

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

BETWEEN:

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"¹

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**

**BOOK OF AUTHORITIES OF THE RECEIVER
(Repayment Motion)
Returnable October 14, 2022**

October 11, 2022

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TO: **THE SERVICE LIST**

¹ See Schedule "A" to the Appointment Order of Mr. Justice Koehnen granted August 3, 2021 ("**Appointment Order**")

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TAB 1

CITATION: GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc., 2014 ONSC 1173

COURT FILE NO.: CV-12-9856-00CL

DATE: 20140224

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: GE Canada Real Estate Financing Business Property Company, Applicant

AND:

1262354 Ontario Inc., Respondent

BEFORE: D. M. Brown J.

COUNSEL: L. Pillon and Y. Katirai, for the Receiver

L. Rogers, for the applicant, GE Canada Real Estate Financing Business Property Company

C. Reed, for the Respondent and for Keith Munt, the principal of the Respondent, and 800145 Ontario Inc., a related subsequent encumbrancer

A. Grossi, for the proposed purchaser, 5230 Harvester Holdings Corp.

HEARD: February 18, 2014

REASONS FOR DECISION

I. Debtor’s request for disclosure of commercially sensitive information on a receiver’s motion to approve the sale of real property

[1] PricewaterhouseCoopers Inc., the receiver of all the assets, undertaking and properties of the respondent debtor, 1262354 Ontario Inc., pursuant to an Appointment Order made November 5, 2012, moved for an order approving its execution of an agreement of purchase and sale dated December 27, 2013, with G-3 Holdings Inc., vesting title in the purchased assets in that purchaser, approving the fees and disbursements of the Receiver and authorizing the distribution of some of the net proceeds from the sale to the senior secured creditor, GE Canada Real Estate Financing Business Property Company (“GE”).

[2] The Receiver’s motion was opposed by the Debtor, Keith Munt, the principal of the Debtor, and another of his companies, 800145 Ontario Inc. (“800 Inc.”), which holds a subordinate mortgage on the sale property. The Debtor wanted access to the information filed by

the Receiver in the confidential appendices to its report, but the Debtor was not prepared to execute the form of confidentiality agreement sought by the Receiver.

[3] After adjourning the hearing date once at the request of the Debtor, I granted the orders sought by the Receiver. These are my reasons for so doing.

II. Facts

[4] The primary assets of the Debtor were two manufacturing facilities located on close to 13 acres of land at 5230 Harvester Road, Burlington (the "Property"). Prior to the initiation of the receivership the Property had been listed for sale for \$10.9 million. Following its appointment in November, 2012, the Receiver entered into a new listing agreement with Colliers Macaulay Nicolls (Ontario) Inc. at a listing price of \$9.95 million. In January, 2013, the listing price was reduced to \$8.2 million.

[5] In its Second Report dated March 14, 2013 and Third Report dated February 5, 2014, the Receiver described in detail its efforts to market and sell the Property. As of the date of the Second Report Colliers had received expressions of interest from 33 parties, conducted 8 site tours and had received 8 executed Non-Disclosure Agreements from parties to which it had provided a confidential information package. From that 5-month marketing effort the Receiver had received one offer, which it rejected because it was significantly below the asking price, and one letter of intent, to which it responded by seeking an increased price.

[6] Prior to the appointment of the Receiver the Debtor had begun the process to seek permission to sever the Property into two parcels. Understanding that severing the Property might enhance its realization value, the Receiver continued the services of the Debtor's planning consultant and in July, 2013, filed a severance application with the City of Burlington. In mid-November, 2013 the City provided the Receiver with its comments and those of affected parties. The City would not support a parking variance request. Based on discussions with its counsel, the Receiver had concerns about the attractiveness of the Property to a potential purchaser should it withdraw the parking variance request. Since the Receiver had issued its notice of a bid deadline in November, it decided to put the severance application on hold and allow the future purchaser to proceed with it as it saw fit.

[7] Returning to the marketing process, following its March, 2013 Second Report the Receiver engaged Cushman & Wakefield Ltd. to prepare a narrative report form appraisal for the Property. On June 6, 2013, Cushman & Wakefield transmitted its report stating a value as at March 31, 2013. The Receiver filed that report on a confidential basis. In its Third Report the Receiver noted that the appraised value was less than the January, 2013 listing price, as a result of which on June 4, 2013 the Receiver authorized Colliers to reduce the Property's listing price to \$6.8 million. That same day the Receiver notified the secured creditors of the reduction in the listing price and the expressions of interest for the Property it had received up until that point of time.

[8] One such letter was sent to Debtor's counsel. Accordingly, as of June 4, 2013, the Debtor and its principal, Munt: (i) were aware of the history of the listing price for the Property

under the receivership; (ii) knew of the marketing history of the Property, including the Receiver's advice that all offers and expressions of interest received up to that time had been rejected "because they were all significantly below the Listing Price and Revised Listing Price for the Property"; (iii) knew that the Receiver had obtained a new appraisal from Cushman which valued the Property at an amount "lower than the Revised Listing Price, which is consistent with the Offers and the feedback from the potential purchasers that have toured the Property"; and, (iv) learned that the listing price had been lowered to \$6.8 million.

[9] On June 18 the Receiver received an offer from an interested party (the "Initial Purchaser") and by June 24 had entered into an agreement of purchase and sale with that party. The Receiver notified new counsel for Munt and his companies of that development on July 29, 2013. The Receiver advised that the agreement contemplated a 90-day due diligence period.

[10] As the deadline to satisfy the conditions under the agreement approached, the Initial Purchaser informed the Receiver that it would not be able to waive the conditions prior to the deadline and requested an extension of the due diligence period until November 5, 2013, as well as the inclusion of an additional condition in its favour that would make the deal conditional on the negotiation of a lease with a prospective tenant. The Receiver did not agree to extend the deadline. Its reasons for so doing were fully described in paragraphs 50 and 51 of its Third Report. As a result, that deal came to an end, the fact of which the Receiver communicated to the secured parties, including Munt's counsel, on September 27, 2013.

[11] The Colliers listing agreement expired on September 30; the Receiver elected not to renew it. Instead, it entered into an exclusive listing agreement with CBRE Limited for three months with the listing price remaining at \$6.8 million. CBRE then conducted the marketing campaign described in paragraph 67 of the Third Report. Between October 7, 2013 and January 21, 2014, CBRE received expressions of interest from 56 parties, conducted 19 site tours and received 12 executed NDAs to whom it sent information packages.

[12] In October CBRE received three offers. The Receiver rejected them either because of their price or the conditions attached to them.

[13] By November, 2013, the Receiver had marketed the Property for one year, during which time GE had advanced approximately \$593,000 of the \$600,000 in permitted borrowings under the Appointment Order. The Receiver developed concerns about how long the receivership could continue without additional funding. By that point of time the Receiver had begun to accrue its fees to preserve cash.

[14] The Receiver decided to instruct CBRE to distribute an email notice to all previous bidders and interested parties announcing a December 2, 2013 offer submission deadline. Emails went out to about 1,200 persons.

[15] In response to the bid deadline notice, four offers were received. The Receiver concluded that none were acceptable.

[16] The Receiver then received five additional offers. It engaged in negotiations with those parties in an effort to maximize the purchase price. On December 13, 2013, the Receiver accepted an offer from G-3 and on December 27 executed an agreement with G-3, subject to court approval.

[17] The Receiver filed, on a confidential basis, charts summarizing the materials terms of the offers received, as well as an un-redacted copy of the G-3 APA. The G-3 offer was superior in terms of price, “clean” - in the sense of not conditional on financing, environmental site assessments, property conditions reports or other investigations – and provided for a reasonably quick closing date of February 25, 2014.

