

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

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

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

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

**ON READING** the Receiver's Notice of Motion, the Second Report and the appendices thereto, [the Supplement to the Second Report of the Receiver dated May 20, 2022 and the appendices thereto.](#) and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver's Motion Record as appears from the affidavit of Nancy Thompson sworn May **17**, 2022 (the "**Thompson Affidavit**"):

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

such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

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

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Sudbury (No. 53) of an Application for Vesting Order in the form

prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter 1000151410 Ontario Limited as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

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

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

- (a) the pendency of these proceedings;

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

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

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

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**SCHEDULE A**

**Form of Receiver's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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LEXINGTON INSURANCE COMPANY, AND  
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Applicants

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SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658  
ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH  
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PENETANGUISH HOLDINGS INC., GROSS PROPERTIES INC., 180 VINE  
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**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of ~~the Honourable~~[Mr.](#) Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases

related thereto, the **‘Real Property’**) of, among other parties, (i) 65 Larch Holdings Inc. (the **‘Legal Owner’**) acquired for, or used in relation to the Legal Owner’s business (collectively, the **‘Legal Owner’s Property’**), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the **‘Beneficial Owners’**), and together with the Legal Owner, the **‘Debtors’**), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated May 24, 2022, the Court approved the agreement of purchase and sale made as of April 21, 2022 (the **"Sale Agreement"**) between the Debtors (acting by the Receiver) and 1000151410 Ontario Limited (the **"Purchaser"**) and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

Per: \_\_\_\_\_

Name:

Title:



**SCHEDULE B**

**Real Property**

65 Larch Street, Sudbury

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

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

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

## SCHEDULE C

### Purchased Assets

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

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

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

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

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

**PIN 73584-0078(LT):**

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

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

**PIN 73584-0097(LT):**

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

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

## SCHEDULE E

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

#### (Unaffected by the Vesting Order)

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

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

- (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.



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

- and -

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

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

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

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**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

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Lawyers for the Receiver

Document comparison by Workshare 10.0 on Monday, May 23, 2022 2:50:49 PM

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Padding cell	

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	Count
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Deletions	4
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Moved to	0
Style change	0
Format changed	0
Total changes	7

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
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THE HONOURABLE MADAM                    )  
  )  
JUSTICE GILMORE                            )  
  )

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**APPROVAL AND VESTING ORDER**  
**100 Colborne Street West & 77 Wyandotte Street, Orillia, Ontario**

**THIS MOTION**, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “B”** hereto (the “**Real Property**”) of (i) 100 Colborne Holdings Inc. (the “**Legal Owner**”) acquired for, or used in

relation to the Legal Owner's business (collectively, the "**Legal Owner's Property**"), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "**Beneficial Owners**"); and together with the Legal Owner, the "**Debtors**"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and Accutrac Property Management Inc. (the "**Purchaser**") dated April 14, 2022 and appended to the Second Report of the Receiver dated May 13, 2022 (the "**Second Report**"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets set out in **Schedule "C"** hereof (the "**Purchased Assets**"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Receiver's Notice of Motion, the Second Report and the appendices thereto, [the Supplement to the Second Report of the Receiver dated May 20, 2022 and the appendices thereto](#), and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver's Motion Record as appears from the affidavit of Nancy Thompson sworn May ~~17~~17, 2022 (the "**Thompson Affidavit**"):

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

such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

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4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Simcoe (No. 51) of an Application for Vesting Order in the form

prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter Accutrac Property Management Inc. as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

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

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

- (a) the pendency of these proceedings;

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

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

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

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**SCHEDULE A**

**Form of Receiver's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of ~~the Honourable~~[Mr.](#) Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases

~~24433017.2~~[24433017.3](#)

related thereto, the “**Real Property**”) of, among other parties, (i) 100 Colborne Holdings Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated May 24, 2022, the Court approved the agreement of purchase and sale made as of April 14, 2022 (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and Accutrac Property Management Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

Per: \_\_\_\_\_

Name:

Title:

