

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

B E T W E E N :

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

MOTION RECORD
(returnable April 14, 2022)

Date: April 5, 2022

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Barristers and Solicitors

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Lawyers for the Receiver

TO: ATTACHED SERVICE LIST

INDEX

Court File No. CV-21-00672999-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

CANNECT MORTGAGE INVESTMENT CORPORATION

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TAB 1

Court File No. CV-21-00672999-00CL

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

B E T W E E N :

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

**NOTICE OF MOTION
(returnable April 14, 2022)**

KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacities, the “**Receiver**”), without security, of all the assets, undertakings and properties (collectively, the “**Property**”) of Claireville Property Holdings Inc. (the “**Debtor**”), will make a motion to a Judge of the Commercial List on Thursday, April 14, 2022 at 11.a.m., or as soon after that time as the motion can be heard, via Zoom coordinates to be provided.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR Orders for, amongst other things:

- (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
- (b) approving the Supplement to the First Report of the Receiver dated April 5, 2022 (the “**First Report Supplement**”) and approving the actions of the Receiver described therein;

- (c) approving the agreement of purchase and sale amongst: (1) the Proposal Trustee (as defined below) and assigned to the Receiver, as vendor; (2) S. Paul Mantini, in trust for an Ontario corporation to be incorporated, as the original purchaser; and (3) 200 Town Centre Court Inc. (the “**Purchaser**”), as purchaser assignee, dated December 2, 2021 and amended March 24, 2022 (collectively, the “**Sale Agreement**”), and authorizing the Receiver to complete the transaction contemplated thereby (the “**Transaction**”);
- (d) vesting in the Purchaser all the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), free and clear of any claims and encumbrances; and
- (e) such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) the Debtor’s principal asset, held on behalf of 21 co-tenants, is the Debtor’s leasehold interest in 13 dual tenant industrial buildings (the “**Leasehold Interest**”);
- (b) the Leasehold Interest is subject to a 99-year ground lease with Kornwood Investments Ltd. (the “**Landlord**”) dated September 1, 1973;
- (c) the Debtor filed a notice of intention to file a proposal under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) on July 2, 2021, naming KSV as the Debtor’s proposal trustee (in such capacity, the “**Proposal Trustee**”);
- (d) on July 28, 2021 (the “**July 28 Order**”), The Honourable Mr. Justice Pattillo granted an Order, which, amongst other things:
 - (i) approved certain debtor-in-possession financing (the “**DIP Facility**”), certain associated priority charges and an associated payout of the Debtor’s then secured lender;

- (ii) extended the Proposal Trustee's powers in respect of the Debtor, to the exclusion of all others Persons (as defined in the July 28 Order), including, without limitation, the Debtor itself and its principal, Mark Gross;
 - (iii) approved a sale and investment solicitation process ("**SISP**"); and
 - (iv) extended the time for the Proposal Trustee to file a proposal on the Debtor's behalf under the BIA (the "**Proposal Filing Deadline**") to and including September 15, 2021;
- (e) the Proposal Filing Deadline was then extended by subsequent Orders of the Court, ultimately to and including December 14, 2021;
- (f) following the extension of the Proposal Filing Deadline to December 14, 2021, it became clear based on the results of the SISP that the Debtor would not be in a position to file a viable proposal prior to January 1, 2022 (the "**Outside Date**"), being the maximum deadline extension permissible under section 50.4(9) of the BIA;
- (g) specifically, the results of the SISP were such that the Proposal Trustee (in consultation with the lender under the DIP Facility (the "**DIP Lender**")) entered into the Sale Agreement on December 2, 2021, which, at the time, was still conditional on, amongst other things, several conditions in favour of the potential purchaser being satisfied or waived subsequent to the Outside Date;
- (h) a further extension of the Proposal Filing Deadline was therefore not sought beyond December 14, 2021, as a result of which the Debtor was deemed bankrupt and KSV was appointed as the Debtor's licensed insolvency trustee, which appointment was affirmed at the first meeting of creditors convened January 5, 2022;
- (i) in parallel, the DIP Lender also brought a motion to appoint KSV as the Receiver;

- (j) as reported to the Court and the Debtor's stakeholders by the Proposal Trustee, the Sale Agreement provided for a transition to receivership, such that a sale approval motion could be brought by the Receiver, subject to its appointment and the potential purchaser's conditions in the Sale Agreement being satisfied or waived;
- (k) pursuant to an Order made December 14, 2021 (the "**Receivership Order**"), KSV was appointed as the Receiver;
- (l) the Receiver recommends that the Court approve the Sale Agreement based on the First Report of the Receiver dated March 2, 2022 (the "**First Report**"), which First Report has been approved by the Court, and for the reasons described in the First Report Supplement;
- (m) the Sale Agreement, which the Receiver has accepted (subject to approval by this Court), contemplates that the Receiver will complete the Transaction and that the property described in the Sale Agreement will be vested in the Purchaser;
- (n) a condition of the Sale Agreement is that this Court provide the sale approval and vesting order (in the form, in all material respects, appended to the Sale Agreement) in favour of the Purchaser;
- (o) the other grounds set out in the First Report and the First Report Supplement;
- (p) section 243 of the BIA;
- (q) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (r) rules 1.04, 2.03, 3.02, 30, 37 and 41.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (s) such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the First Report;
- (b) the First Report Supplement; and
- (c) such further and other material as counsel may submit and this Court may permit.

Date: April 5, 2022

AIRD & BERLIS LLP

Barristers and Solicitors

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Lawyers for the Receiver

TO: ATTACHED SERVICE LIST

**CANNECT MORTGAGE INVESTMENT
CORPORATION**

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Applicant

Respondent

CV-21-00672999-00CL

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(returnable April 14, 2022)**

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Lawyers for the Court-appointed Receiver

TAB 2

Court File No. CV-21-00672999-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 14TH

JUSTICE

)

DAY OF APRIL, 2022

)

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of Claireville Property Holdings Inc. (the “**Debtor**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale amongst: (1) KSV Restructuring Inc., in its capacity as the Proposal Trustee (as defined in the Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made July 28, 2021 (the “**Sale Process Order**”)) and assigned to the Receiver, as vendor; (2) S. Paul Mantini, in trust for an Ontario corporation to be incorporated, as the original purchaser; and (3) 200 Town Centre Court Inc. (the “**Purchaser**”), as purchaser assignee, dated December 2, 2021 and amended March 24, 2022 (collectively, the “**Sale Agreement**”), copies of which are attached as Appendix “G” to

the First Report of the Receiver dated March 2, 2022 (the “**First Report**”), Confidential Appendix “2” to the First Report and Appendix “D” to the Supplement to the First Report of the Receiver dated April 5, 2022 (the “**First Report Supplement**” and, together with the First Report, the “**Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the property described as the “Purchased Assets” in the Sale Agreement (the “**Purchased Assets**”), was heard this day by judicial videoconference because of the COVID-19 pandemic.

ON READING the Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Susy Moniz sworn April 5, 2022, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement including, without limitation, all of the Debtor’s right, title and interest in and to the Ground Lease (as defined herein), shall vest absolutely in the Purchaser, free and clear of and from any and all certificates of pending litigation and any and all security interests (whether

contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, writs, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Sale Process Order; (ii) any encumbrances or charges created by the Order (Appointing Receiver) of The Honourable Mr. Justice Pattillo made December 14, 2021; (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iv) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the lessee of the ground lease in respect of the subject real property identified in **Schedule “B”** hereto (the “**Real Property**”) (collectively, the “**Ground Lease**”), and is hereby directed to delete and expunge from title to the Real Property all of the Claims with respect to the Ground Lease listed in **Schedule “C”** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead

of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

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

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

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

7. **THIS COURT ORDERS** that the First Report Supplement be and is hereby approved and the actions of the Receiver described therein be and are hereby approved.

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

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-21-00672999-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

I. Pursuant to an Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 14, 2021, KSV Restructuring Inc. was appointed as the receiver and manager (in such capacity, the “**Receiver**”) of all the assets, undertakings and properties of Claireville Property Holdings Inc. (the “**Debtor**”).

II. Pursuant to an Order of the Court dated April 14, 2022, the Court approved the agreement of purchase and sale amongst: (1) KSV Restructuring Inc., in its capacity as the Proposal Trustee (as defined in the Order of The Honourable Mr. Justice Pattillo of the Court made July 28, 2021) and assigned to the Receiver, as vendor; (2) S. Paul Mantini, in trust for an Ontario corporation to be incorporated, as the original purchaser; and (3) 200 Town Centre Court Inc. (the “**Purchaser**”), as purchaser assignee, dated December 2, 2021 and amended March 24, 2022 (collectively, the “**Sale Agreement**”), and provided for the vesting in the Purchaser of all the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be

effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) that the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

KSV RESTRUCTURING INC., solely in its capacity as the Receiver, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

SCHEDULE “B”**LEGAL DESCRIPTION****PIN 07368-0036(LT)**

PT LT 38 CON 4 FRONTING THE HUMBER, PT 8 64R2980 EXCEPT PTS 2, 3 & 1 EXPROP
PLAN 11716. ETOBICOKE; CITY OF TORONTO

PIN 07368-0037(LT)

PT LT 38 CON 4 FRONTING THE HUMBER, PT 5 64R2980. ETOBICOKE; CITY OF
TORONTO

**SCHEDULE “C”
INSTRUMENTS TO BE DELETED FROM TITLE**

a) **PIN 07368-0036 (LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
AT3972177	2015/08/07	Notice of Charge of Lease	\$10,000,000	Claireville Property Holdings Inc.	SREIT (Rexdale) Ltd.
AT5775169	2021/06/23	Construction Lien	\$260,515	Trade Electrical Contractors Inc.	
AT5830491	2021/08/16	Certificate of Action		Trade Electrical Contractors Inc.	Aqua Greens Inc. c/o Urban Farmer Claireville Property Holdings Inc.
AT5845822	2021/08/31	Application Court Order		Superior Court of Justice	KSV Restructuring Inc.
AT5888582	2021/10/20	Notice of Assignment of Rents General		Claireville Property Holdings Inc.	Cannect Mortgage Investment Corporation

b) **PIN 07368-0037(LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
AT3972177	2015/08/07	Notice of Charge of Lease	\$10,000,000	Claireville Property Holdings Inc.	SREIT (Rexdale) Ltd.
AT5775169	2021/06/23	Construction Lien	\$260,515	Trade Electrical Contractors Inc.	
AT5830491	2021/08/16	Certificate of Action		Trade Electrical Contractors Inc.	Aqua Greens Inc. c/o Urban Farmer Claireville Property Holdings Inc.
AT5845822	2021/08/31	Application Court Order		Superior Court of Justice	KSV Restructuring Inc.
AT5888582	2021/10/20	Notice of Assignment of Rents General		Claireville Property Holdings Inc.	Cannect Mortgage Investment Corporation

SCHEDULE “D”
PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS

a) **PIN 07368-0036 (LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
EB319687	1966/09/27	Transfer			
64R2980	1973/08/15	Plan Reference			
EB432413	1974/04/23	Notice of Lease			
EB499958	1978/09/15	Agreement			Borough of Etobicoke
64R7329	1978/12/11	Plan Reference			
E317117	2000/03/27	Notice		Her Majesty The Queen In Right Of The Department Of Transport Canada	
E417103	2001/05/29	Application Change Name		Slough Estates (Canada) Limited	Slough Estates Canada Limited
E467712	2001/10/19	Notice of Assignment of Lessee Interest		Slough Estates Canada Limited	SREIT (Rexdale) Ltd
E468446	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Autotek Electroplating Inc.
E468447	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Olympic Coaters Inc.
AT3402986	2013/09/11	Notice of Sublease		SREIT (Rexdale) Ltd	Club Coffee L.P.
AT3972176	2015/08/07	Notice of Assignment of Lessee Interest	\$2,750,000	SREIT (Rexdale) Ltd.	Claireville Property Holdings Inc.
AT5297522	2019/11/19	Notice of Security Interest	\$240,751	De Lage Landen Financial Services Canada Inc.	
AT5655642	2021/02/19	Notice of Security Interest	\$207,490	Add Capital Corp.	
AT5820101	2021/08/04	Notice of Assignment of Lessee Interest	\$2	Duca Financial Services Credit Union Ltd.	Claireville Property Holdings Inc.

b) **PIN 07368-0037(LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
EB319687	1966/09/27	Transfer			
64R2980	1973/08/15	Plan Reference			
EB432135	1974/04/16	Agreement			Borough of Etobicoke
EB432413	1974/04/23	Notice of Lease			
EB497279	1978/07/25	Agreement			Borough of Etobicoke
EB499958	1978/09/15	Agreement			Borough of Etobicoke
64R9552	1982/09/21	Plan Reference			
TB315351	1986/04/23	Lease			
TB331744	1986/06/30	Charge	\$300,000		
E317117	2000/03/27	Notice		Her Majesty The Queen In Right Of The Department Of Transport Canada	
E467712	2001/10/19	Notice of Assignment of Lessee Interest	\$19,844,000	Slough Estates Canada Limited	SREIT (Rexdale) Ltd
E468446	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Autotek Electroplating Inc.
E468447	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Olympic Coaters Inc.
AT3402986	2013/09/11	Notice of Sublease		SREIT (Rexdale) Ltd.	Club Coffee L.P.
AT3499493	2014/01/16	Notice of Sublease		SREIT (Rexdale) Ltd.	Brightroof II GP Inc. Metis Nation of Ontario - Brightroof Solar LP
AT3574752	2014/05/06	Notice of Sublease		SREIT (Rexdale) Ltd.	Brightroof II GP Inc.
AT3870116	2015/04/30	Notice of Charge of Lease	\$80,000,000	Brightroof II GP Inc. Metis Nation of Ontario - Brightroof Solar LP	National Bank of Canada

AT3871059	2015/04/30	Notice of Charge of Lease	\$80,000,000	Brightroof II GP Inc. Metis Nation of Ontario - Brightroof Solar LP	National Bank of Canada
AT3871060	2015/04/30	Notice of Charge of Lease	\$80,000,000	Brightroof II GP Inc. Metis Nation of Ontario - Brightroof Solar LP	National Bank of Canada
AT3972176	2015/08/07	Notice of Assignment of Lessee Interest	\$2,750,000	SREIT (Rexdale) Ltd.	Claireville Property Holdings Inc.
AT5297522	2019/11/19	Notice of Security Interest	\$240,751	De Lage Landen Financial Services Canada Inc.	
AT5384006	2020/03/09	Notice of Security Interest	\$62,215	Blue Chip Leasing Corporation	
AT5384007	2020/03/09	Notice of Security Interest	\$5,011	Blue Chip Leasing Corporation	
AT5384008	2020/03/09	Notice of Security Interest	\$16,086	Blue Chip Leasing Corporation	
AT5384009	2020/03/09	Notice of Security Interest	\$17,387	Blue Chip Leasing Corporation	
AT5384010	2020/03/09	Notice of Security Interest	\$41,764	Blue Chip Leasing Corporation	
AT5384011	2020/03/09	Notice of Security Interest	\$83,447	Blue Chip Leasing Corporation	
AT5384012	2020/03/09	Notice of Security Interest	\$14,038	Blue Chip Leasing Corporation	
AT5655638	2021/02/19	Notice of Security Interest	\$19,647	Add Capital Corp.	
AT5655639	2021/02/19	Notice of Security Interest	\$70,302	Add Capital Corp.	