III. The adjournment request

[18] The only persons who opposed the proposed sale to G-3 were the Debtor, its principal, Munt, together with the related subsequent mortgagee, 800 Inc. When the motion originally came before the Court on February 13, 2014, the Debtor asked for an adjournment in order to review the Receiver’s materials. Although the Receiver had served the Debtor with its motion materials eight days before the hearing date, the Debtor had changed counsel a few days before the hearing. I adjourned the hearing until February 18, 2014 and set a timetable for the Debtor to file responding materials, which it did.

[19] At the hearing the Debtor, Munt and 800 Inc. opposed the sale approval order on two grounds. First, they argued that they had been treated unfairly during the sale process because the Receiver would not disclose to them the terms of the G-3 APA, in particular the sales price. Second, they opposed the sale on the basis that the Receiver had used too low a listing price which did not reflect the true value of the land and was proposing an improvident sale. Let me deal with each argument in turn.

IV. Receiver’s request for approval of the sale: the disclosure issue

A. The dispute over the disclosure of the purchase price

[20] The Debtor submitted that without access to information about the price in the G-3 APA, it could not evaluate the reasonableness of the proposed sale. In order to disclose that information to the Debtor, the Receiver had asked the Debtor to sign a form of confidentiality agreement (the “Receiver’s Confidentiality Agreement”). A dispute thereupon arose between the Receiver and Debtor about the terms of that proposed agreement.

[21] By way of background, on January 8, 2014, the Receiver had advised the secured creditors (other than GE) that it had entered into the G-3 APA and would seek court approval of the sale during the week of February 10. In that letter the Receiver wrote:

As you can appreciate, the economic terms of the Agreement, including the purchase price payable, are commercially sensitive. In order to maintain the integrity of the Sale Process, the Receiver is not in a position to disclose this information at this time.

[22] On January 10, 2014, counsel for the Debtor requested a copy of the G-3 APA. Receiver's counsel replied on January 13 that it would be seeking a court date during the week of February 10 and "as is normally the custom with insolvency proceedings, we will not be circulating the Agreement in advance".

[23] On January 23 Debtor's counsel wrote to the Receiver:

My clients, being both the owner, and secured and unsecured creditors of the owner, and having other interests in the outcome of the sales transaction, have a right to the production of the subject Agreement, and should be afforded a sufficient opportunity to review it and understand its terms in advance of any court hearing to approve the transaction contemplated therein. I once again request a copy of the subject Agreement as soon as possible.

According to the Receiver's Supplemental Report, in response Receiver's counsel explained that the purchase price generally was not disclosed in an insolvency sales transaction prior to the closing of the sale and that the secured claim of GE exceeded the purchase price.

[24] The Receiver's motion record served on February 5 contained a full copy of the G-3 APA, save that the Receiver had redacted the references to the purchase price. An affidavit filed on behalf of the Debtor stated that "it has been Mr. Munt's position that his position on the approval motion is largely contingent upon the terms and conditions of the subject Agreement, particularly the purchase price".

[25] The Debtor and a construction lien claimant, Centimark Ltd., continued to request disclosure of the G-3 APA. On February 11, 2014, Receiver's counsel wrote to them advising that the Receiver was prepared to disclose the purchase price upon the execution of the Receiver's Confidentiality Agreement which confirmed that (i) they would not be bidding on the Property at any time during the receivership proceedings and (ii) they would maintain the confidentiality of the information provided.

[26] Centimark agreed to those terms, signed the Receiver's Confidentiality Agreement and received the sales transaction information. Centimark did not oppose approval of the G-3 sales transaction.

[27] On February 12, the day before the initial return of the sales approval motion, counsel for the Receiver and Debtor discussed the terms of a confidentiality agreement, but were unable to reach an agreement. According to the Receiver's Supplement to the Third Report, "[Munt's counsel] did not inform the Receiver that Munt was prepared to waive its right to bid on the Real Property at some future date".

[28] At the initial hearing on February 13 the Debtor expanded its disclosure request to include all the confidential appendices filed by the Receiver – i.e. the June 6, 2013 Cushman & Wakefield appraisal; a chart summarizing the offers/letters of intent received while Colliers was the listing agent; a chart summarizing the offers/letters of intent received while CBRE had been

the listing agent; and, the un-redacted G-3 APA. Agreement on the terms of disclosure could not be reached between counsel; the motion was adjourned over the long weekend until February 18.

[29] The Receiver's Confidentiality Agreement contained a recital which read:

The undersigned 1262354 Ontario Inc., 800145 Ontario Inc. and Keith Munt have confirmed that it, its affiliates, related parties, directors and officers (collectively the "Recipient"), have no intention of bidding on the Property, located at 5230 Harvester Road, Burlington, Ontario.

The operative portions of the Receiver's Confidentiality Agreement stated:

1. The Recipient shall keep confidential the Confidential Information, and shall not disclose the Confidential Information in any manner whatsoever including in respect of any motion materials to be filed or submissions to be made in the receivership proceedings involving 1262354 Ontario Inc. The Recipient shall use the Confidential Information solely to evaluate the Sale Agreement in connection with the Receiver's motion for an order approving the Sale Agreement and the transaction contemplated therein, and not directly or indirectly for any other purpose.
2. The Recipient will not, in any manner, directly or indirectly, alone or jointly or in concert with any other person (including by providing financing to any other person), effect, seek, offer or propose, or in any way assist, advise or encourage any other person to effect, seek, offer or propose, whether publicly or otherwise, any acquisition of some or all of the Property, during the course of the Receivership proceedings involving 1262354 Ontario Inc.
3. The Recipient may disclose the Confidential Information to his legal counsel and financial advisors (the "Advisors") but only to the extent that the Advisors need to know the Confidential Information for the purposes described in Paragraph 1 hereof, have been informed of the confidential nature of the Confidential Information, are directed by the Recipient to hold the Confidential Information in the strictest confidence, and agree to act in accordance with the terms and conditions of this Agreement. The Recipient shall cause the Advisors to observe the terms of this Agreement and is responsible for any breach by the Advisors of any of the provisions of this Agreement.
4. The obligations set out in this Agreement shall expire on the earlier of: (a) an order of the Ontario Superior Court (Commercial List) (the "Court") unsealing the copy of the Sale Agreement filed with the Court; and (b) the closing of a transaction of purchase and sale by the Receiver in respect of the Property.

[30] Following the adjourned initial hearing of February 13, Debtor's counsel informed the Receiver that his client would sign the Receiver's Confidentiality Agreement if (i) paragraph 3 was removed and (ii) the last sentence of paragraph 1 was revised to read as follows:

The Recipient shall use the Confidential Information solely in connection with the Receiver's motion for an order approving the Sale Agreement and other relief, and not directly or indirectly for any other purpose.

[31] By the time of the February 18 hearing the Debtor had not signed the Receiver's Confidentiality Agreement.

B. Analysis

[32] In *Sierra Club of Canada v. Canada (Minister of Finance)*¹ the Supreme Court of Canada sanctioned the making of a sealing order in respect of materials filed with a court when (i) the order was necessary to prevent a serious risk to an important interest, including a commercial interest, because reasonably alternative measures would not prevent the risk and (ii) the salutary effects of the order outweighed its deleterious effects.² As applied in the insolvency context that principle has led this Court to adopt a standard practice of sealing those portions of a report from a court-appointed officer – receiver, monitor or trustee – filed in support of a motion to approve a sale of assets which disclose the valuations of the assets under sale, the details of the bids received by the court-appointed officer and the purchase price contained in the offer for which court approval is sought.