## **SCHEDULE B**

### **Real Property**

100 Colborne Street West, Orillia

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

77 Wyandotte Street, Orillia

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

## SCHEDULE C

### Purchased Assets

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

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

**SCHEDULE D**

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

**PIN 58650-0115(LT):**

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
SC1278217	January 26, 2016	Charge	\$70,000,000	100 Colborne Holdings Inc.	American General Life Insurance Company,  The Variable Life Annuity Insurance Company, and  Lexington Insurance Company
SC1278218	January 26, 2016	Notice of Assignment of Rents-General		100 Colborne Holdings Inc.	American General Life Insurance Company,  The Variable Life Annuity Insurance Company, and  Lexington Insurance Company
SC1609813	July 19, 2019	Charge	\$6,250,000	240 Old Penetanguish Holdings Inc., and 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1609814	July 19, 2019	Notice of Assignment of Rents-Gener		240 Old Penetanguish Holdings Inc. and, 100	1592106 Ontario Inc.

		al		Colborne Holdings Inc.	
SC1619869	August 29, 2019	Notice		240 Old Penetanguish Holdings Inc. and, 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1689152	June 25, 2020	Application Change Name – Instrument		The Variable Life Annuity Insurance Company	The Variable Annuity Life Insurance Company

**PIN 58644-0014(LT):**

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
SC1278217	January 26, 2016	Charge	\$70,000,000	100 Colborne Holdings Inc.	American General Life Insurance Company,  The Variable Life Annuity Insurance Company, and  Lexington Insurance Company
SC1278218	January 26, 2016	Notice of Assignment of Rents-General		100 Colborne Holdings Inc.	American General Life Insurance Company,  The Variable Life Annuity Insurance Company, and  Lexington

					Insurance Company
SC1609813	July 19, 2019	Charge	\$6,250,000	240 Old Penetanguish Holdings Inc., and 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1609814	July 19, 2019	Notice of Assignment of Rents-General		240 Old Penetanguish Holdings Inc. and, 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1619869	August 29, 2019	Notice		240 Old Penetanguish Holdings Inc. and, 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1689152	June 25, 2020	Application Change Name – Instrument		The Variable Life Annuity Insurance Company	The Variable Annuity Life Insurance Company



## SCHEDULE E

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

#### (Unaffected by the Vesting Order)

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

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

- (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.

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

- and -

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

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

**APPROVAL AND VESTING ORDER**  
**100 Colborne Street West &**  
**77 Wyandotte Street, Orillia, Ontario**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

**Pamela L.J. Huff**, LSO #27344V

Tel: 416-863-2958

Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

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**Alexia Parente**, LSO #81927G

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Fax: 416-863-2653

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

Lawyers for the Receiver

Document comparison by Workshare 10.0 on Monday, May 23, 2022 2:48:52 PM

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Document 1 ID	PowerDocs://TOR_2528/24433017/2
Description	TOR_2528-#24433017-v2-KPMG_-_Gross_-_AVO_(100_Colborne)
Document 2 ID	PowerDocs://TOR_2528/24433017/3
Description	TOR_2528-#24433017-v3-KPMG_-_Gross_-_AVO_(100_Colborne)
Rendering set	Standard

Legend:	
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Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:
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	Count
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Deletions	18
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	35

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MADAM                     )  
  )  
JUSTICE GILMORE                            )

TUESDAY, THE 24th  
DAY OF MAY, 2022

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER  
240 Penetanguishene Road, Midland, Ontario**

**THIS MOTION**, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the **“Receiver”**) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “B”** hereto (the **“Real Property”**) of (i) 240 Old Penetanguish Holdings Inc. (the **“Legal Owner”**) acquired for, or

used in relation to the Legal Owner's business (collectively, the "**Legal Owner's Property**"), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "**Beneficial Owners**"), and together with the Legal Owner, the "**Debtors**"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and Midland Town Centre Inc. (the "**Purchaser**") dated April 19, 2022 and appended to the Second Report of the Receiver dated May 13, 2022 (the "**Second Report**"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets set out in **Schedule "C"** hereof (the "**Purchased Assets**"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Receiver's Notice of Motion, the Second Report and the appendices thereto, [the Supplement to the Second Report of the Receiver dated May 20, 2022 and the appendices thereto](#), and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver's Motion Record as appears from the affidavit of Nancy Thompson sworn May 17, 2022 (the "**Thompson Affidavit**"):

