

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

B E T W E E N:

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

Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC.  
and THE PARTIES LISTED ON SCHEDULE "A"

Respondents

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

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

May 13, 2022

**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)

**Aryo Shalviri**, LSO #63867A  
Tel: 416-863-2962  
Email: [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com)

**Chris Burr**, LSO #55172H  
Tel: 416-863-3261  
Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**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

**TO: SERVICE LIST**

## SCHEDULE "A"

<b>Individuals</b>
Allan Gross
Errol Yim and Andrea Yim, jointly
Ava Gross
Karen Nakagawa and Calvin Nakagawa, jointly
Carol Jaxon
Carole Kai Onouye
Diane Curtis
Dwight Otani and Theresa Otani, jointly
Edward Bugarin
Ellen Fleishman
Gemie Arakawa
George Tamashiro
Guy Pace and Caroline Berdusco, jointly
Heidi Berger
Henry Ko
Hongwei Su
James Brand
Janis L. Lai Trustee
Jean Morel
Jian Zhang
Johann Strasser
John Dattomo and Daniela Dattomo
Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly
Randall Y.C. Ho
Robert Atkinson
Roberta Sunahara and Paul Sunahara, jointly
Seymour Kazimirski
Stanley Salcedo

<b>Trusts</b>
Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Fleishman Family Trust, by and through its trustee(s)
J. Zachery Jones Trust, by and through its trustee(s)
Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Jasen Takei Revocable Living Trust, by and through its trustee(s)
Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Ruth Hisaye Honda Trust, by and through its trustee(s)
S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Wallace K. Tsuha Trust, by and through its trustee(s)
<b>Corporations / Partnerships</b>
1236068 Ontario Limited
1649750 Ontario Inc.
1818019 Ontario Limited
Citydrill Inc.
Gross Capital Inc.
Dirk and Dale IRA LLC
Gross Medical Opportunities Fund LP
Hybrid Activities Inc.
Mark Craig Gross Holdings Inc.
Randy 88, LLC
Rastogi Medicine Professional Corporation
RMK IRA LLC

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**SERVICE LIST**  
(as at April 29, 2022)

<p><b>BLAKE, CASSELS &amp; GRAYDON LLP</b> 199 Bay Street Suite 4000, Commerce Court West Toronto, Ontario M5L 1A9</p> <p><b>Pamela L.J. Huff</b>, LSO #27344V Tel: 416-863-2958 Email: <a href="mailto:pamela.huff@blakes.com">pamela.huff@blakes.com</a></p> <p><b>Chris Burr</b>, LSO #55172H Tel: 416-863-3261 Email: <a href="mailto:chris.burr@blakes.com">chris.burr@blakes.com</a></p>	<p><b>KPMG INC.</b> Bay Adelaide Centre 333 Bay Street, Suite 4600 Toronto, Ontario M5H 2S5</p> <p><b>Nick Brearton</b> Tel: 416-777-3768 Email: <a href="mailto:nbrearton@kpmg.ca">nbrearton@kpmg.ca</a></p> <p><b>George Bourikas</b> Tel: 416-777-8887 Email: <a href="mailto:gbourikas@kpmg.ca">gbourikas@kpmg.ca</a></p>
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<p><b>Aryo Shalviri</b>, LSO #63867A Tel: 416-863-2962 Email: <a href="mailto:aryo.shalviri@blakes.com">aryo.shalviri@blakes.com</a></p> <p><b>Alexia Parente</b>, LSO #81927G Tel: 416-863-2417 Fax: 416-863-2653 Email: <a href="mailto:alexia.parente@blakes.com">alexia.parente@blakes.com</a></p> <p><i>Lawyers for the Applicants and the Receiver</i></p>	<p><b>Katherine Forbes</b> Tel: 416-777-8107 Email: <a href="mailto:katherineforbes@kpmg.ca">katherineforbes@kpmg.ca</a></p> <p><b>Jojo Tang</b> Email: <a href="mailto:jojotang@kpmg.ca">jojotang@kpmg.ca</a></p> <p><i>Receiver</i></p>
<p><b>NORTON ROSE FULBRIGHT CANADA LLP</b> 222 Bay Street, Suite 3000 P.O. Box 53 Toronto, Ontario M5K 1E7</p> <p><b>Evan Cobb</b> Tel: 416-216-1929 Email: <a href="mailto:evan.cobb@nortonrosefulbright.com">evan.cobb@nortonrosefulbright.com</a></p> <p><i>Independent Counsel for the Receiver</i></p>	<p><b>WEISZ FELL KOUR</b> 200 Bay Street, Suite 2305 P.O. Box 120 Toronto, Ontario M5J 2J3</p> <p><b>Sharon A. Kour</b> Tel: 416-613-8283 Email: <a href="mailto:skour@wfklaw.ca">skour@wfklaw.ca</a></p> <p><b>Caitlin Fell</b> Tel: 416-613-8282 Email: <a href="mailto:cfell@wfklaw.ca">cfell@wfklaw.ca</a></p> <p><i>Lawyers for the Legal Owner, Victoria Avenue North Holdings Inc.</i></p>
<p><b>EMILY EVANGELISTA</b> 101 10 Director Court Woodbridge, Ontario L4L 7E8</p> <p>Tel: 905-265-2252, ext. 337 Email: <a href="mailto:emily@evangelistalaw.ca">emily@evangelistalaw.ca</a></p> <p><i>Lawyer for Tanbros Investments Ltd.</i></p>	<p><b>PETER I WALDMANN PROFESSIONAL CORPORATION</b> 183 Augusta Avenue Toronto, Ontario M5T 2L4</p> <p><b>Peter I Waldmann</b> Email: <a href="mailto:peter@peteriwaldmann.com">peter@peteriwaldmann.com</a>; <a href="mailto:info@peteriwaldmann.com">info@peteriwaldmann.com</a>; <a href="mailto:legalservices@peteriwaldmann.com">legalservices@peteriwaldmann.com</a></p> <p><i>Lawyer for Yun Zuo in her personal capacity and as the trustee of The Xuezhong Family Trust, Qiu Xie as the trustee of Xie 2018 Family Trust, Jian Ming Xu (Plaintiff in related court proceedings), and Xing Wang (Plaintiff in related court proceedings)</i></p>

***Legal Owner / Beneficial Owners:***

<b>VICTORIA AVENUE NORTH HOLDINGS INC.</b> 200 Ronson Drive, Suite 201 Toronto, Ontario M9W 5Z9  Attention: Mark Gross Email: <a href="mailto:mark@danimax.ca">mark@danimax.ca</a>	<b>THE BENEFICIAL OWNERS LISTED ON SCHEDULE "A"</b>
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***Ministries / Municipalities:***

<b>CANADA REVENUE AGENCY</b> c/o Department of Justice Ontario Regional Office The Exchange Tower, Box 36 Suite 3400, 130 King Street West Toronto, Ontario M5X 1K6  <b>Diane Winters</b> , General Counsel Tel: 416-973-3172 Fax: 416-973-0810 Email: <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a>  <b>Rakhee Bhandari</b> Tel: 416-952-8563 Email: <a href="mailto:rakhee.bhandari@justice.gc.ca">rakhee.bhandari@justice.gc.ca</a>	<b>MINISTRY OF FINANCE (ONTARIO)</b> Insolvency Unit 33 King Street West, 6th Floor Oshawa, Ontario L1H 8H5  Email: <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a>
<b>CITY OF HAMILTON</b> 71 Main Street West Hamilton, Ontario L8P 4Y5  Attention: Legal Services Email: <a href="mailto:kaush.parameswaran@hamilton.ca">kaush.parameswaran@hamilton.ca</a>	

***Parties with PPSA Registrations:***

<b>BLUE CHIP LEASING CORPORATION</b> c/o Vault Credit Corporation 41 Scarsdale Road, Unit 5 Toronto, Ontario M3B 2R2  Attention: Diana Ortis Email: <a href="mailto:dortis@vaultcredit.ca">dortis@vaultcredit.ca</a>	<b>MILLER THOMSON LLP</b> Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1  <b>Asim Iqbal</b> , LSO #61884B Tel: 416-597-6008 Fax: 416-863-1716 Email: <a href="mailto:aiqbal@millერთhompson.com">aiqbal@millერთhompson.com</a>  <i>Lawyers for De Lage Landen Financial Services Canada Inc.</i>
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<p><b>MERIDIAN ONECAP CREDIT CORP.</b> 204 - 3185 Willingdon Green Burnaby, British Columbia V5G 4P3 Attention: Joanna Alford, Loss Recovery Specialist Email: <a href="mailto:joanna.alford@meridianonecap.ca">joanna.alford@meridianonecap.ca</a></p>	
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***Parties with Encumbrances Registered on Title:***

<p><b>1012689 ONTARIO LIMITED</b> 45 Lower Jarvis Street Toronto, Ontario M5E 1R8 Attention: Joe Chiaravalloti Email: <a href="mailto:joe@canadaautoparks.com">joe@canadaautoparks.com</a></p> <p>With a copy to:</p> <p><b>DALE &amp; LESSMANN LLP</b> 181 University Avenue, Suite 2100 Toronto, Ontario M5H 3M7</p> <p><b>Nedko Petkov</b> Tel: 416-369-7821 Email: <a href="mailto:npetkov@dalelessmann.com">npetkov@dalelessmann.com</a></p>	<p><b>MILLER THOMSON LLP</b> Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p><b>Asim Iqbal</b>, LSO #61884B Tel: 416-597-6008 Fax: 416-863-1716 Email: <a href="mailto:aiqbal@millerthomson.com">aiqbal@millerthomson.com</a></p> <p><i>Lawyers for De Lage Landen Financial Services Canada Inc.</i></p>
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**Email Distribution List:**

[pamela.huff@blakes.com](mailto:pamela.huff@blakes.com); [chris.burr@blakes.com](mailto:chris.burr@blakes.com); [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com);  
[alexia.parente@blakes.com](mailto:alexia.parente@blakes.com); [nbrearton@kpmg.ca](mailto:nbrearton@kpmg.ca); [gbourikas@kpmg.ca](mailto:gbourikas@kpmg.ca);  
[katherineforbes@kpmg.ca](mailto:katherineforbes@kpmg.ca); [jojotang@kpmg.ca](mailto:jojotang@kpmg.ca); [evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com);  
[skour@wfkaw.ca](mailto:skour@wfkaw.ca); [cfell@wfkaw.ca](mailto:cfell@wfkaw.ca); [emily@evangelistalaw.ca](mailto:emily@evangelistalaw.ca); [mark@animax.ca](mailto:mark@animax.ca);  
[peter@peteriwaldmann.com](mailto:peter@peteriwaldmann.com); [info@peteriwaldmann.com](mailto:info@peteriwaldmann.com); [legalservices@peteriwaldmann.com](mailto:legalservices@peteriwaldmann.com);  
[diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca); [rakhee.bhandari@justice.gc.ca](mailto:rakhee.bhandari@justice.gc.ca); [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca);  
[kaush.pameswaran@hamilton.ca](mailto:kaush.pameswaran@hamilton.ca); [dortis@vaultcredit.ca](mailto:dortis@vaultcredit.ca); [aiqbal@millerthomson.com](mailto:aiqbal@millerthomson.com);  
[joanna.alford@meridianonecap.ca](mailto:joanna.alford@meridianonecap.ca); [joe@canadaautoparks.com](mailto:joe@canadaautoparks.com); [npetkov@dalelessmann.com](mailto:npetkov@dalelessmann.com);



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**MOTION RECORD**

**I N D E X**

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**TAB 1**

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

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

**KPMG INC.**, in its capacity as the receiver and manager (in such capacity, the "**Receiver**"), without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" (the "**Real Properties**") of the appointment order granted on August 3, 2021 (the "**Appointment Order**") of (i) of Victoria Avenue North Holdings Inc. (the "**Legal Owner**") acquired for, or used in relation to the Legal Owner's business (the "**Legal Owner's Property**"), and (ii) all right, title and interest of any beneficial owners (the "**Beneficial Owners**") in and to the Legal Owner's Property, including the Real Properties and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (collectively, and together with the Legal Owner's

Property, the “**Property**”) will make a motion to Madam Justice Gilmore on **Tuesday, May 24, 2022 at 1:00 p.m. (Toronto time)**, or as soon after that time as the motion can be heard.

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

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

at the following location:

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

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

**THE MOTION IS FOR:**

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

- (i) approving the asset purchase agreement dated April 26, 2022 (the “**APA**”) among the Receiver and 304 Victoria Investments Inc. and 414 Victoria Investments Inc. (the “**Purchasers**”) and the proposed transaction (the “**Proposed Transaction**”) contemplated thereby;
- (ii) vesting title in and to the Real Property Assets (as defined herein) in the Purchasers, free and clear of all liens, claims and encumbrances, except the Permitted Encumbrances;

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

- (i) authorizing the Receiver to pay Commissions (as defined herein) to CBRE Limited (the “**Broker**”);
- (ii) authorizing the Receiver to make the repayment of the Receiver’s Borrowings and Distribution(s) (each as defined herein);
- (iii) approving the activities of the Receiver, as set out in the Receiver’s First Report to Court dated September 7, 2021 (the “**First Report**”), the Receiver’s Second Report to the Court dated October 22, 2021 (the “**Second Report**”), and the Receiver’s Third Report to the Court dated May 13, 2022 (the “**Third Report**”);
- (iv) dispensing with the requirement that the Receiver and its counsel, Blake, Cassels & Graydon LLP (“**Blakes**”) and Norton Rose Fulbright LLP (“**Norton Rose**”), obtain Court approval of their fees and disbursements (“**Accounts**”) for the Fee Period (defined below) and thereafter unless requested by the Applicants;
- (v) procedurally consolidating the proposed bankruptcy of the Legal Owner with Vine Purchaser and certain of the Southmount Et Al. entities (defined herein); and
- (vi) sealing confidential appendices to the Third Report (the “**Confidential Appendices**”); and

(c) such further and other relief as counsel may request and this Honourable court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

*Background*

1. Pursuant to the Order of the Honourable Mr. Justice Koehnen granted on August 3, 2021, of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), KPMG Inc. was appointed as Receiver of the Property, which are primarily consists of interests in two (2) medical office buildings located in Ontario (together, and their related real property leases and the interest of the Beneficial Owners therein, the “**Real Property Assets**”).

2. On September 7, 2021, the Receiver filed the First Report with the Court in support of an Order of the Honourable Mr. Justice Koehnen granted on September 14, 2021, (i) authorizing and directing the Receiver to undertake the Notification Procedure (as defined in the First Report) to obtain contact information for Beneficial Owners, and (ii) approving a service protocol in respect of the Beneficial Owners, effective as of September 24, 2021, and to provide an update on the status of these receivership proceedings (the “**Proceedings**”) generally (the “**Notification Procedure Order**”).

3. On October 29, 2021, the Court granted an Order (the “**Sale Process Order**”) approving, among other things:

(a) the broker listing agreement dated October 20, 2021 (the “**Broker Listing Agreement**”) and the engagement of the Broker as exclusive real estate broker for the Real Property Assets; and

(b) a sale process for the Real Property Assets, as appended to the Sale Process Order (the “**Sale Process**”) in these receivership Proceedings.

4. On June 29, 2021, KPMG Inc. was appointed as receiver and manager (in such capacity, the “**Southmount Et Al. Receiver**”) of, among other things, the properties of Southmount Healthcare Centre Inc. and certain other entities (“**Southmount Et Al.**”) pursuant to an order of this Court. The primary assets of the respondents in the Southmount et al. receivership proceedings are seven (7) medical office buildings in the same asset class as the Real Properties subject to these Proceedings (the “**Southmount Et Al. Real Property Assets**”). Southmount et al. is affiliated with the Legal Owner, and they are all indirect subsidiaries of Gross Capital Inc. (“**Gross Capital**”), which as detailed in the First Report, was assigned into bankruptcy on June 25, 2021. The Receiver understands that historically the Legal Owner and Southmount Et Al. were each managed by representatives of Gross Capital.

5. On October 29, 2021, the Court granted an order approving a sale process for the Southmount Et Al. Real Property Assets that would be run by the Receiver in conjunction with the Sale Process.

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



*Sale Process Results*

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

8. The Purchasers were selected as the successful bidders. The Receiver recommends the Court approve the Proposed Transaction for, among others, the following reasons:

(a) the market was widely canvassed by the Receiver, resulting in significant participation from potential purchasers and competition amongst same;

(b) the Proposed Transaction is the result of extensive negotiations of the terms of the APA and represents the highest and best offer for the Real Property Assets;

(c) the Proposed Transaction contemplates the sale of the Real Property Assets on an ‘as is where is’ basis, by which the Real Property Assets will be transferred to the Purchasers free and clear (with certain limited exceptions);

(d) the closing conditions are limited and customary in the circumstances, and the Receiver is not currently aware of any information to suggest that such conditions will not be met;

(e) prior to entering into the Proposed Transaction, the Receiver consulted with the Applicants and the secured mortgagees of certain of the Real Property Assets;

(f) the Applicants, who as further discussed in a later section to this Third Report, are the only creditors anticipated to realize a recovery in these Proceedings, support the Proposed Transaction.

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

#### *Town Hall*

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

11. Notice of the Town Hall will be given to all parties known to the Receiver claiming a beneficial interest in and to the Legal Owner’s Property in accordance with the Notification Procedure Order, and will also be posted on the Receiver’s website.

#### *Distributions*

12. As of the date of the Third Report, the Receiver has borrowed \$300,000 (the “**Receiver’s Borrowings**”). The Receiver is seeking the Court’s approval to fully repay the Receiver’s Borrowings, should the Proposed Transaction be approved by the Court and close.

13. The Receiver has obtained an independent legal opinion from Norton Rose which concludes that the Applicants' security is valid and enforceable against the Property and that first in time registrations of the Applicants' security have been made against the Property.

14. The Receiver is not aware of any potential priority claims that would rank ahead of the Applicants at the time of a Distribution.

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

#### *Consolidation of Bankruptcy Estates*

16. The Receiver proposes to proceed with an assignment of the Legal Owner into bankruptcy pursuant to its authority in the Appointment Order, prior to any Distributions. The Southmount Et Al. Receiver is seeking approval from this Court to, among other things, proceed with an assignment of most of the Southmount Et Al. legal owners and a related party, 180 Vine Purchaser Inc. ("**Vine Purchaser**"), into bankruptcy prior to making any distributions. The Southmount et al. Receiver proposes that the bankruptcies of the Southmount Et Al. entities and Vine Purchaser be consolidated for procedural and administrative purposes in the bankruptcy proceedings (the "**Consolidation**").

17. The Receiver requests that the estate of the Legal Owner form part of the Consolidation. The purpose of this Consolidation is to avoid duplicative steps across multiple estates, including

in relation to notices and creditors' meetings. This will add efficiency to the proceedings, conserve resources and will not prejudice any stakeholder.

*Approval of the Receiver's Fees and Activities*

18. The Receiver's activities to the date of the Second Report are detailed in the First Report and Second Report. The activities of the Receiver to the date of the Third Report, as further detailed in the Third Report, have primarily consisted of: (i) conducting and facilitating the Court-approved Sale Process; (ii) corresponding with the Purchasers and their counsel regarding negotiating and finalizing the APA as it relates to the Proposed Transaction; (iii) liaising with counsel in respect of certain litigation; (iv) securing various short-term extensions of insurance coverage from the Legal Owner's insurance provider; (v) attending to various banking and tax matters; and (vi) preparing the Third Report.

19. Professional fees and disbursement of the Receiver for the period from the Receivership Date to March 31, 2022 (the "**Fee Period**") total \$317,309.60. Professional fees and disbursements of Blakes for the Fee Period total \$436,569.12. Professional fees and disbursements of Norton Rose for the Fee Period total \$31,241.78. Invoices and summaries thereof in respect of the Receiver, Blakes and Norton Rose have been provided to the Applicants, as fulcrum creditor having the only economic interest in the invoiced amounts.

20. As discussed above, the Applicants are the only party expected to receive a monetary recovery in these Proceedings. Accordingly, the Applicants are the only creditor with an economic interest in the quantum of professional fees incurred by the Receiver and its counsel. The fees and invoices have been disclosed to the Applicants and the Applicants have advised the Receiver that

they consent to such fees. In the Receiver's view, given the foregoing, it would not be a constructive use of estate funds to take steps to proceed with a fee approval motion.

