

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

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

**Victoria Avenue North Holdings Inc.**

**OCTOBER 22, 2021**

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

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

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

**Applicants**

**AND**

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

**Respondents**

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

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

**DATED OCTOBER 22, 2021**

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

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## I. INTRODUCTION

1. On August 3, 2021 (the “**Receivership Date**”), upon application by American General Life Insurance Company (“**AIG**”), and National Union Fire Insurance Company of Pittsburgh, PA. (together, the “**Applicants**”), KPMG Inc. (“**KPMG**”) was appointed as receiver and manager (in such capacity and not in its personal or corporate capacity, the “**Receiver**”), pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act* R.S.O. 1990 c. C. 43, as amended, of (i) all of the assets, undertakings and properties, including the Real Properties (as defined in the Appointment Order) of Victoria Avenue North Holdings Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”), and (ii) all right, title and interest of any beneficial owners (the “**Beneficial Owners**”) in and to the Legal Owner’s Property, including the Real Properties and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (collectively, the “**Beneficial Owners’ Property**” and together with the Legal Owner’s Property, the “**Property**”).
2. Prior to its appointment as Receiver, KPMG filed a report (the “**Pre-Filing Report**”) to provide information to the Court in connection with the Applicants’ application for the Appointment Order (the “**Application**”).
3. On September 7, 2021, the Receiver filed a report (the “**First Report**”) with the Court in support of the Beneficial Owner Notification & Service Order (as defined herein) and to provide an update on the status of these receivership proceedings (the “**Proceedings**”) generally.
4. Electronic copies of the Pre-Filing Report and First Report are available on the Receiver’s Website (as defined herein).
5. On September 14, 2021, the Court granted an order (the “**Beneficial Owner Notification & Service Order**”): (i) authorizing and directing the Receiver to undertake the Notification Procedure (as defined in the First Report) to obtain contact information of Beneficial Owners, and (ii) approving a service protocol in respect of Beneficial Owners, effective as of September 24, 2021.
6. As noted in the First Report, on June 29, 2021, upon application by AIG and affiliated secured lenders, KPMG was appointed as receiver and manager (in such capacity, the “**Southmount Receiver**”) of, among other things, the properties owned by Southmount Healthcare Centre Inc. *et al* (collectively, the “**Southmount Legal Owners**”), being seven (7) medical office buildings, and one (1) parking lot

(collectively, the “**Southmount et al. Real Property Assets**”), pursuant to an order of this Court (Court file no. CV-21-00664273-00CL) (such proceedings being the “**Southmount Proceedings**”). The primary respondents in the Southmount Proceedings are the Southmount Legal Owners, who are affiliated with the Legal Owner, and are all indirect subsidiaries of Gross Capital Inc. (“**Gross Capital**”), which, as further detailed in the First Report, was assigned into bankruptcy on June 25, 2021. The Receiver understands that historically the Legal Owner and the Southmount Legal Owners were each managed by representatives of Gross Capital.

## II. PURPOSE OF REPORT

7. The purpose of this second report of the Receiver (the “**Second Report**”) is to provide this Honourable Court with information pertaining to:
  - (a) the Receiver’s proposed sale process in respect of the Real Property Assets (as defined herein), a copy of which is attached hereto as **Appendix “A”** (the “**Sale Process**”);
  - (b) the interim statement of receipts and disbursements of the Receiver (the “**Interim R&D**”) from the Receivership Date to and including September 30, 2021 (the “**Period**”);
  - (c) the Receiver’s request that this Court approve an extension of the term of the Receiver Term Sheet, a copy of which is attached hereto as **Appendix “B”**, which is set to expire on February 3, 2021, pursuant to an amending agreement;
  - (d) the results of the security review performed by the Receiver’s independent counsel, Norton Rose Fulbright Canada LLP (“**Norton Rose**”);
  - (e) the activities of the Receiver since the date of the First Report; and
  - (f) the Receiver’s conclusions and recommendations.

## III. QUALIFICATIONS & TERMS OF REFERENCE

8. In preparing this Second Report and making the comments herein, the Receiver has been provided with, or has relied upon certain unaudited, draft, and/or internal financial information, the Legal Owner’s records and financial information and information from other third-party sources (collectively, the “**Information**”). The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

9. Some of the information referred to in this Second Report consists of financial forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
10. Certain information referred to in this Second Report is based on estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and as a consequence no assurance can be provided regarding the forecasted or projected results. The reader is cautioned that the actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant.
11. The Receiver has prepared this Second Report in connection with the motion to be heard on October 29, 2021 (the “**October 29 Motion**”). This Second Report should not be relied on for other purposes.
12. While this Second Report summarizes some of the information contained in the Pre-Filing Report, the First Report and the Applicants’ Application materials for the Appointment Order, certain information contained therein has not been included herein to avoid unnecessary duplication. Accordingly, for additional context and background, readers are directed to the Pre-Filing Report, the First Report and the Affidavit of Jacob Baron sworn on July 9, 2021 (the “**Baron Affidavit**”) which is contained in the Applicants’ Application materials for the Appointment Order. A copy of such materials can be found on the Receiver’s website at [home.kpmg/ca/VictoriaHoldings](http://home.kpmg/ca/VictoriaHoldings) (the “**Receiver’s Website**”).
13. The information contained in this Second Report is not intended to be relied upon by any prospective purchaser in any transaction with the Receiver.
14. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

#### IV. SALE PROCESS

15. As noted in the First Report, prior to the appointment of the Receiver, the Legal Owner operated two (2) medical office buildings located in Hamilton, Ontario, as follows:

Address	Location	Square Feet
304 Victoria Ave N	Hamilton, Ontario	38,828
414 Victoria Ave N	Hamilton, Ontario	47,271

(collectively, and together with their related real property leases, the “**Real Property Assets**”).

16. As further noted in the First Report, the Receiver’s primary stated objective in these Proceedings has

been to conduct a thorough marketing and sale process for the Real Property Assets. This section provides the Receiver's description and analysis of the proposed Sale Process, by which the Receiver seeks to fulfil its primary objective.

#### *Broker Selection Process*

17. On August 9, 2021, the Receiver distributed a request for proposal (the "**Broker RFP**") to seven (7) listing brokers (the "**Solicited Brokers**"), requesting that they submit to the Receiver a proposal to market and sell the Real Property Assets. The list of Solicited Brokers comprised listing brokers which, in the Receiver's view, were likely to have sufficient market presence and reach, and expertise in the asset class in order to appropriately market the Real Property Assets for sale.
18. Each of the Solicited Brokers executed a non-disclosure agreement in order to obtain information and consider submitting a proposal (the "**Interested Brokers**"). The Broker RFP specifically requested that the Interested Brokers include in their proposals, among other things, information pertaining to:
  - (a) estimated indications of value for the Real Property Assets;
  - (b) proposed marketing strategy, including commentary on marketing the Real Property Assets combined with the Southmount *et al.* Real Property Assets, as an entire portfolio (the "**Entire Portfolio**") sale as compared to individually;
  - (c) proposed use of minimum listing period, bid deadlines, and any other relevant milestones and timelines;
  - (d) anticipated time period required to obtain offers in respect of the Real Property Assets and close on any acceptable transactions;
  - (e) a detailed breakdown of the proposed broker fee structure; and
  - (f) relevant credentials and experience.
19. The Broker RFP requested that all proposals be delivered to the Receiver by no later than August 27, 2021 (the "**Proposal Deadline**"). Prior to the Proposal Deadline, the Receiver received proposals from five (5) of the Interested Brokers (the "**Proposals**"). The remaining two (2) Interested Brokers declined to submit proposals on the basis of possessing insufficient expertise in the asset class of the Real Property Assets. The Receiver reviewed the Proposals and engaged in discussions with each of the relevant Interested Brokers to review their respective Proposals and to clarify certain matters therein.