AT5655640	2021/02/19	Notice of Security Interest	\$15,863	Add Capital Corp.	
AT5655641	2021/02/19	Notice of Security Interest	\$94,295	Add Capital Corp.	
AT5820101	2021/08/04	Notice of Assignment Of Lessee Interest	\$2	Duca Financial Services Credit Union Ltd.	Claireville Property Holdings Inc.

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

Court File No. CV-21-00672999-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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Lawyers for the Receiver

TAB 3

~~Revised: January 21, 2014~~

Court File No. CV-21-00672999-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE _____) ~~DAY~~ THURSDAY, THE _____
) 14TH
)
 DAY
 JUSTICE _____
 OF APRIL, ~~20~~ 2022

~~BETWEEN:~~

PLAINTIFF

Plaintiff

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and - _____

DEFENDANT

Defendant

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ KSV Restructuring Inc., in its capacity as the Court-appointed receiver ~~(and manager (in such capacity, the "Receiver"))~~ of

~~the undertaking, property and assets of [DEBTOR]~~Claireville Property Holdings Inc. (the "Debtor"), for an order, *inter alia*, approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale ~~(the "~~amongst: (1) KSV Restructuring Inc., in its capacity as the Proposal Trustee (as defined in the Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the "Court") made July 28, 2021 (the "Sale Process Order") and assigned to the Receiver, as vendor; (2) S. Paul Mantini, in trust for an Ontario corporation to be incorporated, as the original purchaser; and (3) 200 Town Centre Court Inc. (the "Purchaser"), as purchaser assignee, dated December 2, 2021 and amended March 24, 2022 (collectively, the "Sale Agreement")) ~~between,~~ copies of which are attached as Appendix "G" to the First Report of the Receiver ~~and [NAME OF PURCHASER] (the "Purchaser") dated [DATE]~~dated March 2, 2022 (the "First Report"), Confidential Appendix "2" to the First Report and appended Appendix "D" to the Supplement to the First Report of the Receiver dated [DATE] April 5, 2022 (the "First Report" Supplement" and, together with the First Report, the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assetsproperty described as the "Purchased Assets" in the Sale Agreement (the "Purchased Assets"), was heard this day ~~at 330 University Avenue, Toronto, Ontario~~by judicial videoconference because of the COVID-19 pandemic.

ON READING the Report and appendices thereto, and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ and such other counsel as were present, no one appearing for any other person on the service list, although

properly served as appears from the affidavit of [NAME] Susy Moniz sworn [DATE] April 5, 2022, filed¹;

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's⁴ right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~⁴ including, without limitation, all of the Debtor's right, title and interest in and to the Ground Lease (as defined herein), shall vest absolutely in the Purchaser, free and clear of and from any and all certificates

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

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

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

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

of pending litigation and any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, writs, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Sale Process Order; (ii) any encumbrances or charges created by the Order (Appointing Receiver) of ~~the~~The Honourable Mr. Justice [NAME] dated [DATE] Pattillo made December 14, 2021; (~~iii~~) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (~~iii~~iv) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~appropriate Land Titles Division

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

~~of {LOCATION}~~ of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*⁶, the Land Registrar is hereby directed to enter the Purchaser as the ~~owner~~lessee of the ground lease in respect of the subject real property identified in Schedule "B" hereto (the "Real Property") ~~in fee simple~~(collectively, the "Ground Lease"), and is hereby directed to delete and expunge from title to the Real Property all of the Claims with respect to the Ground Lease listed in Schedule "C" hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver¹'s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver¹'s Certificate, forthwith after delivery thereof.

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

⁷ ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

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

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

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

~~(a)~~ (a) the pendency of these proceedings;

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

~~(c)~~ (c) any assignment in bankruptcy made in respect of the Debtor;

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

7. ~~8. THIS COURT ORDERS AND DECLARES~~ that the ~~Transaction is exempt from~~ First Report Supplement be and is hereby approved and the ~~application~~ actions of the ~~Bulk Sales Act (Ontario)~~ Receiver described therein be and are hereby approved.

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

~~Revised: January 21, 2014~~

Schedule ~~"A"~~ – Form of Receiver's Certificate

Court File No. ~~_____~~ CV-21-00672999-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

~~BETWEEN:~~

PLAINTIFF

Plaintiff

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and - _____

DEFENDANT

Defendant

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

RECEIVER'S CERTIFICATE

RECITALS

I. ~~A.~~ Pursuant to an Order of ~~the~~ The Honourable ~~[NAME OF JUDGE]~~ Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ December 14, 2021, KSV Restructuring Inc. was appointed as the receiver (and manager (in such capacity, the "Receiver") of all the ~~undertaking, property~~

~~and~~ assets ~~of [DEBTOR]~~, undertakings and properties of Claireville Property Holdings Inc. (the “Debtor”).

II. ~~B.~~ Pursuant to an Order of the Court dated ~~[DATE]~~ April 14, 2022, the Court approved the agreement of purchase and sale ~~made as of [DATE OF AGREEMENT]~~ (the “Sale Agreement”) ~~between the Receiver [Debtor] and [NAME OF PURCHASER]~~ amongst: (1) KSV Restructuring Inc., in its capacity as the Proposal Trustee (as defined in the Order of The Honourable Mr. Justice Pattillo of the Court made July 28, 2021) and assigned to the Receiver, as vendor; (2) S. Paul Mantini, in trust for an Ontario corporation to be incorporated, as the original purchaser; and (3) 200 Town Centre Court Inc. (the “Purchaser”), as purchaser assignee, dated December 2, 2021 and amended March 24, 2022 (collectively, the “Sale Agreement”), and provided for the vesting in the Purchaser of all the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the ~~Purchase Price~~ purchase price for the Purchased Assets; (ii) that the conditions to ~~Closing~~ closing as set out in ~~section 1 of the~~ Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) that the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

~~-2-~~ A-3

1. ~~1.~~ The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. ~~2.~~ The conditions to Closing as set out in ~~section~~ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; ~~and~~

3. ~~3.~~ The Transaction has been completed to the satisfaction of the Receiver; ~~and~~

4. ~~4.~~ This Receiver's Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

~~{NAME OF RECEIVER}, KSV~~
RESTRUCTURING INC., solely in its capacity
 as the Receiver ~~of the undertaking, property~~
~~and assets of {DEBTOR}~~, and not in its personal
 capacity or in any other capacity

Per: _____

Name: _____

Title: _____

~~Revised: January 21, 2014~~

SCHEDULE "B"

~~Schedule B—Purchased Assets~~

LEGAL DESCRIPTION

PIN 07368-0036(LT)

PT LT 38 CON 4 FRONTING THE HUMBER, PT 8 64R2980 EXCEPT PTS 2, 3 & 1 EXPROP
PLAN 11716. ETOBICOKE; CITY OF TORONTO

PIN 07368-0037(LT)

PT LT 38 CON 4 FRONTING THE HUMBER, PT 5 64R2980. ETOBICOKE; CITY OF
TORONTO

~~Revised: January 21, 2014~~

SCHEDULE "C"

INSTRUMENTS TO BE DELETED FROM TITLE

~~Schedule C—Claims to be deleted and expunged from title to Real Property~~

**~~Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property~~**

~~(unaffected by the Vesting Order)~~

48225779.1

a) **PIN 07368-0036 (LT)**

<u>Reg. No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
<u>AT3972177</u>	<u>2015/08/07</u>	<u>Notice of Charge of Lease</u>	<u>\$10,000,000</u>	<u>Claireville Property Holdings Inc.</u>	<u>SREIT (Rexdale) Ltd.</u>
<u>AT5775169</u>	<u>2021/06/23</u>	<u>Construction Lien</u>	<u>\$260,515</u>	<u>Trade Electrical Contractors Inc.</u>	
<u>AT5830491</u>	<u>2021/08/16</u>	<u>Certificate of Action</u>		<u>Trade Electrical Contractors Inc.</u>	<u>Aqua Greens Inc. c/o Urban Farmer Claireville Property Holdings Inc.</u>
<u>AT5845822</u>	<u>2021/08/31</u>	<u>Application Court Order</u>		<u>Superior Court of Justice</u>	<u>KSV Restructuring Inc.</u>
<u>AT5888582</u>	<u>2021/10/20</u>	<u>Notice of Assignment of Rents General</u>		<u>Claireville Property Holdings Inc.</u>	<u>Cannect Mortgage Investment Corporation</u>

b) **PIN 07368-0037(LT)**

C-3

<u>Reg. No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
<u>AT3972177</u>	<u>2015/08/07</u>	<u>Notice of Charge of Lease</u>	<u>\$10,000,000</u>	<u>Claireville Property Holdings Inc.</u>	<u>SREIT (Rexdale) Ltd.</u>
<u>AT5775169</u>	<u>2021/06/23</u>	<u>Construction Lien</u>	<u>\$260,515</u>	<u>Trade Electrical Contractors Inc.</u>	
<u>AT5830491</u>	<u>2021/08/16</u>	<u>Certificate of Action</u>		<u>Trade Electrical Contractors Inc.</u>	<u>Aqua Greens Inc. c/o Urban Farmer Claireville Property Holdings Inc.</u>
<u>AT5845822</u>	<u>2021/08/31</u>	<u>Application Court Order</u>		<u>Superior Court of Justice</u>	<u>KSV Restructuring Inc.</u>
<u>AT5888582</u>	<u>2021/10/20</u>	<u>Notice of Assignment of Rents General</u>		<u>Claireville Property Holdings Inc.</u>	<u>Cannect Mortgage Investment Corporation</u>

|

SCHEDULE "D"
PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS

|

a) PIN 07368-0036 (LT)

<u>Reg. No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
EB319687	1966/09/27	Transfer			
64R2980	1973/08/15	Plan Reference			
EB432413	1974/04/23	Notice of Lease			
EB499958	1978/09/15	Agreement			Borough of Etobicoke
64R7329	1978/12/11	Plan Reference			
E317117	2000/03/27	Notice		Her Majesty The Queen In Right Of The Department Of Transport Canada	
E417103	2001/05/29	Application Change Name		Slough Estates (Canada) Limited	Slough Estates Canada Limited
E467712	2001/10/19	Notice of Assignment of Lessee Interest		Slough Estates Canada Limited	SREIT (Rexdale) Ltd
E468446	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Autotek Electroplating Inc.
E468447	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Olympic Coaters Inc.
AT3402986	2013/09/11	Notice of Sublease		SREIT (Rexdale) Ltd	Club Coffee L.P.
AT3972176	2015/08/07	Notice of Assignment of Lessee Interest	\$2,750,000	SREIT (Rexdale) Ltd.	Claireville Property Holdings Inc.
AT5297522	2019/11/19	Notice of Security Interest	\$240,751	De Lage Landen Financial Services Canada Inc.	
AT5655642	2021/02/19	Notice of Security Interest	\$207,490	Add Capital Corp.	
AT5820101	2021/08/04	Notice of Assignment of Lessee Interest	\$2	Duca Financial Services Credit Union Ltd.	Claireville Property Holdings Inc.

b) [PIN 07368-0037\(LT\)](#)

<u>Reg. No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
EB319687	1966/09/27	Transfer			
64R2980	1973/08/15	Plan Reference			

EB432135	1974/04/16	Agreement			Borough of Etobicoke
EB432413	1974/04/23	Notice of Lease			
EB497279	1978/07/25	Agreement			Borough of Etobicoke
EB499958	1978/09/15	Agreement			Borough of Etobicoke
64R9552	1982/09/21	Plan Reference			
TB315351	1986/04/23	Lease			
TB331744	1986/06/30	Charge	\$300,000		
E317117	2000/03/27	Notice		Her Majesty The Queen In Right Of The Department Of Transport Canada	
E467712	2001/10/19	Notice of Assignment of Lessee Interest	\$19,844,000	Slough Estates Canada Limited	SREIT (Rexdale) Ltd
E468446	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Autotek Electroplating Inc.
E468447	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Olympic Coaters Inc.
AT3402986	2013/09/11	Notice of Sublease		SREIT (Rexdale) Ltd.	Club Coffee L.P.
AT3499493	2014/01/16	Notice of Sublease		SREIT (Rexdale) Ltd.	Brightroof II GP Inc. Metis Nation of Ontario - Brightroof Solar LP
AT3574752	2014/05/06	Notice of Sublease		SREIT (Rexdale) Ltd.	Brightroof II GP Inc.
AT3870116	2015/04/30	Notice of Charge of Lease	\$80,000,000	Brightroof II GP Inc. Metis Nation of Ontario - Brightroof Solar LP	National Bank of Canada
AT3871059	2015/04/30	Notice of Charge of Lease	\$80,000,000	Brightroof II GP Inc. Metis Nation of Ontario - Brightroof Solar LP	National Bank of Canada
AT3871060	2015/04/30	Notice of Charge of	\$80,000,000	Brightroof II GP Inc.	National Bank of Canada