21. The Receiver respectfully requests that this Court dispense with the requirement that the Receiver, Blakes and Norton Rose obtain Court approval of their Accounts for the Fee Period, and thereafter unless requested by the Applicants, on the basis that the Applicants have consented to the fees for the Fee Period, and provided the Applicants further consent to fees incurred.

*Sealing Order*

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

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

*Additional Grounds*

24. The grounds as more particularly set out in the Third Report;

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

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

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

27. The Third Report, filed; and

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

May 13, 2022

**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)

**Aryo Shalviri**, LSO #63867A  
Tel: 416-863-2962  
Email: [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com)

**Chris Burr**, LSO #55172H  
Tel: 416-863-3261  
Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**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

**TO: SERVICE LIST**

**SCHEDULE "A"**

<b>Individuals</b>
Allan Gross
Errol Yim and Andrea Yim, jointly
Ava Gross
Karen Nakagawa and Calvin Nakagawa, jointly
Carol Jaxon
Carole Kai Onouye
Diane Curtis
Dwight Otani and Theresa Otani, jointly
Edward Bugarin
Ellen Fleishman
Gemie Arakawa
George Tamashiro
Guy Pace and Caroline Berdusco, jointly
Heidi Berger
Henry Ko
Hongwei Su
James Brand
Janis L. Lai Trustee
Jean Morel
Jian Zhang
Johann Strasser
John Dattomo and Daniela Dattomo
Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly
Randall Y.C. Ho
Robert Atkinson
Roberta Sunahara and Paul Sunahara, jointly
Seymour Kazimirski
Stanley Salcedo

<b>Trusts</b>
Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Fleishman Family Trust, by and through its trustee(s)
J. Zachery Jones Trust, by and through its trustee(s)
Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Jasen Takei Revocable Living Trust, by and through its trustee(s)
Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Ruth Hisaye Honda Trust, by and through its trustee(s)
S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Wallace K. Tsuha Trust, by and through its trustee(s)
<b>Corporations / Partnerships</b>
1236068 Ontario Limited
1649750 Ontario Inc.
1818019 Ontario Limited
Citydrill Inc.
Gross Capital Inc.
Dirk and Dale IRA LLC
Gross Medical Opportunities Fund LP
Hybrid Activities Inc.
Mark Craig Gross Holdings Inc.
Randy 88, LLC
Rastogi Medicine Professional Corporation
RMK IRA LLC



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

VICTORIA AVENUE NORTH HOLDINGS INC., *et al.*  
Respondents

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

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

**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)

**Aryo Shalviri**, LSO #63867A  
Tel: 416-863-2962  
Email: [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com)

**Chris Burr**, LSO #55172H  
Tel: 416-863-3261  
Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**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

# TAB 2

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

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

**Victoria Avenue North Holdings Inc.**

**MAY 13, 2022**

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

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

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

**Applicants**

**AND**

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

**Respondents**

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

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

**DATED MAY 13, 2022**

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

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

## I. INTRODUCTION

1. On August 3, 2021 (the “**Receivership Date**”), upon application by American General Life Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the “**Applicants**”), KPMG Inc. (“**KPMG**”) was appointed as receiver and manager (the “**Receiver**”), pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act* R.S.O. 1990 c. C. 43, as amended, of (i) all of the assets, undertakings and properties, including the Real Properties (as defined in the Appointment Order) of Victoria Avenue North Holdings Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”), and (ii) all right, title and interest of any beneficial owners (the “**Beneficial Owners**”) in and to the Legal Owner’s Property, including the Real Properties and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (collectively, and together with the Legal Owner’s Property, the “**Property**”).
2. Prior to its appointment as Receiver, KPMG filed a report dated July 26, 2021 (the “**Pre-Filing Report**”) to provide information to the Court in connection with the Applicants’ application for the Appointment Order (the “**Application**”).
3. On September 7, 2021, the Receiver filed a report (the “**First Report**”) with the Court in support of the Beneficial Owner Notification & Service Order (as defined below) and to provide an update on the status of these receivership proceedings (the “**Proceedings**”) generally.
4. On September 14, 2021, the Court granted an order (the “**Beneficial Owner Notification & Service Order**”): (i) authorizing and directing the Receiver to undertake the Notification Procedure (as defined in the First Report) to obtain contact information for Beneficial Owners, and (ii) approving a service protocol in respect of the Beneficial Owners, effective as of September 24, 2021.
5. On October 29, 2021, the Court granted an order (the “**Sale Process Order**”) approving, among other things:
  - (a) the broker listing agreement dated October 20, 2021 (the “**Broker Engagement Agreement**”), and the engagement of CBRE Limited (“**CBRE**”) as exclusive real estate broker for the Real Property Assets (as defined herein);
  - (b) a sale process for the Real Property Assets, as appended to the Sale Process Order (the “**Sale**”

**Process**”) in these Proceedings;

- (c) the sealing of the confidential appendices to the Receiver’s second report dated October 22, 2021 (the “**Second Report**”, and collectively with the Pre-Filing Report and the First Report, the “**Reports**”); and
  - (d) the extension of the Receiver’s borrowings, pursuant to a term sheet dated June 18, 2021 (the “**Receiver Term Sheet**”), to June 30, 2022.
6. As detailed in the First Report, on June 29, 2021, upon application by American General Life Insurance Company and affiliated secured lenders, KPMG was appointed as receiver and manager (in such capacity, the “**Southmount Et Al. Receiver**”) of, among other things, the properties of Southmount Healthcare Centre Inc. and certain other entities (collectively, “**Southmount Et Al.**”), pursuant to an order of this Court (Court file no. CV-21-00664273-00CL). The primary assets of the respondents in the Southmount Et Al. receivership proceedings are seven (7) medical office buildings in the same asset class as the Real Properties subject to these Proceedings (the “**Southmount Et Al. Real Property Assets**”). Southmount Et Al. are affiliated with the Legal Owner, and they are all indirect subsidiaries of Gross Capital Inc. (“**Gross Capital**”), which as detailed in the First Report, was assigned into bankruptcy on June 25, 2021. The Receiver understands that historically the Legal Owner and Southmount Et Al. were each managed by representatives of Gross Capital.
7. Also on October 29, 2021, the Court granted an order approving a substantially similar sale process for, and the engagement of CBRE in respect of, the Southmount Et Al. Real Property Assets. As detailed in the First Report, the Southmount Et Al. Real Property Assets were intended to be marketed alongside the Real Property Assets in these Proceedings.
8. Electronic copies of the Reports are available on the Receiver’s Website at: [home.kpmg/ca/VictoriaHoldings](http://home.kpmg/ca/VictoriaHoldings) (the “**Receiver’s Website**”).

## II. PURPOSE OF REPORT

9. The purpose of this third report of the Receiver (the “**Third Report**”) is to provide this Court with information pertaining to:
- (a) the conduct and results of the Sale Process;
  - (b) details pertaining to the Proposed Transaction (defined herein) the Receiver is proposing to pursue should the Court grant an order approving same;

- (c) the activities of the Receiver since the date of the Second Report;
- (d) the Receiver's interim statement of receipts and disbursements (the "**Interim SRD**") for the period from the Receivership Date to and including March 31, 2022 (the "**Period**");
- (e) the Receiver's proposed distribution(s) to the Applicants of, among other things, available funds from the net proceeds of the Proposed Transaction;
- (f) the fees and disbursements of the Receiver, its counsel, Blake, Cassels & Graydon LLP ("**Blakes**"), and its independent counsel, Norton Rose Fulbright Canada LLP ("**Norton Rose**");
- (g) the Receiver's intention to bankrupt the Legal Owner, and certain procedural matters related to same; and
- (h) the Receiver's recommendation that this Court grant orders:
  - (i) approving the APA (as defined herein) and the Proposed Transaction and authorizing and directing the Receiver to take such steps as necessary to complete the Proposed Transaction;
  - (ii) vesting title in and to the Real Property Assets in the Purchasers, free and clear of all liens, claims encumbrances, except the Permitted Encumbrances, upon the Receiver filing a certificate confirming among other things, completion of the Proposed Transaction;
  - (iii) authorizing and directing the Receiver to pay the Commissions;
  - (iv) authorizing the Receiver to make the repayment of the Receiver's Borrowings and the Distribution(s) (each as defined herein);
  - (v) dispensing with the requirement that the Receiver, Blakes and Norton Rose obtain Court approval of their Accounts for the Fee Period (defined herein) and thereafter unless requested by the Applicants;
  - (vi) approving the activities of the Receiver as set out in the First Report, the Second Report and this Third Report;
  - (vii) procedurally consolidating the proposed bankruptcy of the Legal Owner, Vine



Purchaser, and any or all of the Southmount Et Al. entities; and

- (viii) sealing the confidential appendices to this Third Report.

### III. QUALIFICATIONS & TERMS OF REFERENCE

10. In preparing this Third Report and making the comments herein, the Receiver has been provided with, or has relied upon certain unaudited, draft, and/or internal financial information, the Legal Owner's records and financial information and information from other third-party sources (collectively, the "**Information**"). The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
11. Some of the Information referred to in this Third Report consists of financial forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
12. Certain Information referred to in this Third Report is based on estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and as a consequence no assurance can be provided regarding the forecasted or projected results. The reader is cautioned that the actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant.
13. The Receiver has prepared this Third Report in connection with the motion to be heard on May 24, 2022 (the "**May 24<sup>th</sup> Motion**") or as soon after that time as the May 24<sup>th</sup> Motion can be heard. This Third Report should not be relied on for other purposes.
14. The information contained in this Third Report is not intended to be relied upon by any prospective purchaser in any transaction with the Receiver.
15. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

### IV. SALE PROCESS

16. As detailed in the Reports, prior to the appointment of the Receiver, the Legal Owner operated two (2) medical office buildings, located at 304 and 414 Victoria Avenue North in Hamilton, Ontario

(together, and their related real property leases and the interest of the Beneficial Owners therein, the “**Real Property Assets**”).

#### *Marketing Period*

17. Promptly following the issuance of the Sale Process Order, the Receiver, with the assistance of CBRE, began implementing the Sale Process. The Southmount Et Al. Real Property Assets were included along with the Real Property Assets (together, the “**Entire Portfolio**”) in the marketing materials.
18. As detailed in the Second Report, the Receiver anticipated that there may be interest from parties seeking to purchase the Real Property Assets on (i) an individual building basis, (ii) a regional sub-portfolio basis (including potentially combined with certain of the Southmount Et Al. Real Property Assets), and/or (iii) an Entire Portfolio basis. As such, the Sale Process contemplated a two-phase marketing approach, with the first phase primarily targeting parties who were likely to be interested in purchasing the Entire Portfolio and interested parties who had already contacted the Receiver (the “**Phase I Marketing Period**”), and the second phase focusing on those parties who were likely to be interested in purchasing a sub-portfolio of buildings, or individual buildings (the “**Phase II Marketing Period**” and together with the Phase I Marketing Period, the “**Marketing Period**”).
19. The Phase I Marketing Period commenced on November 8, 2021, with CBRE issuing direct emails to 2,171 potential interested parties from within CBRE’s contact database, as well as to those parties that had expressed to the Receiver an interest in purchasing some or all of the Real Property Assets (and/or the Southmount Et Al. Real Property Assets) (together, the “**Known Buyers**”). The direct email campaign included a marketing brochure document (i.e. a teaser) containing details about the Real Property Assets and the Entire Portfolio, that was also posted to CBRE’s account and the accounts of several of CBRE’s brokers on LinkedIn, at the commencement of the Phase I Marketing Period.
20. The Phase II Marketing Period commenced during the week of December 6, 2021, and key marketing activities included listing the Real Property Assets on the Multiple Listing Service (“**MLS**”) and posting local signage on the building sites.
21. Parties interested in participating in the Sale Process were asked to deliver to the Receiver an executed confidentiality agreement (“**CA**”), at which point, such parties (the “**Potential Bidders**”) were granted access to an electronic dataroom (the “**Dataroom**”) containing confidential financial and other information concerning the Real Property Assets and the Southmount Et Al. Real Property Assets.
22. Based on the level of interest and activity of the Potential Bidders during the early stages of the Marketing Period, CBRE recommended setting an initial bid deadline of January 25, 2022, (the “**Initial Bid Deadline**”) by which date Potential Bidders were required to deliver a non-binding letter

of intent (a “**Non-Binding LOI**”) to CBRE and the Receiver. The Sale Process contemplated that the Initial Bid Deadline was to be communicated on no less than 30 days’ notice, and on December 15, 2021, it was communicated by the following means:

- (a) email and/or telephone to all Potential Bidders;
  - (b) email to all Known Buyers;
  - (c) updating all social media and MLS listings; and
  - (d) publication in the Dataroom and on the Receiver’s Website.
23. As the Initial Bid Deadline approached, it became clear that there was significant demand from Potential Bidders for physical inspections and site tours of the Real Property Assets, which necessitated additional time to accommodate safely given the surge in Covid-19 cases in Ontario at the time. Accordingly, at the recommendation of CBRE, the Initial Bid Deadline was extended to February 8, 2022 (the “**Revised Initial Bid Deadline**”), and the Revised Initial Bid Deadline was communicated to all Potential Bidders and Known Buyers on January 20, 2022.

#### *Results of the Sale Process*

24. During the Marketing Period, one hundred and sixteen (116) Potential Bidders executed CAs in connection with the Sale Process for both the Real Property Assets and the Southmount Et Al. Real Property Assets. Twelve (12) Non-Binding LOIs were received from ten (10) separate bidders in advance of the Revised Initial Bid Deadline, consisting of bids for (i) the Entire Portfolio, and (ii) regional sub-portfolios of buildings which included at least one (1) of the Real Property Assets. Each of the Legal Owner’s buildings received no fewer than five (5) Non-Binding LOIs on a regional sub-portfolio basis, in addition to six (6) Non-Binding LOIs received for the Entire Portfolio.
25. The Receiver, in consultation with CBRE, reviewed each Non-Binding LOI submitted. Given the number of competing bids received for the Real Property Assets, the Receiver, at the recommendation of CBRE, requested that the parties who submitted Non-Binding LOIs resubmit Non-Binding LOIs on a “best and final” basis (the “**Revised Non-Binding LOIs**”) and, in certain circumstances, clarify certain terms contained in their original Non-Binding LOIs. This resulted in ten (10) Revised Non-Binding LOIs being received (including three (3) in respect of the Entire Portfolio), a number of which included improvements in pricing and other key terms.
26. Bidders that submitted Non-Binding LOIs which were not economically competitive were advised as such, and in some cases, did not submit a Revised Non-Binding LOI. In particular, none of the six (6) Non-Binding LOIs submitted in respect of the Entire Portfolio were competitive. Certain of the Non-

Binding LOIs submitted in respect of the Entire Portfolio were competitive as it related to only certain of the buildings on a regional sub-portfolio basis. These bidders were advised as such, and continued to participate in the Sale Process, submitting Revised Non-Binding LOIs in respect of the regional sub-portfolios of buildings on which their Non-Binding LOIs were competitive.

27. The Receiver, in consultation with CBRE, reviewed each of the Revised Non-Binding LOIs and invited the five (5) bidders (the “**Bidders**”) who had submitted the most competitive bids to submit binding offers in the form of a markup of a form of an asset purchase agreement prepared by the Receiver (a “**Binding Offer**”) by no later than March 7, 2022 (the “**Qualified Bid Deadline**”). All Bidders (i) submitted the information requested by CBRE in order to each be determined a “**Qualified Bidder**” by the Receiver in consultation with CBRE, and (ii) submitted Binding Offers, prior to the Qualified Bid Deadline.
28. All five (5) Binding Offers received were in respect of regional sub-portfolios of buildings, and certain of the Binding Offers were for overlapping buildings. CBRE and the Receiver negotiated with the Qualified Bidders that submitted Binding Offers for overlapping buildings and each such Qualified Bidder agreed to revise its respective Binding Offer (each being a “**Revised Binding Offer**”) to make an offer to purchase only for those buildings where its Binding Offer was the most economically competitive.

## V. PROPOSED TRANSACTION

29. Following receipt of the Revised Binding Offers, the highest Binding Offer for the Real Property Assets was selected (which was an offer exclusively for the Real Property Assets, and did not include any of the Southmount Et Al. Real Property Assets), and the Receiver proceeded to negotiate and enter into an asset purchase agreement (the “**APA**”) with the purchasers (the “**Purchasers**”), which is subject to Court approval (the “**Proposed Transaction**”). A copy of the executed APA, redacted for confidential and commercially sensitive financial information is included in **Appendix “A”** hereto. A summary of the commercially sensitive information redacted from the APA attached hereto is included in **Confidential Appendix “A”** appended hereto, and a summary of the material terms of each of the Binding Offers received in respect of the Real Property Assets is included in **Confidential Appendix “B”** appended hereto (collectively, the “**Confidential Information**”). The Confidential Information has been kept confidential at this time, as should the Proposed Transaction not be approved or not close as anticipated, the disclosure of the Confidential Information would, in the Receiver’s view, be prejudicial to future negotiations or marketing efforts.
30. The key terms of the APA are as follows (all capitalized terms in this paragraph 30 are as defined in the APA):

- (a) Vendors: The Legal Owner and Beneficial Owners of the Real Property Assets, in each case by the Receiver.
- (b) Purchased Assets: The Vendor's right, title and interest in the assets, property and undertaking used in connection with the business of the Vendor (including the Real Property Assets), other than the Excluded Assets. The Purchased Assets are to be purchased on an 'as is, where is' basis, and transferred free and clear of encumbrances other than Permitted Encumbrances.
- (c) Assumed Liabilities: Include all obligations related to the Assigned Contracts, permits and licenses, the Purchased Assets or related business, tax liabilities for post-closing tax periods, trade payables accrued after the Closing Date, environmental claims and liabilities, and all liabilities of the Vendors to its tenants in respect of any tenant inducements or other incentives given by the Vendors to its tenants in the ordinary course of business.
- (d) Assigned Contracts: The Purchasers are assuming: (i) all of the real property leases in respect of the Real Property Assets, (ii) any applicable and valid leases related to lighting and safety devices installed at the buildings, and (iii) those other contracts specifically scheduled in the APA.
- (e) Cure Costs: With respect to any Assigned Contract for which a consent to assignment is required, any amounts required to be paid in respect of the Vendors' monetary defaults thereunder as at the Closing Date, are to be paid by the Purchasers on Closing.
- (f) Deposit: The Proposed Transaction contemplates the payment of a Deposit upon the execution of the APA of approximately 3% of the Purchase Price. The Deposit has been paid to the Receiver in trust.
- (g) Consideration: Comprises the following and is to be satisfied (net of Deposit) by the Purchasers on Closing:
  - (i) cash Purchase Price;
  - (ii) payment of Cure Costs; and
  - (iii) assumption of the Assumed Liabilities.
- (h) Excluded Assets: Include all receivables which are due, accrued or have become owing immediately prior to the Closing, trade accounts, bank accounts, book debts, insurance claims, insurance contracts or policies, bills, credits, rebates, deposits, prepaid expenses,

prepaid rent, prepayments, holdbacks, funds, cash and cash equivalents, marketable securities, short-term investments, intercompany claims, tax credits, including without limitation, tax returns, tax installments paid by or on behalf the Vendors or any of its affiliates, and all rights to claim and/or receive a rebate, refund of, and/or credit in respect of taxes paid by or on behalf the Vendors or any of its affiliates, all minute books and other corporate records of the Vendors, and all causes of action which arise from loss, damage or facts occurring prior to the Closing Date and any insurance proceeds or claims payable for losses or damages incurred prior to the Closing Date. The Excluded Assets include any outstanding amounts in connection with the Non-Performing Lease Settlement (as defined herein).