20. Given that the Proposals were submitted to the Receiver by competitor brokerage firms and contain sensitive commercial and competitive information, a schedule summarizing and comparing the key terms of the Proposals (including economic terms), redacted for the identity of the applicable Interested Brokers (other than the selected Broker) is attached hereto as **Confidential Appendix “A”** (the **“Broker Comparison Summary”**). In the Receiver’s view, the disclosure of the commercial terms and competitive information contained in the Broker Comparison Summary would have a detrimental impact on (i) each of the applicable Interested Brokers, as it would reveal confidential information, including pricing information, to their competitors, and (ii) efforts to engage a new broker in the future should the need arise.
21. Following a thorough review of the Proposals and clarifying discussions with each of the applicable Interested Brokers, the Receiver, in consultation with the Applicants selected CBRE Limited (**“CBRE”**, or the **“Broker”**) as the Receiver’s proposed exclusive listing agent to assist in developing and implementing the Sale Process. As apparent from the Broker Comparison Summary, the economic terms of CBRE’s Proposal were within a narrow competitive range of most of the Proposals received and in the Receiver’s view, CBRE’s proposed marketing strategy and its market reach, together with its experience with court-supervised sale processes make it best suited to assist the Receiver in conducting a robust and transparent Sale Process that will maximize value.
22. The Receiver has engaged the Broker pursuant to an engagement letter dated October 20, 2021 (the **“Broker Engagement Letter”**), subject to Court approval. A copy of the Broker Engagement Letter has been redacted for commercial terms and is attached hereto as **Appendix “C”**, and an unredacted copy is attached hereto as **Confidential Appendix “B”**.
23. Key terms of the Broker Engagement Letter are summarized below:
  - (a) the Broker Engagement Letter is subject to approval of the Court;
  - (b) the Broker will assist the Receiver in the marketing and sale of the Real Property Assets on an “as is, where is” and “free and clear” basis, in accordance with the Sale Process;
  - (c) the Broker will assist the Receiver in conducting all negotiations; however, the Broker will not have the authority to make commitments or representations, enter into any agreements, or sign any documents on behalf of the Receiver;
  - (d) the Broker has the exclusive right to list the Real Property Assets for sale for a six (6) month period commencing on October 30, 2021 and ending on April 29, 2022 (the **“Term”**);

- (e) the Broker will be compensated in the form of a commission based on the gross sale price of the Real Property Assets (the “**Commission**”);
  - (f) the Commission is inclusive of all costs, fees and expenses associated with the Broker marketing the Real Property Assets and engaging or otherwise utilizing a local broker partner as necessary or desirable;
  - (g) the Commission is payable to the Broker in the event that within 120 days after the expiration of the Term, (i) the Receiver enters into an agreement of purchase and sale for the Real Property Assets which is subsequently completed; or (ii) negotiations continue, resume or commence following the Term with any person or entity with whom the Broker has negotiated or introduced the Real Property Assets prior to the expiry of the Term and such negotiations result in the closing of a transaction; and
  - (h) a third-party real estate brokerage, or a CBRE broker other than those parties named in the Broker Engagement Letter, may be permitted to cooperate in the sale of the Real Property Assets, and such cooperating brokerage or broker would be entitled to a commission (which will be paid out of the Broker’s Commission), in order to encourage participation in the Sale Process by the broker community.
24. In the Receiver’s view, the terms of the Broker Engagement Letter are reasonable, provide the appropriate amount of control over the Sale Process for the Receiver and properly incentivize both the Broker to achieve the best outcome in the Sale Process, and any cooperating broker to participate in the Sale Process.
25. The Southmount Receiver is also seeking approval of a substantially similar Sale Process in the Southmount Proceedings and intends to concurrently market the Southmount *et al.* Real Property Assets (which comprise seven similar medical office buildings, and a parking lot) and has also engaged the Broker in connection with same. In the Receiver’s view, this provides for efficiencies and may potentially (i) result in greater market interest in the Real Property Assets if they are marketed as part of the Entire Portfolio, which will be larger in size, and (ii) result in greater market interest in a regional sub-portfolio as the Real Property Assets and certain of the Southmount *et al.* Real Property Assets are located in the greater Hamilton, Ontario area.

#### *Sale Process*

26. Although the Receiver has obtained estimated indications of value from the Interested Brokers that participated in the Broker RFP, which will serve as a reference point throughout the Sale Process, it

has not commissioned formal appraisals. In the Receiver's view, the best indicator of value for the Real Property Assets is a robust and transparent sale process which thoroughly tests the market, and not appraisals which are naturally premised on assumptions and may not materialize as estimated. Accordingly, the Receiver has, in consultation with CBRE, the Applicants and the other registered mortgagees of the Real Property Assets, focused on developing the Sale Process.

27. Parties interested in participating in the Sale Process are encouraged to read the Sale Process in its entirety. The key terms of the Sale Process as detailed in **Appendix "A"** are as follows (unless otherwise noted, defined terms are as defined in the Sale Process):

Marketing

- (a) The Receiver understands that there may be interest from parties seeking to purchase the Real Property Assets and/or the Southmount *et al.* Real Property Assets (i) on an individual building basis, (ii) on a sub-portfolio basis (i.e. two or more buildings, potentially including one or more of the Real Property Assets and one or more of the Southmount *et al.* Real Property Assets), or (iii) on an Entire Portfolio basis. As such, the Sale Process contemplates a two-phased marketing approach, as follows:
- (i) **Phase I Marketing Period – Portfolio Marketing:** At the outset of the initial market launch, the Broker will market directly to potential interested parties that have already expressed interest, or in the view of the Broker and the Receiver, may be interested in purchasing the Entire Portfolio (the "**Known Portfolio Buyers**"). This pool of Known Portfolio Buyers is anticipated to include a wide variety of private and institutional investors.
  - (ii) **Phase II Marketing Period – Sub-Portfolio Marketing:** Approximately four weeks following the initial market launch, the Broker will begin to broadly market to (i) local brokerage firms identified by the Broker, and (ii) parties that may be interested or that have expressed an interest in purchasing less than the Entire Portfolio (i.e. individual buildings, or a sub-portfolio of the Real Property Assets potentially including certain Southmount *et al.* Real Property Assets) (the "**Known Sub-Portfolio Buyers**"). This pool of Known Sub-Portfolio Buyers is anticipated to include local investors, family offices, owner-occupiers, and other interested parties.

- (b) The overall active marketing period is anticipated to be 8-9 weeks in duration (excluding approximately 3-4 weeks around the December holiday period where a significantly lower level of market activity is anticipated).
- (c) The Phase II (Sub-Portfolio) marketing period is anticipated to be 4-5 weeks in duration, beginning approximately 4 weeks following the commencement of the Phase I (Portfolio) marketing period.
- (d) Although the active marketing period for Known Sub-Portfolio Buyers will not commence until after the marketing period is initiated for Known Portfolio Buyers, any parties interested in the Real Property Assets (or a portion thereof) are free to express their interest, undertake diligence and participate in the Sale Process at any time.
- (e) It is anticipated that parties interested in the Entire Portfolio will generally require more time to assess the opportunity and conduct due diligence, while parties interested in less than the Entire Portfolio will be able to assess the opportunity and conduct due diligence more expeditiously. In the Receiver's view, this two-phase marketing approach should permit the Broker to focus on active marketing to prospective purchasers who require more time to conduct diligence at the outset and still provide all prospective purchasers with ample time to participate in the Sale Process.
- (f) Each of the Real Property Assets and the Southmount *et al.* Real Property Assets will be listed on an unpriced basis.
- (g) A variety of marketing tools will be utilized, including marketing presentations, brochures, emails, phone calls, local signage, and listing the Real Property Assets on Multiple Listing Service (MLS) and social media platforms (i.e. LinkedIn).
- (h) All interested parties who sign a confidentiality agreement (each a "**Potential Bidder**") will be granted access to a confidential data room, which will contain financial and other information in respect of the Real Property Assets.