		<u>Lease</u>		<u>Metis Nation of Ontario - Brightroof Solar LP</u>	
<u>AT3972176</u>	<u>2015/08/07</u>	<u>Notice of Assignment of Lessee Interest</u>	<u>\$2,750,000</u>	<u>SREIT (Rexdale) Ltd.</u>	<u>Claireville Property Holdings Inc.</u>
<u>AT5297522</u>	<u>2019/11/19</u>	<u>Notice of Security Interest</u>	<u>\$240,751</u>	<u>De Lage Landen Financial Services Canada Inc.</u>	
<u>AT5384006</u>	<u>2020/03/09</u>	<u>Notice of Security Interest</u>	<u>\$62,215</u>	<u>Blue Chip Leasing Corporation</u>	
<u>AT5384007</u>	<u>2020/03/09</u>	<u>Notice of Security Interest</u>	<u>\$5,011</u>	<u>Blue Chip Leasing Corporation</u>	
<u>AT5384008</u>	<u>2020/03/09</u>	<u>Notice of Security Interest</u>	<u>\$16,086</u>	<u>Blue Chip Leasing Corporation</u>	
<u>AT5384009</u>	<u>2020/03/09</u>	<u>Notice of Security Interest</u>	<u>\$17,387</u>	<u>Blue Chip Leasing Corporation</u>	
<u>AT5384010</u>	<u>2020/03/09</u>	<u>Notice of Security Interest</u>	<u>\$41,764</u>	<u>Blue Chip Leasing Corporation</u>	
<u>AT5384011</u>	<u>2020/03/09</u>	<u>Notice of Security Interest</u>	<u>\$83,447</u>	<u>Blue Chip Leasing Corporation</u>	
<u>AT5384012</u>	<u>2020/03/09</u>	<u>Notice of Security Interest</u>	<u>\$14,038</u>	<u>Blue Chip Leasing Corporation</u>	
<u>AT5655638</u>	<u>2021/02/19</u>	<u>Notice of Security Interest</u>	<u>\$19,647</u>	<u>Add Capital Corp.</u>	
<u>AT5655639</u>	<u>2021/02/19</u>	<u>Notice of Security Interest</u>	<u>\$70,302</u>	<u>Add Capital Corp.</u>	
<u>AT5655640</u>	<u>2021/02/19</u>	<u>Notice of Security Interest</u>	<u>\$15,863</u>	<u>Add Capital Corp.</u>	
<u>AT5655641</u>	<u>2021/02/19</u>	<u>Notice of Security Interest</u>	<u>\$94,295</u>	<u>Add Capital Corp.</u>	
<u>AT5820101</u>	<u>2021/08/04</u>	<u>Notice of Assignment Of</u>	<u>\$2</u>	<u>Duca Financial Services Credit</u>	<u>Claireville Property Holdings Inc.</u>

		<u>Lessee Interest</u>		<u>Union Ltd.</u>	
--	--	------------------------	--	-------------------	--

CANNECT MORTGAGE INVESTMENT CORPORATIONCLAIREVILLE PROPERTY HOLDINGS INC.ApplicantRespondentCourt File No. CV-21-00672999-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto**APPROVAL AND VESTING ORDER**

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Barristers and Solicitors
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Toronto, ON M5J 2T9

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Lawyers for the Receiver

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Document comparison by Workshare Compare on April 5, 2022 10:31:01 AM

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Rendering set	Standard

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Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
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Moved cell	
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Padding cell	

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Deletions	145
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	628

TAB 4

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(continued)

SCHEDULE A
APPROVAL AND VESTING ORDER

Court File No. ~~31-2749576~~ CV-21-00672999-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

~~IN BANKRUPTCY AND INSOLVENCY~~

THE HONOURABLE)	<*>DAY <u>THURSDAY</u> , THE <*> <u>14TH</u>
)	
JUSTICE)	DAY OF <*> <u>APRIL</u> , 202<*> <u>2022</u>

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

**~~IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF~~ CLAIREVILLE
PROPERTY HOLDINGS INC., ~~A CORPORATION INCORPORATED UNDER THE ONTARIO
BUSINESS CORPORATIONS ACT~~**

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the ~~proposal~~
~~trustee~~ Court-appointed receiver and manager (in such capacity, the "~~Proposal Trustee~~") ~~[NTD:~~
~~references to Proposal Trustee and accompanying Court proceedings to be amended, as~~
~~applicable, to reflect the receivership and/or bankruptcy of the Debtor, as~~
~~applicable]~~ Receiver") of Claireville Property Holdings Inc. (the "**Debtor**"), for an order, *inter*

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(continued)

alia, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale ~~between~~amongst: (1) KSV Restructuring Inc., in its capacity as the Proposal Trustee, ~~(as vendor pursuant to~~defined in the Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made July 28, 2021 (the “**Sale Process Order**”))~~;~~ and ~~assigned to the Receiver, as vendor;~~ (2) S. Paul Mantini, in trust for an Ontario corporation to be incorporated, as the original purchaser; and (3) 200 Town Centre Court Inc. (the “Purchaser”), as purchaser assignee, dated ~~December 2, 2021~~ and amended March 24, 2022 (collectively, the “**Sale Agreement**”), ~~a copy~~copies of which ~~is~~are attached as ~~Confidential~~-Appendix “~~G~~” to the First Report of the ~~Proposal Trustee~~Receiver dated ~~March 2, 2022~~ (the “First Report”), Confidential Appendix “2” to the First Report and Appendix “D” to the Supplement to the First Report of the Receiver dated April 5, 2022 (the “First Report Supplement” and, together with the First Report, ~~202~~ (the “Report”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the property described as the “Purchased Assets” in the Sale Agreement (the “**Purchased Assets**”), was heard this day by judicial videoconference because of the COVID-19 pandemic.

ON READING the Report and appendices thereto, and on hearing the submissions of counsel for the ~~Proposal Trustee~~Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~Susy Moniz~~ sworn ~~202~~ April 5, 2022, filed,

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(continued)

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the ~~Proposal Trustee~~Receiver is hereby authorized and approved, with such minor amendments as the ~~Proposal Trustee~~Receiver may deem necessary. The ~~Proposal Trustee~~Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a ~~Proposal Trustee~~Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "~~Proposal Trustee~~Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement including, without limitation, all of the Debtor's right, title and interest in and to the Ground Lease (as defined herein), shall vest absolutely in the Purchaser, free and clear of and from any and all certificates of pending litigation and any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, writs, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Sale Process Order; (ii) any encumbrances or charges created by the Order (Appointing Receiver) of The

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(continued)

Honourable Mr. Justice Pattillo made December 14, 2021; (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and ~~(iii)~~iv) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the lessee of the ground lease in respect of the subject real property identified in **Schedule “B”** hereto (the “**Real Property**”) (collectively, the “**Ground Lease**”), and is hereby directed to delete and expunge from title to the Real Property all of the Claims with respect to the Ground Lease listed in **Schedule “C”** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the ~~Proposal~~ TrusteeReceiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the

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(continued)

Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

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

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

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on the ~~Proposal Trustee~~Receiver and any other licensed insolvency trustee that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation,

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(continued)

nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT ORDERS** that the First Report Supplement be and is hereby approved and the actions of the Receiver described therein be and are hereby approved.

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

Schedule "A" – Form of ~~Proposal Trustee~~ Receiver's CertificateCourt File No. ~~31-2749576~~ CV-21-00672999-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

~~IN BANKRUPTCY AND INSOLVENCY~~

~~IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF~~

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

CLAIREVILLE PROPERTY HOLDINGS INC., ~~A CORPORATION INCORPORATED UNDER THE~~
~~ONTARIO BUSINESS CORPORATIONS ACT~~

~~PROPOSAL TRUSTEE~~

Respondent

RECEIVER'S CERTIFICATE

RECITALS

~~I. Pursuant to a notice of intention to make a proposal under the Bankruptcy and Insolvency Act (Canada) filed by Claireville Property Holdings Inc. (the "Debtor") on July 2, 2021, KSV Restructuring Inc. was named as the Debtor's proposal trustee (in such capacity, the "Proposal Trustee").~~

I. ~~II.~~ Pursuant to an Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the "Court") ~~made July 28~~ dated December 14, 2021 ~~(the~~

~~“Sale Process Order”~~), the Court approved a sale investment solicitation process with respect to, KSV Restructuring Inc. was appointed as the receiver and manager (in such capacity, the “Receiver”) of all the assets, undertakings and business properties of Claireville Property Holdings Inc. (the “Debtor ~~to be conducted by the Proposal Trustee, and expanded the powers of the Proposal Trustee with respect to the Debtor”~~).

II. ~~III.~~ Pursuant to an Order of the Court dated ~~<*>~~, 202~~<*>~~ April 14, 2022, the Court approved the agreement of purchase and sale ~~between~~ amongst: (1) KSV Restructuring Inc., in its capacity as the Proposal Trustee, as vendor pursuant to (as defined in the Sale Process Order of The Honourable Mr. Justice Pattillo of the Court made July 28, 2021) and assigned to the Receiver, as vendor; (2) S. Paul Mantini, in trust for an Ontario corporation to be incorporated, as the original purchaser; and (3) 200 Town Centre Court Inc. (the “Purchaser”), as purchaser assignee, dated ~~<*>~~ December 2, 2021 (and amended March 24, 2022 (collectively, the “Sale Agreement”), and provided for the vesting in the Purchaser of all the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the ~~Proposal Trustee~~ Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the ~~Proposal Trustee~~ Receiver and the Purchaser; and (iii) that the Transaction has been completed to the satisfaction of the ~~Proposal Trustee~~ Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the ~~Proposal Trustee~~Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the ~~Proposal Trustee~~Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the ~~Proposal Trustee~~Receiver; and
4. This ~~Proposal Trustee~~Receiver's Certificate was delivered by the ~~Proposal Trustee~~Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., solely in its capacity as the ~~proposal trustee of the Debtor~~Receiver, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

SCHEDULE "B"**LEGAL DESCRIPTION****PIN 07368-0036(LT)**

PT LT 38 CON 4 FRONTING THE HUMBER, PT 8 64R2980 EXCEPT PTS 2, 3 & 1 EXPROP PLAN 11716. ETOBICOKE; CITY OF TORONTO

PIN 07368-0037(LT)

PT LT 38 CON 4 FRONTING THE HUMBER, PT 5 64R2980. ETOBICOKE; CITY OF TORONTO

SCHEDULE "C"
INSTRUMENTS TO BE DELETED FROM TITLE

a) **PIN 07368-0036 (LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
AT3972177	2015/08/07	Notice of Charge of Lease	\$10,000,000	Claireville Property Holdings Inc.	SREIT (Rexdale) Ltd.
AT5775169	2021/06/23	Construction Lien	\$260,515	Trade Electrical Contractors Inc.	
AT5830491	2021/08/16	Certificate of Action		Trade Electrical Contractors Inc.	Aqua Greens Inc. c/o Urban Farmer Claireville Property Holdings Inc.
AT5845822	2021/08/31	Application Court Order		Superior Court of Justice	KSV Restructuring Inc.
AT5888582	2021/10/20	Notice of Assignment of Rents General		Claireville Property Holdings Inc.	Cannect Mortgage Investment Corporation

b) **PIN 07368-0037(LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
AT3972177	2015/08/07	Notice of Charge of Lease	\$10,000,000	Claireville Property Holdings Inc.	SREIT (Rexdale) Ltd.
AT5775169	2021/06/23	Construction Lien	\$260,515	Trade Electrical Contractors Inc.	
AT5830491	2021/08/16	Certificate of Action		Trade Electrical Contractors Inc.	Aqua Greens Inc. c/o Urban Farmer Claireville Property Holdings Inc.
AT5845822	2021/08/31	Application Court Order		Superior Court of Justice	KSV Restructuring Inc.
AT5888582	2021/10/20	Notice of Assignment of Rents General		Claireville Property Holdings Inc.	Cannect Mortgage Investment Corporation

SCHEDULE "D"
PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS

a) **PIN 07368-0036 (LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
EB319687	1966/09/27	Transfer			
64R2980	1973/08/15	Plan Reference			
EB432413	1974/04/23	Notice of Lease			
EB499958	1978/09/15	Agreement			Borough of Etobicoke
64R7329	1978/12/11	Plan Reference			
E317117	2000/03/27	Notice		Her Majesty The Queen In Right Of The Department Of Transport Canada	
E417103	2001/05/29	Application Change Name		Slough Estates (Canada) Limited	Slough Estates Canada Limited
E467712	2001/10/19	Notice of Assignment of Lessee Interest		Slough Estates Canada Limited	SREIT (Rexdale) Ltd
E468446	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Autotek Electroplating Inc.
E468447	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Olympic Coaters Inc.
AT3402986	2013/09/11	Notice of Sublease		SREIT (Rexdale) Ltd	Club Coffee L.P.
AT3972176	2015/08/07	Notice of Assignment of Lessee Interest	\$2,750,000	SREIT (Rexdale) Ltd.	Claireville Property Holdings Inc.
AT5297522	2019/11/19	Notice of Security Interest	\$240,751	De Lage Landen Financial Services Canada Inc.	
AT5655642	2021/02/19	Notice of Security Interest	\$207,490	Add Capital Corp.	
AT5820101	2021/08/04	Notice of Assignment of Lessee Interest	\$2	Duca Financial Services Credit Union Ltd.	Claireville Property Holdings Inc.