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

such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

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

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Simcoe (No. 51) of an Application for Vesting Order in the form



prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter Midland Town Centre Inc. as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

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

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

- (a) the pendency of these proceedings;

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

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

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

**SCHEDULE A**

**Form of Receiver's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of ~~the Honourable~~[Mr.](#) Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases

[24433010.224433010.3](#)

related thereto, the “**Real Property**”) of, among other parties, (i) 240 Old Penetanguish Holdings Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated May 24, 2022, the Court approved the agreement of purchase and sale made as of April 19, 2022 (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and Midland Town Centre Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 7.1 and 7.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE B**

**Real Property**

240 Penetanguishene Road, Midland

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

## SCHEDULE C

### Purchased Assets

- i. The Assigned Contracts;
- ii. Any Personal Property or fixtures that are Related to the Business and located upon the Real Property Assets;
- iii. All Real Property Assets;
- iv. The Permits and Licences;
- v. The Books and Records that are Related to the Business;
- vi. All proceeds of any or all of the foregoing received or receivable after the Closing Time.

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

**SCHEDULE D**

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

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
SC1278220	January 26, 2016	Charge	\$70,000,000	240 Old Penetanguish Holdings Inc.	American General Life Insurance Company,  The Variable Annuity Life Insurance Company, and  Lexington Insurance Company
SC1278221	January 26, 2016	Notice of Assignment of Rents-General		240 Old Penetanguish Holdings Inc.	American General Life Insurance Company,  The Variable Annuity Life Insurance Company, and  Lexington Insurance Company
SC1609813	July 19, 2019	Charge	\$6,250,000	240 Old Penetanguish Holdings Inc., and 100 Colborne Holdings Inc.	1592106 Ontario Inc.
SC1609814	July 19, 2019	Notice of Assignment of Rents-General		240 Old Penetanguish Holdings Inc., and 100 Colborne	1592106 Ontario Inc.



				Holdings Inc.	
SC1619869	August 29, 2019	Notice		240 Old Penetanguish Holdings Inc., and 100 Colborne Holdings Inc.	1592106 Ontario Inc.

## SCHEDULE E

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

#### (Unaffected by the Vesting Order)

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

- (a) Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears;
- (b) construction, mechanics', carriers', workers', repairers', storers' or other similar Encumbrances (inchoate or otherwise), but only if and to the extent that individually or in the aggregate: (i) they are not in respect of indebtedness exceeding \$10,000; (ii) they arose or were incurred in the ordinary course of business; (iii) they have not been filed, recorded or registered in accordance with Applicable Law; (iv) notice of them has not been given to the Vendors; and (v) the indebtedness secured by them is not in arrears;
- (c) title defects or irregularities, unregistered easements or rights of way, and other unregistered restrictions or discrepancies affecting or restricting the use of real property if such title defects, irregularities or restrictions would be disclosed by an up-to-date survey of such real property or, if not, are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (d) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect or restrict the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (f) registered easements on real property for the supply of utilities or telephone services and for drainage, storm or sanitary sewers, public utilities lines, telephone lines, cable television lines or other services, provided such easements have been complied with in all material respects;
- (g) registered easements or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Real Property Assets, provided such easements or rights-of-way have been complied with in all material respects;
- (h) facility cost sharing, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or any Governmental Authority in respect of the Real Property Assets, provided such agreements have been complied with in all material respects;

- (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.