#### Solicitation and Review of Bids

- (a) Potential Bidders will be required to submit a non-binding letter of interest (each a "**Non-Binding LOI**") by an initial bid deadline (the "**Initial Bid Deadline**"), which Initial Bid Deadline will be determined by the Receiver, in consultation with the Broker, and

communicated broadly to all Potential Bidders and other interested parties on no less than 30 days' notice.

- (b) The Initial Bid Deadline is anticipated to be: (i) determined in early December, 2021 based on the level of market activity, and (ii) set for mid-January, 2022.
- (c) Following the Initial Bid Deadline, the Receiver, in consultation with the Broker, will review each Non-Binding LOI to determine whether it sets out the key information (including the general deal structure, assets to be purchased, liabilities to be assumed, purchase price and material conditions) required to be considered a "Bid".
- (d) Within 21 days of the Initial Bid Deadline, the Receiver, in consultation with the Broker may:
  - (i) select one or more non-overlapping Bids as a "Lead Bid" and seek to negotiate and settle the terms of binding agreement(s); or
  - (ii) invite two or more bidders to participate in a second round of bidding to submit a binding offer by a "Qualified Bid Deadline", to be set on no less than 10 days' notice to such bidders, following which the Receiver will (in consultation with the Broker) evaluate each such binding offer and seek to negotiate and settle the terms of binding agreement(s) to the extent any of them are selected as a successful bid.
- (e) In either case, prior to the negotiation of binding agreement(s), (i) the applicable bidder will have to be determined to be a "Qualified Bidder" by the Receiver, having regard for its ability to consummate its proposed transaction (taking into account such factors as its financial wherewithal, availability of financing, market presence, etc.), and (ii) the applicable bid or binding offer will have to satisfy certain procedural requirements and set out certain information, including timeline to closing, identity of sponsors, contracts to be assumed, approvals to be obtained and any remaining due diligence to be conducted, as determined by the Receiver and communicated to such applicable bidders.
- (f) In evaluating whether to select a "Lead Bid" or a binding offer and proceed to negotiate binding agreement(s), the Receiver will consider, among other things, the following criteria: the purchase price and any proposed adjustments thereto, form of consideration offered, the Real Property Assets to be acquired, the liabilities to be assumed and the certainty and anticipated timing of closing.

- (g) The Receiver is under no obligation to continue negotiations with any particular party, accept any bid or binding offer (including the highest or best offer) or enter into any binding agreement(s).

Court Approval

- (a) If and when one or more binding agreement(s) are negotiated and executed, the Broker and Receiver will assist the parties to complete any remaining due diligence, seek this Court's approval of the proposed transaction(s) and thereafter, seek to close the proposed transaction(s).
28. Since its appointment, the Receiver has received certain unsolicited offers to purchase, and other inquiries from prospective purchasers in respect of certain of the Real Property Assets. However, the Receiver has determined not to progress discussions with these parties outside of the Sale Process and has indicated to such parties that they may participate in the Sale Process, once approved by the Court.
29. In the Receiver's view, the proposed Sale Process provides the best opportunity to broadly market the Real Property Assets and maximize value. Further, the proposed Sale Process was developed in collaboration with the Broker, and the Broker is supportive of the Sale Process.

**V. RECEIVER'S RECEIPTS AND DISBURSEMENTS**

30. As detailed in the Pre-Filing Report, KPMG in its capacity as proposed receiver and based on its knowledge of the Legal Owner's business, had prepared a cash flow forecast (the "**Cash Flow Forecast**") for the purpose of projecting the Legal Owner's estimated liquidity needs for a period of approximately 6 months from the Receivership Date.
31. As noted in the First Report, on August 11, 2021 the Receiver borrowed the amount of approximately \$300,000 as an "Initial Advance" pursuant to the Receiver Term Sheet. There have been no further advances under the Receiver Term Sheet as of the date of this Second Report.
32. As shown in the Interim R&D below, during the Period, the Receiver had cash receipts (including borrowings) of approximately \$731,000, and cash disbursements of approximately \$80,000. As at September 30, 2021, the Receiver's cash on hand was approximately \$651,000.

**Interim Statement of Receipts and Disbursements**  
**For the period August 3, 2021 to September 30, 2021**  
**(C\$, unaudited)**

<b>Receipts</b>	
Receiver's borrowings <sup>1</sup>	300,000
Rent receipts <sup>2</sup>	234,835
Pre-filing bank balance <sup>3</sup>	165,920
HST collected	30,529
<b>Total Receipts</b>	<b>731,283</b>
<b>Disbursements</b>	
Property operating costs <sup>4</sup>	39,011
Property management fees <sup>5</sup>	19,517
Professional fees	12,569
HST paid	9,224
<b>Total disbursements</b>	<b>80,321</b>
<b>Balance in Receiver's accounts</b>	<b>650,962</b>

**Notes:**

1. Borrowings in accordance with Receiver Term Sheet.
  2. Monthly rent collections from tenants.
  3. Cash transferred to the Receiver's estate bank accounts from the Legal Owners' bank accounts upon commencement of the receivership proceedings.
  4. General operating costs such as utilities, maintenance, insurance, etc.
  5. Includes monthly property management fees paid to Prime for managing the properties, and leasing commissions for assisting the Receiver in negotiating new leases and lease extensions with existing tenants.
33. The amount of cash on hand is primarily a result of favourable timing differences in disbursements as compared to the Cash Flow Forecast, the majority of which relate to payments of professional fees and property operating costs. As at September 30, 2021, the Receiver had accrued and unpaid disbursements in the amount of approximately \$184,000 (the “**Accrued Obligations**”), a portion of which has since been paid as at the date of this Second Report. As the Proceedings progress, the Receiver expects that cash on hand will decrease significantly over the coming months, as Accrued Obligations are paid and the disbursement timing differences reverse.

**VI. RECEIVER TERM SHEET**

34. Pursuant to the terms of the Appointment Order, the Receiver was authorized to borrow up to \$500,000 from the Applicants pursuant to the Receiver Term Sheet (and as set out above, to date has borrowed the amount of \$300,000). The Receiver Term Sheet expires on February 3, 2022.

35. If the timelines associated with the Sale Process proceed as anticipated, the Receiver expects transactions involving the Real Property Assets to be closed by or around May, 2022. Accordingly, the Receiver is seeking approval from the Court to extend the term of the Receiver Term Sheet to June 30, 2022 on substantially the same terms.
36. In the Receiver's view, extending the term of the Receiver Term Sheet is appropriate in the circumstances, as it preserves liquidity and provides additional access to funding (if necessary) while the Receiver implements the Sale Process and pursues any resulting transactions. While it is unknown at this time whether the Receiver will be required to draw on the balance of the facility made available by the Receiver Term Sheet, extending the term to June 30, 2022 and preserving such facility provides stability to the operations of these Proceedings in an efficient manner while the Sale Process is being implemented.