[33] The purpose of granting such a sealing order is to protect the integrity and fairness of the sales process by ensuring that competitors or potential bidders do not obtain an unfair advantage by obtaining sensitive commercial information about the asset up for sale while others have to rely on their own resources to place a value on the asset when preparing their bids.³

[34] To achieve that purpose a sealing order typically remains in place until the closing of the proposed sales transaction. If the transaction closes, then the need for confidentiality disappears and the sealed materials can become part of the public court file. If the transaction proposed by the receiver does not close for some reason, then the materials remain sealed so that the confidential information about the asset under sale does not become available to potential bidders in the next round of bidding, thereby preventing them from gaining an unfair advantage in their subsequent bids. The integrity of the sales process necessitates keeping all bids confidential until a final sale of the assets has taken place.

[35] From that it follows that if an interested party requests disclosure from a receiver of the sensitive commercial information about the sales transaction, the party must agree to refrain from participating in the bidding process. Otherwise, the party would gain an unfair advantage over those bidders who lacked access to such information.

¹ 2002 SCC 41

² *Ibid.*, para. 53.

³ 8857574 *Ontario Inc. v. Pizza Pizza Ltd.* (1994), 23 B.L.R. (2d) 239 (Gen. Div.).

[36] Applying those principles to the present case, I concluded that the Receiver had acted in a reasonable fashion in requesting the Debtor to sign the Receiver's Confidentiality Agreement before disclosing information about the transaction price and other bids received. The provisions of the Receiver's Confidentiality Agreement were tailored to address the concerns surrounding the disclosure of sensitive commercial information in the context of an insolvency asset sale:

- (i) Paragraph 1 of the agreement specified that the disclosed confidential information could be used "solely to evaluate the Sale Agreement in connection with the Receiver's motion for an order approving the Sale Agreement". In other words, the disclosure would be made solely to enable the Debtor to assess whether the proposed sales transaction had met the criteria set out in *Royal Bank of Canada v. Soundair Corp.*,⁴ specifically that (i) the Receiver had obtained the offers through a process characterized by fairness, efficiency and integrity, (ii) the Receiver had made a sufficient effort to get the best price and had not acted improvidently, and (iii) the Receiver had taken into account the interests of all parties. The Debtor was not prepared to agree to that language in the agreement and, instead, proposed more general language. The Debtor did not offer any evidence as to why it was not prepared to accept the tailored language of paragraph 1 of the Receiver's Confidentiality Agreement;
- (ii) The recital and paragraphs 2 and 4 of the agreement would prevent the Debtor, its principal and related company, from bidding on the Property during the course of the receivership – a proper request. The Debtor was prepared to agree to that term;
- (iii) However, the Debtor was not prepared to agree with paragraph 3 of the Receiver's Confidentiality Agreement which limited disclosure of the confidential information to the Debtor's financial advisors only for the purpose of evaluating the Receiver's proposed sale transaction. Again, the Debtor did not file any evidence explaining its refusal to agree to this reasonable provision. Although Munt filed an affidavit sworn on February 14, he did not deal with the issue of the form of the confidentiality agreement.

[37] In sum, I concluded that the form of confidentiality agreement sought by Receiver from the Debtor as a condition of disclosing the commercially sensitive sales transaction information was reasonable in scope and tailored to the objective of maintaining the integrity of the sales process. I regarded the Debtor's refusal to sign the Receiver's Confidentiality Agreement as unreasonable in the circumstances and therefore I was prepared to proceed to hear and dispose of the sales approval motion in the absence of disclosure of the confidential information to the Debtor.

⁴ (1991), 4 O.R. (3d) 1 (C.A.)

V. Receiver's request for approval of the sale: The *Soundair* analysis

[38] The Receiver filed detailed evidence describing the lengthy marketing process it had undertaken with the assistance of two listing agents, the offers received, and the bid-deadline process it ultimately adopted which resulted in the proposed G-3 APA. I was satisfied that the process had exposed the Property to the market in a reasonable fashion and for a reasonable period of time. In order to provide an updated benchmark against which to assess received bids the Receiver had obtained the June, 2013 valuation of the Property from Cushman & Wakefield.

[39] The offer received from the Initial Purchaser had contained the highest purchase price of all offers received and that price closely approximated the "as is value" estimated by Cushman & Wakefield. That offer did not proceed. The purchase price in the G-3 APA was the second highest received, although it was below the appraised value. However, it was far superior to any of the other 11 offers received through CBRE in the last quarter of 2013. From that circumstance I concluded that the appraised value of the Property did not accurately reflect prevailing market conditions and had over-stated the fair market value of the Property on an "as is" basis. That said, the purchase price in the G-3 APA significantly exceeded the appraised land value and the liquidation value estimated by Cushman & Wakefield.

[40] Nevertheless, Munt gave evidence of several reasons why he viewed the Receiver's marketing efforts as inadequate:

- (i) Munt deposed that had the Receiver proceeded with the severance application, it could have marketed the Property as one or two separate parcels. As noted above, the Receiver explained why it had concluded that proceeding with the severance application would not likely enhance the realization value, and that business judgment of the Receiver was entitled to deference;
- (ii) Munt pointed to appraisals of various sorts obtained in the period 2000 through to January, 2011 in support of his assertion that the ultimate listing price for the Property was too low. As mentioned, the June, 2013 appraisal obtained by the Receiver justified the reduction in the listing price and, in any event, the bids received from the market signaled that the valuation had over-estimated the value of the Property;
- (iii) Finally, Munt complained that the MLS listing for the Property was too narrowly limited to the Toronto Real Estate Board, whereas the Property should have been listed on all boards from Windsor to Peterborough. I accepted the explanation of the Receiver that it had marketed the Property drawing on the advice of two real estate professionals as listing agents and was confident that the marketing process had resulted in the adequate exposure of the Property.

[41] Consequently, I concluded that the Receiver's marketing of the Property and the proposed sales transaction with G-3 had satisfied the *Soundair* criteria. I approved the sale agreement and granted the requested vesting order.

VI. Request to approve Receiver's activities and fees

[42] As part of its motion the Receiver sought approval of its fees and disbursements, together with those of its counsel, for the period up to January 31, 2014, as well as authorization to make distributions from the net sale proceeds for Priority Claims and an initial distribution to the senior secured, GE. The Debtor sought an adjournment of this part of the motion until after any sale had closed and the confidential information had been unsealed. I denied that request.

[43] As Marrocco J., as he then was, stated in *Bank of Montreal v. Dedicated National Pharmacies Inc.*,⁵ motions for the approval of a receiver's actions and fees, as well as the fees of its counsel, should occur at a time that makes sense, having regard to the commercial realities of the receivership. For several reasons I concluded that it was appropriate to consider the Receiver's approval request at the present time.

[44] First, one had to take into account the economic reality of this receivership – i.e. that given the cash-flow challenges of this receivership, the Receiver had held off seeking approval of its fees and disbursements for a considerable period of time during which it had been accruing its fees.

[45] Second, the Receiver filed detailed information concerning the fees it and its legal counsel had incurred from September, 2012 until January 31, 2014, including itemized invoices and supporting dockets. The Receiver had incurred fees and disbursements amounting to \$356,301.40, and its counsel had incurred fees approximating \$188,000.00. That information was available for the Debtor to review prior to the hearing of the motion.

[46] Third, with the approval of the G-3 sale, little work remained to be done in this receivership. By its terms the G-3 APA contemplated a closing date prior to February 27, 2014, and the main condition of closing in favour of the purchaser was the securing of the approval and vesting order.