- (i) Excluded Liabilities: Include taxes (including municipal taxes) payable by the Vendors arising with respect to any period prior to the closing date, taxes which do not relate to the Purchased Assets, any liability of the Vendors which are incurred under any contract that is not an Assigned Contract and any liability arising from any of the Excluded Assets.
- (j) Closing Dates: Targeted for the 5<sup>th</sup> business day following the later of (i) the issuance of the Approval and Vesting Order, and (ii) the expiry of the Due Diligence Period, estimated to be on or around June 10, 2022.
- (k) Closing Adjustments: Any rents, realty taxes including local improvement rates, unmetered public or private utility charges, unmetered cost of fuel, and personal property taxes and similar ad valorem obligations levied with respect to the Purchased Assets, in each case as applicable and for a period that includes (but does not end on) the Closing Date shall be apportioned and adjusted between the Vendors and the Purchasers based on the number of days of such period up to the Closing Date.
- (l) Transfer Taxes: In addition to the Purchase Price, the Purchasers shall, at Closing, pay all applicable Transfer Taxes.
- (m) Due Diligence Period: The Proposed Transaction provides the Purchasers with forty-five (45) calendar days, commencing on the date of execution of the APA, to conduct their due diligence. If prior to the end of the Due Diligence Period, the Purchasers advise the Vendors that they do not wish to complete the transaction, the APA is terminated and the Deposit is returned to the Purchasers. If prior to the expiry of the Due Diligence Period, the Purchasers advise the Vendors that they have completed their due diligence and will be proceeding with the Proposed Transaction, then the Due Diligence Period expires on such earlier date. If the Purchasers do not advise the Vendors before the expiration of the Due Diligence Period that they will be proceeding with the Proposed Transaction, the Purchasers shall be deemed to

have advised the Vendors and the Receiver that they will not be proceeding with the Proposed Transaction, and the APA is terminated.

- (n) Termination: The APA can also generally be terminated as follows:
- (i) by the mutual agreement of the Vendors and the Purchasers;
  - (ii) by written notice from the Purchasers to the Vendors, in the event that the Purchased Assets are destroyed, lost, or materially damaged;
  - (iii) by written notice from the Purchasers to the Vendors, prior to the expiration of the Due Diligence Period;
  - (iv) by written notice from the Purchasers to the Vendors if there has been a material breach by the Vendors of any representation, warranty or covenant contained in the APA, which breach has not been waived by the Purchasers, and such breach is not curable and has rendered the satisfaction of the Vendors' Conditions impossible by the Outside Date, provided that at the time of providing such notice of termination, the Purchasers are not in breach of any of their obligations under the APA;
  - (v) by written notice from the Vendors to the Purchasers if there has been a material breach by the Purchasers of any representation, warranty or covenant contained in the APA, which breach has not been waived by the Vendors and such breach is not curable and has rendered the satisfaction of the Vendors' Conditions impossible by the Outside Date, provided that at the time of providing such notice of termination, the Vendors are not in breach of any of their obligations under the APA; and
  - (vi) The APA may be terminated by either the Vendors or the Purchasers if Closing has not occurred before the Outside Date, being June 17, 2022 or such later date as the Parties may mutually agree.
- (o) Other
- (i) The representations and warranties of the Vendors are limited and generally consistent with "as-is, where-is" transactions of this type;
  - (ii) The Vendors' Closing deliveries include providing a copy of an Assignment Order (if applicable), in respect of any Critical Contracts or Real Property Leases for which consents to assignment were required which have not been obtained;

- (iii) The Purchasers' Closing deliveries include providing the GST/HST Certificate and Indemnity, duly executed by the Purchasers;
  - (iv) Such other agreements, documents and instruments as may be reasonably required by the Vendors to complete the transactions provided for in the APA, or as are required to be delivered by the Purchasers or the Purchasers' counsel under the APA, all of which shall be in form and substance satisfactory to the Parties, acting reasonably; and
  - (v) The Proposed Transaction is subject to Court approval, and closing is subject to the issuance of an Approval and Vesting Order and to such Approval and Vesting Order being a Final Order (meaning, at the relevant time or date, an order of the Court that has not been vacated, stayed, amended, reversed or modified).
31. As of the date of this Third Report, the Proposed Transaction remains subject to due diligence. Notwithstanding the foregoing, the Receiver is seeking approval of the Proposed Transaction (with such minor amendments as the Receiver may deem necessary to complete same) from this Court, by way of an approval and vesting order, at the same May 24<sup>th</sup> Motion hearing where the Southmount Et Al. Receiver will be seeking this Court's approval of several sale transactions in respect of the Southmount Et Al. Real Property Assets. It is the Receiver's view that having the Court hear motions of the Receiver and the Southmount Et Al. Receiver together will avoid the incremental professional costs which would be associated with a separate Court hearing in respect of these Proceedings at a later date.
32. The Receiver is recommending that this Court approve the Proposed Transaction for the following reasons:
- (a) the Proposed Transaction is the result of a robust and thorough Court-approved Sale Process that broadly canvassed the market and was conducted in accordance with its terms, resulting in significant participation from potential purchasers and competition amongst same;
  - (b) the Proposed Transaction is the result of extensive negotiations of the terms of the APA, and represents the highest and best offer for the Real Property Assets;
  - (c) the Proposed Transaction contemplates the sale of the Real Property Assets on an 'as is, where is' basis, by which the Real Property Assets will be transferred to the Purchasers free and clear. The Receiver is of the view, informed by consultation with CBRE, that the due diligence conditions and timeline of the Proposed Transaction is market and typical in real estate transactions of this type;



- (d) the Purchasers' and Vendors' closing conditions are limited and customary in the circumstances, and the Receiver is not currently aware of any information to suggest that such conditions will not be met;
  - (e) prior to entering into the Proposed Transaction, the Receiver consulted with the Applicants and 1012689 Ontario Inc. ("**Canada Auto Parks**"), a secured mortgagee of the Real Property Assets; and
  - (f) the Applicants, who as further discussed in a later section to this Third Report, are the only creditors anticipated to realize a recovery in these Proceedings, support the Proposed Transaction.
33. CBRE earns commissions in the amounts as set out in the Court-approved Broker Engagement Agreement, which are only due and payable should the Proposed Transaction close (the "**Commissions**").

## VI. TOWN HALL

34. Given the number of parties purporting to have an interest in these Proceedings who have expressed an interest in the status and outcome of these Proceedings to date, the Receiver has scheduled a virtual informational meeting to provide an overview of the Proposed Transaction and to address any questions in respect of the status of these Proceedings and the status of the Southmount Et Al. Proceedings to be held virtually on May 18, 2022 at 3:00 p.m. Eastern Time (the "**Town Hall**").
35. Coordinates of the Town Hall are attached hereto as **Appendix "B"**. Notice of the Town Hall will be given to all parties claiming a beneficial interest in and to the Property in accordance with the terms of the Beneficial Owner Notification & Service Order. Accordingly, the only parties who will receive notice of the Town Hall are parties (i) who have provided an email address to the Receiver as part of the Notification Procedure (as defined in the Beneficial Owner Notification & Service Order) or (ii) in respect of whom the Receiver already had an email address, as disclosed in the Master Contact List (as defined in the Beneficial Owner Notification & Service Order). In the Receiver's view, this is sufficient notice to potential beneficial owners, and was specifically contemplated by the Receiver in seeking the Beneficial Owner Notification & Service Order. Notice of the Town Hall will also be provided to the Service List in these Proceedings and posted on the Receiver's Website.
36. While the Town Hall is intended to be a venue for self-represented parties claiming to have an interest in the Real Property Assets to raise questions and concerns, the Receiver does not intend to require proof of a valid claim in these Proceedings in order to attend the Town Hall. Attendees will be asked

to register, so that the Receiver can keep track of who has attended. The Receiver intends to request at the beginning of the Town Hall that any media identify themselves and disconnect. Receipt of notice of the Town Hall, and attendance thereat, is not an indication or agreement by the Receiver that the applicable attendee has a valid claim in these Proceedings.

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

## VII. ACTIVITIES OF THE RECEIVER

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

### *Operations*

- (a) liaising with Prime Real Estate Group Inc. ("**Prime**") in respect of various operational matters, including repairs and maintenance requirements, leasing and other tenant-related matters at each of the buildings;
- (b) liaising with tenants in respect of lease extensions, renewals, and new lease arrangements;
- (c) terminating four (4) non-performing leases and negotiating a settlement with the tenants of such leases by which approximately \$250,000 of outstanding arrears was settled (the "**Non-Performing Lease Settlement**");
- (d) reviewing and signing cheques for vendor payments;
- (e) collecting rents and outstanding accounts receivable from tenants;
- (f) securing various short-term extensions of insurance coverage from the Legal Owner's insurance provider, as evidenced by binder letters from the Legal Owner's insurance broker, the most recent of such extensions set to expire on May 31, 2022;
- (g) reviewing 2021 common area maintenance and municipal realty tax schedules, invoicing tenants for same, and reviewing common area maintenance and municipal realty tax budgets

for 2022;

- (h) monitoring cash flows and liquidity;
- (i) attending to various banking matters including reviewing monthly bank reconciliations;

*Sale Process*

- (j) assisting CBRE in populating the Dataroom with financial and other information as it relates to the Real Property Assets, and reviewing and executing non-disclosure agreements to allow Potential Bidders access to the Dataroom;
- (k) reviewing reconciliations of lease documentation to rent rolls and liaising with Prime and Potential Bidders in respect of same;
- (l) reviewing building condition assessments and Phase I environmental site assessments for each of the Real Property Assets, and liaising with Prime and Potential Bidders in respect of same;
- (m) reviewing and approving CBRE's marketing materials distributed during the Marketing Period, including a teaser document and a confidential information memorandum;
- (n) reviewing and executing MLS listing agreements;
- (o) with the assistance of Prime, coordinating in-person site visits of the Real Property Assets with various Potential Bidders;
- (p) in consultation with Blakes, preparing a memorandum providing guidelines to Potential Bidders in respect of the submission of Binding Offers to the Receiver;
- (q) in consultation with Blakes, preparing a form of purchase and sale agreement for use by Potential Bidders when submitting Binding Offers;
- (r) reviewing the Non-Binding LOIs, Revised Non-Binding LOIs, Binding Offers, and Revised Binding Offers, and engaging in ongoing consultation and collaboration with CBRE and Blakes in respect of same, and the Sale Process generally;
- (s) with the assistance of Blakes, negotiating, finalizing and executing the APA with the Purchasers as it relates to the Proposed Transaction, including preparing and finalizing schedules of assigned contracts and other transaction details, and discussing same with the Purchasers;

- (t) facilitating payment of the Deposit from the Purchasers to the Receiver in trust;
- (u) facilitating due diligence information requests from the Purchasers and liaising with Prime in respect of same, as necessary;
- (v) providing updates to and consulting with secured creditors in these Proceedings, including consulting with the Applicants and Canada Auto Parks in respect of the Sale Process and the Proposed Transaction;

*Tax Matters*

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

*Statutory & Other Duties*

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

*Litigation & Other*

- (dd) engaging with counsel for the plaintiff and counsel to certain co-defendants in respect of a statement of claim issued in September 2021 but not served on the Receiver, that names the Legal Owner as a defendant;
- (ee) attending the first meeting of creditors in the bankruptcy of Sheldon Gross Limited (“**SGL**”), an equity holder of Gross Capital (the latter being the ultimate parent of the Legal Owner) and reviewing the books and records of the Legal Owner and determining that the Legal

Owner does not have any known claims against the estate of SGL at this time;

- (ff) coordinating and preparing for the Town Hall;

*Other Stakeholder Communications*

- (gg) communicating with KSV Restructuring Inc., in its capacity as bankruptcy trustee of Gross Capital, in respect of the Gross Capital bankruptcy proceedings, and these Proceedings;
- (hh) communicating with Blakes and Norton Rose, in respect of various aspects of these Proceedings;
- (ii) communicating with the Applicants in respect of various aspects of these Proceedings; and
- (jj) communicating with vendors, creditors, parties purporting to have an interest in the Property and other stakeholders in respect of various aspects of these Proceedings.

**VIII. INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

39. As shown in the Interim SRD below, during the Period, the Receiver had cash receipts (including borrowings) of approximately \$1.6 million, and cash disbursements of approximately \$1.2 million. As at March 31, 2022, the Receiver's cash on hand was approximately \$0.3 million.

**Interim Statement of Receipts and Disbursements**  
**For the period August 3, 2021 to March 31, 2022**  
**(C\$, unaudited)**

<b>Receipts</b>	
Rent and other receipts <sup>1</sup>	968,393
Receiver's borrowings <sup>2</sup>	300,000
Pre-filing bank balance <sup>3</sup>	165,920
HST collected	124,825
<b>Total Receipts</b>	<b>1,559,138</b>
<b>Disbursements</b>	
Professional fees and disbursements	518,179
Property operating costs <sup>4</sup>	506,628
HST paid	134,757
Property management fees <sup>5</sup>	71,235
Environmental and building condition reports	7,681
<b>Total disbursements</b>	<b>1,238,480</b>
<b>Balance in Receiver's accounts</b>	<b>320,657</b>

**Notes:**

- (1) Includes monthly rent collections from tenants and other miscellaneous receipts.
- (2) Borrowings in accordance with Receiver Term Sheet.
- (3) Cash transferred to the Receiver's estate bank account from the Legal Owner's bank account upon commencement of the receivership proceedings.
- (4) General operating costs such as utilities, maintenance, insurance, etc.
- (5) Includes monthly property management fees paid to Prime for managing the properties, and leasing commissions for assisting the Receiver in negotiating new leases and lease extensions with existing tenants.

40. As at March 31, 2022, the Receiver had accrued and unpaid expenses in the amount of approximately \$0.3 million.

**IX. FUNDING OF THE RECEIVERSHIP PROCEEDINGS**

41. As detailed in the First Report, pursuant to the terms of the Appointment Order, the Receiver was authorized to borrow up to \$500,000 from the Applicants pursuant to the Receiver Term Sheet, and the Applicants were granted a Receiver's Borrowings Charge (as defined in the Appointment Order) as security for such borrowings, which charge has customary super-priority to other liens and encumbrances, as set out in the Appointment Order. As authorized by the Sale Process Order, the term of the Receiver Term Sheet was extended to June 30, 2022.
42. As of the date of this Third Report, the Receiver has borrowed \$300,000 (the "Receiver's

**Borrowings**”) pursuant to the Receiver Term Sheet. The Receiver is seeking the Court’s approval to fully repay the Receiver’s Borrowings (including accrued interest thereon) and intends to do so prior to the June 30, 2022 expiry of the Receiver Term Sheet, should the Proposed Transaction be approved by the Court, and close.

## **X. DISTRIBUTIONS**

### *Applicants’ Security*

43. As detailed in the Second Report, the Receiver has obtained an independent legal opinion from Norton Rose, with respect to the validity and enforceability of the security granted in favour of the Applicants under the laws of the Province of Ontario, concluding (subject to the qualifications, assumptions and limitations included therein) that the Applicants’ security is valid and enforceable against the Property and that first in time registrations of the Applicants’ security have been made against the Property.
44. A copy of the Norton Rose legal opinion has been made available to certain stakeholders on appropriate arrangements regarding confidentiality, reliance and privilege.
45. The balance of the Applicants’ secured debt (excluding the Receiver’s Borrowings) is estimated to be approximately \$24.1 million as at June 30, 2022, as follows:
  - (a) principal: ~\$21.7 million;
  - (b) accrued interest: ~\$2.0 million;
  - (c) other costs added to the Applicants’ secured debt: ~\$0.4 million; plus
  - (d) other amounts that may be claimable in connection therewith, including yield maintenance amounts.
46. Taking into account the Net Proceeds of Sale (as defined herein), it appears there will not be sufficient proceeds to fully repay the Receiver’s Borrowings, and the principal and interest owing to the Applicants (without accounting for their costs and any other amounts that may be claimable by the Applicants pursuant to their loan and security documents, including yield maintenance amounts).

### *Potential Priority Claims*

47. The Legal Owner did not have any employees, thus, the Receiver understands that there are no potential deemed trust claims in connection with employee source deductions owing to CRA or other priority claims of former employees for unpaid wages.

48. Payment of any outstanding municipal realty tax arrears of the Legal Owner is a closing condition of the Proposed Transaction and shall be satisfied prior to any Distribution (as defined herein).
49. The Legal Owner appears to have outstanding HST arrears related to the period prior to the Receivership Date, as evidenced by documentation obtained from CRA. Pursuant to the Appointment Order, the Receiver was empowered and authorized to, among other things, file an assignment in bankruptcy on behalf of the Legal Owner, should the Receiver consider it necessary or desirable.
50. Following the closing of the Proposed Transaction, and prior to issuing any Distribution, the Receiver intends to file an assignment in bankruptcy on behalf of the Legal Owner. In the Receiver's view, bankrupting the Legal Owner will provide finality to claims and may crystalize certain investment losses for parties claiming an ownership interest in the Property.
51. As such, the Receiver is not aware of any potential priority claims that would rank ahead of the Applicants at the time of a Distribution.

#### *Distributions*

52. Following the closing of the Proposed Transaction, the Receiver will be in possession of the anticipated net sale proceeds from the Proposed Transaction (the "**Net Proceeds of Sale**").
53. The Net Proceeds of Sale are before payment of the Receiver's accrued obligations and the estimated costs to complete the administration of the estate, which estimated costs to complete will be determined by the Receiver prior to any Distribution and retained by the Receiver for the purposes of funding the remaining administration of these Proceedings (the "**Receiver's Holdback**"). The Receiver is seeking an order authorizing one or more distributions to the Applicants of Net Proceeds of Sale and cash on hand as they become available, subject to the Receiver's Holdback (each a "**Distribution**").
54. The Receiver intends to appear before this Court to seek discharge from its role as Receiver, once it has completed its duties in the administration of these Proceedings, at a later date.

## **XI. CONSOLIDATION OF BANKRUPTCY ESTATES**

55. As noted above, the Receiver proposes to proceed with an assignment of the Legal Owner into bankruptcy prior to any Distributions. The Southmount Et Al. Receiver is also intending to proceed with an assignment of the Southmount Et Al. legal owners following the completion of the sale transactions in respect of the Southmount Et Al. Real Property Assets, and is also seeking approval from this Court to, among other things, proceed with an assignment of a related party, 180 Vine



Purchaser Inc. (“**Vine Purchaser**”), into bankruptcy prior to making any distributions. The Southmount Et Al. Receiver is further requesting that the bankruptcies of any or all of the Southmount Et Al. legal entities and Vine Purchaser be consolidated for procedural and administrative purposes (and not substantively) in the bankruptcy proceedings (the “**Consolidation**”).

56. The Receiver requests that the estate of the Legal Owner form part of the Consolidation. The purpose of this Consolidation is to avoid duplicative steps across multiple estates, including in relation to notices and creditors’ meetings. This will add efficiency to the proceedings, conserve resources, and will not prejudice any stakeholder. The Receiver believes that such consolidation for procedural and administrative purposes is in the best interests of the Legal Owner, Vine Purchaser and the applicable Southmount Et Al. legal entities, and their respective stakeholders in a circumstance where creditors of the various estates are likely to have many common or overlapping issues and questions to resolve, and where information relevant to one of the bankruptcy estates is likely to be relevant to the other bankruptcy estates as well.

## **XII. FEES OF THE RECEIVER AND ITS COUNSEL**

57. The Receiver, Blakes and Norton Rose have maintained records of their professional time and costs (the “**Accounts**”), which are summarized below.
58. Professional fees and disbursements of the Receiver, for the period from the Receivership Date to March 31, 2022 (the “**Fee Period**”) total \$317,309.60, including fees and disbursements in the amount of \$280,804.95 and HST in the amount of \$36,504.65. The Receiver’s invoices, and summaries thereof, have been provided to the Applicants, as fulcrum creditor having the only economic interest in these invoiced amounts.
59. Professional fees and disbursements of Blakes for the Fee Period total \$436,569.12, including fees and disbursements in the amount of \$386,487.72 and HST in the amount of \$50,081.40. Blakes’ invoices, and summaries thereof, have been provided to the Applicants, as fulcrum creditor having the only economic interest in these invoiced amounts.
60. Professional fees and disbursements of Norton Rose for the Fee Period total \$31,241.78, including fees and disbursements in the amount of \$3,557.93 and HST in the amount of \$27,683.85. Norton Rose’s invoices, and summaries thereof, have been provided to the Applicants, as fulcrum creditor having the only economic interest in these invoiced amounts.
61. As discussed above, the Applicants are the only party expected to receive a monetary recovery in these

Proceedings, based on the amount of the Net Proceeds of Sale and the aggregate claims of the Applicants. The Receiver's independent counsel, Norton Rose, has opined on the validity and enforceability of the Applicants' security interest in the Property and has noted that the Applicants have made first in time registrations in respect of that security.