## VII. APPLICANTS' SECURITY

37. On March 30, 2015, the Applicants advanced a loan to the Legal Owner in the principal amount of \$24.5 million (the "**Loan**"). As detailed in the Baron Affidavit, the Loan is secured by a mortgage, a general security agreement and a general assignment of leases and rents granted by the Legal Owner. According to the Baron Affidavit, the amount owed by the Legal Owner to the Applicants as at June 30, 2021 is approximately \$22.9 million, plus all applicable costs, fees, expenses, additional interest and other amounts payable pursuant to the applicable loan and security documents (the "**Loan and Security Documents**").
38. The Receiver has obtained an independent legal opinion from its independent counsel, Norton Rose, with respect to the validity and enforceability of the security granted by the Legal Owner in favour of the Applicants under the laws of the Province of Ontario. Norton Rose has reviewed the Loan and Security Documents as well as applicable real property searches and personal property security registry searches in Ontario, and, subject to customary qualifications, assumptions and limitations included therein, is of the opinion that:
- (a) the Loan and Security Documents create a valid mortgage and charge of the Real Property Assets and a valid charge and security interest in the leases of the Real Property Assets and the rents thereunder (the "**Real Property Security**")
  - (b) there is a first in time security registration of the Real Property Security against each of the applicable Real Property Assets;

- (c) the Loan and Security Documents create a valid security interest in the personal property of the Legal Owner that is located at the Real Property and the proceeds thereof (the “**Personal Property Security**”); and
  - (d) a first in time registration has been made under the *Personal Property Security Act* (Ontario) in order to perfect the Personal Property Security.
39. A copy of the Norton Rose legal opinion will be made available to stakeholders on appropriate arrangements regarding confidentiality, reliance and privilege.

### VIII. ACTIVITIES OF THE RECEIVER

40. The activities of the Receiver from the Receivership Date to the date of the First Report are detailed in the First Report. Since the date of the First Report, the Receiver’s activities have included:
- (a) discussions with Prime Real Estate Group Inc. (“**Prime**”) regarding potential repairs and maintenance expenditures related to the Real Property Assets;
  - (b) reviewing the proposals received in response to the Property Management RFP (as defined and discussed in the First Report). The Receiver has determined that at this time, replacing Prime as property manager for the Real Property Assets is not beneficial in the circumstances. In arriving at this view, the Receiver has taken into consideration the performance of Prime since the Receivership Date, the anticipated costs that would be incurred and potential for operational complications that could arise as a result of replacing Prime in advance of the commencement of the proposed Sale Process;
  - (c) engaging Pinchin Ltd. to prepare building condition assessments and Phase I environmental reports for each of the Real Property Assets in connection with the proposed Sale Process;
  - (d) collecting rents;
  - (e) securing a short-term extension of the Legal Owner’s insurance policies (the “**Policies**”) – which were initially set to expire on August 31, 2021 – through to October 31, 2021, as evidenced by a binder letter from the Legal Owner’s insurance broker dated September 28, 2021. The Receiver understands that the insurance underwriter, Allianz Global Risks US Insurance Company, intends to continue to extend the Policies on a month-to-month basis while the Legal Owner is subject to these Proceedings, and the Receiver has made a request for further extension through November 30, 2021;

- (f) responding to calls and inquiries from the Legal Owner's stakeholders, including creditors, suppliers and tenants regarding the Proceedings;
- (g) reviewing the Proposals, conducting phone calls and interviews with the Interested Brokers, selecting the Broker, negotiating the Broker Engagement Letter, and working with the Broker to develop the Sale Process;
- (h) terminating a non-performing head lease at the 414 Victoria Avenue property (on consent of the head tenant), where the head tenant was not remitting the full amount of monthly rent owing under the related lease agreement, and negotiating a direct lease between the Legal Owner and the subtenant going forward;
- (i) negotiating a lease agreement with a new tenant at the 414 Victoria Avenue property;
- (j) pursuant to the Beneficial Owner Notification & Service Order:
  - (i) delivering, on September 15, 2021, letters requesting that Beneficial Owners or parties claiming a beneficial ownership interest in or to the Legal Owner's property provide the Receiver with a valid email address to which notifications and service can be made; and
  - (ii) publishing notices, in the Hawaii Tribune-Herald on September 16 and September 19, 2021, and the Globe and Mail (National Edition) on September 16 and September 20, 2021;
- (k) communicating with the Gross Capital bankruptcy trustee, in respect of the Gross Capital bankruptcy proceedings, and these Proceedings;
- (l) reviewing the independent security opinion prepared by the Receiver's independent counsel, Norton Rose, and communicating with Norton Rose regarding same and other aspects of these Proceedings; and
- (m) communicating with the Applicants and their counsel in respect of various aspects of these Proceedings.

## IX. RECEIVER'S CONCLUSION AND RECOMMENDATION

41. Based on the foregoing, the Receiver respectfully requests that the Court grant an Order:

- (a) approving the Broker Engagement Letter and the engagement of the Broker as exclusive real estate broker in accordance with the terms therein;
- (b) approving the Sale Process;
- (c) approving the extension of the term of the Receiver Term Sheet; and
- (d) sealing the confidential appendices to this Second Report.

All of which is respectfully submitted this 22<sup>nd</sup> day of October, 2021.

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

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

Per:



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



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

# **APPENDIX “A”**

## 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):

<b>Milestone</b>	<b>Anticipated Date / Timeline</b>
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](mailto:katherineforbes@kpmg.ca) / [gbourikas@kpmg.ca](mailto:gbourikas@kpmg.ca)

#### **TO THE BROKER:**

##### **CBRE Limited**

Attention: Michael Bellissimo / Jordan Lunan

Email: [Michael.Bellissimo@cbre.com](mailto:Michael.Bellissimo@cbre.com) / [Jordan.Lunan@cbre.com](mailto:Jordan.Lunan@cbre.com)

#### **WITH A COPY TO:**

##### **Blake, Cassels & Graydon LLP**

Attention: Aryo Shalviri / Chris Burr

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

# **APPENDIX “B”**

## TERM SHEET

**Dated as of JULY 9, 2021**

**WHEREAS** American General Life Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the “**Lenders**”) have sought the appointment of KPMG Inc. (“**KPMG**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as receiver and manager (in such capacity and not in its personal or corporate capacity, the “**Receiver**”) of: (i) all of the assets, undertakings and properties, including, without limitation, the real properties described in Schedule “A” (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 the proceedings and are listed on Schedule “B” (collectively, the “**Beneficial Owners’ Property**” and together with the Legal Owner’s Property, the “**Property**”) to the Receivership Order (as defined below);

**AND WHEREAS** the Receiver is to be appointed by Order of the Ontario Superior Court of Justice (the “**Court**”) pursuant to a hearing scheduled on August 3, 2021 (as may be modified, amended or supplemented with consent of the Receiver and the Lenders, the “**Receivership Order**”) to, among other things, conduct a Court-approved sale process for all or substantially all of the Property;

**AND WHEREAS** the Receiver will incur certain costs and obligations in relation to its appointment as Receiver;

**AND WHEREAS** the Lenders have agreed to fund such costs and obligations of the Receiver in accordance with the terms set out herein (such funding facility, the “**Facility**”);

**NOW THEREFORE**, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. **PURPOSE OF FACILITY:** To fund the costs of the receivership proceedings, including, without limitation, (i) the exercise of the powers and duties conferred upon the Receiver by the Receivership Order; (ii) the cost associated with maintaining, preserving and safeguarding of the Property; (iii) the Receiver’s assessment of realization strategies for the Property, including conducting a sale process with respect to same, in consultation with the Lenders; and (iv) the fees and disbursements of the Receiver and its legal counsel in connection with the foregoing and in connection with the application for the Receivership Order; all substantially in accordance with the receivership budget appended hereto as Schedule “B” (as may be amended, modified or supplemented from time to time on agreement of the Lenders and the Receiver, the “**Budget**”).