[47] Fourth, the Receiver reported that GE's priority secured claim exceeded the purchase price. Accordingly, GE had the primary economic interest in the receivership; it had consented to the Receiver's fees. Also, the next secured in line, Centimark, had not opposed the Receiver's motion.

[48] Which leads me to the final point. Like any other civil proceeding, receiverships before a court are subject to the principle of procedural proportionality. That principle requires taking account of the appropriateness of the procedure as a whole, as well as its individual component parts, their cost, timeliness and impact on the litigation given the nature and complexity of the litigation.⁶ In this receivership the Receiver had served this motion over a week in advance of

⁵ 2011 ONSC 346, para. 7.

⁶ *Hryniak v. Mauldin*, 2014 SCC 7, para. 31.

the hearing date and the Debtor had secured an adjournment over a long weekend; the Debtor had adequate time to review, consider and respond to the motion. I considered it unreasonable that the Debtor was not prepared to engage in a review of the Receiver's accounts in advance of the second hearing date, while at the same time the Debtor took advantage of the adjournment to file evidence in response to the sales approval part of the motion.

[49] Debtor's counsel submitted that an adjournment of the fees request was required so that the Debtor could assess the reasonableness of the fees in light of the purchase price. Yet, it was the Debtor's unreasonable refusal to sign the Receiver's Confidentiality Agreement which caused its inability to access the purchase price at this point of time, and such unreasonable behavior should not be rewarded by granting an adjournment of the fees portion of the motion.

[50] Further, to adjourn the fees portion of the motion to a later date would increase the litigation costs of this receivership. From the report of the Receiver the Debtor's economic position was "out of the money", so to speak, with the senior secured set to suffer a shortfall. It appeared to me that the Debtor's request to adjourn the fees part of the motion would result in additional costs without any evident benefit. I asked Debtor's counsel whether his client would be prepared to post security for costs as a term of any further adjournment; counsel did not have instructions on the point. In my view, courts should scrutinize with great care requests for adjournments that will increase the litigation costs of a receivership proceeding made by a party whose economic interests are "out of the money", especially where the party is not prepared to post security for the incremental costs it might cause.

[51] For those reasons, I refused the Debtor's second adjournment request.

[52] Having reviewed the detailed dockets and invoices filed by the Receiver and its counsel, as well as the narrative in the Third Report and its supplement, I was satisfied that its activities were reasonable in the circumstances, as were its fees and those of its counsel. I therefore approved them.

VII. Partial distribution

[53] Given that upon the closing of the sale to G-3 the Receiver will have completed most of its work, I considered reasonable its request for authorization to make an interim distribution of funds upon the closing. In its Third Report the Receiver described certain Priority Claims which it had concluded ranked ahead of GE's secured claim, including the amounts secured by the Receiver's Charge, the Receiver's Borrowing Charge and an H.S.T. claim. As well, it reported that it had received an opinion from its counsel about the validity, perfection and priority of the GE security, and it had concluded that GE was the only secured creditor with an economic interest in the receivership. In light of those circumstances, I accepted the Receiver's request that, in order to maximize efficiency and to avoid the need for an additional motion to seek approval for a distribution, authorization should be given at this point in time to the Receiver to pay out of the sale proceeds the priority claims and a distribution to GE, subject to the Receiver maintaining sufficient reserves to complete the administration of the receivership.

VIII. Summary

[54] For these reasons I granted the Receiver's motion, including its request to seal the Confidential Appendices until the closing of the sales transaction.

D. M. Brown J.

Date: February 24, 2014

TAB 2

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

THE HONOURABLE MR.) TUESDAY, THE 3RD DAY
)
JUSTICE KOEHNEN) OF AUGUST, 2021

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

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by American General Life Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the "**Applicants**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KPMG Inc. ("**KPMG**") as receiver and manager (in such capacities, the "**Receiver**") without security, of (i) all of the assets, undertakings and properties, including, without limitation, the properties with legal descriptions set out in Schedule "B" (the "**Real Properties**") 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**" and together with



the Legal Owner, the “**Debtors**”) 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, including the Beneficial Owners who are Respondents in these proceedings and are listed on Schedule “A” (collectively, the “**Beneficial Owners’ Property**” and together with the Legal Owner’s Property, the “**Property**”), proceeded by judicial videoconference due to the COVID-19 pandemic.

ON READING the Affidavit of Jacob Baron, sworn July 9, 2021 (the “**Baron Affidavit**”) and the pre-filing report of KPMG in its capacity as proposed Receiver dated July 26, 2021, and on hearing the submissions of counsel for the Applicants and those other counsel and parties listed on the Participant Information Form, no one else appearing although duly served as appears from the affidavit of service of Nancy Thompson sworn July 27, 2021 and on reading the consent of KPMG to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and the method of service validated pursuant to the Order of Justice Gilmore granted on July 12, 2021 (the “**Substituted Service Order**”) so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

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

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable (provided that any disbursements made in connection therewith are made in accordance with the Receiver Term Sheet, as defined in the Baron Affidavit, unless otherwise ordered by the Court):

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

- (g) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Legal Owner or any part or parts thereof;
- (h) to receive and collect all monies and accounts now owed or hereafter owing to (i) the Legal Owner, including, but not limited to, all rents (whether deferred or otherwise) and to exercise all remedies of the Legal Owner in collecting such monies, including, without limitation, to enforce any security held by the Legal Owner, or (ii) the Beneficial Owners on account of the Beneficial Owners' Property and to exercise all remedies of the Beneficial Owners in collecting such monies, including, without limitation, to enforce any security held by the Beneficial Owners;
- (i) to settle, extend or compromise any indebtedness owing to the Legal Owner;
- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Legal Owner, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to file an assignment in bankruptcy on behalf of the Legal Owner, or to consent to the making of a bankruptcy order against the Legal Owner;
- (m) to market any or all of the Property for sale or lease, including advertising and soliciting offers in respect of the Property and any part or parts thereof, and/or soliciting engagement proposals by brokers, listing agents or leasing agents and negotiating such terms and conditions of such sale, lease or engagement as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$750,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Legal Owner;
- (s) to apply for any relief under the Canadian Emergency Rent Assistance Program or any other governmental aid or relief program in the name of the Legal Owner, if thought desirable by the Receiver;
- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of the Legal Owner, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Legal Owner;

- (u) to exercise any shareholder, partnership, joint venture or other rights which the Legal Owner may have, or which the Beneficial Owners may have in respect of the Property; and
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, lease agreements, rent rolls, rent deferral agreements or documentation, securities, contracts, orders, corporate and accounting records, Deposits, and any other papers, records and information of any kind related to the Property, or to the business or affairs of the Legal Owner, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. For greater certainty, the Receiver is authorized and empowered to access and make, retain and take away copies of the Records located at the offices of Gross Capital at the expense of the Receiver and the Gross Capital Trustee shall cooperate and provide reasonable assistance to the Receiver with respect to such Records and information contained in such Records.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE LEGAL OWNER OR THE PROPERTY

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

the Legal Owner or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

13. **THIS COURT ORDERS** that any employees of the Legal Owner shall be deemed to have been terminated by the Legal Owner immediately prior to the issuance of this Order. The Receiver shall not engage any employees of the Legal Owner as its employees and shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

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

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to

their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

other applicable legislation.

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicants pursuant to the Receiver Term Sheet, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, in accordance with the Receiver Term Sheet, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The

whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

26. **THIS COURT ORDERS** that this Order and any other materials, notices or other correspondence in these proceedings can continue to be served upon the Original Beneficial

Owners and Other Potential Parties of Interest (as defined in the Baron Affidavit) in the same manner provided for service of this Application pursuant to the Substituted Service Order.

