

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

THE HONOURABLE MR.) TUESDAY, THE 29TH DAY
JUSTICE DUNPHY) OF JUNE, 2021

B E T W E E N:



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

Applicants

- and -

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

Respondents

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

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by American General Life Insurance Company, Lexington Insurance Company, and The Variable Annuity Life Insurance Company (collectively, the "**Applicants**") for an Order pursuant to 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 (the "**CJA**") appointing KPMG Inc. ("**KPMG**") as receiver and manager (in such capacities, the "**Receiver**") without security, of (i) all of the assets, undertakings and properties, including the real property described in Schedule "A" (the "**Real Property**") of

Southmount Healthcare Centre Inc., 180 Vine Inc. (“**Vine**”), 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the “**Legal Owners**”) acquired for, or used in relation to the Legal Owners’ business, including any interest held by Vine to which the Crown may have rights and any interest in the applicable Real Property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the “**Legal Owners’ Property**”), and (ii) 180 Vine Purchaser Inc., Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**” and together with the Legal Owners, the “**Debtors**”) but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owners’ Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (collectively, the “**Beneficial Owners’ Property**” and together with the Legal Owners’ Property, the “**Property**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Jacob Baron sworn June 18, 2021 (the “**Baron Affidavit**”) and the Exhibits thereto and on hearing the submissions of counsel for the Applicants and those other counsel and parties listed on the Participant Information Form, no one else appearing although duly served as appears from the affidavit of service of Nancy Thompson sworn June 24, 2021 and on reading the consent of KPMG to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and the method of service validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KPMG is hereby appointed Receiver, without security, of all of the Property.

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable (provided that any disbursements made in connection therewith are made in accordance with the Receiver Term Sheet, as defined in the Baron Affidavit, unless otherwise ordered by the Court):

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Legal Owners, including the power to enter into any agreements (including any amendments and modifications thereto), repudiate or disclaim any agreement, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Legal Owners;
- (d) to engage property managers, consultants, contractors, appraisers, agents, brokers, experts, auditors, accountants, managers, assistants, counsel and such other persons from time to time (each, a "**Professional Advisor**") and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order, and in this regard the Receiver is specifically authorized to retain counsel for the Applicants to advise and represent it save and except on matters upon which the Receiver in its judgment, determines it requires independent advice, in which case the Receiver shall retain independent counsel;
- (e) to consult with the Applicants and any other creditors of, or parties with an interest in, the Legal Owners and the Beneficial Owners or the Property from time to time and to provide such information to the Applicants and any such other creditors or interested

parties of the Legal Owners and the Beneficial Owners or the Property as may be reasonably requested, including pursuant to the Receiver Term Sheet;

- (f) to pay the retainer, fees and disbursements of any Professional Advisor retained by the Receiver in connection with or in relation to this application, whether incurred prior to or after the date of this Order, in each case at their standard rates and charges;
- (g) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Legal Owners or any part or parts thereof;
- (h) to receive and collect all monies and accounts now owed or hereafter owing to (i) the Legal Owners, including, but not limited to, all rents (whether deferred or otherwise) and to exercise all remedies of the Legal Owners in collecting such monies, including, without limitation, to enforce any security held by the Legal Owners, or (ii) the Beneficial Owners on account of the Beneficial Owners' Property and 180 Vine Purchaser Inc. on account of the applicable Real Property conveyed to it by the Crown, and to exercise all remedies of the Beneficial Owners in collecting such monies, including, without limitation, to enforce any security held by the Beneficial Owners;
- (i) to settle, extend or compromise any indebtedness owing to the Legal Owners;
- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Legal Owners, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to file an assignment in bankruptcy on behalf of the Legal Owners, or to consent to the making of a bankruptcy order against the Legal Owners;