Notwithstanding any provision to the contrary herein, the Lenders shall not be obligated to fund any Advances (as defined below) which, in the aggregate, exceed \$500,000 and, accordingly, the total amount advanced under the Facility shall not exceed \$500,000, unless the Lenders otherwise agree.

**2. AVAILABILITY:** Promptly following the granting of the Receivership Order, the Lenders will make an initial advance under the Facility to the Receiver in the amount of \$300,000 (all figures CAD) (the “**Initial Advance**”).

Thereafter, the Facility may be drawn down by the Receiver in weekly advances in amounts determined by the Receiver (each, an “**Advance**”) to cover anticipated costs and expenses of the receivership. The Receiver shall be entitled to submit a weekly written request (an “**Advance Request**”) for an Advance. Such Advances are to be made substantially in accordance with the Budget, unless otherwise agreed by the Lenders.

Upon receipt of an Advance Request, the Lenders (or their designee) will provide the requested Advance to the Receiver by wire transfer to an account stipulated by the Receiver by the end of the business day that is five (5) business days following the day on which the Advance Request is received by the Lenders. For greater certainty, the Advances are to be made prior to the time that liability for the anticipated costs and expenses are to be incurred by the Receiver in accordance with the Budget and the Receiver will use reasonable efforts not to incur any material obligation to any party unless and until the Receiver is in receipt of sufficient funds to satisfy such obligation in full.

**3. EXPENSES** The Lenders shall be entitled to reimbursement of all of their reasonable costs and expenses (including the fees and expenses of their counsel, appraisers and other advisors) incurred in connection with this Facility (collectively, the “**Expenses**”).

**4. INTEREST & FEES AND EXPENSES:** Interest shall accrue from the date of the Initial Advance on the outstanding balance of the Initial Advance and any Advance thereafter (collectively and together with all Expenses, the “**Obligations**”) at an annual interest rate of 8.95 %. All interest shall be computed on the basis of a year of 365 days for the actual number of days (including the first day but excluding the last day) elapsed.

**5. REPAYMENT:** The Obligations (including interest thereon) shall be repaid to the Lenders upon the realization of net proceeds from the sale of any Property, in accordance with the Receivership Order and the Receiver’s Borrowings Charge (as defined in the Receivership Order) or any subsequent order of the Court.

For greater certainty, KPMG in its personal or corporate capacity will not have any liability to repay the Obligations (including interest thereon).

**6. TERM:** The Facility will be available to the Receiver for an initial six (6) month period ending February 3, 2022 (the “**Initial Term**”). Prior to the expiry of the Initial Term, the Lenders shall determine, at their sole discretion in consultation with the Receiver, the need to provide additional availability under the Facility for the purposes of continuing to pursue a Court-approved sale process for the Property (or any portion thereof) and/or consummating any successful bid(s) for the Property (or any portion thereof). If the Lenders so elect to provide additional funding, such additional funding is to be provided for a period of time to be agreed upon by the Lenders and the

Receiver in accordance with a revised budget to be agreed upon between the Lenders and the Receiver.

Notwithstanding the foregoing, the Lenders may terminate the Facility at any time following the occurrence of an Event of Default (as defined below) at which point the Initial Term shall be deemed to have expired.

**7. CONDITIONS PRECEDENT:**

The Lenders will not be obligated to make any Advance (including the Initial Advance) under the Facility unless the following conditions precedent have been satisfied or waived by the Lenders in writing:

1. The Receivership Order has been issued by no later than August 3, 2021, in form and substance satisfactory to the Lenders.
2. The Receiver has executed and returned a copy of this Term Sheet.
3. Other than the Initial Advance, the Receiver has delivered an Advance Request to the Lenders by no later than 5:00 pm Toronto time on the day that is five (5) business days prior to the day on which an Advance is to be made.
4. No Event of Default has occurred.

**8. EVENTS OF DEFAULT:**

The occurrence of any one or more of the following constitutes an “Event of Default” under this Term Sheet:

1. Any termination of the stay of proceedings contained in the Receivership Order.
2. Any termination of the appointment of the Receiver.
3. Any order is issued by the Court:
  - (i) granting any other claim or lien in respect of the Property that is *pari passu* with or in priority to the Receiver’s Borrowings Charge (as defined in the Receivership Order);
  - (ii) modifying this Term Sheet, without the prior written consent of the Lenders;
  - (iii) approving any sale of the Property (or any portion thereof) without the prior written consent of the Lenders which does not provide for sufficient proceeds to fully repay all of the Obligations; or
  - (iv) reversing, modifying, staying or amending the Receivership Order, without the written consent of the Lenders.

**9. REMEDIES:**

Upon the occurrence of an Event of Default, and at any time thereafter while an Event of Default is continuing, the Lenders may declare, after giving notice to the Receiver, that the Facility is terminated and cancelled. For greater certainty, the Receiver shall be entitled to pay any obligations incurred by the Receiver from the Advances (including the Initial Advance), notwithstanding any Event of Default.

**10. REIMBURSEMENT:** At the termination of the receivership, the Receiver shall, after paying all obligations incurred by it, reimburse to the Lenders any excess or residual funds in its possession from the Advances (including the Initial Advance).

**11. GOVERNING LAW:** Ontario and the federal laws of Canada applicable therein.

**12. SECURITY:** The Receiver's Borrowings Charge (as defined in the Receivership Order), being a court-ordered receiver's borrowings charge over all of the Property as provided for in the Receivership Order, in form and substance satisfactory to the Lenders and the Receiver, as evidenced by Receiver's Certificates (as defined in the Receivership Order). For greater certainty, following the Initial Advance, the Receivership Order shall be registered on title against the real property described on Schedule "A".

**13. FURTHER ASSURANCES** The Receiver shall, from time to time do, execute and deliver, or cause to be done, executed and delivered, such further acts, documents and things as the Lenders may reasonably request for the purpose of giving effect to this Term Sheet.

**14. NOTICE:** Any notice or request required or permitted to be given in connection with this Term Sheet shall be in writing and shall be sufficiently given if delivered by email:

(a) in the case of the Receiver at:

**KPMG Inc.**, as Receiver of Victoria Avenue North Holdings Inc.,  
*et al.*  
333 Bay Street, Suite 4600  
Bay Adelaide Centre  
Toronto ON M5H 2S5

Attention: Nick Brearton / George Bourikas  
Email: [nbrearton@kpmg.ca](mailto:nbrearton@kpmg.ca) / [gbourikas@kpmg.ca](mailto:gbourikas@kpmg.ca)

(b) in the case of the Lenders at:

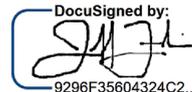
**AIG Asset Management (U.S.), LLC**, as investment advisor to the  
Lenders  
777 S. Figueroa Street, 16th Floor  
Los Angeles, CA 90017

Attention: Michelle Campion / Jacob Baron  
Email: [michelle.campion@aig.com](mailto:michelle.campion@aig.com) / [jacob.baron@aig.com](mailto:jacob.baron@aig.com)

[Signature Page Follows]

If the above terms and conditions contained herein are acceptable to the proposed Receiver, please execute and return a copy of this Term Sheet.

**AMERICAN GENERAL LIFE INSURANCE COMPANY by its investment advisor, AIG Asset Management (U.S.), LLC, a Delaware limited liability company**

DocuSigned by:  


Per: \_\_\_\_\_  
Name: Jeff Flinn  
Title: Managing Director

**NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA. by its investment advisor, AIG Asset Management (U.S.), LLC, a Delaware limited liability company**

DocuSigned by:  


Per: \_\_\_\_\_  
Name: Jeff Flinn  
Title: Managing Director

Acknowledged and accepted as of the 9<sup>th</sup> day of July, 2021.