b) **PIN 07368-0037(LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
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EB319687	1966/09/27	Transfer			
64R2980	1973/08/15	Plan Reference			
EB432135	1974/04/16	Agreement			Borough of Etobicoke
EB432413	1974/04/23	Notice of Lease			
EB497279	1978/07/25	Agreement			Borough of Etobicoke
EB499958	1978/09/15	Agreement			Borough of Etobicoke
64R9552	1982/09/21	Plan Reference			
TB315351	1986/04/23	Lease			
TB331744	1986/06/30	Charge	\$300,000		
E317117	2000/03/27	Notice		Her Majesty The Queen In Right Of The Department Of Transport Canada	
E467712	2001/10/19	Notice of Assignment of Lessee Interest	\$19,844,000	Slough Estates Canada Limited	SREIT (Rexdale) Ltd
E468446	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Autotek Electroplating Inc.
E468447	2001/10/23	Notice of Sublease		SREIT (Rexdale) Ltd.	Olympic Coaters Inc.
AT3402986	2013/09/11	Notice of Sublease		SREIT (Rexdale) Ltd.	Club Coffee L.P.
AT3499493	2014/01/16	Notice of Sublease		SREIT (Rexdale) Ltd.	Brightroof II GP Inc. Metis Nation of Ontario - Brightroof Solar LP
AT3574752	2014/05/06	Notice of Sublease		SREIT (Rexdale) Ltd.	Brightroof II GP Inc.
AT3870116	2015/04/30	Notice of Charge of Lease	\$80,000,000	Brightroof II GP Inc. Metis Nation of Ontario - Brightroof Solar LP	National Bank of Canada
AT3871059	2015/04/30	Notice of Charge of Lease	\$80,000,000	Brightroof II GP Inc. Metis Nation of Ontario - Brightroof Solar LP	National Bank of Canada

AT3871060	2015/04/30	Notice of Charge of Lease	\$80,000,000	Brightroof II GP Inc. Metis Nation of Ontario - Brightroof Solar LP	National Bank of Canada
AT3972176	2015/08/07	Notice of Assignment of Lessee Interest	\$2,750,000	SREIT (Rexdale) Ltd.	Claireville Property Holdings Inc.
AT5297522	2019/11/19	Notice of Security Interest	\$240,751	De Lage Landen Financial Services Canada Inc.	
AT5384006	2020/03/09	Notice of Security Interest	\$62,215	Blue Chip Leasing Corporation	
AT5384007	2020/03/09	Notice of Security Interest	\$5,011	Blue Chip Leasing Corporation	
AT5384008	2020/03/09	Notice of Security Interest	\$16,086	Blue Chip Leasing Corporation	
AT5384009	2020/03/09	Notice of Security Interest	\$17,387	Blue Chip Leasing Corporation	
AT5384010	2020/03/09	Notice of Security Interest	\$41,764	Blue Chip Leasing Corporation	
AT5384011	2020/03/09	Notice of Security Interest	\$83,447	Blue Chip Leasing Corporation	
AT5384012	2020/03/09	Notice of Security Interest	\$14,038	Blue Chip Leasing Corporation	
AT5655638	2021/02/19	Notice of Security Interest	\$19,647	Add Capital Corp.	
AT5655639	2021/02/19	Notice of Security Interest	\$70,302	Add Capital Corp.	
AT5655640	2021/02/19	Notice of Security Interest	\$15,863	Add Capital Corp.	

AT5655641	2021/02/19	Notice of Security Interest	\$94,295	Add Capital Corp.	
AT5820101	2021/08/04	Notice of Assignment Of Lessee Interest	\$2	Duca Financial Services Credit Union Ltd.	Claireville Property Holdings Inc.

~~IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF~~ CANNECT MORTGAGE INVESTMENT CORPORATION
~~CLAIREVILLE PROPERTY HOLDINGS INC., A CORPORATION INCORPORATED UNDER THE ONTARIO BUSINESS CORPORATIONS ACT~~

Applicant

Respondent

Court File No.

~~31-2749576~~ CV-21-00672999-00CL

**ONTARIO
 SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST**

~~IN BANKRUPTCY AND INSOLVENCY~~

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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Lawyers for the ~~Proposal Trustee~~Receiver

TAB 5



**Supplement to the First Report to Court
of KSV Restructuring Inc.
as Receiver and Manager of
Claireville Property Holdings Inc.**

April 5, 2022

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Appendices

Appendix

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First Report to Court dated March 2, 2022 (without appendices)	A
Email to Service List dated March 18, 2022	B
March 22 Order and accompanying endorsement	C
Amending Agreement dated March 24, 2022.....	D
Sworn Declaration sworn March 24, 2022	E

Court File No. CV-21-00672999-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

**SUPPLEMENT TO THE FIRST REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER OF
CLAIREVILLE PROPERTY HOLDINGS INC.**

APRIL 5, 2022

1.0 Introduction

1. This report (the “Supplemental Report”) supplements the First Report of the Receiver dated March 2, 2022 (the “First Report”). The First Report was approved by the Court, is integral to the motion for which the Supplemental Report is filed and should be read in its entirety. A copy of the First Report (without appendices) is attached as Appendix “A”.
2. Capitalized terms used but not defined in this Supplemental Report have the meaning provided to them in the First Report, except that the “Attempted Purchaser” and the “Attempted Transaction” are redefined in this Supplemental Report as the “Purchaser” and the “Transaction”, respectively.

2.0 Developments Since the Issuance of the First Report

1. As set out in detail in the First Report, a dispute arose between the Purchaser and the Receiver in respect of the Estoppel Conditions, which dispute prevented the Receiver from seeking approval of, and closing, the Transaction. Accordingly, the relief originally recommended by the Receiver in connection with the First Report included approval of a further Receivership Bid Process, the purpose of which would have been to solicit revised offers for the Leasehold Interest.

2. However, Section 5.0(5) of the First Report also advised that the Receiver was still prepared to seek the Approval and Vesting Order in respect of the Transaction if the Purchaser agreed to waive the Estoppel Conditions prior to the hearing of the Receiver's motion on March 22, 2022, which the Purchaser had refused to do as at the date of the First Report.
3. On March 18, 2022, the Purchaser confirmed that it was waiving the Estoppel Conditions. On the same date, the Receiver advised the Service List by email of the foregoing. In the same email, the Receiver also advised the Service List of the Receiver's intention:
 - a) not to seek approval of the further Receivership Bid Process or related relief regarding the marketing and sale of the Leasehold Interest at the March 22, 2022 hearing; and
 - b) to ask the Court on March 22, 2022 for an additional hearing date to hear an approval and vesting motion in connection with the Transaction (the "AVO Motion").

A copy of the Receiver's March 18th email to the Service List is attached as Appendix "B".

4. On March 22, 2022, the Court issued an Order approving the First Report, the actions of the Receiver described therein and the sealing of the Confidential Appendices (the "March 22 Order"). At the hearing on March 22, 2022, the Receiver also confirmed a date of April 14, 2022 for the hearing of the AVO Motion. Copies of the March 22 Order and accompanying endorsement are attached as Appendix "C".
5. On March 24, 2022, the Receiver, the Purchaser and the Purchaser Assignee (as defined below) entered into an amending and assumption agreement regarding the APS (the "Amending Agreement" and, together with the APS, the "Agreement"). A copy of the Amending Agreement is attached as Appendix "D". The key terms of the Amending Agreement are as follows:
 - a) an assignment by the Receiver of the Proposal Trustee's interest in the APS, and the agreement by the parties to reinstate their respective obligations under the Agreement and to be bound by same;
 - b) the Purchaser's direction that title to the Purchased Assets (as defined in the APS) be taken in the name of 200 Town Centre Court Inc. (the "Purchaser Assignee"). The principal of both the Purchaser and the Purchaser Assignee is S. Paul Mantini; and
 - c) the reaffirmation by the Purchaser and the Purchaser Assignee that they have irrecoverably waived the Estoppel Conditions and the Diligence Condition.

2.1 Purpose of this Supplemental Report

1. The substantive purpose of the Supplemental Report is to recommend that the Court issue the Approval and Vesting Order in the form, in all material respects, of the draft Order attached to the APS (which APS itself was appended to the First Report), as amended only to reflect the necessities of the Amending Agreement and the filing of the Supplemental Report. In substance, the requested Approval and Vesting Order:
 - a) approves the Transaction;
 - b) vests title in and to the Purchased Assets in the Purchaser Assignee, free and clear of all liens, claims and encumbrances, except the Permitted Encumbrances (as defined in the APS), upon the Receiver filing a certificate with the Court confirming completion of the Transaction; and
 - c) approves the Supplemental Report and the actions of the Receiver described herein.

2.2 Restrictions

1. The Supplemental Report is subject to the same restrictions as the First Report.

3.0 Transaction¹

1. The SISP results are set out in the First Report and are not repeated below.
2. The key terms and conditions of the Agreement are provided below.
 - a) Purchaser Assignee: 200 Town Centre Court Inc.;
 - b) Purchase Price: the Purchase Price amount is sealed pursuant to the March 22 Order (and is available for the Court at Confidential Appendix “2” to the First Report);
 - c) Deposits: the Deposits have been paid to the Receiver (which amount is available for the Court at Confidential Appendices “1” and “2” to the First Report);
 - d) Purchased Assets: the Purchased Assets include all of the Company’s right, title and interest in and to the Property, excluding the Excluded Assets and the Excluded Liabilities, which Purchased Assets include the Company’s right, title and interest in and to the following:
 - i. the Contracts (as defined in the APS to be, with certain exceptions, all the contracts, etc., to which the Company is a party, or by which the Company, in its capacity as owner of the Purchased Assets, is bound, including, without limitation, the Company’s right, title and interest in and to the Ground Lease);

¹ Terms not defined in this section have the meanings provided to them in the Agreement.

- ii. all: (i) prepaid rent; (ii) prepaid operating costs or expenses; and (iii) deposits of whatever nature and kind from any Person, public utility or Governmental Authority relating to the Purchased Assets;
 - iii. the Permits (as defined in the APS to be all the permits, etc., issued, granted or required by any Governmental Authority in respect of the Purchased Assets), but only to the extent transferable to the Purchaser or the Purchaser's permitted assignees; and
 - iv. the Warranty Rights (as defined in the APS to be the full benefit of all warranty rights, etc., of the Company against manufacturers, contractors or any other Person which apply to the Purchased Assets, but only to the extent that the same are capable of being assigned);
- e) Excluded Assets: means all the Company's right, title and interest in and to the Property other than the Purchased Assets, which Excluded Assets include the Company's right, title and interest, if any, in and to the following:
 - i. the Cash;
 - ii. original tax records and books and records that do not relate exclusively or primarily to any of the Purchased Assets;
 - iii. the benefit of any refundable Taxes payable or paid by the Company in respect of the Purchased Assets and applicable solely to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Company to any refund, rebate, or credit of Taxes for the period prior to the Closing Date; and
 - iv. the Excluded Contracts;
- f) "As Is, Where Is": the Agreement is consistent with standard insolvency transactions, i.e., to be completed on an "as is, where is" basis with minimal representations, warranties and conditions by the Receiver;
- g) Closing Date: means, unless otherwise agreed in writing by the Parties, the date that is the later of: (i) the 1st Business Day following the date that is 20 days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) the 1st Business Day following the date that is 20 days following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined; and
- h) Remaining Material Condition Known to the Receiver: issuance of the Approval and Vesting Order.

3. Subsequent to the First Report, the Receiver learned that: (i) one of Mr. Mantini's companies² had previously signed an agreement in November 2020 to purchase the real property municipally known as 40 King Street West in Oshawa, Ontario from an entity in the Gross Group³ (the "40 King Transaction"); (ii) the 40 King Transaction did not close; and (iii) the parties to the 40 King Transaction subsequently entered into a settlement agreement in May 2021 (the "40 King Settlement Agreement").
4. As set out in the First Report, accusations have been made by investors of the Gross Group (of which the Company is a member) of misappropriation and misuse of investor funds by Mark and Sheldon Gross and/or entities controlled by Mark and Sheldon Gross, which allegations are being investigated by KSV, in its capacity as the GCI Trustee.
5. Prior to entering into the Amending Agreement, the Receiver advised Mr. Mantini that it would request, and Mr. Mantini agreed to provide, a sworn declaration containing the following substantive points, an executed copy of which is attached as Appendix "E" (the "Sworn Declaration"):
 - a) neither Mark Gross, nor anyone related to him nor any entity controlled by him is involved in the Transaction; and
 - b) with the exception of the 40 King Settlement Agreement, neither Mr. Mantini, nor his wife, nor any company controlled by either of them currently has any business dealings or investments with Mark Gross or his family or any companies which, to Mr. Mantini's knowledge, are controlled by Mark Gross or his family.

3.1 Recommendation re: Transaction

1. The Receiver recommends the Court approve the Transaction for the following reasons:
 - a) the SISP (which, as described in the First Report, was approved by the Court on July 28, 2021 in the NOI Proceedings for which KSV acted as the Proposal Trustee), resulted in a wide canvassing of the market by CBRE, with the Proposal Trustee's oversight. In this regard, 13 parties executed a confidentially agreement and performed diligence over the course of the SISP, which resulted in three offers being submitted on or prior to the Bid Deadline, including the Purchaser's offer;
 - b) the APS specifically contemplates its assignment to the Receiver, as disclosed previously to the Company's stakeholders, including in both the Proposal Trustee's Fourth Report and in the First Report, which assignment has now occurred pursuant to the Amending Agreement;

² Being 1180554 Ontario Limited.

³ Being 40 King West Holdings Inc.

