re: Property Tax Assessment Appeal Involving 100 Colborne

Dear Mr. Caruana:

As you are aware, we are counsel to KPMG Inc. in its capacity as court-appointed receiver and manager (in such capacity, the "**Receiver**") of, among other things, all of the assets, undertakings and properties of, 100 Colborne (collectively, the "**100 Colborne Property**") pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted on June 29, 2021 (the "**Appointment Order**").

We hereby make reference to the Asset Purchase Agreement between, among others, 100 Colborne (by the Receiver) and your client Accutrac Property Management Inc. (the "**Purchaser**"), dated April 14, 2022 (the "**APA**"), pursuant to which the Purchaser acquired the real property located at 100 Colborne Street West, Orillia, Ontario (the "**Colborne Real Property**") on June 6, 2022.

We write to set out, on the record, the Receiver's position in respect of the municipal tax property assessment appeal with respect to the 100 Colborne Real Property ("**Tax Appeal**"). Background relating to the Tax Appeal is set out in the letter dated November 24, 2022 to (then) counsel for the Purchaser, a copy of which is attached hereto (the "**November 24 Letter**").

In the November 24 Letter, the Receiver: (i) put the Purchaser on notice that pursuant to the APA and the Appointment Order, any rebates, refunds and/or credits received in respect of the Tax Appeal form part of the 100 Colborne Property which are not an asset of the Purchaser and are required to be remitted to the Receiver, and (ii) expressed frustration that, notwithstanding multiple follow-up attempts with (then) counsel to the Purchaser, the Purchaser refused to engage in constructive discussions with the Receiver regarding a consensual resolution of this matter.

On December 2, 2022, we received *without prejudice* correspondence from you in respect of this matter, setting out the Purchaser's position in respect of the Tax Appeal (the "**December 2 Letter**").

Blakes

On December 9, 2022, the Receiver responded to the December 2 Letter by way of further correspondence to counsel for the Purchaser (the "**December 9 Response**"). In the December 9 Response, the Receiver, among other things, requested: (i) a *without prejudice* conference call among counsel for the parties and their respective clients during the week of December 12th to explore whether this matter could be resolved consensually and on an efficient and cost-effective basis, and (ii) that the Purchaser confirm the total quantum of the refund expected to be received in respect of the Tax Appeal. On December 9, 2022, counsel to the Purchaser acknowledged receipt of the December 9 Response and suggested that a response to the request for a conference call would be forthcoming.

More than one month has passed since the delivery of the December 9 Response and, despite further follow-up attempts by counsel to the Receiver and counsel to the Purchaser advising on January 12th that efforts were being made to follow-up with the Purchaser with a view to reverting as quick as possible, no further correspondence or communication has been received from the Purchaser.

We are surprised that despite multiple efforts by the Receiver to work cooperatively with the Purchaser to explore a potential consensual resolution, the Purchaser has not engaged and, instead, chosen to simply ignore an officer of the Court. Accordingly, we have received instructions to schedule a Motion to pursue recovery of all refunds and credits related to the Tax Appeal. Further, as set out in the November 24 Letter, the Receiver will be reaching out directly to the Altus Group and the city of Orillia to obtain additional information and discuss this matter directly with those parties.

Please advise us of your availability to discuss a litigation timetable, failing which we will seek the Court's assistance at a scheduling hearing.

The Receiver expressly reserves and retains all rights and remedies pursuant to the APA, the Appointment Order and at law.

We look forward to hearing from you.

Best regards,

Aryo Shalviri

Cc: K. Forbes & G. Bourikas, *Receiver*
A. Parente, *Blakes*

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Aryo Shalviri
Partner
Dir: 416-863-2962
aryo.shalviri@blakes.com

November 24, 2022

VIA E-MAIL

Reference: 00026466/000001

Barriston Law LLP
46A King William Street, PO Box 5500
Huntsville, ON P1H 2K8

Attention: William J. Lang
Email: blang@barristonlaw.com

Re: Receivership Proceedings of 100 Colborne Holdings Inc. ("100 Colborne"), *et al.* (Court File No. CV-21-00664273-00CL)

Re: Property Tax Assessment Involving 100 Colborne Holdings Inc.

Mr. Lang,

As you are aware, we are counsel to KPMG Inc. in its capacity as court-appointed receiver and manager (in such capacity, the "**Receiver**") of, among other things, all of the assets, undertakings and properties of, 100 Colborne (collectively, the "**100 Colborne Property**") pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) granted on June 29, 2021 (the "**Appointment Order**").

We hereby make reference to the Asset Purchase Agreement between, among others, 100 Colborne (by the Receiver) and your client Accutrac Property Management Inc. (the "**Purchaser**), dated April 14, 2022 (the "**APA**"), pursuant to which the Purchaser acquired the real property located at 100 Colborne Street West, Orillia, Ontario (the "**Colborne Real Property**") on June 6, 2022 (the "**Closing Date**").

Following the Closing Date, the Receiver has become aware that Altus Group was, prior to the appointment of the Receiver, engaged by 100 Colborne to commence a municipal tax property assessment appeal with respect to the 100 Colborne Real Property ("**Tax Appeal**").

This Letter is to put the Purchaser on notice that: (i) pursuant to the APA, any rebates, refunds and/or credits that are received or may be received in respect of the Tax Appeal form part of the 100 Colborne Property and are "Excluded Assets" under the APA, which have not been acquired by the Purchaser, (ii) the Purchaser has no authority to pursue the Tax Appeal and/or any settlement thereof as it relates to any 100 Colborne Property without the participation and consent of the Receiver; and (iii) pursuant to the Appointment Order, all persons are required to forthwith advise the Receiver of the existence of any 100 Colborne Property in their possession or control.

Blakes

We have previously discussed with you, on a preliminary and *without prejudice* basis, potential arrangements regarding the conduct of the Tax Appeal and any refunds, rebates and/or credits that may be derived therefrom. Following those preliminary discussions and despite multiple follow-up attempts, you have advised that you do not have instructions from your client to speak to this matter.

We continue to be available to discuss a potential consensual resolution of this matter. However, if we have not heard from you by December 2, 2022, we will be writing to the Altus Group and City of Orillia directly to set out the Receiver's views and considering what, additional steps the Receiver will take in respect of the Tax Appeal.

The Receiver expressly reserves and retains all rights and remedies pursuant to the APA, the Appointment Order and at law.

We look forward to hearing from you.

Yours truly,

Aryo

Aryo Shalviri

Cc: K. Forbes & G. Bourikas, *Receiver*
A. Parente, *Blakes*

13164190.2