- (m) to market any or all of the Property for sale or lease, including advertising and soliciting offers in respect of the Property and any part or parts thereof, and/or soliciting engagement proposals by brokers, listing agents or leasing agents and negotiating such terms and conditions of such sale, lease or engagement as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$750,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.
- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Legal Owners;
- (s) to apply for any relief under the Canadian Emergency Rent Assistance Program or any other governmental aid or relief program in the name of the Legal Owners, if thought desirable by the Receiver;
- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of the Legal Owners, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Legal Owners;
- (u) to exercise any shareholder, partnership, joint venture or other rights which the Legal Owners may have, or which the Beneficial Owners may have in respect of the Property; and
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- (w) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, property managers, including, without limitation, Prime Real Estate Group Inc. and Fausto Carnicelli, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, (iii) Gross Capital Inc. ("**Gross Capital**"), and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, including, for greater certainty, all rents or security deposits held by third parties for (i) the Legal Owners, and/or (ii) the Beneficial Owners in respect of the Property (collectively, the

“**Deposits**”), and shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, lease agreements, rent rolls, rent deferral agreements or documentation, securities, contracts, orders, corporate and accounting records, Deposits, and any other papers, records and information of any kind related to the Property, or to the business or affairs of the Legal Owners, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. For greater certainty, the Receiver is authorized and empowered to access and make, retain and take away copies of the Records located at the offices of Gross Capital at the expense of the Receiver and Gross Capital shall cooperate and provide reasonable assistance to the Receiver with respect to such Records and information contained in such Records.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing

the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE LEGAL OWNERS OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Legal Owners or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Legal Owners or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Legal Owners, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Legal Owners to carry on any business which the Legal Owners are not lawfully entitled to carry on, (ii) exempt the Receiver or the Legal Owners from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Legal Owners, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Legal Owners or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, property maintenance or management services, utility or other services to the Legal Owners are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Legal Owners' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Legal Owners or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property or rents derived from any or all of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that any employees of the Legal Owners shall be deemed to have been terminated by the Legal Owners immediately prior to the issuance of this Order. The Receiver shall not engage any employees of the Legal Owners as its employees and shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided

for in section 14.06(1.2) of the BIA, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

14. **THIS COURT ORDERS** that the Receiver is expressly authorized and empowered to send notices of the terminations (if any) provided for in paragraph 13 of this Order to the applicable employees of the Legal Owners (if any) in the name of and on behalf of the Legal Owners and to do or cause to be done all such further acts and things necessary or desirable in respect of the termination of such employees, including, without limitation, any applicable statutory notices or filings in the name of and on behalf of the Legal Owners.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*,

the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver (including any independent counsel) shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel (including any independent counsel) shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel (including any independent counsel), and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicants pursuant to the Receiver Term Sheet, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000 (or such greater amount as this Court may by further Order authorize) at any time, in accordance with the Receiver Term Sheet, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: home.kpmg/ca/SouthmountEtAl.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or electronic transmission to the Legal Owners' creditors, the Beneficial Owners or other interested parties at their respective addresses as last shown on the records of the Legal Owners and that any such service or distribution by courier, personal delivery, facsimile or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

27. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver are at liberty to serve or distribute this Order and any other materials and Orders as may be reasonably required in these proceedings, including any notices, court materials, or other correspondence, by forwarding true copies thereof by electronic message to the Legal Owners' creditors, the Beneficial Owners or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

28. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Debtors.

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

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. **THIS COURT ORDERS** that the Applicants shall have their costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicants' security or, if not so provided by the Applicants' security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



A handwritten signature in black ink, appearing to read "S. F. Dunphy, J.", is written over a horizontal line. The signature is stylized and somewhat illegible due to the cursive nature of the handwriting.

SCHEDULE "A"

"Real Property"

Municipal Address: 35 Upper Centennial Parkway, Hamilton

Legal Descriptions: PIN 17088-0748(LT): PT LT 25, CON 8 SALTFLEET, PART 7, PLAN 62R-18917; STONEY CREEK; TOGETHER WITH AN EASEMENT OVER PT LT 25, CON 8 SALTFLEET, PARTS 9, 11, 12 AND 13 ON 62R18917 AS IN WE749696; CITY OF HAMILTON; and