- c) in the Receiver's view, the APS represents the best offer received by the Bid Deadline. In this regard, Confidential Appendix "1" to the First Report contains an offer summary of all offers received by the Bid Deadline;
 - d) as discussed in the First Report, the unsolicited Kornwood APS (containing a higher purchase price than the APS) was submitted on two occasions after the Bid Deadline. On both occasions, the Receiver was advised that the Kornwood APS would be open for acceptance for between approximately 24 and 48 hours. Given that the Receiver was working in good faith with the Purchaser at that time, the Receiver did not engage with Kornwood or any of its representatives or related parties in respect of the Kornwood APS. No explanation was provided as to why Kornwood did not submit an offer prior to the Bid Deadline in accordance with the Court-approved SISF;
 - e) the Purchaser and the Purchaser Assignee have waived the Estoppel Conditions and the Diligence Condition, the two deposits have been remitted to the Receiver in accordance with the Agreement and Mr. Mantini has also provided the Sworn Declaration at the Receiver's request;
 - f) since advising the Service List on March 18, 2022 that the Receiver would be seeking the Approval and Vesting Order, no stakeholder has indicated any objection to the Receiver or its counsel;
 - g) the DIP Lender is supportive of the Transaction; and
 - h) as set out in the First Report, there are no funds available for a second marketing process, as the DIP Lender has confirmed that it is not prepared to allow its collateral to be used to fund these proceedings indefinitely. Also as set out in the First Report, the DIP Lender has advised that it would submit a credit bid to protect its interests should the Transaction not be completed in the near term.
2. In light of the foregoing, it is the Receiver's view that the Transaction satisfies the principles described in *Royal Bank v. Soundair*.⁴
- a) the Receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - b) the interests of all parties have been considered;
 - c) the process by which offers were obtained was conducted with efficacy and integrity; and
 - d) there has not been unfairness in the working out of the process.

⁴ (1991), 4 O.R. (3d) 1 (C.A.) at para. 16.

4.0 Next Steps in these Proceedings

1. Subject to the Court granting the Approval and Vesting Order in connection with the Transaction, the Receiver intends to:
 - a) work with the Purchaser and the Purchaser Assignee to close the Transaction; and
 - b) bring a final motion in these proceedings to, *inter alia*, approve distributions of the cash on deposit in the Receiver's account, including from the net proceeds of the Transaction, and seek the Receiver's discharge.

5.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an Order granting the relief detailed herein.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CLAIREVILLE PROPERTY HOLDINGS INC.
AND NOT IN ANY OTHER CAPACITY**

APPENDIX “A”



**First Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of
Claireville Property Holdings Inc.**

March 2, 2022

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Court File No. CV-21-00672999-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

FIRST REPORT OF KSV RESTRUCTURING INC. AS RECEIVER AND MANAGER OF
CLAIREVILLE PROPERTY HOLDINGS INC.

MARCH 2, 2022

1.0 Introduction

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as receiver and manager (in such capacities, the "Receiver") of all of the assets, undertaking and property (collectively, the "Property") of Claireville Property Holdings Inc. (the "Company").
2. On July 2, 2021, the Company filed a Notice of Intention to Make a Proposal ("NOI") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), and KSV was named the Company's Proposal Trustee (in such capacity, the "Proposal Trustee") (the "NOI Proceedings").
3. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") issued on July 28, 2021 (the "July 28 Order"), the Court, among other things:
 - a) approved a debtor-in-possession loan facility (the "DIP Facility") in the amount of \$4.5 million from Cconnect Mortgage Investment Corporation (the "DIP Lender") and granted a charge on the Property in favour of the DIP Lender for advances under the DIP Facility;
 - b) expanded the powers of the Proposal Trustee to oversee the Company's operations, including controlling receipts and disbursements; and
 - c) approved a sale and investment solicitation process ("SISP") .

A copy of the July 28 Order is attached as Appendix "A".

4. Pursuant to subsequent Court orders, the Court granted extensions of the deadline to file a proposal and extended the corresponding stay of proceedings under the BIA to December 14, 2021.
5. The SISP contemplated a bid deadline of November 9, 2021 (the “Bid Deadline”). As set out in the Proposal Trustee’s Fourth Report to Court dated December 8, 2021 (the “Proposal Trustee’s Fourth Report”), a copy of which is attached (without appendices) as Appendix “B”, the parties that made the strongest offers under the SISP were interviewed by the Proposal Trustee, the DIP Lender and the Proposal Trustee’s realtor, CB Richard Ellis Limited (“CBRE”).
6. On December 2, 2021, following negotiations, the Proposal Trustee and S. Paul Mantini, in trust for an Ontario corporation to be incorporated (the “Attempted Purchaser”), entered into an Agreement of Purchase and Sale (the “APS”) for substantially all of the Property (the “Attempted Transaction”). As set out in the Proposal Trustee’s Fourth Report, the APS was conditional in several respects, including, among other things, the Attempted Purchaser’s due diligence conditions and Court approval.
7. In light of the conditionality of the APS and the time period associated with same, it was apparent that the Company would not be in a position to file a viable proposal or close the Attempted Transaction prior to January 1, 2022, being the six-month anniversary of the commencement of the NOI Proceedings and the date by which the Company was required to file a proposal pursuant to the maximum deadline extensions permissible under subsection 50.4(9) of the BIA (the “Outside Date”).
8. As set out in the Proposal Trustee’s Fourth Report, the APS provided for a transition to receivership such that the Receiver would be able to bring a sale approval motion *“should the [Attempted] Purchaser be in a position to satisfy or waive its conditions.”*
9. In light of the inability for the Company to file a viable proposal or close the Attempted Transaction prior to the Outside Date, the DIP Lender sought to terminate the NOI Proceedings and appoint KSV as Receiver. The Court granted this relief on December 14, 2021. A copy of the order terminating the NOI Proceedings, discharging the Proposal Trustee and approving the Proposal Trustee’s Fourth Report and the Proposal Trustee’s conduct and activities is attached as Appendix “C” (the “NOI Termination Order”). A copy of the order appointing KSV as Receiver is attached as Appendix “D” (the “Receivership Order”). A copy of the Court’s endorsement is attached as Appendix “E”.
10. As no proposal was filed, the Company was deemed to have made an assignment in bankruptcy pursuant to subsection 50.4(8) of the BIA and KSV was appointed as Licensed Insolvency Trustee of the Company, which appointment was affirmed at the First Meeting of Creditors convened on January 5, 2022.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company and these proceedings;
 - b) summarize material SISP-related events following the Bid Deadline;
 - c) provide an update on the status of the Attempted Transaction, including a dispute between the Attempted Purchaser and the Receiver which has prevented the Receiver from seeking approval of, and closing, the Attempted Transaction;
 - d) recommend that the Court issue an Order:
 - i. authorizing and directing the return of \$460,000 of deposits plus interest thereon (the “Deposits”) paid by the Attempted Purchaser in connection with the APS, less the Receiver’s costs of its motion if opposed by the Attempted Purchaser;
 - ii. declaring, for greater certainty, that none of the Receiver, the Proposal Trustee and KSV has any remaining obligations under the APS;
 - iii. authorizing and directing the Receiver to solicit revised and final offers from certain bidders, including the Attempted Purchaser (the “Receivership Bid Process”); and
 - iv. approving this Report and the Receiver’s activities set out in this Report.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information prepared by the Company, the Company’s books and records and discussions with the Company’s property manager, Prime Real Estate Group Inc. (“Prime”). The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
2. The Receiver expresses no opinion or other level of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Company’s financial information should perform its own diligence and any reliance placed by any party on the Company’s financial information presented herein shall not be considered sufficient for any purpose whatsoever.

1.3 Currency

1. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

1.4 Court Materials

1. Court materials filed in these proceedings are available on the Receiver's website at <https://www.ksvadvisory.com/insolvency-cases/case/claireville-property-holdings-inc.>

2.0 Background

2.1 Corporate Overview

1. Prior to its bankruptcy, the Company was a privately owned corporation incorporated in 2015. Based on a review of the corporate profile report, the sole registered director and officer of the Company was Mark Gross.
2. Mark Gross and his father, Sheldon Gross, were also the sole registered directors and officers of Gross Capital Inc. ("GCI"), which is the Company's parent and a 50% shareholder of Prime. On June 25, 2021, GCI filed an assignment in bankruptcy and KSV was appointed Licensed Insolvency Trustee (in such capacity, the "GCI Trustee") of GCI's bankrupt estate, which appointment was affirmed at GCI's first meeting of creditors on July 15, 2021. GCI's estate also owns several other real estate holding companies, certain of which are subject to separate receivership proceedings before this Court.

2.2 Leasehold Interest

1. The Company's principal asset is its leasehold interest (the "Leasehold Interest") in 13 dual tenant industrial buildings municipally addressed as 18/20/22/24/26 Huddersfield Road, 350/354/358 Humberline Drive and 93/101/123/130/160 Claireville Drive (collectively, the "Real Property").
2. The Company is the registered owner of the Leasehold Interest, which it holds on behalf of 21 co-tenants (collectively, the "Co-Tenants"). GCI is one of the Co-Tenants, with a 7.3% beneficial interest in the Company's Co-Tenancy (the "Co-Tenancy").
3. The Leasehold Interest is subject to a 99-year ground lease with Kornwood Investments Ltd. ("Kornwood") dated September 1, 1973 (the "Ground Lease"), which expires on or about August 31, 2072. Rent under the Ground Lease is calculated based on 9% of the fair market value of the Real Property. The fair market value and the corresponding lease payments reset periodically in accordance with the terms of the Ground Lease. The next reset date for rent under the Ground Lease is September 1, 2023 (the "2023 Reset"). Based on the terms of the Ground Lease, its holder should have been profitable (as discussed below); however, absent changes to the Ground Lease or the 13 leases between the Company and each of the subtenants at the Real Property, the Receiver understands that the Ground Lease holder would incur substantial and recurring losses due to the significantly higher rents payable to Kornwood after the 2023 Reset. A copy of the Ground Lease is attached as Appendix "F".

2.3 Investigation

1. KSV, in its capacity as GCI Trustee, is investigating the assets and pre-bankruptcy operations of GCI and several of GCI's subsidiaries and related parties (collectively, the "Gross Group"). The investigation was commenced due to, among other things, accusations made by investors of misappropriation and misuse of investor funds by Mark and Sheldon Gross and/or entities controlled by Mark and Sheldon Gross.
2. A portion of the GCI Trustee's investigation is focused on the Company. The Company has historically been profitable - it has most recently generated annual income of over \$1 million in 2018 and 2019; however, notwithstanding the recurring income stream, the Company was insolvent when it filed its NOI on July 2, 2021.
3. Historically, funds generated by the Leasehold Interest were advanced by the Company to other entities in the Gross Group which contributed to the Company's insolvency. In this regard, the Co-Tenancy's financial statements as at December 31, 2020 reflect an intercompany advance owing from GCI to the Company of approximately \$3.3 million.
4. The GCI Trustee's investigation of GCI is ongoing. The GCI Trustee has recently been instructed by the inspectors of GCI's estate to conduct examinations of certain parties pursuant to Section 163 of the BIA. The GCI Trustee has recently issued two Notices of Examination and intends to be issuing additional notices following these initial two examinations, which are scheduled to commence in March 2022. The GCI Trustee has been and intends to continue reporting periodically to the inspectors of GCI's estate in connection with its investigation.

2.4 DIP Financing and Expanded Powers

1. At the commencement of the NOI Proceedings, the Company's principal secured creditor was DUCA Financial Services Credit Union Ltd. ("DUCA"), which was owed approximately \$2.4 million. As a result of, among other things, DUCA learning that the Company had accrued unpaid property tax arrears of approximately \$2 million, DUCA issued demand together with a Notice of Intention to Enforce Security pursuant to Section 244 of the BIA in June 2021. The Company filed its NOI prior to the expiry of the statutory 10-day notice period in an effort to preserve value and maximize recoveries for its stakeholders.
2. In July 2021, the Company obtained a commitment letter from the DIP Lender to repay DUCA and bring the outstanding property taxes current. The July 28 Order approved the DIP Facility, which funding was received on July 30, 2021. On the following business day, the Company used the \$4.5 million available under the DIP Facility to repay DUCA and the property tax arrears.
3. To address stakeholder concerns regarding the management of the Company, the Proposal Trustee advised Mark Gross that it was only prepared to support a continuation of the NOI Proceedings if its powers were enhanced such that Mark Gross could no longer control the Company or make any executive decisions, including controlling receipts and disbursements and/or decisions concerning the SISP. Mark Gross consented to this relief. Pursuant to the July 28 Order, Mark Gross no longer had any decision-making authority or control over the Company, including the SISP and the bank accounts.

3.0 SISP

1. The SISP results were set out in the Proposal Trustee's Fourth Report (attached as Appendix "B"), which was approved by the Court pursuant to the NOI Termination Order. In summary:

Pre-marketing Phase

- a) CBRE, with the Proposal Trustee's assistance, prepared:
 - a portfolio flyer detailing the offering and investment highlights for the Leasehold Interest (the "Investment Summary");
 - a confidentiality agreement ("CA");
 - a virtual data room, which contained, among other things, copies of the Ground Lease, subleases, environmental reports, building condition reports, rent rolls, financial budgets and property tax bills; and
 - a confidential information memorandum ("CIM"), which included more detailed information on the Leasehold Interest and details concerning the SISP.

Marketing

- a) Over the course of the SISP, CBRE sent the Investment Summary and CA to its network of over 450 prospective purchasers; and
- b) Interested parties were required to sign the CA to obtain a copy of the CIM and to access the data room.