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

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

GENERAL

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

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

31. **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

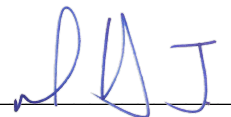
make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

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

35. **THIS COURT ORDERS** that the Receiver shall, as soon as reasonably practicable and in any event no later than (i) November 3, 2021, or (ii) such later date as may be ordered by this Court, on notice to the Service List, seek Court approval of a marketing and sale process in respect of the Real Properties.



SCHEDULE "A"

Individuals
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

Trusts
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)
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

SCHEDULE "B"
"Real Properties"

Municipal Address: 304 Victoria Avenue North, Hamilton

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

Municipal Address: 414 Victoria Avenue North, Hamilton

Legal Description: 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 "C"

RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that KPMG Inc., the receiver (the "**Receiver**") of (i) all of the assets, undertakings and properties, including, without limitation, the properties with legal descriptions set out on Schedule "B" of the Order (as defined below) (the "**Real Properties**") 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, including the Beneficial Owners who are Respondents in these proceedings and are listed on Schedule "A" of the Order (as defined below) (collectively, the "**Beneficial Owners' Property**" and together with the Legal Owner's Property, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 3rd day of August, 2021 (the "**Order**") made in an action having Court file number CV-21-00665375-00CL, has received as such Receiver from the holders of this certificate, being American General Life Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the "**Lenders**"), the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lenders with interest thereon calculated in accordance with the Receiver Term Sheet (as defined in the Affidavit of Jacob Baron sworn July 9, 2021).

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself

out of such Property in respect of its remuneration and expenses.

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

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

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

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

DATED the ____ day of _____, 2021.

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

Per: _____

Name:

Title:

AMERICAN GENERAL LIFE INSURANCY COMPANY *et al.*
Applicants

- and - VICTORIA AVENUE NORTH HOLDINGS INC. *et al.*
Respondents

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

Proceeding Commenced at Toronto

**ORDER
(Appointing Receiver)**

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

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Tel: 416-863-5256
Fax: 416-863-2653

Lawyers for the Applicants

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
)
MR. JUSTICE KOEHNEN) FRIDAY, THE 29th
) DAY OF OCTOBER, 2021

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

ORDER

(Approval of Broker Engagement, Sale Process and Ancillary Matters)

THIS MOTION made by KPMG Inc., in its capacity as Court appointed receiver and manager (the "**Receiver**") without security, of (i) all of the assets, undertakings and properties, including, without limitation, the real properties municipally known as 304 Victoria Avenue North, Hamilton, Ontario and 414 Victoria Avenue North, Hamilton, Ontario (collectively with the leases related thereto, the "**Real Property Assets**") 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**" and together with the Legal Owner, the "**Debtors**") in and to the Legal Owner's Property, including the Real Property Assets and all proceeds thereof, whether held directly or



indirectly by the Beneficial Owners for themselves or for others, including the Beneficial Owners who are Respondents in these proceedings and are listed on Schedule “A” (the “**Beneficial Owners’ Property**” and together with the Legal Owners’ Property, the “**Property**”), for an Order, among other things:

- (i) approving the broker listing agreement dated as of October 20, 2021 (the “**Broker Engagement Agreement**”) among the Legal Owner and CBRE Limited (the “**Broker**”) and the engagement of the Broker as exclusive real estate broker in accordance with the terms therein;
- (ii) approving the proposed sale process set out at Schedule “B” hereto (the “**Sale Process**”); and
- (iii) sealing Confidential Appendices “A” and “B” (collectively, the “**Confidential Appendices**”) to the Receiver’s Second Report to the Court dated October 22, 2021 (the “**Second Report**”),

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

ON READING the Receiver’s Notice of Motion, the Second Report and the appendices thereto, the affidavit of Nancy Thompson sworn October 26, 2021 (the “**Thompson Affidavit**”), and on hearing the submissions of counsel for the Receiver and the Applicants and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver’s motion record as appears from the Thompson Affidavit.

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver’s Notice of Motion and Motion Record 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.

CBRE AS BROKER

2. **THIS COURT ORDERS** that the Broker Engagement Agreement, a redacted copy of which is attached as Appendix “C” to the Second Report and an unredacted copy of which is

attached as Confidential Appendix “B” to the Second Report, is hereby approved and (i) the Receiver is hereby authorized to execute, on behalf of the Debtors, such other ancillary agreements or documents as may be necessary or desirable in connection with the Broker’s mandate, and (ii) the Broker is authorized to act as the exclusive real estate broker to market the Property in accordance with the Sale Process.

SALE PROCESS

3. **THIS COURT ORDERS** that the Sale Process be and is hereby approved.
4. **THIS COURT ORDERS** that the Receiver and the Broker are hereby authorized and directed to perform their obligations under the Sale Process and to do all such things as are necessary or desirable to implement and carry out the Sale Process.
5. **THIS COURT ORDERS** that the Receiver and the Broker and their respective representatives and advisors shall have no corporate or personal liability in connection with conducting the Sale Process, save and except for any gross negligence or wilful misconduct on their part, as determined by this Court. Nothing in this Order shall derogate from the protections afforded to the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* (Canada) or the Appointment Order granted on August 3, 2021 (the “**Appointment Order**”).
6. **THIS COURT ORDERS** that, in connection with the Sale Process and pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver and Broker are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or bidders and to their advisors, but only to the extent desirable or required (in the sole discretion of the Receiver) to negotiate and attempt to complete one or more sale transactions (each, a “**Transaction**”). Each prospective purchaser or bidder to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Receiver or Broker (as applicable); or (ii) destroy all such information that is not electronically stored and, in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser in any Transaction shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which

is in all material respects identical to the prior use of such information by the Debtors or the Receiver, and shall return all other personal information to the Receiver or Broker (as applicable), or ensure that all other personal information is destroyed.

RECEIVER TERM SHEET

7. **THIS COURT ORDERS** that the Receiver is hereby authorized to execute an amending agreement with the Applicants, amending the definition of “Initial Term” in the Receiver Term Sheet (as defined in the Appointment Order) to “June 30, 2022” and that the Receiver’s Borrowings Charge (as defined in the Appointment Order) shall continue to secure all amounts owing pursuant to the Receiver Term Sheet, as amended, with the same priority provided for in the Appointment Order.

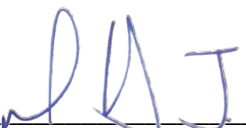
SEALING ORDER

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

GENERAL

9. **THIS COURT ORDERS** that the Receiver is at liberty to apply to the Court for advice and directions with respect to this Order and/or the Sale Process.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Receiver 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 may be necessary or desirable to give effect to this Order and to assist the Receiver in carrying out the terms of this Order.



SCHEDULE "A"

Individuals
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

Trusts
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)
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

SCHEDULE "B"
SALE PROCESS

Procedures for the Sale Process

Background

1. On August 3, 2021, pursuant to an application by American General Life Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the “**Applicants**”), KPMG Inc. was appointed as Receiver and Manager (in such capacity, the “**Receiver**”) of all of the Property (as defined in Schedule “A” hereto), pursuant to an Order of the Superior Court of Justice (Commercial List) (the “**Court**”) granted in receivership proceedings bearing Court File No. CV-21-00665375-00CL (the “**Receivership Proceedings**”).
2. On October 29, 2021, the Court granted an Order, approving a sale process in accordance with the terms and conditions set forth herein (the “**Sale Process**”) and the engagement of CBRE Limited as listing broker (in such capacity, the “**Broker**”).
3. The Sale Process is to be conducted by the Receiver, with the assistance of the Broker. The purpose of the Sale Process is to identify one or more purchasers of the Real Property Assets and any other Property (as defined and listed in Schedule “A” hereto) and to complete one or more transactions as contemplated herein. Set forth below are the procedures that shall govern the Sale Process and any transactions consummated as a result thereof.