PIN 17088-0762(LT): PT LT 25 CON 8 SALTFLEET BEING PARTS 1, 2, 3, 4, 5 AND 10 ON 62R18917; S/T AN EASEMENT OVER PART 3 ON 62R18917 IN FAVOUR OF PARTS 1-5 INCL, 12-15 INCL, 18, 21, 30, 31, 32, 36, 38, 42, 48, 53 ON 62R14684 AS IN LT562193; T/W AN EASEMENT OVER PARTS 2, 4, 14, 21, 30, 31, 32, 36, 38, 48 ON 62R14684 AS IN LT562194; SUBJECT TO AN EASEMENT OVER PART 5 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALTFLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; SUBJECT TO AN EASEMENT OVER PART 10 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALTFLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; SUBJECT TO AN EASEMENT OVER PART 2 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALTFLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; SUBJECT TO AN EASEMENT OVER PART 3 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALTFLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; STONEY CREEK; TOGETHER WITH AN EASEMENT OVER PARTS 9, 11, 12 AND 13 ON 62R18917 AS IN WE749696; CITY OF HAMILTON

Municipal Address: 240 Old Penetang Road North, Midland

Legal Description: PIN 58454-0029(LT): PT E1/2 LT 106 CON 1 WPR TINY; PT LT 107 CON 1 WPR TINY PT 3 & 4, 51R18477 & PT 4, 5, 6, 7 & 10 R1026 EXCEPT 51R3985; T/W & S/T RO1045345; MIDLAND

Municipal Address: 100 Colborne Street West, Orillia

Legal Description: PIN 58650-0115(LT): PT LT 10-15, 17 BLK C PL 228 ORILLIA PT 3, 4 & 5, 51R10372; ORILLIA

Municipal Address: 77 Wyandotte Street, Orillia

Legal Description: PIN 58644-0014(LT): LT 16 BLK G PL 228 ORILLIA; PT LT 15 BLK G PL 228 ORILLIA AS IN RO1453448; ORILLIA

Municipal Address: 849 Alexander Court, Peterborough

Legal Description: PIN 28061-0157(LT):PT LTS 3 & 4, PL 23Q, PART 1&2, 45R647, NORTH MONAGHAN; PETERBOROUGH

Municipal Address: 65 Larch Street, Sudbury

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

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

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

Municipal Address: 2009 Long Lake Road, Sudbury

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

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

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

Municipal Address: 180 Vine Street South, St. Catharines

Legal Description: PIN 46272-0086 (LT): PT LT 7, 9-10 BLK D CY PL 46 GRANTHAM; PT BLK A CY PL 79 GRANTHAM; PT BLK A, B CY PL 80 GRANTHAM; PT UNNAMED ST CY PL 46 GRANTHAM , CLOSED BY RO407053, PT 1 30R2209 EXCEPT PT 1 30R3734, PT 1 30R6493, & PT 1 30R7456; CITY OF ST. CATHARINES

SCHEDULE "B"

RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that KPMG Inc., the receiver (the "**Receiver**") of (i) all of the assets, undertakings and properties, including the real property described in Schedule "A" (the "**Real Property**") to the Order (defined below) of Southmount Healthcare Centre Inc., 180 Vine Inc. ("**Vine**"), 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the "**Legal Owners**") acquired for, or used in relation to the Legal Owners' business, including any interest held by Vine to which the Crown may have rights and any interest in the applicable Real Property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the "**Legal Owners' Property**"), and (ii) 180 Vine Purchaser Inc., Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "**Beneficial Owners**" and together with the Legal Owners, the "**Debtors**") but solely in respect of all of the Beneficial Owners' right, title and interest in and to 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, the "**Beneficial Owners' Property**" and together with the Legal Owners' Property, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 29th day of June, 2021 (the "**Order**") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated in accordance with the Receiver Term Sheet (as defined in the Affidavit of Jacob Baron sworn June 18, 2021).

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to

the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable in accordance with the Receiver Term Sheet.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal or corporate liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2021.

KPMG INC., solely in its capacity as Receiver of the Property, and not in its personal or corporate capacity

Per: _____

Name:

Title:

AMERICAN GENERAL LIFE INSURANCY COMPANY *et al.* - and -
Applicants

SOUTHMOUNT HEALTHCARE CENTRE INC. *et al.*
Respondents

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

Proceeding Commenced at Toronto

**ORDER
(Appointing Receiver)**

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