62. Accordingly, the Applicants are the only creditor with an economic interest in the quantum of the professional fees incurred by the Receiver and its counsel. As stated above, the fees and invoices have been disclosed to the Applicants, and the Applicants have advised the Receiver that they consent to such fees. Given that only the Applicants have an economic interest in the fees, and that they consent to them, in the Receiver's view it would not be a constructive use of estate funds to put the Receiver and its counsel to the task for preparing and filing fee affidavits and taking steps to proceed with a fee approval motion.
63. The Receiver respectfully requests that this Court dispense with the requirement that the Receiver, Blakes and Norton Rose obtain Court approval of the Accounts for the Fee Period, on the basis that the Applicants have consented to the fees for the Fee Period, and provided the Applicants further consent to fees incurred after the Fee Period. The Receiver is aware of similar relief being granted in other insolvency proceedings in Ontario in the interests of efficiency.
64. Should such approval be granted, the Receiver will provide the Applicants with a written statement of the quantum of such Accounts from time to time after the Fee Period. The Receiver will seek approval from this Court of the Accounts (or a portion thereof) in the event that the Applicants request in writing at the Receiver do so, for any period after the Fee Period and prior to the discharge of the Receiver.

### **XIII. RECEIVER'S CONCLUSION AND RECOMMENDATION**

65. Based on the forgoing, the Receiver respectfully requests that the Court grant the relief referenced in paragraph 9(h) herein.

All of which is respectfully submitted this 13<sup>th</sup> day of May, 2022.

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

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

Per:



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**Katherine Forbes**  
**CPA, CA, CIRP, LIT**  
President



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

# **APPENDIX “A”**

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

- and -

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

- and –

**FORGE AND FOSTER INVESTMENT MANAGEMENT INC.**

- and –

**304 VICTORIA INVESTMENTS INC. AND 414 VICTORIA INVESTMENTS INC.**

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**ASSET PURCHASE AGREEMENT**

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**DATED AS OF APRIL 26, 2022**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of April 26, 2022 is made by and between:

**VICTORIA AVENUE NORTH HOLDINGS INC. by KPMG INC. in its capacity as Court-appointed Receiver and Manager and not in its personal or corporate capacity**

(the “**Legal Owner**”)

- and -

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

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

- and -

**FORGE & FOSTER INVESTMENT MANAGEMENT INC. (the “**Guarantor**”)**

- and -

**304 VICTORIA INVESTMENTS INC. (“304 PurchaseCo”) AND 414 VICTORIA INVESTMENTS INC. (“414 PurchaseCo”)**

(collectively, the “**Purchasers**”)

### RECITALS:

- A. The Vendors are the legal owners of and in the business of operating the Real Property Assets (the “**Business**”).
- B. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on August 3, 2021 in the proceedings bearing Court File No. Court File No. CV-21-00665375-00CL (the “**Receivership Proceedings**”), KPMG Inc. was appointed as receiver and manager of, among other things, (i) all of the assets and undertakings of the Legal Owner, and (ii) all right, title and interest of any beneficial owners (collectively, the “**Beneficial Owners**”) in and to the Legal Owners’ assets, undertakings and properties, including the Real Property Assets (in such capacity and not in its personal or corporate capacity, the “**Receiver**”).
- C. On October 29, 2021, the Court granted an order (the “**Sale Process Order**”) in the Receivership Proceedings, approving a sale process in respect of the Real Property Assets (the “**Sale Process**”).
- D. Pursuant to the Sale Process and the Sale Process Order, the Receiver wishes to cause the Vendors to sell and assign to the Purchasers, and the Purchasers wish to purchase and assume from the Vendors, all of the Vendors’ right, title and interest in and to the Purchased Assets and the Assumed Liabilities (each as defined below), on the terms and subject to the conditions contained in this Agreement.

- E. The transactions contemplated by this Agreement are subject to the approval of the Court and will be consummated pursuant to the Approval and Vesting Order to be entered by the Court in the Receivership Proceedings.

**NOW THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, the Parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions.** In this Agreement:

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

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

**“304 Victoria Real Property Asset”** means the real property listed and specified on Schedule “B” as the “304 Victoria Real Property Asset”.

**“414 Victoria Real Property Asset”** means the real property listed and specified on Schedule “B” as the “414 Victoria Real Property Asset”.

**“304 Victoria Real Property Leases”** means all of the real property leases in respect of the 304 Victoria Real Property Asset, including those listed and specified as “304 Victoria Real Property Leases” on Schedule “C”.

**“414 Victoria Real Property Leases”** means all of the real property leases in respect of the 414 Victoria Real Property Asset, including those listed and specified as “414 Victoria Real Property Leases” on Schedule “C”.

**“Action”** means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, Order, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at Law or in equity and by or before a Governmental Authority.

**“Affiliate”** means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to **“control”** another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term **“controlled”** shall have a similar meaning.

**“Agreement”** means this Asset Purchase Agreement, including the preamble and the Recitals, and all the Schedules attached hereto, as they may be amended, restated or supplemented from time to time in accordance with the terms hereof.

**“Applicable Law”** means, with respect to any Person, property, transaction, event or other matter, (i) any foreign or domestic constitution, treaty, law, statute, regulation,

code, ordinance, principle of common law or equity, rule, municipal by-law, Order or other requirement having the force of law, (ii) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law (collectively, in the foregoing clauses (i) and (ii), "**Law**"), in each case relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

**"Approval and Vesting Order"** means an Order of the Court issued in the Receivership Proceedings, in form and substance satisfactory to the Parties and the Receiver, each acting reasonably, approving the transactions contemplated by this Agreement and vesting in the Purchasers all of the Vendors' right, title and interest in and to the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances).

**"Assigned Contracts"** means, collectively, the Critical Contracts, the Real Property Leases, the Personal Property Leases and the other Contracts listed on Schedule "C".

**"Assignment and Assumption Agreement"** means an assignment and assumption agreement, in form and substance satisfactory to the Parties and the Receiver, each acting reasonably, evidencing the assignment to each applicable Purchaser of the Vendors' rights, benefits and interests in, to and under the applicable Assigned Contracts and the assumption by such Purchaser of all of the Assumed Liabilities under or in respect of such Assigned Contracts.

**"Assignment Order"** means an order of the Court issued in the Receivership Proceedings in form and substance satisfactory to the Parties and the Receiver, each acting reasonably, assigning to the Purchasers the Vendors' right, benefit and interest in and to any of the Critical Contracts or Real Property Leases for which any necessary consent to assign has not been obtained.

**"Assumed Liabilities"** means the following Liabilities of each of the Vendors:

- (1) all Liabilities under the Assigned Contracts and Permits and Licences (in each case to the extent such Assigned Contract or Permit and Licence is effectively assigned to the Purchasers) arising on or after the Closing Date;
- (2) all Liabilities relating to the Purchased Assets or Related to the Business arising on or after the Closing Date, including any Post-Closing Real Property Taxes;
- (3) all Liabilities on account of the trade accounts, payables and other current accounts payable, in each case incurred or accrued by any of the Vendors on or after the Closing Date in the ordinary course of business and Related to the Business;
- (4) all Environmental Claims and all Environmental Liabilities; and
- (5) without limiting foregoing clause (a), all Liabilities of the Vendors to any of the Vendors' tenants in respect of any tenant inducements or other incentives given by any of the Vendors to their tenants in the ordinary course of business.

**“Books and Records”** means the books, records, files, papers, books of account and other financial data of the Vendors which are solely Related to the Business or related to the Purchased Assets, including drawings, engineering information, manuals and Data, sales and advertising materials, rent rolls, sales and purchase correspondence, trade association files, research and development records, lists of present and former customers and suppliers, marketing lists and marketing consent records and all records, Data and information stored electronically, digitally or on computer-related or any other media.

**“Broker”** means CBRE Limited.

**“Business”** has the meaning set out in Recital A.

**“Business Day”** means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto, Ontario.

**“Cash and Cash Equivalents”** means cash, bank balances, monies in possession of banks and other depositories, term or time deposits, marketable securities, short term investments, funds, bankers’ acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents of, owned or held by the Vendors or the Receiver or for the account of the Vendors.

**“Cash Purchase Price”** has the meaning set out in Section 3.1(1).

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

**“Closing”** means the completion of the purchase and sale of the Vendors’ right, title and interest in and to the Purchased Assets and the assignment to and assumption by the Purchasers of the Assumed Liabilities in accordance with the provisions of this Agreement.

**“Closing Date”** means the date on which Closing occurs, which date shall be the Target Closing Date or such other date as may be agreed to in writing by the Parties.

**“Closing Time”** means the time of day on the Closing Date when Closing occurs.

**“Contracts”** means all pending and executory contracts, agreements, leases, understandings and arrangements (whether oral or written) to which any of the Vendors are a party or by which any of the Vendors or any of the Purchased Assets are bound or under which the Vendors have rights.

**“Court”** has the meaning set out in Recital B.

**“Critical Contracts”** means those other Contracts that are, in the opinion of the Purchaser, acting reasonably, necessary and critical to the operation of the Business and the Purchased Assets as a going concern after the Closing Date as listed and specified as “Critical Contracts” on Schedule “C”.

**“Cure Costs”** means (i) with respect to any Assigned Contract for which a consent to assignment is required and has not been obtained and is to be assigned to the

Purchasers in accordance with the terms of the Assignment Order, the amounts, if any, required to be paid to remedy all of the Vendors' monetary defaults existing as at the Closing Date under the applicable Assigned Contract (or such other amounts as may be agreed by the Purchasers and the counterparty to such Assigned Contract), and (ii) with respect to any Assigned Contract to be assigned on consent, where consent is required, the amount, if any, required to be paid to a counterparty to secure its consent to the assignment of the applicable Assigned Contract by any of the Vendors to the Purchasers (which amount shall be set out on the form of contractual consent agreed to by the Purchasers and the counterparty to such Assigned Contract).

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

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

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

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

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

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

**"Environmental Law"** means any Applicable Law or binding agreement with any Governmental Authority: (i) relating to pollution (or the investigation or cleanup thereof), the management or protection of natural resources, endangered or threatened species,

human health or safety, or the protection or quality of the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (ii) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

**“Environmental Liabilities”** means all past, present and future obligations and Liabilities of whatsoever nature or kind arising from or relating to, directly or indirectly to any Environmental Claim applicable to or otherwise involving the Purchased Assets or any past, present or future non-compliance with, violation of or Liability under any Environmental Laws or any Environmental Permit applicable to or otherwise involving the Purchased Assets, whenever occurring or arising.

**“Environmental Permit”** means any Permit and Licence, letter, clearance, consent, waiver, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

**“Environmental Release”** includes any actual or potential release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

**“ETA”** means the *Excise Tax Act*, RSC 1985, c E-15 and the regulations thereunder.

**“Excluded Assets”** means (i) all Receivables which are due, accrued or have become owing immediately prior to the Closing Time, trade accounts, bank accounts, book debts, insurance claims, insurance Contracts or policies, bills, credits, rebates, deposits, prepaid expenses, prepaid rent, prepayments, holdbacks, funds, Cash and Cash Equivalents, marketable securities, short-term investments, Intercompany Claims, Tax credits, including without limitation, Tax Returns, Tax installments paid by or on behalf of any of the Vendors or any of their Affiliates, and all rights to claim and/or receive a rebate, refund of, and/or credit in respect of Taxes paid by or on behalf of any of the Vendors or any of their Affiliates, (ii) all Proprietary Marks and other Intellectual Property which includes the word “Gross”, (iii) all minute books and other corporate records of any of the Vendors and any Books and Records that any of the Vendors or the Receiver are required by Applicable Law to retain in their possession, (iv) the rights of any of the Vendors under this Agreement or any other agreement, certificate or instrument executed and delivered pursuant to this Agreement, (v) all causes of action which arise from loss, Damage or facts occurring prior to the Closing Date and any insurance proceeds or claims payable for losses or damages incurred prior to the Closing Date, other than insurance proceeds or rights thereto assigned to the Purchasers in accordance with Section 5.4, (vi) all shares, units, partnership interests or other ownership or equity interests of the Vendors in any Affiliate of the Vendors, and (vii) any other assets, rights or property of any kind or nature whatsoever of any of the Vendors not listed in Schedule “A” as “Purchased Assets”.

**“Final Order”** means, at the relevant time or date, an order of the Court that has not been vacated, stayed, amended, reversed or modified.

**“Governmental Authority”** means:

- (1) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);
- (2) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;
- (3) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and
- (4) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, securities commission or professional association.

**“GST/HST”** means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA.

**“GST/HST Certificate and Indemnity”** has the meaning set forth in Section 3.5.

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

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

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

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

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

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

**“Intellectual Property”** means all intellectual property and industrial property, throughout the world, whether or not registerable, patentable or otherwise formally protectable, and whether or not registered, patented, otherwise formally protected or the subject of a pending application for registration, patent or any other formal protection, including all (i) trade-marks, corporate names and business names, (ii) inventions, (iii) works and subject matter in which copyright, neighbouring rights or moral rights subsist, (iv) industrial designs, patents, (v) know-how, trade secrets, proprietary information, confidential information and information of a sensitive nature that have value to the

Business or relate to business opportunities for the Business, in whatever form communicated, maintained or stored, (vi) telephone numbers and facsimile numbers, (vii) registered domain names, and (viii) social media usernames and other internet identities and all account information relating thereto.

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

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

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

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

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

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

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

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

**“Outside Date”** means June 17, 2022 or such later date as the Parties may mutually agree.

**“Party”** means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and **“Parties”** means more than one of them.

**“Permits and Licences”** means any and all licences, permits, approvals, authorizations, certificates, directives, Orders, variances, registrations, rights, privileges, concessions, granted, conferred or otherwise created by any Governmental Authority and held by or on behalf of any of the Vendors or other evidence of authority Related to the Business issued to, granted to, conferred upon, or otherwise created for, any of the Vendors which relate to the ownership, maintenance, operation of the Business or the Purchased Assets.



**“Permitted Encumbrances”** means, collectively:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) 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;
- (7) 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;
- (8) 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;
- (9) 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;

- (10) the Real Property Leases, any registered notices of leases and all other encumbrances and instruments registered against title to the Real Property Assets by reason of any tenant of a Real Property Lease having encumbered such Real Property Lease; and
- (11) in respect of the Real Property Assets and the Real Property Leases, the provisions of any Applicable Law, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning, and any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent.

**“Person”** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity.

**“Personal Information”** means information about an identifiable individual as defined in Privacy Law.

**“Personal Property”** means any and all vehicles, machinery, equipment, parts, chattels, inventory of spare parts, parts and supplies, furniture and any other tangible personal and movable property in which any of the Vendors have a beneficial right, title or interest (whether owned or leased), in all cases, solely Related to the Business, wherever situate, other than Excluded Assets.

**“Personal Property Leases”** means a personal or movable property lease, chattel lease, equipment lease, financing lease, conditional or instalment sales contract and other similar agreement relating to Personal Property to which any of the Vendors are a party or under which they have rights to use Personal Property as listed and specified as “Personal Property Leases” on Schedule “C”.

**“Pre-Closing Period”** has the meaning set out in Section 3.4.

**“Post-Closing Period”** has the meaning set out in Section 3.4.

**“Post-Closing Real Property Taxes”** means, any Taxes payable respect of any Real Property Assets, in respect of the period from and after the Closing Date which shall be calculated on a pro-rata basis on the basis of a 365 day year.

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

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

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

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

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

**“Real Property Assets”** means, collectively, the 304 Victoria Real Property Asset and the 414 Victoria Real Property Asset.

**“Real Property Leases”** means, collectively, all of the 304 Victoria Real Property Leases and all of the 414 Victoria Real Property Leases.

**“Receiver”** has the meaning set out in Recital B.

**“Receiver’s Certificate”** means the certificate, substantially in the form to be attached as Schedule “B” to the Approval and Vesting Order and in form and substance satisfactory to the Parties and the Receiver, each acting reasonably, to be delivered by the Receiver to the Purchasers on Closing and thereafter filed by the Receiver with the Court certifying that the conditions to Closing have been satisfied and/or waived by the Vendors and the Purchasers (as applicable) and that the transactions contemplated by this Agreement have been completed to the satisfaction of the Receiver.

**“Receivership Proceedings”** has the meaning set out in Recital B.

**“Receivables”** means, in respect of a Person all cash, accounts receivable, rents, bills receivable, trade accounts, holdbacks, retention, book debts and insurance claims due or accruing due to such Person, together with any unpaid interest or fees accrued on such items and any security or collateral for such items, including recoverable deposits.

**“Related to the Business”** means primarily (i) used in, (ii) arising from or (iii) otherwise related to the Business or any part thereof.

**“Replacement Permit and Licence”** means a new permit, licence, authorization, approval or other similar item providing substantially equivalent rights to the Purchasers as the Vendors are entitled to as of the Closing Date pursuant to the applicable Permit and Licence.

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

**“Sale Process”** has the meaning set out in Recital B.

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

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

**“Target Closing Date”** means the fifth (5<sup>th</sup>) Business Day following the later of (i) the issuance of the Approval and Vesting Order, and (ii) the expiry of the Due Diligence Period.

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

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

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

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

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

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

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

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

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

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

**1.6 Additional Rules of Interpretation.**

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

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

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

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

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

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

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

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

**SCHEDULES**

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

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

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

## ARTICLE 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

**2.1 Purchase and Sale of Purchased Assets.** At the Closing Time, on and subject to the terms and conditions of this Agreement and the Approval and Vesting Order, the Vendors shall sell to each of the Purchasers, and each of the Purchasers shall purchase from the Vendors, all of the Vendors' right, title and interest in and to the Purchased Assets, allocated as follows: (i) 304 PurchaseCo shall (a) purchase the 304 Victoria Real Property Asset and all other Purchased Assets allocated to 304 PurchaseCo on Schedule "A" hereto, and (b) assume all of the 304 Real Property Leases and all other Assigned Contracts allocated to 304 PurchaseCo on Schedule "C" hereto; and (ii) 414 PurchaseCo shall (a) purchase the 414 Victoria Real Property Asset and all other Purchased Assets allocated to 414 PurchaseCo on Schedule "A" hereto, and (b) assume all of the 414 Real Property Leases and all other Assigned Contracts allocated to 414 PurchaseCo on Schedule "C" hereto. In each case, the Purchased Assets shall, on Closing, be vested in the applicable Purchaser free and clear of all Encumbrances other than Permitted Encumbrances, to the extent and as provided for in the Approval and Vesting Order. For greater certainty, notwithstanding any other provision of this Agreement, this Agreement does not constitute an agreement by any of the Purchasers to purchase, or by the Vendors to sell, any Excluded Assets.

**2.2 Assumption of Assumed Liabilities.** At the Closing Time, on and subject to the terms and conditions of this Agreement, each of the Purchasers shall assume and agree to pay when due and perform and discharge in accordance with their terms, the applicable Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchasers shall not assume any Liabilities hereunder other than the Assumed Liabilities, except as required under Applicable Law.

### **2.3 Assignment of Contracts.**

(1) *Obtaining Consents.* Prior to Closing, at the written request of the Purchasers, the Vendors, with the assistance of the Purchasers, shall use commercially reasonable efforts to obtain all consents required to assign the applicable Assigned Contracts each of the Purchasers.

(2) *Assignment Order.* To the extent that any Assigned Contract is not assignable without the consent of the counterparty or any other Person and such consent has not been obtained prior to the Closing Date, (i) the Vendors' rights, benefits and interests in, to and under such Assigned Contract may be conveyed to the applicable Purchaser pursuant to an Assignment Order, (ii) the Receiver will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contract on or prior to the Closing Date in form and substance acceptable to the Purchasers, acting reasonably, (iii) the Purchasers, at their own expense, will promptly provide to the Receiver all such information within their possession

or under their control as the Receiver may reasonably request to obtain the Assignment Order, and (iv) if an Assignment Order is obtained in respect of such Assigned Contract in form and substance acceptable to the Purchasers, acting reasonably, each of the applicable Purchasers shall accept the assignment of such Assigned Contract on such terms.

(3) *Cure Costs.* Unless the Parties otherwise agree, to the extent that any Cure Costs are payable with respect to any Assigned Contract, each of the applicable Purchasers shall (i) where such Assigned Contract is assigned pursuant to an Assignment Order, pay all such Cure Costs in accordance with the Assignment Order, and (ii) where such Assigned Contract is not assigned pursuant to an Assignment Order, pay all such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchasers and such counterparty. The Cure Costs as paid by each of the Purchasers shall be in addition to the Cash Purchase Price received by the Vendors for the Purchased Assets.