**KPMG INC., solely in its capacity as proposed court-appointed receiver and manager and not in its personal or corporate capacity, and without personal or corporate liability**

Per: \_\_\_\_\_  
Name:  
Title:

If the above terms and conditions contained herein are acceptable to the proposed Receiver, please execute and return a copy of this Term Sheet.

**AMERICAN GENERAL LIFE INSURANCE COMPANY** by its investment advisor, **AIG Asset Management (U.S.), LLC**, a Delaware limited liability company

Per: \_\_\_\_\_  
Name:  
Title:

**NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.** by its investment advisor, **AIG Asset Management (U.S.), LLC**, a Delaware limited liability company

Acknowledged and accepted as of the 9<sup>th</sup> day of July, 2021.

**KPMG INC.**, solely in its capacity as proposed court-appointed receiver and manager and not in its personal or corporate capacity, and without personal or corporate liability

Per:   
Name: Nicholas Brearton  
Title: President

**SCHEDULE "A"****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 "B"**

*(attached)*

<b>Loan 1</b>															
<b>Cash Flow Forecast</b>															
<b>Semi-Monthly Period Ending</b>	<b>Notes</b>	<b>14-Aug-21</b>	<b>31-Aug-21</b>	<b>14-Sep-21</b>	<b>30-Sep-21</b>	<b>14-Oct-21</b>	<b>31-Oct-21</b>	<b>14-Nov-21</b>	<b>30-Nov-21</b>	<b>14-Dec-21</b>	<b>31-Dec-21</b>	<b>14-Jan-22</b>	<b>31-Jan-22</b>	<b>14-Feb-22</b>	<b>Total</b>
<b>Receipts</b>															
	1														
Rent receipts (net)	2	92,007	24,968	92,007	24,968	92,007	24,968	92,007	24,968	92,007	24,968	91,434	24,968	91,027	792,302
Collection of deferred rent	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-
HST collected	4	11,961	3,246	11,961	3,246	11,961	3,246	11,961	3,246	11,961	3,246	11,886	3,246	11,834	102,999
<b>Total Receipts</b>		<b>103,967</b>	<b>28,214</b>	<b>103,321</b>	<b>28,214</b>	<b>102,861</b>	<b>895,302</b>								
<b>Disbursements</b>															
	1														
Property operating expenses	5	(34,938)	-	(34,938)	-	(35,973)	-	(37,538)	-	(37,279)	-	(44,710)	-	(36,775)	(262,150)
Management fee	6	(8,267)	-	(8,267)	-	(8,267)	-	(8,267)	-	(8,267)	-	(8,267)	-	(8,267)	(57,867)
Initial possession cost	7	(30,000)	-	-	-	-	-	-	-	-	-	-	-	-	(30,000)
Repairs and maintenance	8	(12,342)	-	(17,342)	-	(12,342)	-	(14,342)	-	(13,842)	-	(12,342)	-	(12,342)	(94,895)
Environmental and building condition reports	9	(10,000)	-	-	-	-	-	-	-	-	-	-	-	-	(10,000)
HST paid on operating disbursements	10	(12,421)	-	(7,871)	-	(7,356)	-	(7,819)	-	(7,720)	-	(8,491)	-	(7,460)	(59,139)
HST refund / (remittance)	11	-	-	-	-	-	27,727	-	5,109	-	2,921	-	3,385	-	39,142
Municipal realty taxes	12	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Contingency	13	(10,000)	-	(10,000)	-	(10,000)	-	(10,000)	-	(10,000)	-	(10,000)	-	(10,000)	(70,000)
<b>Total Operating Disbursements</b>		<b>(117,968)</b>	<b>-</b>	<b>(78,418)</b>	<b>-</b>	<b>(73,937)</b>	<b>27,727</b>	<b>(77,966)</b>	<b>5,109</b>	<b>(77,108)</b>	<b>2,921</b>	<b>(83,810)</b>	<b>3,385</b>	<b>(74,843)</b>	<b>(544,909)</b>
<b>Net Operating Cash Flow</b>		<b>(14,001)</b>	<b>28,214</b>	<b>25,549</b>	<b>28,214</b>	<b>30,030</b>	<b>55,941</b>	<b>26,001</b>	<b>33,322</b>	<b>26,860</b>	<b>31,135</b>	<b>19,511</b>	<b>31,599</b>	<b>28,018</b>	<b>350,393</b>
Professional fees	14	-	(234,711)	-	(95,724)	-	(82,864)	-	(82,864)	-	(82,864)	-	(82,864)	(41,432)	(703,326)
HST paid on professional fees	15	-	(30,512)	-	(12,444)	-	(10,772)	-	(10,772)	-	(10,772)	-	(10,772)	(5,386)	(91,432)
<b>Total Professional Fees</b>		<b>-</b>	<b>(265,224)</b>	<b>-</b>	<b>(108,169)</b>	<b>-</b>	<b>(93,637)</b>	<b>-</b>	<b>(93,637)</b>	<b>-</b>	<b>(93,637)</b>	<b>-</b>	<b>(93,637)</b>	<b>(46,818)</b>	<b>(794,758)</b>
<b>Net Cash Flow</b>		<b>(14,001)</b>	<b>(237,010)</b>	<b>25,549</b>	<b>(79,955)</b>	<b>30,030</b>	<b>(37,696)</b>	<b>26,001</b>	<b>(60,314)</b>	<b>26,860</b>	<b>(62,502)</b>	<b>19,511</b>	<b>(62,038)</b>	<b>(18,801)</b>	<b>(444,365)</b>
<b>Opening Cash Balance</b>	16	<b>50,000</b>	<b>35,999</b>	<b>98,990</b>	<b>124,539</b>	<b>44,584</b>	<b>74,614</b>	<b>36,918</b>	<b>62,920</b>	<b>2,605</b>	<b>29,465</b>	<b>66,963</b>	<b>86,474</b>	<b>24,436</b>	<b>50,000</b>
Net Cash Flow		(14,001)	(237,010)	25,549	(79,955)	30,030	(37,696)	26,001	(60,314)	26,860	(62,502)	19,511	(62,038)	(18,801)	(444,365)
Advances under Receiver Term Sheet		-	300,000	-	-	-	-	-	-	-	100,000	-	-	-	400,000
<b>Closing Cash Balance</b>		<b>35,999</b>	<b>98,990</b>	<b>124,539</b>	<b>44,584</b>	<b>74,614</b>	<b>36,918</b>	<b>62,920</b>	<b>2,605</b>	<b>29,465</b>	<b>66,963</b>	<b>86,474</b>	<b>24,436</b>	<b>5,635</b>	<b>5,635</b>

**Notes:**

- The Cash Flow Forecast assumes that none of the Properties will be sold within the 6-month forecast period. Actual cash flow may vary significantly from the Cash Flow Forecast depending on if and when some or all Properties are sold.
- Projected using May 2021 Rent Rolls as a baseline, adjusted based on actual receipts in May 2021 and additional details provided by property management, as necessary.
- Assumed no receipts associated with deferred rents given the uncertainty around collections.
- 13% of projected rent receipts (net) and collection of deferred rent.
- Projected using 2021 operating budgets (include utilities, cleaning etc.) obtained from property management, and adjusted as required.
- Projected using 2021 operating budgets obtained from property management.
- One-time costs associated with the Receiver taking possession of the assets.
- Projected using 2021 operating budgets obtained from property management. Figures do not include contingent CAPEX of \$30k that may be adjusted after the Receiver performs a fulsome assessment of the properties.
- Assumes Phase I environmental assessment and building condition reports are required as part of sale process. Projected cost of \$5k per building.
- 13% of projected operating disbursements.
- Assumes that HST filings are completed on a monthly basis, with amounts owing paid/received one month thereafter. Includes ITCs on professional fees.
- All outstanding municipal realty taxes to be remitted in full to municipalities on closing of asset sales from sale proceeds.
- Contingency for unanticipated disbursements.
- Professional fees include fees for the Receiver, counsel to the Receiver (Blake, Cassels & Graydon LLP), and independent counsel to the Receiver (Norton Rose Fulbright LLP).  
Fee estimates for the Receiver and counsel to the Receiver do not include additional costs associated with transactions related to sale of Properties.
- HST is calculated as 13% of total professional fees.
- Opening cash balance is an estimated balance as at July 31, 2021.