Sale Process Overview and Timeline

4. The Sale Process procedures set forth herein describe: (i) the manner in which prospective bidders may gain or continue to have access to due diligence materials and information concerning the Property, including the Real Property Assets, (ii) the process for the receipt and negotiation of Non-Binding LOIs, Bids, Successful Bids and Binding Agreements (each as defined below), (iii) the process and criteria by which Qualified Bids (defined below) are determined, and (iv) the process and criteria by which a Qualified Bid may be evaluated and selected as a Successful Bid (defined below).
5. The Sale Process shall be implemented by the Receiver, with the assistance of the Broker.
6. The following table sets out a summary and approximate timeline of key milestones under this Sale Process, subject to any amendments by the Receiver pursuant to and in accordance with the terms herein (all capitalized terms are defined below):

Milestone	Anticipated Date / Timeline
Commencement of Sale Process	November 1, 2021
Commencement of Phase I (Portfolio) Marketing Period	November 1, 2021
Commencement of Phase II (Sub-Portfolio) Marketing Period	November 30, 2021
Determination of Initial Bid Deadline by the Receiver, and communication to prospective bidders (<i>on no less than 30 days’ notice</i>)	December, 2021
Initial Bid Deadline	To be determined by Receiver as set out above and paragraph 13 herein

Review of Non-Binding LOIs, selection of any Lead Bid(s) and determination by Receiver to proceed with a Qualified Bid Deadline	21 days following Initial Bid Deadline
Qualified Bid Deadline, if applicable (<i>on no less than 10 days' notice</i>)	Within 31 days following Initial Bid Deadline
Negotiation of Binding Agreement(s)	2 weeks following selection of Lead Bid (if applicable) or Qualified Bid Deadline (if applicable)
Satisfaction or waiver of due diligence conditions in Binding Agreement(s)	4 to 6 weeks following execution of such Binding Agreement(s) (exact timeline to be agreed upon therein)
Court approval of any Successful Bid(s)	As soon as reasonably practicable following satisfaction of any due diligence conditions in applicable Binding Agreement(s)
Closing of any Successful Bid(s)	As soon as reasonably practicable following Court approval

Marketing Period

Phase I (Portfolio) Marketing Period

7. The Broker, in consultation with the Receiver, will prepare a list of parties that may have an interest in a potential transaction to acquire the entire Portfolio (as defined and listed in Schedule "A" hereto) (the "**Identified Portfolio Buyers**"). As soon as reasonably practicable following the commencement of the Sale Process, the Broker shall: (i) notify the Identified Portfolio Buyers and any other parties who reach out to the Broker or the Receiver and express an interest in acquiring the entire Portfolio (together with the Identified Portfolio Buyers, the "**Known Portfolio Buyers**") of the existence of the Sale Process, and invite the Known Portfolio Buyers to participate in the Sale Process in accordance with the terms of the Sale Process, (ii) market the entire Portfolio on such social media platforms as the Broker, in consultation with the Receiver, deems advisable including, without limitation, LinkedIn, and (iii) take any other steps to advertise the Real Property Assets as the Receiver, in consultation with the Broker, deems appropriate.

8. A non-confidential marketing presentation prepared by the Broker, in consultation with the Receiver, (the "**Marketing Presentation**") describing the opportunity to acquire the entire Portfolio will be made available by the Broker to all Known Portfolio Buyers as soon as reasonably practicable following the commencement of the Sale Process.

Phase II (Sub-Portfolio) Marketing Period

9. The Broker, in consultation with the Receiver, will prepare a list of parties that may have an interest in a potential transaction to acquire less than the entire Portfolio (the “**Identified Sub-Portfolio Buyers**”). As soon as reasonably practicable following November 30, 2021 (or such earlier date that the Receiver deems appropriate, in consultation with the Broker), the Broker shall: (i) notify local brokerage firms identified by the Broker (the “**Local Brokers**”), (ii) notify Identified Sub-Portfolio Buyers and any other parties who reach out to the Broker or the Receiver and express an interest in acquiring less than the entire Portfolio (collectively, the “**Known Sub-Portfolio Buyers**” and together with the Known Portfolio Buyers, the “**Known Buyers**”) of the existence of the Sale Process, and invite the Known Sub-Portfolio Buyers to express their interest and participate in the Sale Process in accordance with the terms of the Sale Process, (iii) erect “For Sale” signage in respect of any one or more Real Property Asset that the Broker may determine, (iv) list each Real Property Asset on the Multiple Listing Service (MLS) and (v) take any other steps to advertise the Real Property Assets as the Receiver, in consultation with the Broker, deem appropriate.

10. A non-confidential marketing brochure for each Real Property Asset describing the opportunity to acquire each Real Property Asset (each, a “**Brochure**”) will be made available by the Broker to all Known Sub-Portfolio Buyers and Local Brokers as soon as practicable following November 30, 2021 (or such earlier date that the Receiver deems appropriate, in consultation with the Broker).

Access to Dataroom & Site Visits

11. In order for any party that is interested in participating in the Sale Process to: (i) participate in the Sale Process, (ii) be granted access to the electronic dataroom that contains confidential information concerning the Property, including the Real Property Assets (the “**Dataroom**”), and (iii) be provided with any other confidential information by the Broker or the Receiver, such party must deliver to the Receiver, an executed confidentiality agreement, in form and substance satisfactory to Receiver (“**Confidentiality Agreement**”, with a party who executes a Confidentiality Agreement becoming a “**Potential Bidder**”).

12. Potential Bidders shall be provided with access to the Dataroom, together with the Marketing Presentation, Brochures and such further information and marketing materials (collectively, the “**Marketing Materials**”) as the Receiver or Broker may deem appropriate. The Receiver, Broker, Legal Owner and Beneficial Owners and their respective representatives and advisors make no representation or warranty as to the accuracy or completeness of any information provided to Potential Bidders, including the information contained in any Marketing Materials or the Dataroom. The Receiver and Broker will coordinate all reasonable requests from Potential Bidders for additional information and due diligence access to the Real Property Assets. The Receiver, Broker, Legal Owner and Beneficial Owners and their respective representatives and advisors are not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Property, whether provided during site visits or obtained from the Dataroom or otherwise.

Bidding Process

Initial Bid Deadline

13. The Receiver, in consultation with the Broker, will determine and designate an initial bid deadline (the “**Initial Bid Deadline**”) and provide no less than 30 days’ notice of same by:

- (a) Email and/or telephone to all Potential Bidders;
- (b) Email to all Known Buyers (other than Potential Bidders notified pursuant to subparagraph 13(a) above);
- (c) Updating any applicable social media and/or MLS postings; and
- (d) Publication in the Dataroom and the website established by the Receiver for the Receivership Proceedings.