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

- and -

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

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

**APPROVAL AND VESTING ORDER**  
**240 Penetanguishene Road, Midland, Ontario**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

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Lawyers for the Receiver

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Format changed	0
Total changes	35

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MADAM                    )  
  )  
JUSTICE GILMORE                            )

TUESDAY, THE 24th  
DAY OF MAY, 2022

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER  
849 Alexander Court, Peterborough, Ontario**

**THIS MOTION**, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “B”** hereto (the “**Real Property**”) of (i) 2478658 Ontario Ltd. (the “**Legal Owner**”) acquired for, or used in

relation to the Legal Owner's business (collectively, the "Legal Owner's Property"), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "Beneficial Owners"; and together with the Legal Owner, the "Debtors"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the "Transaction") contemplated by an [amended and restated](#) agreement of purchase and sale (the "Sale Agreement") between the Debtors (acting by the Receiver) and Seven Hills Developments Inc. (the "Purchaser") dated April 14, 2022 and appended to the Second Report of the Receiver dated May 13, 2022 (the "Second Report"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets set out in Schedule "C" hereof (the "Purchased Assets"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver's Notice of Motion, the Second Report and the appendices thereto, [the Supplement to the Second Report of the Receiver dated May 20, 2022 and the appendices thereto](#), and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver's Motion Record as appears from the affidavit of Nancy Thompson sworn May ~~16~~17, 2022 (the "Thompson Affidavit"):

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



such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

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

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Peterborough (No. 45) of an Application for Vesting Order in the form

prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter Seven Hills Developments Inc. as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

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

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

- (a) the pendency of these proceedings;

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

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

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

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**SCHEDULE A**

**Form of Receiver's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of ~~the Honourable~~[Mr.](#) Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases related thereto, the "**Real Property**") of, among other parties, (i) 2478658 Ontario Ltd. (the

~~24433409.2~~[24433409.3](#)

“**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated May 24, 2022, the Court approved the [amended and restated](#) agreement of purchase and sale made as of April 14, 2022 (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and Seven Hills Developments Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE B**

**Real Property**

849 Alexander Court, Peterborough

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

## SCHEDULE C

### Purchased Assets

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

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



**SCHEDULE D****Claims to be deleted and expunged from title to Real Property**

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
PE239807	January 26, 2016	Charge	\$70,000,000	2478658 Ontario Ltd.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
PE239808	January 26, 2016	Notice of Assignment of Rents-General		2478658 Ontario Ltd.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
PE314057	July 19, 2019	Charge	\$6,250,000	2478658 Ontario Ltd.	1592106 Ontario Inc.
PE314058	July 19, 2019	Notice of Assignment of Rents-General		2478658 Ontario Ltd.	1592106 Ontario Inc.
PE316568	August 28, 2019	Notice	\$2	2478658 Ontario Ltd.	1592106 Ontario Inc.
PE324329	December 19, 2019	Charge	\$1,000,000	2478658 Ontario Ltd.	1012689 Ontario Limited

## SCHEDULE E

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

#### (Unaffected by the Vesting Order)

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

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

respects, and in each case so long as they are registered on title or have been made available to the Purchaser prior to the expiry of the Due Diligence Period;

- (i) any minor encroachments by any structure located on the Real Property Assets onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Real Property Assets;
- (j) all encumbrances and instruments registered against title to the Real Property Assets and the property that is the subject of the Real Property Leases, other than financing-related Encumbrances, which will be discharged on Closing pursuant to the Approval and Vesting Order; and
- (k) in respect of the Real Property Assets and the Real Property Leases, the provisions of any Applicable Law, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning, and any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent.

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

- and -

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

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

**APPROVAL AND VESTING ORDER**  
**849 Alexander Court, Peterborough, Ontario**

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Suite 4000, Commerce Court West

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Style change	0
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Total changes	37

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER  
2009 Long Lake Road, Sudbury, Ontario**

**THIS MOTION**, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “B”** hereto (the “**Real Property**”) of (i) 2009 Long Lake Holdings Inc. (the “**Legal Owner**”) acquired for, or used

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

**ON READING** the Receiver's Notice of Motion, the Second Report and the appendices thereto, [the Supplement to the Second Report of the Receiver dated May 20, 2022 and the appendices thereto](#), and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver's Motion Record as appears from the affidavit of Nancy Thompson sworn May 17, 2022 (the "**Thompson Affidavit**"):