(4) *Assignment.* At the Closing Time, on and subject to the terms and conditions of this Agreement (including Section 2.3(5) below), the Approval and Vesting Order and the Assignment Order (if applicable), all of the Vendors' rights, benefits and interests in, to and under the Assigned Contracts shall be assigned to each of the applicable Purchasers, the consideration for which is included in the Purchase Price.

(5) *Where Consent Required.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Assigned Contract to the extent such Assigned Contract is not assignable under Applicable Law, or the terms of the applicable Assigned Contract provide that it is not assignable without the consent of another Person, unless such consent has been obtained or the assignment is subject to an Assignment Order.

(6) *No Adjustment.* For greater certainty, in respect of any Assigned Contract other than the Critical Contracts or the Real Property Leases, if the consent of any Person is required to assign such Contract but such consent is not obtained prior to Closing and such Contract is not assigned pursuant to an Assignment Order, such Contract shall not form part of the Purchased Assets and (i) no Party shall be considered to be in breach of this Agreement, (ii) the failure to assign or otherwise transfer such Assigned Contract shall not be a condition to Closing, (iii) the Purchase Price shall not be subject to any adjustment, and (iv) the Closing shall not be delayed.

(7) *Intercompany Corporate Services.* Any corporate support, treasury, legal, human resources, risk management, property management, commercial, marketing, accounting, payroll and technical support services Related to the Business provided by any of the Vendors or by any Affiliate to any of the Vendors, to the Business prior to Closing will be terminated as of the Closing, and the Purchasers acknowledge and agree that they shall be responsible for providing their own corporate support, treasury, legal, human resources, risk management, property management, commercial, marketing, accounting, payroll and technical support services in respect of the Purchased Assets and the Business following Closing.

## **2.4 Transfer and Assignment of Permits and Licences.**

(1) *Obtaining Consents.* Prior to Closing, to the extent that a Permit and Licence is assignable or otherwise transferable by any of the Vendors to the Purchasers, the Vendors, with the assistance of the Purchasers, shall use commercially reasonable efforts to obtain all

necessary consents or approvals to assign or otherwise transfer such Permits and Licences to each applicable Purchaser. Each Purchaser (i) shall pay all costs required to be paid to third parties and/or Governmental Authorities in connection with obtaining the assignment or transfer of any applicable Permit and Licence to such Purchaser, or reissuance thereof (which costs shall be in addition to the Purchase Price), and (ii) shall reimburse the Vendors to the extent of any third party costs and/or any costs payable to Governmental Authorities that are incurred by any of the Vendors in connection with obtaining the assignment or transfer of any applicable Permit and Licence to such Purchaser or obtaining any Replacement Permits and Licence (which costs shall be in addition to the Purchase Price), provided, however, that the applicable Vendors provide evidence of such third party costs and/or Governmental Authority costs satisfactory to such Purchaser, acting reasonably, and such third party costs and/or Governmental Authority costs shall exclude all salaries, fees and costs of any and all consultants, employees, counsel or other Representatives of the Vendors related to such assignment and transfer.

(2) *Transfer and Assignment.* At the Closing Time, on and subject to the terms and conditions of this Agreement and the Approval and Vesting Order, all of the Vendors' rights, benefits and interests in, to and under the Permits and Licences, to the extent assignable, shall be assigned to each applicable Purchaser, the consideration for which is included in the Purchase Price.

(3) *Where Consent Required.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or otherwise transfer any Permit and Licence to the extent such Permit and Licence is not assignable or transferable under Applicable Law or the terms of the applicable Permit and Licence provide that it is not assignable without the consent of another Person, unless such consent has been obtained.

(4) *Post-Closing Assignment.* Notwithstanding anything in this Agreement to the contrary, if the consent or approval of any Person or Governmental Authority is required to assign or otherwise transfer a Permit and Licence, but such consent or approval is not obtained prior to Closing, (i) the Vendors and each applicable Purchaser shall use their commercially reasonable efforts to obtain the necessary consents or approvals to the assignment or transfer of such Permit and Licence to such Purchaser or such Purchaser shall use its commercially reasonable efforts to obtain (with commercially reasonable assistance from the Vendors) a Replacement Permit and Licence thereof, in each case, as soon as practicable following Closing, (ii) neither Party shall be considered to be in breach of this Agreement, (iii) the failure to assign or otherwise transfer such Permit and Licence or obtain any Replacement Permit or Licence, shall not be a condition to Closing, (iv) the Purchase Price shall not be subject to adjustment, and (v) the Closing shall not be delayed.

(5) *Obtaining Replacement Permits and Licenses.* To the extent that a Permit and Licence is not assignable or otherwise transferrable by the Vendors to any Purchaser, such Purchaser, with the assistance of the Vendors, shall use commercially reasonable efforts to obtain a Replacement Permit and Licence in connection with the purchase and sale of the Purchased Assets. Each Purchaser shall pay all costs required in connection with obtaining any Replacement Permit and Licence (which shall be in addition to the Purchase Price).



**ARTICLE 3  
PURCHASE PRICE & TAXES**

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

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

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

- (1) a deposit in the amount of \$ [REDACTED] (the "**Deposit**") which shall be paid by the Purchasers to the Receiver upon execution of this Agreement and shall be applied against the Cash Purchase Price on Closing. The Purchasers agree that the Deposit shall be deposited into a non-interest bearing account of the Receiver;
- (2) the balance of the Cash Purchase Price, after crediting the Deposit in Section 3.2(1), shall be paid by the Purchasers to the Receiver on behalf of the Vendors at Closing;
- (3) the Cure Costs, shall be paid or otherwise satisfied by each applicable Purchaser on behalf of the Vendors at Closing in accordance with Section 6.3(3); and
- (4) an amount equal to the agreed value of the Assumed Liabilities, shall be satisfied at Closing by the assumption by each Purchaser of the applicable Assumed Liabilities by the execution and delivery of the Assignment and Assumption Agreement.

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

**3.4 Closing Adjustments.** Any (i) rents, (ii) realty Taxes including local improvement rates, (iii) unmetered public or private utility charges, (iv) unmetered cost of fuel, and (v) personal property Taxes and similar *ad valorem* obligations levied with respect to the Purchased Assets, in each case as applicable and for a period that includes (but does not end on) the Closing Date shall be apportioned and adjusted between the Vendors and the Purchasers based on the

number of days of such period up to the Closing Date (such portion of such period, the “**Pre-Closing Period**”) and the number of days of such period including and after the Closing Date (such portion of such period, the “**Post-Closing Period**”). For greater certainty the Post-Closing Period, including the Closing Date itself shall be apportioned to the Purchasers.

**3.5 Taxes.** The Purchasers shall pay or cause the payment of all applicable Transfer Taxes as and when such Transfer Taxes are payable pursuant to Applicable Law. The Purchasers and the Vendors acknowledge and agree that the Purchase Price and all other amounts referenced herein are exclusive of all Transfer Taxes. With respect to the Purchased Assets, the Vendors shall charge and collect all applicable GST/HST on Closing, unless the Purchasers provide on Closing a certificate and indemnity substantially in the form attached hereto as **Schedule “E”** (the “**GST/HST Certificate and Indemnity**”).

**3.6 Taxes and GST/HST Gross Up.** In the event that any payment made by any Vendor or Purchaser as a consequence of a breach, modification or termination of this Agreement is deemed by the ETA to include GST/HST, or is deemed by any applicable provincial or territorial legislation to include a similar value added or multi-staged tax, the amount of such payment or forfeiture shall be increased accordingly. For greater certainty, if the Purchasers are required by Applicable Law to deduct or withhold any amount from the Purchase Price payable hereunder, then the Purchase Price shall be increased by an additional amount such that the amount received by the Vendors after such deduction or withholding (including deduction or withholding from such additional amount) is equal to the amount that the Vendors would have received absent any such deduction or withholding.

### **3.7 Tax Elections.**

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

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

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

any amended or successor provision thereto, and any analogous provision of provincial or territorial Tax legislation.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

**4.1 Representations and Warranties of the Purchasers.** As a material inducement to the Vendors entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendors are entering into this Agreement in reliance upon the representations and warranties of the Purchasers set out in this Section 4.1, the Purchasers jointly and severally represent and warrant to the Vendors as follows:

(1) *Incorporation and Corporate Power.* Each Purchaser is a corporation incorporated, organized and subsisting under the Laws of the jurisdiction of its incorporation. Each Purchaser has the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform its obligations under this Agreement and under all such other agreements and instruments.

(2) *Authorization by Purchasers.* The execution and delivery of this Agreement and all other agreements and instruments to be executed by it as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchasers.

(3) *Approvals.* No consent, waiver, authorization or approval of any Person and no notice or declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchasers of this Agreement or all other agreements and instruments to be executed by the Purchasers or the performance by the Purchasers of their obligations hereunder or thereunder.

(4) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchasers enforceable against the Purchasers in accordance with its terms. There is no Legal Proceeding in progress, pending against or threatened against or affecting the Purchasers, and there are no grounds on which any such Legal Proceeding might be commenced and there is no Order outstanding against or affecting the Purchasers which, in any such case, affects adversely or might affect adversely the ability of the Purchasers to enter into this Agreement or to perform their obligations hereunder.

(5) *ICA.* Neither Purchaser is a “non-Canadian” within the meaning of the *ICA*, or, if any Purchaser is a “non-Canadian”, such Purchaser is a “WTO investor” within the meaning of the *ICA*.

(6) *ETA.* The Purchasers are registered for GST/HST purposes under Part IX of the ETA, and their GST/HST numbers indicated on the GST/HST Certificate and Indemnity will be true and accurate.

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

(8) *Sufficient Funds.* The Purchasers have sufficient financial resources or have arranged sufficient financing for themselves, on Closing (which financing is not subject to any conditions other than the conditions to Closing set out herein), to pay the Cash Purchase Price, the Cure Costs and the Transfer Taxes payable on Closing and any and all other amounts payable by the Purchasers, if any, pursuant to this Agreement.

**4.2 Representations and Warranties of the Vendors.** As a material inducement to the Purchasers entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchasers are entering into this Agreement in reliance upon the representations and warranties of the Vendors set out in this Section 4.2, the Vendors jointly and severally represent and warrant to the Purchasers as follows:

(1) *Incorporation and Corporate Power.* The Vendors are corporations incorporated, organized and subsisting under the laws of the jurisdiction of their incorporation. Subject to the Approval and Vesting Order having been granted and being a Final Order, the Vendors have the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform their other obligations hereunder and under all such other agreements and instruments.

(2) *Authorization by Vendors.* Subject to the Approval and Vesting Order having been granted and being a Final Order, the execution and delivery of this Agreement and all other agreements and instruments to be executed by the Vendors as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by the Court to be executed and delivered by the Receiver.

(3) *Enforceability of Obligations.* Subject to the Approval and Vesting Order having been granted and being a Final Order, this Agreement constitutes a valid and binding obligation of the Vendors enforceable against the Vendors in accordance with its terms.

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

(5) *Commissions.* The Purchasers will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Vendors. The Vendors will be responsible for payment of any fees and other amounts charged by the Broker in connection with the transactions contemplated by this Agreement.

**4.3 As is, Where is.** Notwithstanding any other provision of this Agreement, each Purchaser acknowledges, agrees and confirms that:

(a) except for the representations and warranties of the Vendors set forth in Section 4.2, it is entering into this Agreement, acquiring the Purchased Assets and assuming the Assumed Liabilities on an "as is, where is" basis as they exist as of the Closing Time and will accept the Purchased Assets in their state, condition and location as of the Closing Time except as expressly set forth in this Agreement and the sale of the Purchased Assets is made without legal warranty and at the risk of such Purchaser;

(b) it has conducted or will conduct during the Due Diligence Period to its satisfaction such independent searches, investigations and inspections of the Purchased Assets, the

Business and the Assumed Liabilities as it deemed appropriate, and based solely thereon, has determined to proceed with the transactions contemplated by this Agreement;

(c) except as expressly stated in Section 4.2, neither the Vendors nor any other member of the Sale Process Team or their Representatives have made or are making, and the Purchasers are not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Purchased Assets, the Vendors' right, title or interest in or to the Purchased Assets, the Business or the Assumed Liabilities, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of any parts/and/or components, latent defects, quality, quantity or any other thing affecting any of the Purchased Assets or the Assumed Liabilities, or normal operation thereof, or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any Applicable Law in any jurisdiction, which the Purchasers confirm do not apply to this Agreement and are hereby waived in their entirety by the Purchaser;

(d) without limiting the generality of the foregoing, no representation, warranty or covenant is given by the Sale Process Team or any of the Sale Process Team's Representatives that any of the Purchased Assets are or can be made operational within a specified time frame or will achieve any particular result, level of service, occupancy or use;

(e) without limiting the generality of the foregoing, except as expressly stated in Section 4.2, neither the Sale Process Team nor any of the Sale Process Team's Representatives have made any representation or warranty as to any regulatory approvals, licenses, permits, consents or authorizations, including the Permits and Licences, that may be needed to complete the transactions contemplated by this Agreement or to operate or carry on the Business or any portion thereof, and the Purchasers are relying entirely on their own investigation, due diligence and inquiries in connection with such matters;

(f) all written and oral information or Data obtained from any member of the Sale Process Team or any of the Sale Process Team's Representatives, including in any teaser letter, asset listing, confidential information memorandum or other document made available to the Purchasers (including in certain "data rooms", presentations, site visits and diligence meetings or telephone calls), with respect to the Purchased Assets, the Business, and the Assumed Liabilities has been obtained for the convenience of the Purchasers only, and no member of the Sale Process Team nor any of the Sale Process Team's Representatives have made any representation or warranty, express or implied, statutory or otherwise as to the accuracy or completeness of any such information;

(g) any information regarding or describing the Purchased Assets, the Business or the Assumed Liabilities in this Agreement (including the Schedules hereto), or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by the Purchaser, and no representation, warranty or condition, express or implied, has or will be given by the Sale Process Team or any of the Sale Process Team's Representatives, or any other Person concerning the completeness or accuracy of such information or descriptions;

(h) except as otherwise expressly provided in this Agreement, the Purchasers hereby unconditionally and irrevocably waive any and all actual or potential rights or claims the Purchasers might have against any member of the Sale Process Team or any of the Sale Process Team's Representatives pursuant to any warranty, express or implied, legal or

conventional, of any kind or type, other than those representations and warranties of the Vendors expressly set forth in Section 4.2. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including claims regarding defects, whether or not discoverable or latent, product liability claims, or similar claims, and all other claims that may be later created or conceived in strict liability or as strict liability type claims and rights;

(i) none of the representations and warranties of the Vendors contained in this Agreement shall survive Closing and, subject to Section 8.3(2), the Purchasers' sole recourse for any breach of representation or warranty of the Vendors in Section 4.2 shall be for the Purchasers not to complete the transactions as contemplated by this Agreement and for greater certainty the Purchasers shall have no recourse or claim of any kind against the Vendors or the proceeds of the transactions contemplated by this Agreement following Closing; and

(j) this Section 4.3 shall not merge on Closing and is deemed incorporated by reference in all closing documents and deliveries.

## **ARTICLE 5 COVENANTS**

**5.1 Motion for Approval and Vesting Order.** This Agreement is subject to Court approval, and Closing is subject to the issuance of the Approval and Vesting Order. The Receiver shall file with the Court a motion seeking the Court's issuance of the Approval and Vesting Order by no later than May 25, 2022. The Purchasers shall cooperate with the Receiver in their efforts to obtain the issuance and entry of the Approval and Vesting Order. The Purchasers, at their own expense, will promptly provide to the Receiver all such information within their possession or under their control as the Receiver may reasonably request to obtain the Approval and Vesting Order.

**5.2 Access During Interim Period.** During the Interim Period, the Vendors shall, subject to any confidentiality, privacy or safety restrictions, give, or cause to be given, to the Purchasers and their Representatives reasonable access during normal business hours to the Purchased Assets (where situated), including the Books and Records, to conduct such investigations, inspections, surveys or tests thereof and of the financial and legal condition of the Business and the Purchased Assets as the Purchasers deem reasonably necessary or desirable to further familiarize themselves with the Business and the Purchased Assets and plan for the operation of the Business following Closing. Without limiting the generality of the foregoing, the Purchasers shall be permitted reasonable access during normal business hours to the Real Property Assets and all Books and Records relating to information scheduled or required to be disclosed under this Agreement. Such investigations, inspections, surveys and tests shall be carried out at the Purchasers' sole and exclusive risk and peril, during normal business hours, and the Vendors shall co-operate reasonably in facilitating such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchasers.

**5.3 Transaction Personal Information.** Each Party shall comply with Privacy Law in the course of collecting, using and disclosing Transaction Personal Information. The Purchasers shall cause their Representatives to observe the terms of this Section 5.3 and to protect and safeguard Transaction Personal Information in their possession in accordance with Privacy Law. The Purchasers shall collect Transaction Personal Information prior to Closing only for purposes

related to the transactions contemplated by this Agreement. The Purchasers shall not, without the consent of the individuals to whom such Personal Information relates or as permitted or required by Applicable Law, use or disclose Transaction Personal Information (i) for purposes other than those for which such Transaction Personal Information was collected by any of the Vendors prior to the Closing and (ii) for a purpose which does not relate directly to the carrying on of the Business or to the carrying out of the purposes for which the transactions contemplated by this Agreement were implemented.

**5.4 Risk of Loss.** The Purchased Assets shall be at the risk of the Vendors until Closing. If, between the date hereof and Closing, any of the Purchased Assets are destroyed, lost or materially damaged (each a “**Casualty**”), the Purchasers shall still complete the purchase of the Purchased Assets on an “as is, where is” basis without any adjustment to the Cash Purchase Price payable hereunder and take an assignment from the Vendors of all insurance proceeds payable to the Vendors in respect of the Casualty, provided that, in the event of a Material Casualty, the Purchasers shall have the option, in their discretion, to terminate this Agreement. For greater certainty, in no event shall the aggregate total of the insurance proceeds assigned to the Purchasers in accordance with this Section 5.4 and the fair market value of Purchased Assets exceed the Cash Purchase Price.

**5.5 Indemnity.** The Purchasers hereby jointly and severally indemnify the Vendors, the Receiver and their respective Representatives, and saves them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatsoever to:

- (1) any Transfer Taxes (including penalties and interest) which may be assessed against any of the Vendors;
- (2) the Purchasers’ access in accordance with Section 5.1;
- (3) the collection, use or disclosure of Transaction Personal Information by the Purchasers and their Representatives; and
- (4) the Purchasers’ failure to pay when due and perform and discharge the Assumed Liabilities in accordance with their terms.

**5.6 Environmental Liabilities.** The Purchasers acknowledge and agree that upon Closing, the Purchasers shall become responsible for the payment, performance and discharge of all Environmental Liabilities related to the Purchased Assets including, as applicable, all obligations of any kind whatsoever under Environmental Laws relating to the Purchased Assets.

**5.7 Books and Records.** The Purchasers shall preserve and keep the Books and Records acquired by them pursuant to this Agreement for a period of six (6) years after Closing, or for any longer periods as may be required by any Laws applicable to such Books and Records. The Purchasers shall make such Books and Records, as well as electronic copies of such Books and Records (including all software systems containing such Books and Records), available to the Receiver and the Vendors, and their respective Representatives and successors, and any trustee in bankruptcy of the Vendors, and shall permit any of the foregoing persons to take copies of such Books and Records as they may require.

**5.8 Certain Information Technology Assets.** With respect to information technology assets primarily Related to the Business to be acquired by the Purchasers hereunder (such as

desktops, laptops, mobile phones, servers and related hardware), if any (collectively, “**Hardware**”), the Purchasers will co-operate with the Vendors, at the Purchasers’ cost and expense, in causing data contained or stored in such Hardware (if any) not relating primarily to the Business, the Purchased Assets or the Assumed Liabilities to be removed from such Hardware (if any) in a manner reasonably satisfactory to the Vendors prior to the Closing Date or within a reasonable period of time thereafter, provided that such removal shall be carried out in a manner that does not damage or otherwise interfere with any data contained or stored in such Hardware (if any) primarily Related to the Business or the Purchased Assets. Any third party provider selected by the Purchasers and the Vendors to provide such services shall be agreed upon by the Purchasers and the Vendors, acting reasonably.