# **APPENDIX “C”**

**THIS EXCLUSIVE ENGAGEMENT AGREEMENT** made the 20<sup>th</sup> day of October 2021  
(the "**Agreement**")

**BETWEEN**

**VICTORIA AVENUE NORTH HOLDINGS INC. (the "Owner"), BY KPMG INC., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER (AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY) (the "Receiver")**

-and-

**CBRE LIMITED ("CBRE")**

**WHEREAS** the Owner is the legal owner of the property located at:

- 304 Victoria Avenue North, Hamilton, Ontario
- 414 Victoria Avenue North, Hamilton, Ontario, (collectively, the "**Property**");

**AND WHEREAS** CBRE is a real estate brokerage, licensed to carry on business in the Province of Ontario;

**AND WHEREAS** the Receiver was appointed pursuant to an order of the Ontario Superior Court of Justice [Commercial List] (the "**Court**") granted on August 3, 2021;

**AND WHEREAS** pursuant to the terms of this Agreement, the Owner intends to appoint CBRE as the Owner's exclusive commercial real estate brokerage (the "**Appointment**") to provide the Owner with CBRE's commercial real estate brokerage services (the "**Services**") in listing the Property for sale pursuant to a sale process and related sale procedure to be approved by the Court;

**AND WHEREAS** the CBRE listing team representing the Owner in the sale of the Property shall consist of Michael Bellissimo, Jordan Lunan, Tim E A Pacaud and Scott MacKenzie (local agent) (the "**Listing Team**");

**NOW THEREFORE** in consideration of the Appointment and the Services, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Owner and CBRE, the Owner and CBRE hereby agree as follows:

**ARTICLE 1 – RECITALS**

1.1 The above recitals are true and accurate in all respects.

**ARTICLE 2 – TERM**

2.1 This Agreement is subject to the Court granting an Order (in form and substance satisfactory to the Receiver, in its sole and absolute discretion) ("**Approval Order**") in the receivership proceedings bearing Court File No. CV-21-00665375-00CL (the

“**Receivership Proceedings**”) approving: (i) a sale process and related sale procedure in connection with the sale of the Property (“**Sale Process**”), and (ii) this Agreement and the terms hereof.

- 2.2 Subject to the granting of the Approval Order, the Owner grants to CBRE the exclusive right to list the Property for sale for a period commencing October 30<sup>th</sup>, 2021 and ending on April 29<sup>th</sup>, 2022 (the “**Term**”), at a price and terms which are satisfactory to the Owner.
- 2.3 Unless otherwise agreed by the undersigned in writing, this Agreement shall automatically terminate without any further step or notice should an Approval Order not be granted by the Court by November 8, 2021. Upon termination of this Agreement, the Owner shall have no further liability or obligation to CBRE whatsoever, other than to pay CBRE’s reasonable fees and documented out of pocket expenses incurred prior to November 8, 2021, up to a maximum aggregate total amount of CAD \$ [REDACTED] (or such greater amount as the Receiver may agree in writing).

### ARTICLE 3 – CBRE REMUNERATION

- 3.1 The Owner agrees to pay CBRE a commission based on the gross sale price of the Property as follows (the “**Commission**”):

<b>Exclusive Bulk Portfolio Sale of Property (as set out in section 3.2 below)</b>	[REDACTED] %
<b>Individual Building Sales (buildings sold on an individual basis by the Listing Team):</b>	
304 Victoria Avenue North, Hamilton, Ontario	[REDACTED] %
414 Victoria Avenue North, Hamilton, Ontario	[REDACTED] %

Commissions are inclusive of all costs, fees and expenses associated with CBRE marketing the Property, and engaging or otherwise utilizing a local broker partner, and shall be payable if and only if a closing occurs pursuant to a contract of purchase and sale executed and delivered by the Owner for the Property during the Term or the Holdover Period (but for greater certainty, such closing can occur outside of the Term or Holdover Period provided that the applicable contract of purchase and sale is executed and delivered during the Term or Holdover Period).

- 3.2 An Exclusive Bulk Portfolio Sale of Property under this Agreement shall be any transaction whereby one or both of buildings comprising the Property is/are sold as part of a transaction that is an “Exclusive Bulk Portfolio Sale of Property” pursuant to the exclusive engagement agreement between CBRE and Southmount Healthcare Centre Inc. *et al* (by their court-appointed receiver and manager), dated October 20, 2021. For greater certainty, where one building comprising the Property is sold pursuant to an Exclusive Bulk Portfolio Sale under this Agreement, the Commission payable in respect of such building shall be [REDACTED] % and where both buildings comprising the Property are sold pursuant to an Exclusive Bulk Portfolio Sale under this Agreement, the Commission payable in respect of both of the buildings shall be [REDACTED] %.

- 3.3 The Commission shall be payable to CBRE immediately upon the closing of the agreement of purchase and sale referred to in section 3.1 above, notwithstanding that the sale may close, or the transfer may be completed, following the expiry of the Term.
- 3.4 The Commission payable herein shall be subject to the payment of Harmonized Sales Tax (HST) thereon by the Owner.
- 3.5 CBRE is authorized to accept a deposit from any prospective purchaser. The Owner agrees that all deposit monies payable hereunder shall be paid into the trust account of CBRE. CBRE shall have the right to deduct any Commission payable hereunder from the deposit monies CBRE holds in its trust account; and any remaining balance of Commission due and payable to CBRE shall be paid by the Owner forthwith to CBRE.
- 3.6 In the event a purchaser fails to complete the purchase and the deposit or any part thereof becomes forfeited, awarded, directed or released to the Owner, then the Owner authorizes CBRE to retain, up to a maximum aggregate total amount of fifty percent (50%) not to exceed CAD \$ [REDACTED] per Property of such deposit in satisfaction of CBRE's reasonable fees and documented out of pocket expenses incurred prior to such deposit having been forfeited, awarded, directed or released to the Owner and to pay the balance of the deposit to the Receiver, for the Owner, without any setoff or deduction.

#### **ARTICLE 4 – HOLDOVER**

- 4.1 The Owner further agrees to pay CBRE the Commission if, within one hundred and twenty (120) days after the expiration of the Term (the "**Holdover Period**"), with or without the involvement of CBRE: (i) the Owner enters into an agreement of purchase and sale for the Property, which is subsequently completed whether within or outside of the Holdover Period; or (ii) negotiations continue, resume or commence with any person or entity (including his/her/its successors, assigns or affiliates) with whom CBRE has negotiated (either directly or through another agent) or to whom the Owner or the Property was introduced or submitted, from any source whatsoever prior to the expiration of the Term and such negotiations lead to the execution of an agreement of purchase and sale for the Property which is subsequently completed, whether within or outside of the Holdover Period.
- 4.2 CBRE agrees to submit a list to the Receiver of all persons or entities which have submitted an offer or expressed interest in any Property within ten (10) business days following the expiration of the Term, provided, however, that if a written offer has been submitted, then it shall not be necessary to include the offeror's name on the list.
- 4.3 The Commission contemplated by this Article 4 shall be payable immediately upon the closing of the agreement of purchase and sale; regardless of whether the closing occurs during or outside the Holdover Period.