Results by the Bid Deadline of November 9, 2021

- a) 13 parties executed the CA, and were provided a copy of the CIM and given access to the data room, certain of which visited the Real Property;
- b) Three parties, including the Attempted Purchaser, submitted offers on or prior to the Bid Deadline. A summary of the offers received in the SISP was provided as a confidential appendix to the Proposal Trustee's Fourth Report, and is provided again for convenience in Confidential Appendix "1" to this Report (the "Offer Summary"); and
- c) The Proposal Trustee, the DIP Lender and CBRE interviewed each party that submitted an offer. Following these meetings, the Proposal Trustee, in consultation with the DIP Lender and CBRE, worked to negotiate a transaction with the Attempted Purchaser, which resulted in the APS being signed on December 2, 2021. A redacted version of the APS is attached as Appendix "G". An unredacted version is provided in Confidential Appendix "2". The rationale for sealing the purchase price in the APS is provided in Section 3.2 below.

3.1 Expressions of Interest by Kornwood and the DIP Lender, and Related Matters

1. Following service of the DIP Lender's motion/application materials to terminate the NOI Proceedings and appoint the Receiver (the "December 14th Relief"), and following service of the Proposal Trustee's Fourth Report disclosing the results of the SISP, the DIP Lender's counsel and the Proposal Trustee's counsel were contacted by Kornwood's legal counsel in these proceedings (Paliare Roland Rosenberg Rothstein LLP ("Paliare")).
2. Paliare expressed certain concerns regarding potential motivations of the Attempted Purchaser, and indicated that Kornwood might want to submit an offer to purchase the Leasehold Interest. No explanation was provided as to why Kornwood did not submit an offer prior to the Bid Deadline, and no evidence was provided to substantiate Kornwood's concerns. Ultimately, Kornwood confirmed it would attend the hearing but not oppose the December 14th Relief, as set out in the email exchange between counsel on December 13, 2021 that is attached as Appendix "H". No one appeared at the hearing on behalf of the Attempted Purchaser.
3. One of the conditions of the APS was a due diligence condition in favour of the Attempted Purchaser (the "Diligence Condition"). On or around December 21, 2021, counsel for the DIP Lender advised the Receiver that the DIP Lender would likely submit a credit bid for the Property if the Diligence Condition was not satisfied (or waived) by the Attempted Purchaser.
4. The Diligence Condition originally needed to be satisfied (or waived) by no later than January 4, 2022. Shortly before that date, the Attempted Purchaser requested (and was granted) a brief extension to January 6, 2022. The Attempted Purchaser waived the Diligence Condition on January 6, 2022.
5. During the two-day Diligence Condition extension between January 4, 2022 and January 6, 2022, the Receiver was sent, on January 5, 2022, an unsolicited Agreement of Purchase and Sale from an entity that the Receiver understands is related to Kornwood (the "Kornwood APS"). The Kornwood APS provided for a higher purchase price than the one in the Attempted Purchaser's APS and contained no substantive conditions, except for Court approval. The Kornwood APS was open for acceptance by the Receiver until 1pm on January 7, 2022. Given that the Receiver was working in good faith with the Attempted Purchaser, the Receiver did not engage with Kornwood or any of its representatives or related parties in respect of the Kornwood APS. A redacted version of the Kornwood APS is attached as Appendix "I". An unredacted version is provided in Confidential Appendix "3". The rationale for sealing the purchase price in the Kornwood APS is provided in Section 3.2 below.
6. On January 11, 2022, the Receiver was sent a further unsolicited communication from counsel for the bidder under the Kornwood APS, which advised that the Kornwood APS was being reinstated and would be open for acceptance by the Receiver until 5pm on January 12, 2022. Once again, given that the Receiver was working in good faith with the Attempted Purchaser, the Receiver did not engage with Kornwood or any of its representatives or related parties in respect of the Kornwood APS.

3.2 Sealing Order

1. The Receiver respectfully requests that the Offer Summary, the unredacted APS and the unredacted Kornwood APS be filed with the Court on a confidential basis and be sealed (“Sealing Order”) pending further order of the Court, as the documents contain confidential information. If the unredacted versions of these materials are not sealed, the disclosure of the information may negatively impact realizations on the Leasehold Interest in the context of the Receivership Bid Process or otherwise.
2. The Receiver is not aware of any party that will be prejudiced if the proposed Sealing Order is granted. To the contrary, the Receiver is concerned that value may not be maximized if the Sealing Order is not granted. Accordingly, the Receiver believes the proposed Sealing Order is appropriate in the circumstances.

4.0 Conditions Precedent to APS

1. Notwithstanding the Attempted Purchaser’s waiver of the Diligence Condition on January 6, 2022, the APS contains the following additional conditions:
 - a) per section 15.10 of the APS, an assignment of the Proposal Trustee’s interest in the APS to the Receiver (and, in connection with any such assignment, an agreement by the Receiver and the Attempted Purchaser to reactivate the obligations of the parties under the APS, which obligations are deemed by section 15.2 of the APS to have ended completely upon the discharge of the Proposal Trustee on December 14, 2021);
 - b) delivery on or prior to closing by the Proposal Trustee of an estoppel certificate from Kornwood, as stipulated by Section 22.01 of the Ground Lease (the “Landlord Estoppel Certificate”);
 - c) delivery on or prior to closing by the Proposal Trustee of estoppel certificates, in a form acceptable to the Attempted Purchaser, acting reasonably, from each subtenant¹, as to, among other things, the status of each subtenant’s lease (collectively, the “Tenant Estoppel Certificates”);
 - d) delivery on or prior to closing by the Proposal Trustee of such further documentation relating to the completion of the Attempted Transaction as shall be required by the Attempted Purchaser, acting reasonably (together with the Landlord Estoppel Certificate and the Tenant Estoppel Certificates, the “Estoppel Conditions”); and
 - e) issuance of the Approval and Vesting Order in the form, in all material respects, of the draft order attached as a schedule to the APS.

¹ An estoppel certificate is not required to be obtained from one tenant, Aqua Greens Inc., which is currently subject to receivership proceedings before this Court.

2. Following the Attempted Purchaser's satisfaction of the Diligence Condition on January 6, 2022, the Receiver continued to take steps to advance the Attempted Transaction to a stage of being able to assess whether completion thereof was likely, thereby informing whether the Receiver should take an assignment of the Proposal Trustee's interest in the APS and seek Court approval thereof.
3. The Receiver took steps to obtain the Tenant Estoppel Certificates and the Landlord Estoppel Certificate (jointly, the "Estoppel Certificates"). Specifically, the Attempted Purchaser was asked to provide a form of tenant estoppel certificate that would be to its satisfaction, and the Receiver's counsel prepared a form of landlord estoppel certificate reflecting the language contained in Section 22.01 of the Ground Lease.

4.1 Landlord Estoppel Certificate

1. Section 22.01 of the Ground Lease requires Kornwood to provide an estoppel certificate only if, among other things, "*no default then exists*" under the Ground Lease within 20 days of the request by the tenant.
2. On January 11, 2022, the Receiver sent an email to Kornwood requesting the Landlord Estoppel Certificate. The email contained the form of Landlord Estoppel Certificate prepared by the Receiver's legal counsel, Aird & Berlis LLP ("Aird & Berlis"), as discussed above. A copy of the form of Landlord Estoppel Certificate that was requested is attached as Appendix "J".
3. On January 13, 2022, the Receiver was contacted by a representative of Kornwood who advised that, in accordance with the Ground Lease, Kornwood had arranged for a structural engineering firm to inspect the buildings and the parking areas. The representative of Kornwood requested that Prime make arrangements with the subtenants to allow the engineer to access the buildings. The Receiver responded on January 13, 2022 to request which provisions Kornwood was relying on for this purpose. As at the date of this Report, Kornwood has not responded to the Receiver's email. A copy of this correspondence is attached as Appendix "K".
4. On January 31, 2022, Kornwood provided an executed Landlord Estoppel Certificate via Minden Gross LLP, which sets out various alleged defaults by the Company under the Ground Lease. The alleged defaults consist of: (i) events that occurred prior to the NOI Proceedings (e.g. failure to pay property taxes or obtain adequate insurance), which to the Receiver's knowledge have since been cured; (ii) issues that the Receiver is unaware of (e.g. the Company allegedly not performing repairs and maintenance to the Leasehold Interest); and (iii) the filing of the NOI and subsequent insolvency steps constituting current defaults under the Ground Lease. A copy of the Landlord Estoppel Certificate, together with a blackline to the version sent by the Receiver on January 11, 2022, is attached as Appendix "L".
5. On January 31, 2022, the Receiver provided the Attempted Purchaser with a copy of the executed Landlord Estoppel Certificate. The Attempted Purchaser responded by advising the Receiver that, in the Attempted Purchaser's view, the executed Landlord Estoppel Certificate did not comply with Section 22.01 of the Ground Lease and the proposed Approval and Vesting Order "*must cleanse any past defaults of the existing tenant.*" A copy of this email exchange is attached as Appendix "M".

6. On February 1, 2022, the Attempted Purchaser emailed the Receiver and requested that the Receiver modify the form of Approval and Vesting Order attached to the APS to provide for additional protections for the Attempted Purchaser related to the Ground Lease, which changes were requested as a result of Kornwood's Landlord Estoppel Certificate. Notwithstanding that the form of Approval and Vesting Order to be sought in connection with the Attempted Transaction was agreed by the parties and included as a schedule to the APS, the Attempted Purchaser's February 1st email stated:

"I do not wish to be difficult but until we resolve the wording of the proposed order to my satisfaction I reserve my right to reject the estoppel certificate delivered by the landlord..."

A copy of the February 1st email is attached as Appendix "N".

7. On February 8, 2022, the Receiver and its counsel held a conference call with the Attempted Purchaser and its counsel. During this call, the Receiver advised of the post-Bid Deadline offers made by Kornwood (including the fact they contained a superior purchase price) and the interest expressed by the DIP Lender in submitting a credit bid. Accordingly, the Receiver confirmed it was not comfortable seeking additional, material protections in the Approval and Vesting Order attached to the APS without giving other interested prospective purchasers an opportunity to submit revised/final offers for the Property, given the significance of the requested change and the interest expressed in the Property by Kornwood and the DIP Lender. At the Attempted Purchaser's request, the Receiver advised it would ask Kornwood to consider amending the executed Landlord Estoppel Certificate if the Attempted Purchaser documented the specific issues that it had with the document.
8. This information was provided by the Attempted Purchaser to the Receiver on February 9, 2022, by way of a mark-up to Kornwood's executed Landlord Estoppel Certificate (the "Mark-Up"). A copy of the Mark-Up and cover email are attached collectively as Appendix "O". The Attempted Purchaser's Mark-Up does not take issue with the filing of the NOI and subsequent insolvency steps constituting current defaults under the Ground Lease (see section 3(d) of the Mark-Up), and the Attempted Purchaser also confirms its understanding in the Mark-Up that *"Section 22.01 of the Ground Lease permits the Landlord not to provide the certification required if a default then exists ..."*² (see section 5 of the Mark-Up).
9. As it said it would do, the Receiver's counsel wrote to Minden Gross upon receipt of the Attempted Purchaser's Mark-Up, attaching same and asking Kornwood to consider amending the executed Landlord Estoppel Certificate in light of the feedback received from the Attempted Purchaser. On February 11, 2022, Minden Gross confirmed that an amended Landlord Estoppel Certificate would not be provided. A copy of this email exchange is attached as Appendix "P".

² The Attempted Purchaser goes on to claim in the Mark-Up, without support, that the Ground Lease *"does not permit or contemplate a 'without prejudice' response"* by Kornwood if it chooses to provide the certificate when it is not obliged to do so.

10. On February 11, 2022, Aird & Berlis advised the Attempted Purchaser of Kornwood's decision not to amend the Landlord Estoppel Certificate. With a view to determining whether it would be possible to still complete the Attempted Transaction, the Receiver asked the Attempted Purchaser to confirm whether it would waive the Estoppel Conditions by February 15, 2022, in which case the Receiver would proceed to seek Court approval of the Attempted Transaction. A copy of this email is attached as Appendix "Q".
11. On February 14, 2022, the Attempted Purchaser asked Aird & Berlis who was acting for Kornwood in connection with the Landlord Estoppel Certificate, and the Attempted Purchaser was provided with this information (i.e. Minden Gross).
12. On February 15, 2022, the Attempted Purchaser emailed Aird & Berlis to advise, among other things, that, in its view, Kornwood is attempting to frustrate the Attempted Transaction and that the APS is a binding agreement between the Proposal Trustee and Attempted Purchaser and that the Proposal Trustee is obliged to take all necessary steps to comply with its obligations under the APS, including to compel Kornwood to deliver an acceptable Landlord Estoppel Certificate. A copy of this correspondence is attached as Appendix "R".
13. On February 16, 2022, Aird & Berlis responded to the Attempted Purchaser by advising, among other things, that:
 - a) per section 15.2 of the APS, there were no ongoing obligations under the APS as a result of the discharge of the Proposal Trustee;
 - b) notwithstanding the Proposal Trustee's discharge, the Receiver has been working with the Attempted Purchaser in good faith over the past few months (and to the exclusion of other potential purchasers who have expressed an interest in the opportunity) with a view to determining if the Attempted Transaction could still be consummated, this time between the Receiver and the Attempted Purchaser. Nonetheless, the Receiver is not prepared to take an assignment of the APS and continue to pursue the Attempted Transaction unless the Receiver sees a realistic pathway to closing the Attempted Transaction with the Attempted Purchaser;
 - c) the Receiver is not prepared (and has no obligation) to get involved in a dispute between the Attempted Purchaser and Kornwood (or in a dispute between the Attempted Purchaser and any of the space tenants); and
 - d) absent written confirmation by the Attempted Purchaser that it is waiving the Estoppel Conditions, the Receiver sees no realistic pathway to closing the Transaction and will therefore need to move on by taking steps to solicit offers for the Property. On the other hand, if the Attempted Purchaser provides written confirmation of its waiver of the Estoppel Conditions, the Receiver would take an assignment of the APS and expeditiously work to seek Court approval of the Attempted Transaction.