Non-Binding LOIs & Bids

14. A Potential Bidder that wishes to make a formal offer to consummate a potential transaction must deliver a non-binding letter of intent ("**Non-Binding LOI**") to the Broker and the Receiver by sending an email attaching same to the email addresses set out for each in Schedule "A" hereto. A Non-Binding LOI shall only be considered a "**Bid**" (and such Potential Bidder submitting the Bid, a "**Bidder**") and reviewed by the Receiver in the Sale Process if it is received by the Broker and Receiver by no later than the Initial Bid Deadline, and meets the requirements set by the Receiver and/or the Broker, which shall include all of the following:

- (a) General Deal Structure: Clear identification of: (i) the Property (including Real Property Assets) proposed to be acquired (the "**Purchased Assets**"), (ii) any liabilities anticipated to be assumed, and (iii) the total proposed purchase price for the Purchased Assets (the "**Purchase Price**");
- (b) Material Conditions: Clear identification of all material conditions to closing that the Bidder may wish to impose and the process and expected timing for satisfaction of same;
- (c) Overview of Bidder: The identity and background of all parties submitting the Bid;
- (d) No Reliance: An acknowledgement and representation that the Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets and liabilities to be assumed; and (ii) has not relied upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied regarding the Purchased Assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith;
- (e) As is/Where is: A confirmation that the Purchased Assets to be acquired and liabilities to be assumed are to be acquired and assumed substantially on an "as, is, where is" and without recourse basis; and
- (f) Additional Information: Such other information as may reasonably be requested by the Receiver and/or the Broker.

Review of Non-Binding LOIs & Bids

15. The Receiver, in consultation with the Broker, will review each Non-Binding LOI. The Receiver and/or the Broker may request clarification of the terms of any Non-Binding LOI and, for greater certainty, may hold clarifying discussion with any Bidder regarding its Non-Binding LOI, including to request that such Bidder submit a revised and clarified Non-Binding LOI, provided the initial Non-Binding LOI was submitted by the Initial Bid Deadline.

16. As soon as reasonably practicable following the Initial Bid Deadline, the Receiver, in consultation with the Broker, will assess the Non-Binding LOIs received and determine which Non-Binding LOIs constitute Bids. To the extent that a Non-Binding LOI is not compliant with any one or more of the requirements specified in paragraph 14, the Receiver, in consultation with the Broker, may waive such non-compliance, in the Receiver's sole discretion.

17. Within 21 days of the Initial Bid Deadline, the Receiver, following consultation with the Broker may:

- (a) Select one or more non-overlapping Bids as a lead bid (a "**Lead Bid**"), if the Bidder submitting such Lead Bid is determined to be a Qualified Bidder and such Bid is determined to satisfy the requirements of a Qualified Bid set out in paragraph 19 (with the exception of it being irrevocable and binding, and provided that it has been submitted by the Initial Bid Deadline) and negotiate and settle the terms of Binding Agreement(s) with such Qualified Bidder(s).

- (b) Initiate a second round of bidding and request that two or more Bidders submit qualifications to become Qualified Bidders and submit a “**Binding Offer**” in the form of a markup of a form of purchase and sale agreement prepared by the Receiver (“**Form of Binding Agreement**”) and deliver a copy thereof, together with a blackline against the Form of Binding Agreement (or such other form of binding agreement that the Receiver, in its sole discretion, determines is satisfactory), by a deadline to be designated by the Receiver in consultation with the Broker, and communicated to such Bidders on no less than 10 days’ notice (the “**Qualified Bid Deadline**”), in which case the Receiver may, following consultation with the Broker, select any one or more non-overlapping Binding Offers as a successful bid and negotiate and settle the terms of Binding Agreement(s).

18. Any Binding Agreement that is settled in accordance with paragraph 17(a) and executed or any Binding Offer that is selected as a successful bid in accordance with paragraph 17(b) shall be a “**Successful Bid**”.

Qualified Bids

19. As soon as reasonably practicable following the Qualified Bid Deadline, the Receiver, in consultation with the Broker, will assess the Binding Offers received and determine which Binding Offers constitute Qualified Bids. A Binding Offer shall only be considered a “**Qualified Bid**” if it meets the requirements set by the Receiver and/or the Broker, which shall include all of the following:

- (a) Qualified Bidder: The Binding Offer is submitted by a Qualified Bidder (as defined and described below) and meets all of the criteria of a Bid as set out in paragraph 14;
- (b) Deadline: The Binding Offer is received by the Broker and Receiver by no later than the Qualified Bid Deadline;
- (c) Irrevocability: The Binding Offer is irrevocable for a period of not less than 5 days;
- (d) Identity of Sponsors: The identity of all parties that will be sponsoring or participating in the proposed transaction, including all direct and indirect principals of the Qualified Bidder and information about any sources of debt or equity capital sufficient for the Receiver to determine which individuals have a direct or indirect economic interest in the proposed transaction;
- (e) Approval: Evidence, in form and substance reasonably satisfactory to the Receiver, of corporate authorization and approval from the Qualified Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Binding Offer, which clearly identifies any anticipated shareholder, regulatory or other approvals outstanding (and the anticipated time frame and any anticipated impediments for obtaining such approvals);
- (f) Assumed Contracts: Clear identification of the contracts, agreements or other arrangements that are to be assumed by the Qualified Bidder;
- (g) Due Diligence: To the extent that the proposed transaction is conditional upon additional confirmatory due diligence, clear identification of the scope and nature of such confirmatory due diligence and timing for satisfaction of same;
- (h) Timeline to Closing: A timeline to closing with critical milestones; and
- (i) Additional Information: Such other information as may reasonably be requested by the Receiver and/or the Broker.

20. To the extent that a Binding Offer is not compliant with any one or more of the requirements specified in paragraph 19, the Receiver, in consultation with the Broker, may waive such non-compliance, in the Receiver’s sole discretion.

Qualified Bidder Requirements

21. The Receiver, in consultation with the Broker, shall assess each Bidder to determine whether such Bidder is likely to be able to consummate its proposed transaction (a “**Qualified Bidder**”), taking into account such factors as, without limitation, the Bidder’s financial wherewithal, availability of financing, existing market presence (if any), experience with comparable transactions to the proposed transaction and any other factors that may be relevant, in the sole discretion of the Receiver. The Receiver shall promptly notify any Bidder which has been determined to be a Qualified Bidder.

22. At any time during the Sale Process, the Receiver may, in consultation with the Broker, eliminate a Potential Bidder or Bidder from the Sale Process, including if: (i) such party does not submit a Bid by the Initial Bid Deadline, (ii) such party does not submit a Qualified Bid by the Qualified Bid Deadline (if applicable), or (iii) the Receiver determines that a previously designated Qualified Bidder ceases to meet the criteria of a Qualified Bidder. Any Potential Bidder or Bidder who is disqualified from the Sale Process will be notified as such by the Receiver, and shall (i) have its access to the Dataroom terminated, and (ii) no longer be entitled to further correspondence or updates regarding the Sale Process, in each case unless and until the Receiver determines, in its sole discretion, that the Bidder qualifies (or re-qualifies) as a Qualified Bidder.

Successful Bids

23. Evaluation criteria with respect to whether a Bid or Qualified Bid constitutes a Successful Bid may include, but are not limited to factors such as: (i) the Purchase Price and net value (including assumed liabilities and other obligations to be performed by the Qualified Bidder), (ii) the form of consideration being offered, including any Purchase Price adjustments and/or any non-cash consideration, (iii) whether there is a firm irrevocable commitment for financing or whether the Qualified Bidder has demonstrated access to sufficient capital resources to consummate its proposed transaction, (iv) the claims likely to be created by such bid in relation to other bids, (v) the counterparties to its proposed transaction, (vi) the terms of its proposed Binding Agreement, (vii) the scope, nature and anticipated length of any remaining due diligence that remains to be carried out, (viii) other factors affecting the speed, certainty and value of its proposed transaction (including any regulatory approvals required to close its proposed transaction), (ix) the Property and liabilities included or excluded from the bid, and (x) the likelihood and timing of consummating the proposed transaction.