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



such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

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

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Sudbury (No. 53) of an Application for Vesting Order in the form

prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter 1000151410 Ontario Limited as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

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

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

- (a) the pendency of these proceedings;

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

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

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

**SCHEDULE A**

**Form of Receiver's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of ~~the Honourable~~[Mr.](#) Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases

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related thereto, the ‘**Real Property**’) of, among other parties, (i) 2009 Long Lake Holdings Inc. (the ‘**Legal Owner**’) acquired for, or used in relation to the Legal Owner’s business (collectively, the ‘**Legal Owner’s Property**’), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the ‘**Beneficial Owners**’, and together with the Legal Owner, the ‘**Debtors**’), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated May 24, 2022, the Court approved the agreement of purchase and sale made as of April 21, 2022 (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and 1000151410 Ontario Limited (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

Per: \_\_\_\_\_

Name:

Title:

## **SCHEDULE B**

### **Real Property**

#### 2009 Long Lake Road, Sudbury

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

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

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

## SCHEDULE C

### Purchased Assets

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

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



**SCHEDULE D****Claims to be deleted and expunged from title to Real Property****PIN 73595-0102(LT):**

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
SD309728	January 26, 2016	Charge	\$70,000,000	2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309729	January 26, 2016	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD352589	March 2, 2018	Charge	\$1,600,000	2009 Long Lake Holdings Inc.	Gross Capital Inc.
SD379372	July 19, 2019	Charge	\$6,250,000	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD379373	July 19, 2019	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD379376	July 19, 2019	Postpone-ment		Gross Capital Inc.	1592106 Ontario Inc.
SD381948	August 29, 2019	Notice	\$2	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD381949	August 29, 2019	Postpone-ment		Gross Capital Inc.	1592106 Ontario Inc.
SD386442	November 5, 2019	Notice of Security Interest (LED	\$152,185	De Lage Landen Financial Services Canada	

[24433387-324433387.4](#)

		Lighting Retrofit)		Inc.	
SD393218	March 4, 2020	Notice of Security Interest	\$58,240	Blue Chip Leasing Corporation	

**PIN 73595-0174(LT):**

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
SD309728	January 26, 2016	Charge	\$70,000,000	2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309729	January 26, 2016	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD352589	March 2, 2018	Charge	\$1,600,000	2009 Long Lake Holdings Inc.	Gross Capital Inc.
SD379372	July 19, 2019	Charge	\$6,250,000	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD379373	July 19, 2019	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD379376	July 19, 2019	Postpone-ment		Gross Capital Inc.	1592106 Ontario Inc.
SD381948	August 29, 2019	Notice	\$2	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.

SD381949	August 29, 2019	Postpone-ment		Gross Capital Inc.	1592106 Ontario Inc.
SD386442	November 5, 2019	Notice of Security Interest	\$152,185	De Lage Landen Financial Services Canada Inc.	
SD393217	March 4, 2020	Notice of Security Interest	\$58,240	Blue Chip Leasing Corporation	

**PIN 73595-0333(LT):**

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
SD309728	January 26, 2016	Charge	\$70,000,000	2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309729	January 26, 2016	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD352589	March 2, 2018	Charge	\$1,600,000	2009 Long Lake Holdings Inc.	Gross Capital Inc.
SD379372	July 19, 2019	Charge	\$6,250,000	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD379373	July 19, 2019	Notice of Assignment of Rents-General		2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD379376	July 19, 2019	Postpone-me		Gross Capital Inc.	1592106 Ontario

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		nt			Inc.
SD381948	August 29, 2019	Notice	\$2	2009 Long Lake Holdings Inc.	1592106 Ontario Inc.
SD381949	August 29, 2019	Postpone-ment		Gross Capital Inc.	1592106 Ontario Inc.
SD386442	November 5, 2019	Notice of Security Interest	\$152,185	De Lage Landen Financial Services Canada Inc.	
SD393216	March 4, 2020	Notice of Security Interest	\$58,240	Blue Chip Leasing Corporation	

## SCHEDULE E

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

#### (Unaffected by the Vesting Order)

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

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

- (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.