**5.9 Trademarked and Branded Assets.** With respect to any Purchased Assets to be acquired by the Purchasers hereunder bearing any trademarks, business names, logos or other branding and Intellectual Property associated therewith (collectively, “**Proprietary Marks**”), such Proprietary Marks, with the exception of Proprietary Marks relating to the branding of medical centres located at the Real Property Assets, do not form part of the Purchased Assets. The Purchasers will co-operate with the Vendors, at the Purchasers’ reasonable cost and expense, in removing, dismantling and/or destroying such Proprietary Marks on or contained in any of the Purchased Assets, to the satisfaction of the Vendors, and nothing in this Agreement shall be construed as a licence by the Vendors to the Purchasers of any Intellectual Property that does not form a part of the Purchased Assets.

**5.10 Regulatory Approvals.** The Purchasers, with the assistance of the Vendors shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions, as applicable, required under any Law applicable to such Party or any of their Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of their obligations pursuant to this Agreement. The Vendors shall cooperate reasonably with the Purchasers and their Affiliates in promptly seeking to obtain all such consents, authorizations, orders, approvals and clearance certificates. The Parties shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

**5.11 Cooperation and Consultation with Governmental Authorities.** All meetings, submissions, filings, and proposals made by or on behalf of either Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the consummation of the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Vendors or the Purchasers with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other Party hereunder in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such filings, meetings, submissions and proposals. Each Party shall give notice to the other Party with respect to any meeting, submission, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact (except where such Governmental Authority expressly requests that such Party not attend or participate in such meeting, discussion, appearance or contact). Notwithstanding any requirement under this Section 5.11, a Party shall not be required to provide the other Party with any information



required to be provided under this Section 5.11 where the information is confidential and competitively sensitive, in which case the supplying Party shall provide a redacted version to the requesting Party and shall provide the information on a non-redacted basis to the receiving Party's external counsel, and the receiving Party agrees that it shall neither request nor receive such non-redacted information from its external counsel.

**5.12 Excluded Assets.** Following the Closing Date, the Purchasers shall undertake commercially reasonable efforts to collect, for and on behalf of the Vendors, any Receivables that are Excluded Assets. To the extent that any Receivables that are Excluded Assets are received by the Purchasers following the Closing Date, the Purchasers shall, as soon as reasonably practicable and in any event no later than three (3) Business Days following such receipt, remit such Receivables to the Receiver, for and on behalf of the Vendors.

**5.13 Guarantee.**

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

(c) vary, compromise, exchange, renew, discharge, release, subordinate, postpone or abandon any Guaranteed Obligations of any of the Purchasers hereunder, or under any agreement or instrument executed and delivered pursuant to this Agreement,

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

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

## **ARTICLE 6 CLOSING ARRANGEMENTS**

**6.1 Closing.** The Closing may be affected by way of a virtual Closing, whereby required executed Closing deliverables are circulated by electronic mail in pdf and released at such time and pursuant to such protocols and confirmations as the Parties may agree.

**6.2 Vendors' Closing Deliveries.** At the Closing, the Vendors shall deliver or cause to be delivered to each of the Purchasers the following:

- (1) the applicable Purchased Assets, with delivery to occur in situ wherever such Purchased Assets are located at the Closing Time;
- (2) keys and access cards required to gain access to the applicable Real Property Assets;
- (3) a copy of the Approval and Vesting Order, which shall be a Final Order;
- (4) a copy of any Assignment Order, if applicable, in respect of any Critical Contracts or Real Property Leases for which consents to assignment were required which have not been obtained, which Assignment Order shall be a Final Order;
- (5) the Assignment and Assumption Agreement, duly executed by the Vendors;
- (6) a bring-down certificate executed by each of the Vendors dated as of the Closing Date, in form and substance satisfactory to the Purchasers, acting reasonably, certifying that (i) all of the representations and warranties of the Vendors hereunder remain true and correct in all material respects as of the Closing Date as if made on and as of such date or, if made as of a date specified therein, as of such date, and (ii) all of the terms and conditions set out in this Agreement to be complied with or performed by the Vendors at or prior to Closing have been complied with or performed by the Vendors in all material respects;

- (7) transfers of title to the applicable Real Property Assets in registrable form, which transfers shall be prepared by the Vendors' solicitor, provided that the Vendors shall not be obligated to execute the Planning Act statements in such transfers; and
- (8) such other agreements, documents and instruments as may be reasonably required by the Purchasers to complete the transactions provided for in this Agreement, or as are required to be delivered by the Vendors or Receiver's counsel under this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

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

- (1) the payment referred to in Section 3.2(2), which shall be made to the Receiver for and on behalf of the Vendors;
- (2) the payment of all Transfer Taxes (if any) required to be paid on Closing, which shall be made to the Receiver;
- (3) to the extent payable on Closing, evidence that Cure Costs (if any) in respect of each Assigned Contract have been paid in accordance with (i) the Assignment Order where such Assigned Contract is assigned pursuant to an Assignment Order, and (ii) the consent of the applicable counterparty or as otherwise agreed upon by a Purchaser and such counterparty, where such Assigned Contract is not assigned pursuant to an Assignment Order;
- (4) the Assignment and Assumption Agreement, duly executed by the Purchasers;
- (5) a bring-down certificate executed by a senior officer of the Purchasers dated as of the Closing Date, in form and substance satisfactory to the Vendors, acting reasonably, certifying that (i) all of the representations and warranties of the Purchasers hereunder remain true and correct in all material respects as of the Closing Date as if made on and as of such date or, if made as of a date specified therein, as of such date, and (ii) all of the terms and conditions set out in this Agreement to be complied with or performed by the Purchasers at or prior to Closing have been complied with or performed by the Purchasers in all material respects; and
- (6) the GST/HST Certificate and Indemnity; and
- (7) such other agreements, documents and instruments as may be reasonably required by the Vendors to complete the transactions provided for in this Agreement, or as are required to be delivered by the Purchasers or the Purchasers' counsel under this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

## ARTICLE 7 CONDITIONS OF CLOSING

**7.1 Due Diligence Period.** The Purchasers shall have until the end of the Due Diligence Period to conduct commercial property appraisals and for their solicitors to conduct title and off-title searches in respect of the Purchased Assets. If, prior to the end of the Due Diligence Period the Purchasers advise the Vendors that they do not wish to complete the transactions contemplated by this Agreement, this Agreement shall be terminated and of no further force or effect and the Deposit, together with any interest earned thereon, shall be returned to the Purchasers. If, prior to the expiry of the Due Diligence Period, the Purchasers advise the Vendors that they will be proceeding with the transactions contemplated by this Agreement, the Due Diligence Period shall be deemed to expire on such date. If the Purchasers do not advise the Vendors before the expiration of the Due Diligence Period that they will not be proceeding with the transactions contemplated by this Agreement, the Purchasers shall be deemed to have advised the Vendors and the Receiver that they not will be proceeding with the Transaction and this Agreement shall be terminated and of no further force or effect and the Deposit, together with any interest earned thereon, shall be returned to the Purchasers. In order to facilitate the completion of the Purchaser's diligence, the Legal Owner will, at the reasonable request of the Purchaser, provide the Purchaser with the appropriate consent letters and authorizations (in form and substance satisfactory to the Vendors) to allow the Purchaser to communicate with tenants of the Real Property Assets, provided that in such case, the Receiver shall be copied on any such correspondence with such entities and permitted to attend any call or discussion with such entities.

**7.2 Purchaser's Conditions.** The Purchasers shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Outside Date, each of the conditions listed below in this Section 7.2 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Purchasers, and may be waived by the Purchasers in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall only be binding on the Purchasers if made in writing:

(1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court and be a Final Order.

(2) *Critical Contracts & Real Property Leases Consents.* All consents necessary to assign the Critical Contracts and the Real Property Leases to the Purchasers shall have been obtained, or an Assignment Order shall have been issued and entered by the Court in respect of such Critical Contracts and Real Property Leases where necessary consents have not been obtained, and any such Assignment Order shall be a Final Order.

(3) *Vendors' Deliveries.* The Vendors shall have executed and delivered or caused to have been executed and delivered to the Purchasers at the Closing all the documents contemplated in Section 6.2.

(4) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any Final Order or Law which has the effect of (i) making any of the transactions contemplated by this Agreement illegal, or (ii) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.

(5) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.2 shall be materially true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

(6) *No Breach of Covenants.* The Vendors shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Vendors on or before the Closing.

**7.3 Vendors' Conditions.** The Vendors shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the conditions listed below in this Section 7.3 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Vendors, and may be waived by the Vendors in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall only be binding on the Vendors if made in writing.

(1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court and be a Final Order.

(2) *Successful Bid.* The Receiver shall have determined in accordance with the Sale Process that this Agreement is the Successful Bid.

(3) *Purchasers' Deliverables.* The Purchasers shall have executed and delivered or caused to have been executed and delivered to the Vendors at the Closing all the documents and payments contemplated in Section 6.3.

(4) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any Final Order or Law which has the effect of (i) making any of the transactions contemplated by this Agreement illegal, or (ii) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.

(5) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.1 shall be materially true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

(6) *No Breach of Covenants.* The Purchasers shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser, on or before the Closing.

**7.4 Receiver's Certificate.** When the conditions to Closing set out in Section 7.1 and Section 7.3, have been satisfied and/or waived by the Vendors or the Purchasers, as applicable, the Receiver shall (i) issue its Receiver's Certificate to the Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Receiver's Certificate with the Court (and shall provide a copy of such filed Receiver's Certificate to the Purchasers). The Parties hereby acknowledge and agree that the Receiver will be entitled to file the Receiver's Certificate with the Court without independent investigation upon receiving written confirmation from the Purchasers that all conditions to Closing in favour of the Purchasers have been satisfied or waived and the Receiver will have no Liability to the Purchasers or any other Person as a result of filing the Receiver's Certificate.

## ARTICLE 8 TERMINATION

**8.1 Grounds for Termination.** This Agreement may be terminated prior to the Closing Time:

- (1) by the mutual written agreement of the Vendors and the Purchasers;
- (2) by written notice from the Purchasers to the Vendors in accordance with Section 5.4;
- (3) by written notice from the Purchasers to the Vendors, prior to the expiration of the Due Diligence Period, in accordance with Section 7.1.
- (4) by written notice from the Purchasers to the Vendors if there has been a material breach by the Vendors of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchasers, and such breach is not curable and has rendered the satisfaction of any condition in Section 7.1 impossible by the Outside Date, provided that at the time of providing such notice of termination, the Purchasers are not in breach of any of their obligations under this Agreement;
- (5) by written notice from the Vendors to the Purchasers if there has been a material breach by the Purchasers of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendors and such breach is not curable and has rendered the satisfaction of any condition in Section 7.3 impossible by the Outside Date, provided that at the time of providing such notice of termination, the Vendors are not in breach of any of their obligations under this Agreement; and
- (6) by the Purchasers, on the one hand, or by the Vendors, on the other hand, upon written notice to the other Party if the Closing has not occurred by the Outside Date, provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(6) shall not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in the Closing not occurring by the Outside Date.

**8.2 Effect of Termination.** If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder, except as contemplated in Sections 5.3 (*Transaction Personal Information*), 5.5 (Indemnity), 8.2 (*Effect of Termination*), 8.3 (*Treatment of Deposit*), 9.2 (*Expenses*), 9.3 (*Public Announcements*), 9.4 (*Notices*), 9.7 (*Entire Agreement*), 9.9 (*Amendment*), 9.11 (*Severability*), 9.13 (*Governing Law*), 9.14 (*Dispute Resolution*), 9.15 (*Attornment*), 9.16 (*Successors and Assigns*), 9.17 (*Assignment*), 9.18 (*Receiver's Capacity*) and 9.19 (*Third Party Beneficiaries*), which shall survive such termination.

**8.3 Treatment of Deposit.**

(1) *Retention of Deposit.* In the event that this Agreement is terminated by the Vendors pursuant to (i) Section 8.1(5), or (ii) Section 8.1(6) and the reason that Closing did not occur by the Outside Date was the result of a breach by the Purchasers of any representation,

warranty or covenant contained in this Agreement, the Deposit and any interest earned thereon shall be forfeited by the Purchasers and retained by the Receiver on behalf of the Vendors as a genuine estimate of liquidated damages, and not as a penalty.

(2) *Return of Deposit.* In the event that this Agreement is terminated (i) by the Purchasers prior to the expiration of the Due Diligence Period in accordance with Section 7.1, or (ii) pursuant to any Section of this Agreement other than (A) Section 8.1(5), or (B) Section 8.1(6) and the reason that Closing did not occur by the Outside Date was not the result of a breach by the Purchasers of any representation, warranty or covenant contained in this Agreement, then in each such case the Deposit and any interest earned thereon shall be promptly returned to the Purchasers by the Receiver. The return of the Deposit shall be the Purchasers' sole and exclusive remedy for any termination of this Agreement.

## **ARTICLE 9 GENERAL**

**9.1 Survival.** All representations, warranties, covenants and agreements of the Vendors or the Purchasers made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall merge and shall not survive the Closing except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or obligations extending after the Closing, or as otherwise expressly provided in this Agreement. For greater certainty, the following sections shall survive Closing: 2.2 (*Assumed Liabilities*), 2.3(7) (*Intercompany Corporate Services*), 2.4(4) (*Post-Closing Assignment*), 3.3 (*Allocation of Purchase Price*), 3.4 (*Closing Adjustments*), 3.5 (*Taxes*), 3.6 (*GST/HST Gross Up*), 3.7 (*Tax Elections*), 4.2(5) (*Commissions*), 4.3 (*As is, Where is*), 5.3 (*Transaction Personal Information*); 5.5 (*Indemnity*), 5.6 (*Environmental Liabilities*), 5.7 (*Books and Record*), 5.12 (*Excluded Assets*), 7.4 (*Receiver's Certificate*), 8.3 (*Treatment of Deposit*), 9.1 (*Survival*), 9.2 (*Expenses*), 9.3 (*Public Announcements*), 9.4 (*Notices*), 9.5 (*Time of Essence*), 9.6 (*Further Assurances*), 9.7 (*Post-Closing Wind-Up of Receivership Proceedings*), 9.8 (*Entire Agreement*), 9.9 (*Amendment*), 9.10 (*Waiver*), 9.11 (*Severability*), 9.12 (*Remedies Cumulative*), 9.13 (*Governing Law*), 9.14 (*Dispute Resolution*), 9.15 (*Attornment*), 9.16 (*Successors and Assigns*), 9.17 (*Assignment*), 9.18 (*Receiver's Capacity*) and 9.19 (*Third Party Beneficiaries*).

**9.2 Expenses.** Except as otherwise expressly provided herein, each Party shall be responsible for all costs and expenses (including any Taxes imposed on such expenses) incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisers). Notwithstanding the forgoing, the cost of retaining a notary and a land surveyor, if necessary, in connection with the preparation of the legal descriptions of the Real Property Assets shall be borne by the Purchasers.

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

disclose the quantum of the Purchase Price, Cash Purchase Price, Deposit, Assumed Liabilities or allocation of Purchase Price without the prior written consent of the Vendors and the Receiver.

#### **9.4 Notices.**

(1) *Mode of Giving Notice.* Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if sent by e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

(2) *if to the Vendors, to:*

c/o KPMG Inc., in its capacity as Receiver  
Attention: Katherine Forbes / George Bourikas  
Email: [katherineforbes@kpmg.ca](mailto:katherineforbes@kpmg.ca) / [gbourikas@kpmg.ca](mailto:gbourikas@kpmg.ca)

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

Blake, Cassels & Graydon LLP  
Attention: Aryo Shalviri / Chris Burr  
Email: [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com) / [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

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

c/o FORGE & FOSTER INVESTMENT MANAGEMENT INC.  
Attention: Joe Accardi / Alex Manojlovich  
Email: [joe.accardi@forgeandfoster.ca](mailto:joe.accardi@forgeandfoster.ca) [alex.manojlovich@forgeandfoster.ca](mailto:alex.manojlovich@forgeandfoster.ca)

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

Scarfone Hawkins LLP  
Attention: David Rosati  
Email: [drosati@shlaw.ca](mailto:drosati@shlaw.ca)

(4) *Deemed Delivery of Notice.* Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of e-mailing or sending by other means of recorded electronic communication, provided that such day is a Business Day and the communication is so e-mailed or sent before 5:00 p.m. Toronto time on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

(5) *Change of Contact Particulars.* Any Party may from time to time change its contact particulars under this Section 9.4 by notice to the other Party given in the manner provided by this Section 9.4.

**9.5 Time of Essence.** Time shall be of the essence of this Agreement in all respects.

**9.6 Further Assurances.** The Vendors and the Purchasers shall, at the sole expense of the requesting Party, from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all



such further acts and things in connection with this Agreement that the other Party may reasonably require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

**9.7 Post-Closing Wind-Up of Receivership Proceedings.** Notwithstanding any other provision of this Agreement, nothing in this Agreement shall operate to restrict in any way the rights of the Receiver to distribute any of the Vendors' assets or otherwise wind up the Receivership Proceedings as it may determine in its sole discretion after the Closing, even if doing so may impair the Vendors' ability to provide or perform any further cooperation, assistance or further assurances as may otherwise be provided under this Agreement.

**9.8 Entire Agreement.** Other than any confidentiality agreement, non-disclosure agreement or similar undertaking or agreement signed by the Purchasers in favour of any of the Vendors, which remain in full force and effect, except as amended by this Agreement, this Agreement and the agreements contemplated hereby constitute the entire agreement between the Parties or any of them pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written (including any letter of intent or expression of interest submitted by any affiliates of the Purchasers). There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as explicitly set out in this Agreement.

**9.9 Amendment.** No amendment of this Agreement shall be effective unless made in writing and signed by the Parties (which, for greater certainty, may be by way of e-mail exchanged by counsel for the Parties).

**9.10 Waiver.** A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing by the Party to be bound by the waiver and then only in the specific instance and for the specific purpose for which it has been given (which, for greater certainty, may be by way of e-mail exchanged by counsel for the Parties). No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

**9.11 Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**9.12 Remedies Cumulative.** The rights, remedies, powers and privileges herein provided to a Party are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Party.

**9.13 Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable therein.

**9.14 Dispute Resolution.** If any dispute arises with respect to the interpretation or enforcement of this Agreement, including as to what constitutes a breach or material breach of this Agreement for the purposes of Article 8, such dispute shall be determined by the Court within the Receivership Proceedings, or by such other Person or in such other manner as the Court may direct. Without prejudice to the ability of any of the Vendors or the Purchasers to enforce this Agreement in any other proper jurisdiction, the Purchasers and the Vendors irrevocably submit and attorn to the non-exclusive jurisdiction of the Court.

**9.15 Attornment.** Each Party agrees (i) that any Legal Proceeding relating to this Agreement must be brought in the Court, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of the Court; (ii) that it irrevocably waives any right to, and shall not, oppose any such Legal Proceeding in the Province of Ontario on any jurisdictional basis, including *forum non conveniens*; and (iii) not to oppose the enforcement against it in any other jurisdiction of any Order duly obtained from the Court as contemplated by this Section 9.15. Each Party agrees that service of process on such Party as provided in Section 9.4 shall be deemed effective service of process on such Party.

**9.16 Successors and Assigns.** This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

**9.17 Assignment.** Prior to the issuance of the Approval and Vesting Order, each Purchaser may assign all of its rights and obligations under this Agreement to an Affiliate, provided that (i) such Purchaser shall remain liable to perform all of its obligations hereunder, and (ii) such Purchaser and its assignee execute and deliver to the Vendors an assignment and assumption agreement, in form and substance satisfactory to the Vendors, evidencing such assignment. Other than in accordance with the preceding sentence, the Purchasers may not assign or transfer, whether absolutely, by way of security or otherwise, all or any part of their rights or obligations under this Agreement.

**9.18 Receiver's Capacity.** The Purchasers acknowledge and agree that (i) any reference to the Vendors in this Agreement shall mean the Vendors, by the Receiver, and (ii) the Receiver, acting in its capacity as the Receiver in the Receivership Proceedings will have no Liability or obligation in connection with this Agreement whatsoever in its capacity as Receiver, in its personal or corporate capacity or otherwise.