## **ARTICLE 5 – EXCLUSIVE ENGAGEMENT**

- 5.1 The Owner warrants to CBRE that, as at the execution of this Agreement, it is not a party to any valid listing agreement with any other real estate brokerage with respect to the sale of the Property. The Owner shall not engage the services of another real estate brokerage during the Term with respect to the sale of the Property.
- 5.2 CBRE shall assist the Receiver in formulating a Sale Process and provided that the Approval Order has been granted by the Court, market and list the Property, on an “as is, where is” basis in accordance with such Sale Process.
- 5.3 The Receiver shall, as soon as reasonably practicable following the execution and delivery of this Agreement, seek the Court’s issuance of the Approval Order and CBRE shall cooperate with the Receiver in its efforts to obtain the issuance of the Approval Order.
- 5.4 Subject to the Sale Process, the Receiver agrees (i) to cooperate with CBRE in bringing about a sale of the Property, and (ii) to refer all inquiries of anyone interested in the Property to CBRE as soon as reasonably practicable.
- 5.5 The status of the marketing efforts, discussions, and terms and conditions of any and all offers received in connection with the Sale Process shall be promptly communicated to and discussed with the Receiver. CBRE will assist the Owner and the Receiver’s lawyers in conducting all negotiations; provided, however, that CBRE shall not have the authority to make any commitments or representations, enter into any agreements, or sign any documents on behalf of the Receiver or Owner. All final terms and conditions of any transaction will be subject to the approval of the Receiver in its sole discretion, and CBRE acknowledges that any transaction will be subject to the terms of the Sale Process and any subsequent orders of the Court. The Receiver shall have the sole discretion to accept or reject any offer, or to withdraw any Property from the market, and the undersigned acknowledge that any transaction relating to the Property will be subject to Court approval.
- 5.6 The Owner and CBRE hereby acknowledge that this is an exclusive listing and that CBRE shall not be required to cooperate with any other brokerage or team in connection with this exclusive listing. At the sole discretion of CBRE, a third-party real estate brokerage or another CBRE broker may be permitted to cooperate in the sale of the Property on terms which shall be established by the Listing Team and such cooperating brokerage or broker at a commission rate of █%; and, which terms shall not require the Owner to pay any commission in addition to the Commission set out herein.
- 5.7 CBRE is authorized to advertise the Property and to place a "For Sale" sign or signs on the Property if, in CBRE’s opinion, such advertisement and signage would facilitate the sale of the Property. CBRE shall provide the Receiver with advance notice of any such sign or signs being placed on the Property.

## **ARTICLE 6 – DUAL AGENCY**

- 6.1 The Owner acknowledges and agrees that CBRE may represent the Owner and a purchaser in a dual agency relationship. The Owner hereby consents to the possibility of limited dual agency wherein CBRE maintains confidentiality with respect to pricing intentions, participation of other prospective parties in the Sale Process, corporate objectives and motivation for both principals to the transaction.
- 6.2 Notwithstanding the foregoing, the members of the Listing Team shall not act adverse in interest to the Owner during the Term.

## **ARTICLE 8 – GENERAL PROVISIONS**

- 8.1 *Authority:* The Owner and CBRE represent and warrant to the other of them that each has the authority to execute this Agreement; and that this Agreement, shall be legally binding upon the Owner and CBRE and their successors and permitted assigns once the Approval Order is granted.
- 8.2 *Entire Agreement:* This Agreement constitutes the entire agreement between the Owner and CBRE, and supersedes all prior discussions, negotiations and agreements, whether oral or written. In case of any inconsistencies between this Agreement and any commission provisions in the agreement of purchase and sale, the provisions of this Agreement shall govern and be paramount.
- 8.3 *Amendments:* No amendment or alteration of this Agreement shall be valid or binding unless made in writing and signed by the Receiver for and on behalf of the Owner and CBRE.
- 8.4 *Severability:* Should any provision of this Agreement be unenforceable at law, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall continue in force and shall be binding as though such provision had not been included.
- 8.5 *Interpretation:* The headings inserted in this Agreement are for convenience of reference only and, in no way define, limit or enlarge the scope or meaning of any of the terms and conditions contained in this Agreement. The preamble to this Agreement forms an integral part of this Agreement and shall be used in its interpretation.
- 8.6 *Confidentiality:* Notwithstanding the foregoing or any other provision of this Agreement: (i) CBRE and its representatives shall treat as confidential and shall not, unless such information is otherwise publicly disclosed, unless the Receiver has provided prior written consent (which may be by way of email) or unless required by applicable law, disclose any communications with the Receiver, any communications with any prospective purchaser, any proposals, offers or bids (including the terms thereof) received in connection with the Property or the Sale Process or any information relating to the Property to any person or party which has not been expressly approved by the Receiver in writing (which may be by way of email); and (ii) the Receiver shall be entitled to (a) share unredacted copies of this Agreement with any stakeholder in the Receivership Proceedings with whom the

Receiver intends to consult who undertake to keep such Agreement and the terms thereof confidential, and (b) file a copy of this Agreement, redacted for financial terms, with the Court in connection with the Motion for the Approval Order and set out such economic terms and/or unredacted copy of this Agreement in a confidential appendix, provided that the Receiver also seeks an Order from the Court sealing such confidential appendix.

- 8.7 *Receiver's Capacity:* CBRE acknowledges and agrees that the Receiver, acting in its capacity as court-appointed receiver, will have no liability in connection with this Agreement whatsoever, whether in its capacity as Receiver, personal or corporate capacity or otherwise.
- 8.8 *Jurisdiction:* This Agreement shall be governed by, and shall be subject to, the laws of the Province of Ontario; and the Owner and CBRE hereby attorn to the jurisdiction of the courts of the Province of Ontario with respect to any dispute concerning the interpretation, application and enforcement of this Agreement.
- 8.9 *Legally Required Verifications:* CBRE is bound by the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the "Act") to verify the identity of the clients and companies that are involved in a real estate transaction.

By its signature hereon, the Owner hereby acknowledges receipt of an executed copy of this Agreement.

**IN WITNESS WHEREOF** the Owner and CBRE agree to the terms and conditions as set out herein; and have executed this Agreement as of the date first written above.

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

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

Print Name:   Katherine Forbes  

CBRE LIMITED

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

I have authority to bind the company

Print Name:   Adrian Lee

**7 CB: ~~89BH5~~ @APPENDIX "5"**

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

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

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**CONFIDENTIAL APPENDIX**

**CONFIDENTIAL APPENDIX "A" –  
BROKER COMPARISON SUMMARY  
TO THE FIRST REPORT OF THE RECEIVER  
DATED OCTOBER 21, 2021**

**TO BE FILED SEPARATELY WITH THE COURT**

**7 CB: ~~8 9 BH5~~ @APPENDIX "6"**

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

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

B E T W E E N:

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

Applicants

- and -

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

Respondents

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

**CONFIDENTIAL APPENDIX**

**CONFIDENTIAL APPENDIX "B" –  
UNREDACTED BROKER ENGAGEMENT LETTER  
TO THE FIRST REPORT OF THE RECEIVER  
DATED OCTOBER 21, 2021**

**TO BE FILED SEPARATELY WITH THE COURT**