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

- and -

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

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

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**APPROVAL AND VESTING ORDER**  
**2009 Long Lake Road, Sudbury, Ontario**

---

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

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Lawyers for the Receiver





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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**DISTRIBUTION AND ANCILLARY MATTERS ORDER**

**THIS MOTION**, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the ‘**Receiver**’) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule ‘A’** (the ‘**Real Property**’) of the Appointment Order granted on June 29, 2021 (the ‘**Appointment Order**’) of:

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(i) Southmount Healthcare Centre Inc. (formerly Carriage Gate Group Inc.) (“**Southmount**”), 180 Vine Inc. (“**Vine Co.**”), 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the “**Legal Owners**”) acquired for, or used in relation to the Legal Owners’ business, including any interest held by Vine Co. to which Her Majesty the Queen in Right of Ontario (the “**Crown**”) may have rights and any interest in the applicable real property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the “**Legal Owners’ Property**”), and (ii) 180 Vine Purchaser Inc., Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owners, the “**Debtors**”), but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owners’ Property, including the Real Property ~~(together with the Legal Owner’s Property, the “**Real Property Assets**”)~~, and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others ~~(together with the Legal Owners’ Property, the “**Receivership Assets**”)~~, for an Order, among other things:

- (i) authorizing the Receiver to pay commissions to CBRE Limited (the “**Broker**”);
- (ii) authorizing the Receiver to make distributions to the Applicants;
- (iii) procedurally consolidating the bankruptcy proceedings of the Legal Owners (other than Southmount and Vine Co.) and certain related parties;
- (iv) approving the activities of the Receiver, as set out in the Receiver’s First Report to Court dated October 21, 2021 (the “**First Report**”) and the Receiver’s Second Report to the Court dated May 13, 2022 (the “**Second Report**”); and
- (v) sealing Confidential Appendices “A”, “B” and “C” to the Second Report ~~and~~ Confidential Appendices “A” and “B” to the Supplement to the Second Report of the

Receiver dated May 20, 2022 (the “Supplemental Report” and such Confidential Appendices being, collectively, the “Confidential Appendices”):

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

**ON READING** the Receiver’s Notice of Motion, the First Report and the appendices thereto, the Second Report and the appendices thereto, the Supplemental Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver’s Motion Record as appears from the affidavit of Nancy Thompson sworn May ~~16~~<sup>17</sup>, 2022 (the “Thompson Affidavit”):

**SERVICE**

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver’s Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.

**PAYMENT OF BROKER COMMISSIONS**

2. **THIS COURT ORDERS AND DECLARES** that the Receiver is authorized and directed to pay the Commissions (as defined in the Second Report) to the Broker as and when the applicable sale transactions close, out of the proceeds thereof, in each case in such amounts as are prescribed by the terms of the broker listing agreement dated as of October 20, 2021 among the Debtors and the Broker.

**RESERVE AND DISTRIBUTIONS**

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to:

- (a) repay all indebtedness outstanding under Receiver’s Certificates (as defined in the Appointment Order) issued under the term sheet among the Applicants and the

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Receiver, dated June 18, 2021 from the Net Proceeds of Sale (as defined in the Second Report) and any other funds in the possession of the Receiver (the ‘Receivership Cash’):

- (b) distribute to the Applicants by way of one or more distributions from the Receivership Cash at the time or times determined by the Receiver, in its sole discretion, ~~an amount not exceeding the maximum amount owed by the Debtors to the Applicants on account of principal, interest, fees and expenses;~~

subject to the maintenance of a reserve, in an amount satisfactory to the Receiver, in consultation with the Applicants, or in an amount otherwise ordered by the Court, to: (i) fund the fees and disbursements of the Receiver and its counsel, (ii) fund operating costs and expenses of the Debtors incurred in relation to the ~~Real Property~~ Receivership Assets since the date of the Appointment Order, (iii) secure the obligations under the Receiver’s Charge (as defined in the Appointment Order), and (iv) fund the Bankruptcy Costs (defined below).