**9.19 Third Party Beneficiaries.** Except as set forth in Section 4.3 and Section 5.5, this Agreement is for the sole benefit of the Parties, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**9.20 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by e-mail in pdf format or by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

**[SIGNATURE PAGE TO FOLLOW]**

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

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

By: Katherine Forbes  
Name: Katherine Forbes  
Title: President

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

By: Katherine Forbes  
Name: Katherine Forbes  
Title: President

**304 VICTORIA INVESTMENTS INC.**

By: \_\_\_\_\_  
Name: Joseph Accardi  
Title: President

**414 VICTORIA INVESTMENTS INC.**

By: \_\_\_\_\_  
Name: Joseph Accardi  
Title: President

**FORGE & FOSTER INVESTMENT  
MANAGEMENT INC.**

By: \_\_\_\_\_  
Name:  
Title:

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

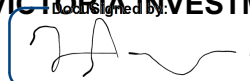
**VICTORIA AVENUE NORTH HOLDINGS INC.  
BY KPMG INC. IN ITS CAPACITY AS COURT-  
APPOINTED RECEIVER AND MANAGER  
AND NOT IN ITS PERSONAL OR  
CORPORATE CAPACITY**

By: \_\_\_\_\_  
Name:  
Title:

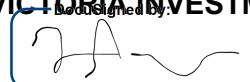
**BENEFICIAL OWNERS BY KPMG INC. IN ITS  
CAPACITY AS COURT-APPOINTED  
RECEIVER AND MANAGER AND NOT IN ITS  
PERSONAL OR CORPORATE CAPACITY**

By: \_\_\_\_\_  
Name:  
Title:

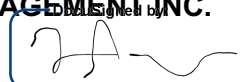
**304 VICTORIA INVESTMENTS INC.**

Digitally signed by:  
  
\_\_\_\_\_  
B07FC2ABBAD94F2...  
Name: Joseph Accardi  
Title: President

**414 VICTORIA INVESTMENTS INC.**

Digitally signed by:  
  
\_\_\_\_\_  
B07FC2ABBAD94F2...  
Name: Joseph Accardi  
Title: President

**FORGE & FOSTER INVESTMENT  
MANAGEMENT INC.**

Digitally signed by:  
  
\_\_\_\_\_  
B07FC2ABBAD94F2...  
Name: Joe Accardi  
Title: Director

**SCHEDULE "A"****PURCHASED ASSETS**

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

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

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

**SCHEDULE "B"****REAL PROPERTY ASSETS**

The Real Property Assets included in this Agreement are more particularly described as follows:

**304 Victoria Real Property Asset:**

304 Victoria Ave N, Hamilton, ON, L8L 5G4:  
LT 7, PL 33 ; LTS 1, 2, 3, 4, 5, 6, 7 & 8, PL 137; HAMILTON

**414 Victoria Real Property Asset:**

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

LT 38, PL 254 ; PT LT 37, PL 254 ; PT LTS 8, 9, 10, 11 & 12, PL 288 ; PT ALLEYWAY, PL 288,  
PART 1, 62R8027 ; HAMILTON

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

**Critical Contracts:** Nil.

**Real Property Leases:**

**304 Victoria Real Property Leases**

1. Lease dated March 1, 2008 related to Suite 100 between Bird-Mor Drugs Limited, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as amended pursuant to an Amending Agreement dated October 2, 2012 and as further amended pursuant to an Amending Agreement dated March 27, 2017.
2. Lease dated September 29, 2014 related to Suite 302 between 1543730 Ontario Inc., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, and Walter Paliga as indemnifier, as amended pursuant to an Amending Agreement dated October 25, 2015 and as further amended pursuant to an Amending Agreement dated February 27, 2017 and as further amended pursuant to an Amending Agreement dated January 1, 2022.
3. Lease dated August 13, 2010 related to Suite 402 between Dr. William A. Fulton, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, now on a month-to-month basis.
4. Lease dated July 1, 2003 related to Suite 501 between Dr. Amin Mulji, as tenant and 304 Victoria Avenue North Holdings Ltd., as landlord, now on a month-to-month basis.
5. Lease dated October 7, 2008 related to Suite 502 between Dr. Taiwo Aderibigbe, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, as amended pursuant to an Amending Agreement dated May 31, 2013, now on a month-to-month basis.
6. Lease dated November 14, 2011 related to Suite 503 between WEMS Inc., as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, and Dr. Anne Beattie, as indemnifier.
7. Lease dated December 1, 2008 related to Suite 504 between Dr. Arianna Dal Cin, as tenant and Healthcare Properties Holdings Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, as amended pursuant to an Amending Agreement dated October 11, 2013, now, on a month-to-month basis.

**Personal Property Leases:**

1. Equipment Lease Agreement dated August 24, 2020 between Meridian OneCap Credit Corp. and Victoria Avenue Holdings Inc. and Gross Capital Inc.

2. Equipment Lease Agreement dated April 1, 2020 between Blue Chip Financial Solutions and Victoria Avenue North Holdings Inc.

**Other Contracts:**

1. Elevator Maintenance Agreement dated February 25, 2015 between Brock Elevator Limited and Prime Real Estate Group.
2. Landscaping Agreement dated March 30, 2022 between White Start Cleaning Services Inc. and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver).
3. Parking Lease dated October 15, 2018 between Medpark Solutions Inc., as tenant and Victoria Avenue North Holdings, as landlord.

**414 Victoria Real Property Leases**

1. Lease dated February 1, 2022 related to Suite L1 between Wellington X-Ray & Ultra Sound Ltd., as tenant and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver), as landlord, now on a month-to-month basis.
2. Lease dated November 1, 2014 related to Suite L2 between PT Healthcare Solutions Corp., as tenant, and 1333732 Ontario Inc. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord.
3. Lease dated July 1, 2014 related to Suite L3 between 952587 Ontario Ltd., as tenant and 1333732 Ontario Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord.
4. Lease dated February 1, 2022 related to Suite M1 between Dr. Allen Greenspoon and Dr. Joel Yellin, as tenant and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver), as landlord, now on a month-to-month basis.
5. Lease dated July 15, 2014 related to Suite M02 between MediClinic 2000 Inc., as tenant and 1333732 Ontario Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, and Dr. Allen Greenspoon, as Indemnifier.
6. Lease dated February 25, 2022 related to Suite M03 between Dr. Naresh K. Murty Medicine Professional Corporation, as tenant and 414 Victoria Avenue Holdings Inc. (by KPMG Inc. as receiver), the landlord, now on a month-to-month basis.
7. Lease dated November 15, 2014 related to Suites M04 and M12 between 2424565 Ontario Inc., as tenant and 1333732 Ontario Ltd. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord.
8. Lease dated February 15, 2022 related to Suite M06 between Hometown Hearing Inc., as tenant and 414 Victoria Avenue Holdings Inc., as landlord.
9. Lease dated August 10, 2021 related to Suite M10 between Home and Community Care Support Service, Hamilton Niagara Haldimand Brant, as tenant and 414 Victoria Avenue Holdings Inc. (by KPMG Inc. as receiver), as landlord, now on a month-to-month basis.



10. Lease dated February 2, 2022 related to Suite M11 between Dr. M. B. Greenspan, as tenant and 414 Victoria Avenue North Holdings Inc., as landlord.
11. Lease dated November 28, 2013 related to Suite M14 between Wharton Medical Centre Inc., as tenant and 1333732 Ontario Inc. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, now on a month-to-month basis.
12. Lease dated September 1, 2009 related to Suite M15 between 1347878 Ontario Ltd., cob Hamilton Community Pharmacy, as tenant and 1333732 Ontario Inc. (predecessor-in-interest to Victoria Avenue North Holdings Inc.), as landlord, as further amended pursuant to an Assignment and Amendment of Lease dated December 17, 2010.
13. Lease dated January 1, 2022 related to Suite M16 between Dr. Allen Greenspoon and Dr. Joel Yellin, as tenants, and Victoria Avenue North Holdings Inc., as landlord, now on a month-to-month basis.
14. Lease dated February 1, 2022 related to Suite M18 between Dr. Allen Greenspoon and Dr. Joel Yellin, as tenant and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver), as landlord, now on a month-to-month basis.

**Personal Property Leases:**

1. Equipment Lease Agreement dated August 24, 2020 between Meridian OneCap Credit Corp. and Victoria Avenue Holdings Inc. and Gross Capital Inc.
2. Equipment Lease Agreement dated April 1, 2020 between Blue Chip Financial Solutions and Victoria Avenue North Holdings Inc.

**Other Contracts:**

1. Parking Agreement dated December 15, 2014 between Canada Wide Parking Inc. and 1333732 Ontario Ltd. (predecessor-in-interest to Victoria Avenue North Holdings).
2. Elevator Maintenance Agreement between Brock Elevator Limited and Prime Real Estate Group.
3. Landscaping Agreement dated March 30, 2022 between White Star Cleaning Services Inc. and Victoria Avenue North Holdings Inc. (by KPMG Inc. as receiver).

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

<b>ASSETS</b>	<b>Forge &amp; Foster Investment Management Inc.</b>
304 Victoria Real Property Asset	\$ [REDACTED]
414 Victoria Real Property Asset	\$ [REDACTED]
<b>Total:</b>	<b>\$ [REDACTED]</b>

**SCHEDULE “E”**

**GST/HST CERTIFICATE AND INDEMNITY**

**DATE:** \_\_\_\_\_, 2022

**TO:** **Victoria Avenue North Holdings Inc. by KPMG Inc. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity and Beneficial Owners by KPMG Inc. in its capacity as Court-appointed Receiver and Manager and not in its personal capacity or corporate capacity (the “Vendors”)**

**FROM:** **304 Victoria Investments Inc. and 414 Victoria Investments Inc. (the “Purchasers”)**

**RE:** **Asset Purchase Agreement dated as of April 26, 2022 (the “APA”) between the Vendors and the Purchasers in respect of the Purchased Assets**

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

1. The Purchasers hereby declare and certify as follows:
  - (a) the applicable Purchased Assets are being purchased by each Purchaser as principal for its own account and not as an agent, trustee or otherwise on behalf of or for another person;
  - (b) each Purchaser is registered under Subdivision d of Division V of Part IX of the ETA for the collection and remittance of GST/HST and their registration numbers are [●] and [●], and such registrations are in good standing and have not been varied, cancelled or revoked;
  - (c) each Purchaser shall, in accordance with subsections 221(2) and 228(4) of the ETA, self-assess the GST/HST payable in respect of the sale of the Purchased Assets, thus relieving the Vendors from any requirement to collect the GST/HST payable in respect thereof. Each Purchaser represents and warrants that such GST/HST shall be accounted for, in accordance with the ETA, in its GST/HST return for the reporting period during which such tax became payable, which return shall be filed, along with all required remittances, on or before the statutory deadline for filing such return.
  
2. The Purchasers shall jointly and severally indemnify and save harmless the Vendors from and against any and all GST/HST, penalties, interest and/or other costs which may become payable by or be assessed against the Vendors or any and all claims incurred, suffered or sustained by the Vendors as a result of any failure:
  - (a) by the Vendors to collect and remit any GST/HST applicable on the sale and conveyance of the Purchased Assets by the Vendors to the Purchasers or as a

result of any failure by the Purchasers to comply with the provisions of this certificate and indemnity; and

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

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

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

**304 VICTORIA INVESTMENTS INC.**

---

Name: Joseph Accardi  
Title: President

**414 VICTORIA INVESTMENTS INC.**

---

Name: Joseph Accardi  
Title: President

# **APPENDIX “B”**



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

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

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

**-AND-**

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

**(together, the “Proceedings”)**

### **NOTICE OF TOWN HALL**

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

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

**Date:** May 18, 2022

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

**Location:** Videoconference via Microsoft Teams

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

**Call-in:** 647-794-1236

**Meeting ID:** 620 423 341#

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

KPMG Inc., in its capacity as Receiver of:

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

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

(and not in its personal or corporate capacity)

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

B E T W E E N:

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

Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC.  
and THE PARTIES LISTED ON SCHEDULE "A"

Respondents

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

**CONFIDENTIAL APPENDIX**

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

**TO BE FILED SEPARATELY WITH THE COURT**

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

B E T W E E N:

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

Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC.  
and THE PARTIES LISTED ON SCHEDULE "A"

Respondents

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

**CONFIDENTIAL APPENDIX**

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

**TO BE FILED SEPARATELY WITH THE COURT**



**TAB 3**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

B E T W E E N:

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

Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC.  
and THE PARTIES LISTED ON SCHEDULE "A"

Respondents

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

**APPROVAL AND VESTING ORDER  
304 & 414 Victoria Ave. North, Hamilton, 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 **Schedules "C" and "D"** hereto (the "**Real Property**") of (i) Victoria Avenue North Holdings Inc. (the "**Legal Owner**") acquired for, or used in relation to the Legal Owner's business (collectively, the "**Legal Owner's Property**"), and (ii) the beneficial owners of the Legal Owner's Property (collectively, the

- 2 -

“**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), as vendor, 304 Victoria Investments Inc. (the “**304 Purchaser**”) and 414 Victoria Investments Inc. (the “**414 Purchaser**”, together with the 304 Purchaser, the “**Purchasers**”), as purchasers and Forge & Foster Investment Management Inc., as guarantor, dated April 26, 2022 and appended to the Third Report of the Receiver dated May 13, 2022 (the “**Third Report**”), and vesting in each of the applicable Purchasers the Debtors’ right, title and interest in and to the assets set out in **Schedule “E”** 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 Third Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchasers and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver’s Motion Record as appears from the affidavit of Nancy Thompson sworn May **[\*]**, 2022 (the “**Thompson Affidavit**”):

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver’s Notice of Motion and Motion Record as set out in the Thompson Affidavit is hereby abridged, and the method of service validated pursuant to the Order of Mr. Justice Koehnen granted on September 14, 2021, so that this motion is properly returnable today.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved,

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

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchasers substantially in the form attached as **Schedule "B"** hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased described in **Schedule "E"**, including without limitation the Real Property, shall vest absolutely in the applicable Purchasers in accordance with the allocation set out in Section 2.1 of the Sale Agreement, 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 Koehnen dated August 3, 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 **Schedules "F" and "G"** 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 "H"**) 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.

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4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Hamilton Wentworth (No. 62) 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 304 Victoria Investments Inc. as the owner of the “**304 Real Property**”, as defined in **Schedule “C”** hereto, in fee simple, and is hereby directed to delete and expunge from title to the 304 Real Property all of the Claims listed in **Schedule “F”** hereto.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Hamilton Wentworth (No. 62) 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 414 Victoria Investments Inc. as the owner of the “**414 Real Property**”, as defined in **Schedule “D”** hereto, in fee simple, and is hereby directed to delete and expunge from title to the 414 Real Property all of the Claims listed in **Schedule “G”** hereto.

6. **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.

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

8. **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

- 5 -

to disclose and transfer to the Purchasers all Personal Information in the Books and Records (each as defined in the Sale Agreement) of the Debtors. The Purchasers 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.

9. **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 Purchasers 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.

10. **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

- 6 -

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

<b>Individuals</b>
Allan Gross
Errol Yim and Andrea Yim, jointly
Ava Gross
Karen Nakagawa and Calvin Nakagawa, jointly
Carol Jaxon
Carole Kai Onouye
Diane Curtis
Dwight Otani and Theresa Otani, jointly
Edward Bugarin
Ellen Fleishman
Gemie Arakawa
George Tamashiro
Guy Pace and Caroline Berdusco, jointly
Heidi Berger
Henry Ko
Hongwei Su
James Brand
Janis L. Lai Trustee
Jean Morel
Jian Zhang
Johann Strasser
John Dattomo and Daniela Dattomo
Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly
Randall Y.C. Ho
Robert Atkinson
Roberta Sunahara and Paul Sunahara, jointly
Seymour Kazimirski
Stanley Salcedo

<b>Trusts</b>
Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Fleishman Family Trust, by and through its trustee(s)
J. Zachery Jones Trust, by and through its trustee(s)
Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Jasen Takei Revocable Living Trust, by and through its trustee(s)
Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Ruth Hisaye Honda Trust, by and through its trustee(s)
S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Wallace K. Tsuha Trust, by and through its trustee(s)
<b>Corporations / Partnerships</b>
1236068 Ontario Limited
1649750 Ontario Inc.
1818019 Ontario Limited
Citydrill Inc.
Gross Capital Inc.
Dirk and Dale IRA LLC
Gross Medical Opportunities Fund LP
Hybrid Activities Inc.
Mark Craig Gross Holdings Inc.
Randy 88, LLC
Rastogi Medicine Professional Corporation
RMK IRA LLC



**SCHEDULE B**

**Form of Receiver's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC.  
and THE PARTIES LISTED ON SCHEDULE "A"

Respondents

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

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (the "**Court**") dated August 3, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases related thereto, the "**Real Property**") of, among other parties, (i) Victoria Avenue North Holdings Inc. (the "**Legal Owner**") acquired for, or used in relation to the Legal Owner's

- 2 -

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

B. Pursuant to an Order of the Court dated May 24, 2022, the Court approved the agreement of purchase and sale (the “**Sale Agreement**”) between the Debtors (acting by the Receiver), as vendor, 304 Victoria Investments Inc. and 414 Victoria Investments Inc., as purchasers (collectively, the “**Purchasers**”) and Forge & Foster Investment Management Inc., as guarantor, dated April 26, 2022 and provided for the vesting in the Purchasers 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 Purchasers of a certificate confirming (i) the payment by the Purchasers 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 Purchasers; 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 Purchasers have paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Section 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and

- 3 -

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

**KPMG Inc., in its capacity as Receiver of the undertaking, property and assets of Victoria Avenue North Holdings Inc., et. al, and not in its personal capacity**

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

Name:

Title:

## SCHEDULE A TO RECEIVER'S CERTIFICATE

<b>Individuals</b>
Allan Gross
Errol Yim and Andrea Yim, jointly
Ava Gross
Karen Nakagawa and Calvin Nakagawa, jointly
Carol Jaxon
Carole Kai Onouye
Diane Curtis
Dwight Otani and Theresa Otani, jointly
Edward Bugarin
Ellen Fleishman
Gemie Arakawa
George Tamashiro
Guy Pace and Caroline Berdusco, jointly
Heidi Berger
Henry Ko
Hongwei Su
James Brand
Janis L. Lai Trustee
Jean Morel
Jian Zhang
Johann Strasser
John Dattomo and Daniela Dattomo
Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly
Randall Y.C. Ho
Robert Atkinson
Roberta Sunahara and Paul Sunahara, jointly
Seymour Kazimirski
Stanley Salcedo

<b>Trusts</b>
Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Fleishman Family Trust, by and through its trustee(s)
J. Zachery Jones Trust, by and through its trustee(s)
Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Jasen Takei Revocable Living Trust, by and through its trustee(s)
Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Ruth Hisaye Honda Trust, by and through its trustee(s)
S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Wallace K. Tsuha Trust, by and through its trustee(s)
<b>Corporations / Partnerships</b>
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1649750 Ontario Inc.
1818019 Ontario Limited
Citydrill Inc.
Gross Capital Inc.
Dirk and Dale IRA LLC
Gross Medical Opportunities Fund LP
Hybrid Activities Inc.
Mark Craig Gross Holdings Inc.
Randy 88, LLC
Rastogi Medicine Professional Corporation
RMK IRA LLC

**SCHEDULE C****304 Real Property**

304 Victoria Ave N, Hamilton, ON, L8L 5G4:

PIN 17187-0013 (LT): LT 7, PL 33; LTS 1, 2, 3, 4, 5, 6, 7 & 8, PL 137; HAMILTON

**SCHEDULE D****414 Real Property**

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

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

## **SCHEDULE E**

### **Purchased Assets**

- (1) The Assigned Contracts;
- (2) Any Personal Property or fixtures that are Related to the Business and located upon the Real Property Assets;
- (3) All Real Property Assets;
- (4) 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;
- (5) The Permits and Licences;
- (6) The Books and Records that are Related to the Business;
- (7) All goodwill Related to the Business; and
- (8) 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 F**

**Claims to be deleted and expunged from title to the 304 Real Property**

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
WE1027848	March 31, 2015	Charge	\$24,500,000	Victoria Avenue North Holdings Inc.	American General Life Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA
WE1027849	March 31, 2015	Notice of Assignment of Rents General		Victoria Avenue North Holdings Inc.	American General Life Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA
WE1371410	August 1, 2019	Charge	\$3,600,000	Victoria Avenue North Holdings Inc.	1012689 Ontario Limited
WE1392369	November 5, 2019	Notice of Security Interest	\$150,036	De Lage Landen Financial Services Canada Inc.	
WE1403562	December 19, 2019	Charge	\$1,600,000	Victoria Avenue North Holdings Inc.	1012689 Ontario Limited
WE1535741	August 6, 2021	Application to register Court Order		Ontario Superior Court of Justice (Commercial List)	KPMG Inc.