A copy of this correspondence is attached as Appendix "S".

14. On February 17, 2022, the Attempted Purchaser responded to Aird & Berlis disagreeing with the Receiver's position and advising that it intends to "*vigorously pursue all rights and remedies that [it] may have against the Proposal Trustee in the event of the failure by the Proposal Trustee to perform its obligations under the APS and will hold the Proposal Trustee liable for any damages, including damages for lost opportunity resulting therefrom.*" A copy of this correspondence is attached as Appendix "T".
15. As at the date of this Report, the dispute between the Attempted Purchaser and the Receiver has not been resolved.

4.2 Tenant Estoppel Certificates

1. As at the date of this Report, the subtenants have all provided the Receiver with Tenant Estoppel Certificates. Certain of the Tenant Estoppel Certificates contain modifications to the Attempted Purchaser's standard form. The Attempted Purchaser has advised the Receiver that two of the Tenant Estoppel Certificates are unacceptable. At the request of the Attempted Purchaser, the Receiver requested changes to the two Tenant Estoppel Certificates in question, but the subtenants have refused to modify their certificates.

4.3 Recommendation re: APS

1. The Receiver recommends that the Court issue an order authorizing and directing the return of the Deposits to the Attempted Purchaser less the Receiver's costs of its motion if opposed by the Attempted Purchaser and otherwise confirming that none of the Receiver, the Proposal Trustee and KSV has any remaining obligations under the APS, for the following reasons:
 - a) the existing default under the Ground Lease, as a result of which Kornwood is not required to provide an estoppel certificate in compliance with section 22.01 of the Ground Lease;
 - b) Kornwood's confirmation that it will not amend the executed Landlord Estoppel Certificate;
 - c) the Amended Purchaser's refusal to accept the executed Landlord Estoppel Certificate (and two of the Tenant Estoppel Certificates);
 - d) there not being any realistic pathway (or credible legal basis) to compel these stakeholders to change their respective positions;
 - e) as a result of the above, there not being any realistic pathway to close the Attempted Transaction, which the Receiver has nonetheless worked in good faith to attempt to advance despite not being bound under the APS;
 - f) paragraph 3(j) of the Receivership Order already authorizes the Receiver to consider other marketing alternatives, apart from the APS that resulted from the SISP conducted during the NOI Proceedings;

- g) the Receiver understands that the DIP Lender, which may be the only economic stakeholder in these proceedings, supports the Receiver's proposed course of action in respect of the APS; and
- h) there are no funds available for a protracted process whereby the Receiver continues in perpetuity to pursue satisfaction of the remaining conditions contemplated under the Attempted Transaction, and the DIP Lender has confirmed that it is not prepared to allow its collateral to be used to fund these proceedings indefinitely.

5.0 Receivership Bid Process

1. Provided that the Court accepts the Receiver's recommendations regarding the APS, the Receiver is seeking approval of the below Receivership Bid Process, which would be open to select bidders (and anyone else who bids on an unsolicited basis) to submit offers blacklined to the Receiver's standard form of Agreement of Purchase and Sale within ten (10) days following Court approval of the Receivership Bid Process.
2. The parties the Receiver would approach are:
 - a) the Attempted Purchaser;
 - b) the other parties who submitted offers in the SISP;
 - c) Kornwood;
 - d) the DIP Lender, which has recently confirmed again to the Receiver that it intends on submitting a credit bid to protect its interests; and
 - e) Concord Products and Blow Moldings Ltd., a subtenant that has expressed an interest in the opportunity.
3. In the Receiver's view, the proposed Receivership Bid Process is reasonable and appropriate for the following reasons:
 - a) given the previous marketing period under the SISP and the above parties' familiarity with the Property, it provides sufficient time for interested parties to assess the Leasehold Interest and submit final offers;
 - b) it preserves the Attempted Purchaser's ability to revise its offer (including to seek its requested material change to the previously settled form of Approval and Vesting Order that was agreed and attached as a schedule to the APS);
 - c) it is designed to provide certainty and a conclusion to the marketing and sale process for the Property as the DIP Lender has confirmed that it is prepared to submit an unconditional offer;
 - d) the DIP Lender is supportive of the relief requested; and
 - e) there are no funds available for a protracted process as the DIP Lender has confirmed that it is not prepared to allow its collateral to be used to fund these proceedings indefinitely.

4. Accordingly, the Receiver recommends the Court issue an order approving the Receivership Bid Process.
5. For greater certainty, the Receiver is still prepared to seek the Approval and Vesting Order in respect of the Attempted Transaction, provided the Attempted Purchaser agrees to waive the Estoppel Conditions prior to the hearing of the Receiver's motion. As at the date of this Report, the Attempted Purchaser has refused to waive the Estoppel Conditions.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed herein.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CLAIREVILLE PROPERTY HOLDINGS INC.
AND NOT IN ANY OTHER CAPACITY**

APPENDIX “B”

From: Jeremy Nemers
Sent: March 18, 2022 1:14 PM
To: Kyle Plunkett; Tamie Dolny; ngoldstein@ksvadisvory.com; dsieradzki@ksvadisvory.com; skour@wfkllaw.ca; cfell@wfkllaw.ca; dmagisano@lernalers.ca; jdiciano@primerealestategroup.ca; Lawrence.hansen@devrylaw.ca; jbunting@tyrllp.com; Kristin.pereira@meridianonecap.ca; Joanna.alford@meridiancu.ca; vdare@foglers.com; jfried@foglers.com; mkaplan@foglers.com; asugar@foglers.com; Lossrecovery@leasedirect.com; ekfleishman@1evergreenlaw.com; adashefsky@gmail.com; gbt@tdslaw.com; aiqbal@millerthomson.com; etawfik@millerthomson.com; fred@fredtayar.com; max.starnino@paliareroland.com; cfrancis@mindengross.com; mkaroly@harris-sheaffer.com; rcr@zeifmans.ca; sls@zeifmans.ca; donparente@parenteborean.com; diane.winters@justice.gc.ca; rakhee.bhandari@justice.gc.ca; insolvency.unit@ontario.ca; ahope@potentiarenewables.com; a.conte@contelaw.ca; mantinisp@bennettjones.com; crawfords@bennettjones.com; maya@chaitons.com; dricher@fasken.com; mark@danimax.ca
Subject: Re: Cannect Mortgage Investment Corporation v. Claireville Property Holdings Inc. - Court File No. CV-21-00672999-00CL

TO THE SERVICE LIST:

All capitalized terms in this email are defined as they appear in the First Report of the Receiver dated March 2, 2022 (the "First Report"), which First Report was included in the Receiver's motion record of the same date.

Further to the below email chain, and in accordance with paragraph 5.0.5 of the First Report, the Attempted Purchaser confirmed to the Receiver today that the Attempted Purchaser has waived the Estoppel Conditions. Accordingly, the Receiver intends:

(a) not to seek at Tuesday's hearing paragraphs 3, 4 or 5 of the draft Order that was appended to the Receiver's motion record (being the three paragraphs in the draft Order entitled "Relief Regarding the Marketing and Sale of the Property"); and

(b) to ask the Court on Tuesday for an additional hearing date to hear an approval and vesting motion in connection with the Attempted Transaction. In the same way as the Receiver served its last motion on proper service to the full Service List and with the support of a Receiver's report, the Receiver would do the same thing for the approval and vesting motion.

Thank you,

Jeremy

Get [Outlook for iOS](#)

From: Jeremy Nemers <jnemers@airdberlis.com>

Sent: Thursday, March 3, 2022 4:06 PM

To: Kyle Plunkett; Tamie Dolny; ngoldstein@ksvadisvory.com; dsieradzki@ksvadisvory.com; skour@wfkllaw.ca; cfell@wfkllaw.ca; dmagisano@lernalers.ca; mark@grosscapital.ca; jdiciano@primerealestategroup.ca; Lawrence.hansen@devrylaw.ca; jbunting@tyrllp.com; Kristin.pereira@meridianonecap.ca; Joanna.alford@meridiancu.ca; vdare@foglers.com; jfried@foglers.com; mkaplan@foglers.com; asugar@foglers.com; juanita@bluechipleasing.com; info@bluechipleasing.com; Lossrecovery@leasedirect.com;

ekfleishman@1evergreenlaw.com; adashefsky@gmail.com; gbt@tdslaw.com; aiqbal@millerthomson.com;
 etawfik@millerthomson.com; fred@fredtayar.com; max.starnino@paliareroland.com; cfrancis@mindengross.com;
 mkaroly@harris-sheaffer.com; rcr@zeifmans.ca; sls@zeifmans.ca; donparente@parenteborean.com;
 diane.winters@justice.gc.ca; rakhee.bhandari@justice.gc.ca; insolvency.unit@ontario.ca;
 ahope@potentiarenewables.com; a.conte@contelaw.ca; mantinisp@bennettjones.com; crawfords@bennettjones.com;
 maya@chaitons.com; dricher@fasken.com

Subject: RE: Cannect Mortgage Investment Corporation v. Claireville Property Holdings Inc. - Court File No. CV-21-00672999-00CL

TO THE SERVICE LIST:

Further to the below email of yesterday, this matter is returnable on Tuesday, March 22, 2022 at 10:30 a.m. via the following Zoom coordinates:

<https://airdberlis.zoom.us/j/89257119248?pwd=bitGUUx6QVdZUktyK29wVkFyaVFndz09>

Meeting ID: 892 5711 9248

Passcode: 125523

One tap mobile

+16475580588,,89257119248#,,,,*125523# Canada

+17789072071,,89257119248#,,,,*125523# Canada

Dial by your location

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

Meeting ID: 892 5711 9248

Passcode: 125523

Find your local number: <https://airdberlis.zoom.us/j/kyAHD2hmP>

Thank you,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724

E jnemers@airdberlis.com

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error.
 If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Eunice Baltkois <ebaltkois@airdberlis.com> **On Behalf Of** Jeremy Nemers

Sent: March 2, 2022 3:15 PM

To: Kyle Plunkett <kplunkett@airdberlis.com>; Jeremy Nemers <jnemers@airdberlis.com>; Tamie Dolny <tdolny@airdberlis.com>; ngoldstein@ksvadvisory.com; dsieradzki@ksvadvisory.com; skour@wfkllaw.ca; cfell@wfkllaw.ca; dmagisano@lerner.ca; mark@grosscapital.ca; jdiciano@primerealestategroup.ca; Lawrence.hansen@devrylaw.ca; jbunting@tyrllp.com; Kristin.pereira@meridianonecap.ca; Joanna.alford@meridiancu.ca; vdare@foglers.com; jfried@foglers.com; mkaplan@foglers.com; asugar@foglers.com; juanita@bluechipleasing.com; info@bluechipleasing.com; Lossrecovery@leasedirect.com; ekfleishman@1evergreenlaw.com; adashefsky@gmail.com; gbt@tdslaw.com; aiqbal@millerthomson.com; etawfik@millerthomson.com; fred@fredtayar.com; max.starnino@paliareroland.com; cfrancis@mindengross.com; mkaroly@harris-sheaffer.com; rcr@zeifmans.ca; sls@zeifmans.ca; donparente@parenteborean.com;

diane.winters@justice.gc.ca; rakhee.bhandari@justice.gc.ca; insolvency.unit@ontario.ca;
 ahope@potentiarenewables.com; a.conte@contelaw.ca; mantinisp@bennettjones.com; crawfords@bennettjones.com;
 maya@chaitons.com; dricher@fasken.com

Subject: Cannect Mortgage Investment Corporation v. Claireville Property Holdings Inc. - Court File No. CV-21-00672999-00CL

Importance: High

SENT ON BEHALF OF JEREMY NEMERS

Attached please find the Motion Record of KSV Restructuring Inc., in its capacity as the Court-appointed Receiver of Claireville Property Holdings Inc., dated March 2, 2022 and returnable on a date to be scheduled, which is hereby served upon you pursuant to the *Rules*.

Eunice Baltkois

Assistant to Ian Aversa & Jeremy Nemers

T 416.863.1500 x4505
 F 416.863.1515
 E ebaltkois@airdberlis.com

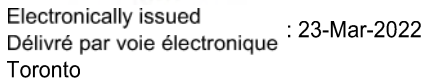
Aird & Berlis LLP | Lawyers

Brookfield Place, 181 Bay Street, Suite 1800
 Toronto, Canada M5J 2T9 | airdberlis.com



This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error.
 If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

APPENDIX “C”



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

)

)

)

BETWEEN:

Applicant

- and -

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

ANCILLARY ORDER

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacities, the “**Receiver**”), without security, of all the

assets, undertakings and properties (collectively, the “**Property**”) of Claireville Property Holdings Inc. (the “**Debtor**”), for an order, amongst other things: (i) approving the First Report of the Receiver dated March 2, 2022 (the “**First Report**”) and the actions of the Receiver set out therein; and (ii) sealing Confidential Appendices “1,” “2” and “3” to the First Report (the “**Confidential Appendices**”), was heard this day by Zoom due to the Covid-19 emergency.

ON READING the First Report (including the appendices thereto, including, without limitation, the Confidential Appendices), and on hearing the submissions of counsel for the Receiver and such other counsel as was present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Eunice Baltkois sworn March 3, 2022, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver’s notice of motion and the Receiver’s corresponding motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF FIRST REPORT


2. **THIS COURT ORDERS** that the First Report be and is hereby approved and the actions of the Receiver described therein be and are hereby approved.

SEALING

3. **THIS COURT ORDERS** that the three Confidential Appendices to the First Report be and are hereby sealed until further Order of this Court.