#### **BANKRUPTCY OF 180 VINE PURCHASER INC.**

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to file and assignment in bankruptcy on behalf of 180 Vine Purchaser Inc. (**‘Vine Purchaser’**), or to consent to the making of a bankruptcy order against Vine Purchaser.

#### **PROCEDURAL CONSOLIDATION**

5. **THIS COURT ORDERS** that following any assignment in bankruptcy by or on behalf of the Legal Owners other than Southmount and Vine Co. (the **‘Bankruptcy Legal Owners’**); ~~180 Vine Purchaser Inc. (‘Vine Purchaser’)~~ and Victoria Avenue North Holdings Inc. (**‘Victoria’**), KPMG Inc., in its capacity as the bankruptcy trustee of the Bankruptcy Legal Owners, ~~Vine Purchaser~~ and Victoria (the **‘Trustee’**) shall be entitled to administer the

~~24431502.4~~24431502.7

procedural matters relating to those bankruptcy proceedings on a consolidated basis (the “**Consolidated Proceedings**”) and a copy of this order will be filed in the court file for each of the estates of the Bankruptcy Legal Owners, ~~Vine Purchaser~~ and Victoria.

6. **THIS COURT ORDERS** that the Trustee is authorized to carry out its administrative duties and responsibilities as trustee in bankruptcy as if the Consolidated Proceedings were a single proceeding under the *Bankruptcy and Insolvency Act* (Canada), including without limitation:

- a) the meetings of creditors of the Bankruptcy Legal Owners, ~~Vine Purchaser~~ and Victoria may be convened and conducted jointly,
- b) the Trustee is authorized to issue consolidated reports in respect of the Bankruptcy Legal Owners, ~~Vine Purchaser~~ and Victoria; and
- c) the Trustee is authorized to deal with all filings and notices relating to the bankruptcy on a consolidated basis

7. **THIS COURT ORDERS** that the Consolidated Proceeding will be in relation to procedural matters only and do not:

- a) affect the separate legal status of the corporate structure of the Bankruptcy Legal Owners, ~~Vine Purchaser~~ and Victoria;
- b) cause any of the Bankruptcy Legal Owners, ~~Vine Purchaser~~ or Victoria to be liable for any claim for which it is otherwise not liable, or cause any of the Bankruptcy Legal Owners, ~~Vine Purchaser~~ or Victoria to have any interest in any asset which it otherwise would not have; or
- c) affect the Bankruptcy Legal Owners’, ~~Vine Purchaser’s~~ or Victoria’s filing obligations under the *Bankruptcy and Insolvency Act* (Canada).

8. **THIS COURT ORDERS** that the Receiver shall be permitted to transfer to the Trustee from time to time funding for costs associated with the bankruptcies of the Bankruptcy Legal Owners ~~and Vine Purchaser~~, as determined by the Receiver in consultation with the Applicants (the “**Bankruptcy Costs**”).

**APPROVAL OF REPORTS & ACTIVITIES**

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

**SEALING ORDER**

10. **THIS COURT ORDERS** that the Confidential Appendices are hereby sealed and shall not form part of the public record.

**MISCELLANEOUS**

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

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

- and -

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

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

**DISTRIBUTION AND ANCILLARY  
MATTERS ORDER**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

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**Alexia Parente**, LSO #81927G

Tel: 416-863-2417

Fax: 416-863-2653

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

Lawyers for the Receiver

~~24431502.4~~[24431502.7](#)

Document comparison by Workshare 10.0 on Tuesday, May 24, 2022 8:56:21 AM

Input:	
Document 1 ID	PowerDocs://TOR_2528/24431502/4
Description	TOR_2528-#24431502-v4-KPMG_-_Gross_-_Distribution_Order_(Southmount)
Document 2 ID	PowerDocs://TOR_2528/24431502/7
Description	TOR_2528-#24431502-v7-KPMG_-_Gross_-_Distribution_Order_(Southmount)
Rendering set	Standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:
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	Count
Insertions	16
Deletions	20
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	38