### SCHEDULE G

#### Claims to be deleted and expunged from title to the 414 Real Property

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
LT540170	February 5, 1999	Application (General)		Victorian Order of Nurses, Hamilton-Dundas Branch	Victorian Order of Nurses Hamilton-Wentworth Branch
WE1027848	March 31, 2015	Charge	\$24,500,000	Victoria Avenue North Holdings Inc.	American General Life Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA.
WE1027849	March 31, 2015	Notice of Assignment of Rents General		Victoria Avenue North Holdings Inc.	American General Life Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA.
WE1371410	August 1, 2019	Charge	\$3,600,000	Victoria Avenue North Holdings Inc.	1012689 Ontario Limited
WE1392895	November 7, 2019	Notice of Security Interest	\$157,428	De Lage Landen Financial Services Canada Inc.	
WE1403562	December 19, 2019	Charge	\$1,600,000	Victoria Avenue North Holdings Inc.	1012689 Ontario Limited

- 2 -

WE1535741	August 6, 2021	Application to register Court Order		Ontario Superior Court of Justice (Commercial List)	KPMG Inc.
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**SCHEDULE H**  
**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.

- (1) 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;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) 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;
- (7) 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;
- (8) facility cost sharing, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or any Governmental Authority in respect of the Real Property Assets, provided such agreements have been complied with in all material respects;

- 2 -

- (9) 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;
- (10) the Real Property Leases, any registered notices of leases and all other encumbrances and instruments registered against title to the Real Property Assets by reason of any tenant of a Real Property Lease having encumbered such Real Property Lease; and
- (11) in respect of the Real Property Assets and the Real Property Leases, the provisions of any Applicable Law, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning, and any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent.

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

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

- and -

VICTORIA AVENUE NORTH HOLDINGS INC., *et al.*  
Respondents

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

**APPROVAL AND VESTING ORDER**  
**304 & 414 Victoria Ave. North, Hamilton, 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)

**Aryo Shalviri**, LSO #63867A

Tel: 416-863-2962

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

**Chris Burr**, LSO #55172H

Tel: 416-863-3261

Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**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

**TAB 4**

Revised: January 21, 2014

Court File No. ~~\_\_\_\_\_~~ CY-21-00665375-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

BETWEEN:

~~PLAINTIFF~~

Plaintiff

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

Applicants

- and -

~~DEFENDANT~~

Defendant

VICTORIA AVENUE NORTH HOLDINGS INC.  
and THE PARTIES LISTED ON SCHEDULE "A"

Respondents

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

**APPROVAL AND VESTING ORDER**  
304 & 414 Victoria Ave. North, Hamilton, Ontario

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ KPMG Inc., in its capacity as ~~the~~ Court-appointed receiver and manager (the "~~Receiver~~") without security of the ~~undertaking~~,

~~13143037.1~~ 24430937.4

DOCSTOR: 1201927\14

~~-2-~~

~~property and assets of [DEBTOR] (the "Debtor"),~~ undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedules "C" and "D" hereto (the "Real Property") of (i) Victoria Avenue North Holdings Inc. (the "Legal Owner") acquired for, or used in relation to the Legal Owner's business (collectively, the "Legal Owner's Property"), and (ii) the beneficial owners of the Legal Owner's Property (collectively, the "Beneficial Owners", and together with the Legal Owner, the "Debtors"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtors (acting by the Receiver and [NAME OF PURCHASER]), as vendor, 304 Victoria Investments Inc. (the "**304 Purchaser**") and 414 Victoria Investments Inc. (the "**414 Purchaser**", together with the 304 Purchaser, the "**Purchasers**"), as purchasers and Forge & Foster Investment Management Inc., as guarantor, dated ~~[DATE]~~ April 26, 2022 and appended to the Third Report of the Receiver dated [DATE] May 13, 2022 (the "**Third Report**"), and vesting in ~~each of the Purchaser~~ applicable Purchasers the ~~Debtor~~ Debtors's right, title and interest in and to the assets ~~described set out in the Sale Agreement~~ Schedule "E" hereof (the "**Purchased Assets**"), was heard this day ~~at 330 University Avenue,~~ by judicial videoconference via Zoom in Toronto, Ontario.

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

~~13143037-1~~ 24430937.4



-3-

~~list~~, although properly served with the Receiver's Motion Record as appears from the affidavit of ~~[NAME]~~ Nancy Thompson sworn May [DATE] filed<sup>1\*</sup>, 2022 (the "Thompson Affidavit):

1. **THIS COURT ORDERS ~~AND DECLARES~~** that the time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit is hereby abridged, and the method of service validated pursuant to the Order of Mr. Justice Koehnen granted on September 14, 2021, so that this motion is properly returnable today.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the Receiver<sup>3</sup> 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 each of the ~~Purchaser~~ applicable Purchasers.

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the ~~Purchaser~~ Purchasers substantially in the form attached as **Schedule A** "B" hereto (the "**Receiver's Certificate**"), all of the ~~Debtor's~~ Debtors' right, title and interest in and to the Purchased ~~Assets~~ described in ~~the Sale Agreement [and listed on Schedule B hereto]~~<sup>4</sup> "E", including without limitation the Real Property, shall vest absolutely in the ~~Purchaser~~ applicable Purchasers in accordance with the allocation set out in Section 2.1 of the Sale Agreement, free

<sup>1</sup> ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

<sup>2</sup> ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

<sup>3</sup> ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

<sup>4</sup> ~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

13143037.1-24430937.4

~~-44 -~~

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**"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of ~~the Honourable~~ Mr. Justice [NAME] Kochnen dated ~~[DATE]~~ August 3, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on ~~Schedule C~~ Schedules "F" and "G" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on ~~Schedule D~~ "H") 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.

~~3. — THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act~~<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real

<sup>5</sup> ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

<sup>6</sup> ~~Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

~~13143037.1~~ [24430937.4](#)

~~-5-~~

~~Property”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Hamilton Wentworth (No. 62) 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 304 Victoria Investments Inc. as the owner of the “304 Real Property”, as defined in Schedule “C” hereto, in fee simple, and is hereby directed to delete and expunge from title to the 304 Real Property all of the Claims listed in Schedule “F” hereto.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Hamilton Wentworth (No. 62) 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 414 Victoria Investments Inc. as the owner of the “414 Real Property”, as defined in Schedule “D” hereto, in fee simple, and is hereby directed to delete and expunge from title to the 414 Real Property all of the Claims listed in Schedule “G” hereto.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> 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

~~<sup>7</sup>The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at “net proceeds”.~~

~~-66-~~

sale<sup>8</sup>, 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.

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

8. ~~6.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the ~~Purchaser~~Purchasers all ~~human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "•"~~ Personal Information in the Books and Records (each as defined in the Sale Agreement) of the Debtors. The ~~Purchaser~~Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~Debtors.

9. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

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

the vesting of the Purchased Assets in the ~~Purchaser~~Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of ~~the~~any Debtor and shall

<sup>8</sup>~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

~~-7-~~

not be void or voidable by creditors of ~~the~~[such](#) Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. — THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

10. ~~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.

---

Revised: January 21, 2014

**Schedule**SCHEDULE A—

<b>Individuals</b>
<a href="#">Allan Gross</a>
<a href="#">Errol Yim and Andrea Yim, jointly</a>
<a href="#">Ava Gross</a>
<a href="#">Karen Nakagawa and Calvin Nakagawa, jointly</a>
<a href="#">Carol Jaxon</a>
<a href="#">Carole Kai Onouye</a>
<a href="#">Diane Curtis</a>
<a href="#">Dwight Otani and Theresa Otani, jointly</a>
<a href="#">Edward Bugarin</a>
<a href="#">Ellen Fleishman</a>
<a href="#">Gemie Arakawa</a>
<a href="#">George Tamashiro</a>
<a href="#">Guy Pace and Caroline Berdusco, jointly</a>
<a href="#">Heidi Berger</a>
<a href="#">Henry Ko</a>
<a href="#">Hongwei Su</a>
<a href="#">James Brand</a>
<a href="#">Janis L. Lai Trustee</a>
<a href="#">Jean Morel</a>
<a href="#">Jian Zhang</a>
<a href="#">Johann Strasser</a>
<a href="#">John Dattomo and Daniela Dattomo</a>
<a href="#">Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly</a>
<a href="#">Randall Y.C. Ho</a>
<a href="#">Robert Atkinson</a>
<a href="#">Roberta Sunahara and Paul Sunahara, jointly</a>
<a href="#">Seymour Kazimirski</a>
<a href="#">Stanley Salcedo</a>

<b>Trusts</b>
<a href="#">Charlyn Shizue Honda Masini Trust, by and through its trustee(s)</a>
<a href="#">Fleishman Family Trust, by and through its trustee(s)</a>
<a href="#">J. Zachery Jones Trust, by and through its trustee(s)</a>
<a href="#">Jane Shigeta Revocable Living Trust, by and through its trustee(s)</a>
<a href="#">Jasen Takei Revocable Living Trust, by and through its trustee(s)</a>
<a href="#">Melvin Shigeta Revocable Living Trust, by and through its trustee(s)</a>
<a href="#">Ruth Hisaye Honda Trust, by and through its trustee(s)</a>
<a href="#">S. Bucky Revocable Living Trust &amp; Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)</a>
<a href="#">Wallace K. Tsuha Trust, by and through its trustee(s)</a>
<b>Corporations / Partnerships</b>
<a href="#">1236068 Ontario Limited</a>
<a href="#">1649750 Ontario Inc.</a>
<a href="#">1818019 Ontario Limited</a>
<a href="#">Citydrill Inc.</a>
<a href="#">Gross Capital Inc.</a>
<a href="#">Dirk and Dale IRA LLC</a>
<a href="#">Gross Medical Opportunities Fund LP</a>
<a href="#">Hybrid Activities Inc.</a>
<a href="#">Mark Craig Gross Holdings Inc.</a>
<a href="#">Randy 88, LLC</a>
<a href="#">Rastogi Medicine Professional Corporation</a>
<a href="#">RMK IRA LLC</a>

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**SCHEDULE B****Form of Receiver's Certificate**Court File No. CV-21-00665375-00CL**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**~~PLAINTIFF~~****Plaintiff**AMERICAN GENERAL LIFE INSURANCE COMPANY and  
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.Applicants

- and -

**~~DEFENDANT~~****Defendant**VICTORIA AVENUE NORTH HOLDINGS INC.  
and THE PARTIES LISTED ON SCHEDULE "A"RespondentsAPPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**RECEIVER'S CERTIFICATE****RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Koehnen of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ August 3, 2021 (the "Appointment Order"), KPMG Inc. was appointed as the

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receiver and manager (the "**Receiver**") without security of the ~~undertaking, property and~~ assets of ~~[DEBTOR] (the "Debtor")~~, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases related thereto, the "Real Property") of, among other parties, (i) Victoria Avenue North Holdings Inc. (the "Legal Owner") acquired for, or used in relation to the Legal Owner's business (collectively, the "Legal Owner's Property"), and (ii) the beneficial owners of the Legal Owner's Property (collectively, the "Beneficial Owners", and together with the Legal Owner, the "Debtors"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated ~~[DATE]~~ May 24, 2022, the Court approved the agreement of purchase and sale ~~made as of [DATE OF AGREEMENT]~~ (the "**Sale Agreement**") between the Debtors (acting by the Receiver ~~[Debtor] and [NAME OF PURCHASER] (the "Purchaser")~~), as vendor, 304 Victoria Investments Inc. and 414 Victoria Investments Inc., as purchasers (collectively, the "Purchasers") and Forge & Foster Investment Management Inc., as guarantor, dated April 26, 2022 and provided for the vesting in the ~~Purchaser~~ Purchasers of the ~~Debtor~~ Debtors's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the ~~Purchaser~~ Purchasers of a certificate confirming (i) the payment by the ~~Purchaser~~ Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ Sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the ~~Purchaser~~ Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.



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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~~Purchasers have paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in ~~section~~Section 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the ~~Purchaser~~Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

~~[NAME OF RECEIVER]~~KPMG Inc., in its capacity as Receiver of the undertaking, property and assets of ~~[DEBTOR]~~Victoria Avenue North Holdings Inc., et. al, and not in its personal capacity

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

Name:

Title:

Document comparison by Workshare 10.0 on Friday, May 13, 2022 1:59:57 PM

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Document 2 ID	PowerDocs://TOR_2528/24430937/4
Description	TOR_2528-#24430937-v4-KPMG_-_Gross_-_AVO_(Victoria)
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	

<b>Statistics:</b>	
	Count
Insertions	443
Deletions	133
Moved from	1
Moved to	1
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Format changed	0
Total changes	578

# TAB 5

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

B E T W E E N:

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

Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC.  
and THE PARTIES LISTED ON SCHEDULE “A”

Respondents

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

**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 “B”** (the “**Real Property**”) of the Appointment Order granted on August 3, 2021 (the “**Appointment Order**”), of (i) Victoria Avenue North Holdings Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”), and (ii) the beneficial owners of the Legal Owner’s Property (collectively, the “**Beneficial Owners**”, and

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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 (together with the Legal Owner’s Property, the “**Receivership Assets**”), for an order, among other things:

- (i) authorizing the Receiver to pay commissions to CBRE Limited (the “**Broker**”);
- (ii) authorizing the Receiver to make distributions to the Applicants;
- (iii) procedurally consolidating the bankruptcy proceedings of the Legal Owner 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**”), the Receiver’s Second Report to the Court dated October 22, 2021 (the “**Second Report**”) and the Receiver’s Third Report to Court dated May 13, 2022 (the “**Third Report**”, together with the First Report and the Second Report, the “**Reports**”);
- (v) dispensing with the requirement that the Receiver and its counsel, Blake, Cassels & Graydon LLP and Norton Rose Fulbright Canada LLP, obtain Court approval of their fees and disbursements (“**Accounts**”); and
- (vi) sealing Confidential Appendices “A” and “B” to the Third Report (collectively, the “**Confidential Appendices**”).

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Receiver’s Notice of Motion, the Reports 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

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properly served with the Receiver's Motion Record as appears from the affidavit of Nancy Thompson sworn May [ \* ], 2022 (the "**Thompson Affidavit**");

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit is hereby abridged, and the method of service validated pursuant to the Order of Mr. Justice Koehnen granted on September 14, 2021, 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 Third Report) to the Broker as and when applicable sale transactions close, out of the proceeds thereof, in each case in such amounts as are prescribed by the terms of the broker listing agreement dated as of October 20, 2021 among the Debtors and the Broker.

### **RESERVE AND DISTRIBUTIONS**

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to:
- (a) repay all indebtedness outstanding under Receiver's Certificates (as defined in the Appointment Order) issued under the term sheet among the Applicants and the Receiver, dated July 9, 2021 from the Net Proceeds of Sale (as defined in the Third 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

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discretion, an amount not exceeding the maximum amount owed by the Debtors to the Applicants on account of principal, interest, fees and expenses, subject to the maintenance of a reserve, in an amount satisfactory to the Receiver, in consultation with the Applicants, or in an amount otherwise ordered by the Court, to: (i) fund the fees and disbursements of the Receiver and its counsel, (ii) fund operating costs and expenses of the Debtors incurred in relation to the Receivership Assets since the date of the Appointment Order, (iii) secure the obligations under the Receiver's Charge (as defined in the Appointment Order), and (iv) fund the Bankruptcy Costs (defined below).

#### **PROCEDURAL CONSOLIDATION**

4. **THIS COURT ORDERS** that following any assignment in bankruptcy by or on behalf of any of (a) the Legal Owner, (b) 180 Vine Inc., 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the "**Other Legal Owners**") and (c) 180 Vine Purchaser Inc. ("**Vine Purchaser**"), KPMG Inc., in its capacity as the bankruptcy trustee of the Legal Owner, those Other Legal Owners and Vine Purchaser (the "**Trustee**") shall be entitled to administer the procedural matters relating to those bankruptcy proceedings on a consolidated basis (the "**Consolidated Proceedings**") and a copy of this order will be filed in the court file for each of the estates of the Legal Owner, Other Legal Owners and Vine Purchaser.

5. **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:



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- a) the meetings of creditors of the Legal Owner, any Other Legal Owners and Vine Purchaser may be convened and conducted jointly,
  - b) the Trustee is authorized to issue consolidated reports in respect of the Legal Owner, any Other Legal Owners and Vine Purchaser; and
  - c) the Trustee is authorized to deal with all filings and notices relating to the bankruptcy on a consolidated basis
6. **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 Legal Owner, Other Legal Owners and Vine Purchaser;
  - b) cause any of the Legal Owner, Other Legal Owners and Vine Purchaser to be liable for any claim for which it is otherwise not liable, or cause any of the Legal Owner, Other Legal Owners and Vine Purchaser to have any interest in any asset which it otherwise would not have; or
  - c) affect the Legal Owner's, Other Legal Owners' or Vine Purchaser's filing obligations under the *Bankruptcy and Insolvency Act* (Canada).
7. **THIS COURT ORDERS** that the Receiver shall be permitted to transfer to the Trustee from time to time funding for costs associated with the bankruptcy of the Legal Owner, as determined by the Receiver in consultation with the Applicants (the "**Bankruptcy Costs**").

#### **APPROVAL OF REPORTS & ACTIVITIES**

8. **THIS COURT ORDERS** that the Reports and the activities of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal

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capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

#### **DISPENSING WITH REQUIREMENT TO PASS ACCOUNTS**

9. **THIS COURT ORDERS AND DECLARES** that the requirement of the Receiver and its legal counsel (including any independent counsel) pursuant to Paragraph 19 of the Appointment Order to pass their Accounts is hereby waived and dispensed with: (a) in respect of the period up to and including March 31, 2022, and (b) in respect of the period from and after March 31, 2022, provided that (i) the Receiver provides the Applicants with a written statement of the quantum of such Accounts from time to time, and (ii) none of the Applicants requests in writing that the Receiver or its counsel pass their Accounts for such period prior to the discharge of the Receiver.

#### **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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## Schedule A

Individuals	Trusts
Allan Gross	Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Errol Yim and Andrea Yim, jointly	Fleishman Family Trust, by and through its trustee(s)
Ava Gross	J. Zachery Jones Trust, by and through its trustee(s)
Karen Nakagawa and Calvin Nakagawa, jointly	Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Carol Jaxon	Jasen Takei Revocable Living Trust, by and through its trustee(s)
Carole Kai Onouye	Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Diane Curtis	Ruth Hisaye Honda Trust, by and through its trustee(s)
Dwight Otani and Theresa Otani, jointly	S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Edward Bugarin	Wallace K. Tsuha Trust, by and through its trustee(s)
Ellen Fleishman	
Gemie Arakawa	
George Tamashiro	
Guy Pace and Caroline Berdusco, jointly	
Heidi Berger	
Henry Ko	
Hongwei Su	
James Brand	
Janis L. Lai Trustee	
Jean Morel	
Jian Zhang	
Johann Strasser	
John Dattomo and Daniela Dattomo	
Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly	
Randall Y.C. Ho	
Robert Atkinson	
Roberta Sunahara and Paul Sunahara, jointly	
Seymour Kazimirski	
Stanley Salcedo	
	Corporations / Partnerships
	1236068 Ontario Limited
	1649750 Ontario Inc.
	1818019 Ontario Limited
	Citydrill Inc.
	Gross Capital Inc.
	Dirk and Dale IRA LLC
	Gross Medical Opportunities Fund LP
	Hybrid Activities Inc.
	Mark Craig Gross Holdings Inc.
	Randy 88, LLC
	Rastogi Medicine Professional Corporation
	RMK IRA LLC

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

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

- and -

VICTORIA AVENUE NORTH HOLDINGS INC., *et al.*  
Respondents

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

**DISTRIBUTION AND ANCILLIARY  
MATTERS ORDER**

**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)

**Aryo Shalviri**, LSO #63867A

Tel: 416-863-2962

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

**Chris Burr**, LSO #55172H

Tel: 416-863-3261

Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**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

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

- and -

VICTORIA AVENUE NORTH HOLDINGS INC., *et al.*  
Respondents

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

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**MOTION RECORD**  
**(Sale Approval and Ancillary Matters)**  
**Returnable May 17, 2022**

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**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)

**Aryo Shalviri**, LSO #63867A

Tel: 416-863-2962

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

**Chris Burr**, LSO #55172H

Tel: 416-863-3261

Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**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