Court Approval

24. The acceptance of the Successful Bid(s) by the Receiver will be subject to approval of the Court. The Receiver shall use reasonable efforts to apply to the Court for approval of any Successful Bid(s) as soon as practical following the determination by it of any such Successful Bid(s).

25. On closing of a Successful Bid, all overlapping Binding Offers (other than such Successful Bid) shall be deemed rejected by the Receiver as of the date of the closing of such Successful Bid.

Modification, Termination & Waiver

26. The Receiver shall have the right, at any time and in its sole discretion, to: (i) waive strict compliance with the terms of this Sale Process by any person (including missed deadlines or late submission of materials), and (ii) modify the procedures set out herein (including altering the deadlines set out herein), and/or adopt such other procedures that will better promote the sale of any part of the Property (or any portion thereof), provided that material modifications to, or the termination of, the Sale Process shall require Court approval. For certainty, any waiver of or amendments to the deadlines set out herein shall not constitute a material modification.

“As Is, Where Is”

27. Any sale of the Property will be on an “as is, where is” and without recourse basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, the Broker, the Legal Owner, the Beneficial Owners (as defined in Schedule “A” hereto) or their respective representatives or advisors, except to the extent otherwise expressly provided under a Binding Agreement.

Free of Any and All Claims and Interests

28. In the event of a sale of Purchased Assets, to the extent permitted by law, all of the rights, title and interests of the Legal Owner and Beneficial Owners in such Purchased Assets will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges and interests on or against such Purchased Assets (collectively, the “**Claims and Interests**”), other than those permitted encumbrances expressly set out in any applicable Binding Agreement, and such Claims and Interests are only to attach to the net proceeds of the sale of Purchased Assets (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof).

No Obligation to Conclude a Transaction

29. Neither the Receiver nor the Broker shall be under any obligation to (i) continue negotiations with any Qualified Bidder, and/or (ii) accept any Qualified Bid or other offer (including the highest or best offer), or to select any Successful Bid(s). Without limiting the generality of the foregoing and for greater certainty, the Receiver, in consultation with the Broker, shall have the discretion to determine that a Qualified Bid is not a Successful Bid, even if such Qualified Bid has the highest gross Purchase Price, having regard in all circumstances to the criteria set out in paragraph 23 above.

No Liability

30. The Receiver, Broker, Legal Owner and Beneficial Owners and their respective representatives and advisors shall have no liability or obligations whatsoever to any party or person in connection the Sale Process, including but not limited to arising from any rejection of any Bid, Qualified Bid or Binding Offer. No party or person shall have any entitlement for any reason (including in the event of any modification or termination of the Sale Process) to reimbursement for any costs or expenses incurred.

Notice

31. Any documents, notices, communication or deliverables to be provided to the Receiver or Broker hereunder shall be provided in accordance with and in the manner specified in Schedule “A” hereto.

General

32. The Receiver shall be at liberty, throughout the duration of the Sale Process, to consult with any mortgagee of Real Property Assets (including the Applicants) in respect of matters related to the Sale Process and provide such party with a copy of all Non-Binding LOIs, Binding Offers and Binding Agreements, provided that: (i) such party confirms to the Receiver in advance of such consultation and in writing that, neither it nor its affiliates, related parties or principles will be participating in the Sale Process as a Potential Bidder or Bidder, and (ii) the Receiver has reached confidentiality arrangements that are satisfactory to it with such party.

33. Nothing in this Sale Process or in any court order approving this Sale Process shall create any rights in any person other than the Receiver and the Broker.

34. All inquiries from parties interested in participating in the Sale Process (including any Potential Bidders) shall be directed to the Receiver or the Broker. For greater certainty, no party interested in participating in the Sale Process (including any Potential Bidder) shall have any discussions regarding

any transaction, Real Property Assets or other Property with representatives of the Legal Owner, Beneficial Owners or any tenants of any of the Real Property Assets without the advance written consent of the Receiver.

35. At any time during this Sale Process, the Receiver may apply to the Court for advice and directions with respect to the matters contemplated hereby.

Schedule "A" to Sale Process

Defined Terms:

Capitalized terms used but not otherwise defined in the Sale Process procedures shall have the following meanings:

"Beneficial Owners" means, collectively, all beneficial owners of the Legal Owner's Property.

"Binding Agreement" means a definitive and binding agreement of purchase and sale.

"Business Day" means a day, other than a Saturday or Sunday, on which banks are open for business in the City of Toronto.

"Legal Owner" means Victoria Avenue North Holdings Inc.

"Legal Owners' Property" means all of the assets, undertakings and properties, including the Real Property Assets of the Legal Owner.

"Portfolio" means, collectively, the portfolio of Real Property Assets and portfolio of Southmount *et al.* Real Property Assets.

"Property" means, collectively, all of the Legal Owners' Property and all of the Beneficial Owners' right, title and interest to the Legal Owners' Property, whether held directly or indirectly by the Beneficial Owners for themselves or for others.

"Real Property Assets" means the medical office buildings located at the following municipal addresses and the real property leases related thereto:

- 304 Victoria Avenue North, Hamilton Ontario
- 414 Victoria Avenue North, Hamilton Ontario

"Southmount *et al.* Real Property Assets" means the medical office buildings and other real property located at the following municipal addresses and the real property leases related thereto, which are being concurrently marketed pursuant to a Court-supervised sale process in receivership proceedings bearing Court File No. CV-21-00664273-00CL:

- 35 Upper Centennial Parkway, Hamilton Ontario
- 180 Vine Street South, St. Catharines Ontario
- 849 Alexander Court, Peterborough Ontario
- 2009 Long Lake Road, Sudbury Ontario
- 65 Larch Street, Sudbury Ontario
- 100 Colborne Street, Orillia Ontario
- 77 Wyandotte Street, Orillia Ontario (parking lot adjoining 100 Colborne Street)
- 240 Penetanguishene Road, Midland Ontario

Notice:

Any notice, document, communication or other deliverable permitted or required to be given under the Sale Process (including the submission of Non-Binding LOIs and/or any Binding Offers) shall be given by electronic mail to the below recipients, and shall be deemed to be sent: (i) on the day that it is sent, if it is sent prior to 5:00 pm (Toronto Time) on a Business Day, or (ii) on the next following Business Day, if it is sent after 5:00 pm (Toronto Time) on a Business Day, or on a non-Business Day.

TO THE RECEIVER:

KPMG INC.

Attention: Katherine Forbes / George Bourikas

Email: katherineforbes@kpmg.ca / gbourikas@kpmg.ca

TO THE BROKER:

CBRE Limited

Attention: Michael Bellissimo / Jordan Lunan

Email: Michael.Bellissimo@cbre.com / Jordan.Lunan@cbre.com

WITH A COPY TO:

Blake, Cassels & Graydon LLP

Attention: Aryo Shalviri / Chris Burr

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

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

ORDER
(Approval of Broker Engagement, Sale Process
and Ancillary Matters)

BLAKE, CASSELS & GRAYDON LLP

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Lawyers for the Receiver

AMERICAN GENERAL LIFE
INSURANCE COMPANY, ET AL.
Applicants

- and -
VICTORIA AVENUE NORTH
HOLDINGS INC., ET AL.
Respondents

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

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

Proceeding commenced at TORONTO

**BOOK OF AUTHORITIES
OF THE RECEIVER**
(Motion returnable October 14, 2022)

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Toronto, ON M5K 1E7

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