MISCELLANEOUS

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



Digitally signed by Jessica
Kimmel
Date: 2022.03.22 21:30:25 -04'00'

-and-

Applicant

Respondent

Court File No. CV-21-00672999-00CL

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

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett (LSO # 61044N)
Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

Jeremy Nemers (LSO # 66410Q)
Tel : (416) 865-7724
Fax : (416) 863-1515
Email : jnemers@airdberlis.com

Lawyers for the Receiver



SUPERIOR COURT OF JUSTICE
COUNSEL SLIP/ENDORSMENT

COURT FILE

NO.: CV-21-00672999-00CLDATE: March 22, 2022

TITLE OF PROCEEDING **CANNECT MORTGAGE INVESTMENT CORPORATION V. CLAIREVILLE
 PROPERTY HOLDINGS INC.**
 BEFORE MADAM JUSTICE KIMMEL

NAMES OF COUNSEL AND PARTY:

- ☐ APPLICANT(S)
☐ PLAINTIFF(S)

PHONE _____

EMAIL _____

NAMES OF COUNSEL AND PARTY:

- ☐ DEFENDANT(S)
☐ RESPONDENT(S)
☐ DEFENDANT(S)
☐ RESPONDENT(S)

PHONE _____

EMAIL _____

PHONE _____

EMAIL _____

NAMES OF COUNSEL AND OTHER PARTIES:

- ☒ Jeremy Nemers and Kyle Plunkett for the Receiver
 Catherine Francis for Kornwood
 David Sieradzki of KSV Restructuring
☐ Daniel Richer for Xylem Canada Company
 Elsir Tawfik for De Lage
 Gerard C. Borean for Concord Blow & Moldings
 Ltd

PHONE 416-865-3406 / 416-865-7724EMAIL kplunkett@airdberlis.com ;jnemers@airdberlis.comEMAIL cfrancis@mindengross.comEMAIL dsieradzki@ksvadvisory.comEMAIL driche@fasken.comEMAIL Etawfik@millerthomson.comEMAIL gborean@parenteborean.comEMAIL pjcarrol@sympatico.caEmail: pjcarrol@sympatico.ca

- ☐ Self-Represented Parties Patrick Carroll

ENDORSEMENT OF JUSTICE KIMMEL :

[1] KSV Restructuring Inc. ("KSV"), in its capacity as the Court-appointed receiver and manager (in such capacities, the "Receiver"), without security, of all the assets, undertakings and properties (collectively, the "Property") of Claireville Property Holdings Inc. (the "Debtor"), brought a motion for the approval of the First Report of the Receiver dated March 2, 2022 (the "First Report") and for approval of the actions of the Receiver described therein, and for certain relief in connection with a Sale Agreement with an Attempted Purchaser, as described therein.

[2] After the Receiver's motion was brought, the Attempted Purchaser elected to waive certain conditions under the Sale Agreement that rendered much of the relief that the Receiver was seeking on this motion moot.

[3] A scaled back form of order dealing with limited ancillary relief and sealing certain confidential appendices to the Receiver's report is sought, that is not opposed by any party on the service list.

[4] The Receiver's counsel provided to the court, in accordance with the current commercial list practice direction, with three confidential appendices to the Receiver's First Report (an offer summary and unredacted versions of the Sale Agreement and another unsigned APS) that are proposed to be sealed under a partial sealing order (the "Proposed Sealing Order").

[5] The court is satisfied that the proposed sealing of these confidential Appendices is necessary while the closing of the Sale Agreement is pending to avoid any interference with any future attempts to market and sell the Property if for any reason the transaction contemplated by the Sale Agreement does not close and the Property has to be remarketed, and to avoid any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information pending the completion of any sale of the Property. These salutary effects outweigh any deleterious effects, including the possible negative effects on the right to free expression and the public interest in open and accessible court proceedings.

[6] The proposed sealing is as narrow as possible (only those confidential appendices that pose a risk are being sealed) while still achieving the legitimate requirement of protecting the sale process, in the interests of all stakeholders. Accordingly, it appropriately balances the open court principle and legitimate commercial requirements for confidentiality. I am satisfied that the proposed Partial Sealing Order is appropriate under the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC requirements. The nature and scope of the Proposed Sealing Order is consistent with the court's practice of granting limited sealing orders in conjunction with the marketing and sale of properties in receivership proceedings.

[7] Order to go in the form signed by me today, with immediate effect and without the necessity of formal entry.

[8] The Receiver's counsel shall submit to the court, together with a copy of this endorsement and the signed order, a sealed envelope containing the three sealed confidential Appendices and request that the sealed envelope be filed, so as to give effect to the Partial Sealing Order contained in paragraphs 4, 5 and 6 of this endorsement and paragraph 3 of the signed order.

[9] A 30-minute hearing has been scheduled on April 14, 2022 at 11:00 a.m., at which time the Receiver anticipates bringing a motion for an approval and vesting order, if the Sale Agreement is completed. The material for that motion shall be served in the normal course with appropriate time afforded to interested stakeholders to respond.

A handwritten signature in black ink, appearing to read "Kimmel J.", with a stylized, cursive script.

KIMMEL J.

APPENDIX “D”

AMENDING AND ASSUMPTION AGREEMENT

(this "Amending and Assumption Agreement")

TO: KSV Restructuring Inc. ("KSV"), solely in its capacity as the Court-appointed receiver and manager of Claireville Property Holdings Inc. (in such capacity, the "Receiver"), and not in its personal capacity or any other capacity

AND TO: S. Paul Mantini, in trust for an Ontario Corporation to be incorporated (the "Purchaser")

AND TO: 200 Town Centre Court Inc. (the "Purchaser Assignee")

RE: Agreement of Purchase and Sale between KSV, in its capacity as the proposal trustee of Claireville Property Holdings Inc. (in such capacity, the "Proposal Trustee"), as vendor, and the Purchaser, as purchaser, dated December 2, 2021 (the "APS")

WHEREAS the Proposal Trustee and the Purchaser are parties to the APS;

AND WHEREAS the APS provides, amongst other things, that:

- a) up until Closing (as defined in the APS), the Purchaser shall have the right to direct that title to the Purchased Assets (as defined in the APS) be taken in the name of another person, entity, joint venture, partnership or corporation provided that the assignee shall agree in writing to assume and be bound by the terms and conditions of the APS (the "**Assumption Agreement**") and a copy of such Assumption Agreement is delivered to the Proposal Trustee forthwith after having been entered into and prior to Closing, upon which however the Purchaser shall not be released from any of its obligations and liabilities under the APS;
- b) upon the discharge of the Proposal Trustee, the respective obligations of the Proposal Trustee and the Purchaser by reason of the APS shall end completely and they shall have no further or continuing obligations by reason thereof; and
- c) the Proposal Trustee's interest in the APS may be assigned, including, without limitation, to any licensed insolvency trustee appointed in respect of the Purchased Assets;

AND WHEREAS, pursuant to the Orders of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated December 14, 2021, the Proposal Trustee was discharged in respect of the Purchased Assets (subject to remaining the Proposal Trustee "*for the performance of such incidental duties as may be required to complete the administration of the Proposal Proceeding*") and the Receiver was appointed in respect of the Purchased Assets;

NOW THEREFORE, in consideration of good and valuable consideration, as further outlined below, each of the parties hereto agrees as follows:

1. except as modified herein, no other change or modification to the terms of the APS or any other documents delivered in connection therewith is intended or implied, and in all other

respects, the terms of the APS and all other documents delivered in connection therewith are confirmed, and the terms of the APS are incorporated by reference herein;

2. if there is any inconsistency or conflict between the terms of this Amending and Assumption Agreement and the terms of the APS or any other document delivered in connection therewith, the provisions of this Amending and Assumption Agreement shall prevail (but, for greater certainty, only to the extent of the inconsistency);
3. terms that are capitalized but otherwise not defined herein shall have the same meaning given to them in the APS;
4. the APS is hereby amended such that:
 - (a) the Proposal Trustee's interest in the APS be and is hereby assigned to the Receiver; and the Receiver agrees to assume and be bound by the terms and conditions of the APS, as amended by this Amending and Assumption Agreement;
 - (b) for greater certainty, and notwithstanding the discharge of the Proposal Trustee, each of the Receiver and the Purchaser agrees to reinstate their respective obligations (and those of any assignee or successor in interest) by reason of the APS, as amended by this Amending and Assumption Agreement;
 - (c) upon the discharge of KSV as the Receiver, the respective obligations of the Receiver and the Purchaser (and any assignee or successor in interest) by reason of the APS, as amended by this Amending and Assumption Agreement, shall end completely and they shall have no further or continuing obligations by reason thereof and hereof;
 - (d) the Purchaser directs that title to the Purchased Assets shall be taken in the name of the Purchaser Assignee;
 - (e) the Purchaser Assignee agrees to assume and be bound by the terms and conditions of the APS, as amended by this Amending and Assumption Agreement;
 - (f) the Purchaser and the Purchaser Assignee reaffirm that: (i) they have irrevocably waived the deliverables contemplated by subsections 6.3(7), 6.3(8) and 6.3(9) of the APS; and (ii) the due diligence condition contemplated by section 7.3(1) of the APS has been irrevocably satisfied on or prior to the Conditional Period Termination Date; and
 - (g) this Amending and Assumption Agreement constitutes the Assumption Agreement;
5. it is acknowledged by the Purchaser and the Purchaser Assignee that: (i) the Receiver has taken assignment of the Proposal Trustee's interest in the APS, and has entered into this Amending and Assumption Agreement, solely in its capacity as the Receiver; and (ii) KSV shall have absolutely no personal or corporate liability under or as a result of the APS, as amended by this Amending and Assumption Agreement, in any respect;
6. each of the Purchaser, the Purchaser Assignee and the Receiver acknowledges and declares that:

- 3 -

- (a) it has had an adequate opportunity to read and consider this Amending and Assumption Agreement and to obtain such advice in regard to it as it considers advisable, including, without limitation, independent legal advice;
 - (b) it fully understands the nature and effect of this Amending and Assumption Agreement; and
 - (c) this Amending and Assumption Agreement has been duly executed voluntarily; and
7. this Amending and Assumption Agreement may be executed and transmitted by electronic means, and any signature received by electronic transmission shall be treated as an original signature.

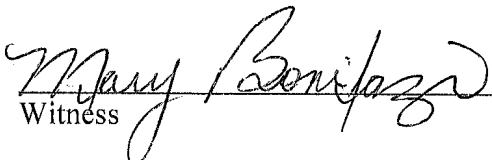
IN WITNESS WHEREOF the undersigned have executed this Amending and Assumption Agreement this 24th day of March, 2022.

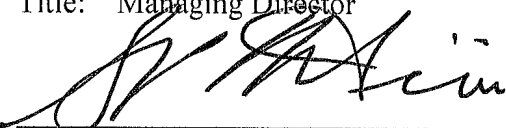
KSV RESTRUCTURING INC., solely in its capacity as the Receiver and not in its personal capacity or in any other capacity

By: 

Name: Noah Goldstein

Title: Managing Director


Witness



S. PAUL MANTINI, in trust for an Ontario corporation to be incorporated

200 TOWN CENTRE COURT INC.

By: 

Name: S. Paul Mantini

Title: Director, President and Secretary

APPENDIX “E”

Court File No. CV-21-00672999-00CL

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

BETWEEN:

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

SWORN DECLARATION

I, **SERAFINO PAUL MANTINI**, of the Municipality of Toronto, in the Province of Ontario,

SOLEMNLY DECLARE THAT:

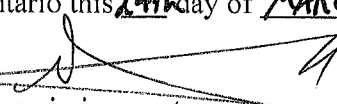
1. Unless otherwise stated, all capitalized terms herein are defined in the Agreement of Purchase and Sale between KSV Restructuring Inc., in its capacity as the proposal trustee of the Respondent (in such capacity, the "**Proposal Trustee**"), as vendor, and S. Paul Mantini, in trust for an Ontario Corporation to be incorporated, as purchaser, dated December 2, 2021 (as same may be amended, including, without limitation, to assign the Proposal Trustee's interest therein to KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager of the Respondent) (collectively, the "**APS**").
2. Neither Mark Gross, nor anyone related to him nor any entity controlled by him is involved in any way in the Transaction. (However, for greater certainty, I understand that one or more of these parties has an interest and/or involvement in the Respondent (the assets of which are the subject of the APS), the Respondent's property management company and one of the Respondent's tenants.)
3. With the exception of a settlement agreement made as of May 3, 2021 between 1180554 Ontario Limited (which I control) and 40 King Street West Holdings Inc. (which Mark Gross and/or his family controls), neither I, nor my wife, nor any company controlled by either of us currently has any business dealings or investments with Mark Gross or his

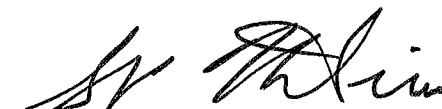
family or any companies which, to my knowledge, are controlled by Mark Gross or his family.

4. I have had an adequate opportunity to read and consider this sworn declaration and to obtain such advice in regard to it as it considers advisable, including, without limitation, independent legal advice. I fully understand the nature and effect of this sworn declaration and this sworn declaration has been duly executed voluntarily.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED before me in the
Municipality of TORONTO, in the Province
of Ontario this 24th day of MARCH, 2022


A Commissioner, etc.



SERAFINO PAUL MANTINI

TAB 6

Court File No. CV-21-00672999-00CL

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

B E T W E E N :

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

**SERVICE LIST
(as of March 4, 2022)**

TO:	<p>AIRD & BERLIS LLP Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9</p> <p>Kyle Plunkett Tel: (416) 865-3406 Email: kplunkett@airdberlis.com</p> <p>Jeremy Nemers Tel: (416) 865-7724 Email: jnemers@airdberlis.com</p> <p>Tamie Dolny Tel: (647) 426-2306 Email: tdolny@airdberlis.com</p> <p>Lawyers for the Receiver</p>
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AND TO:	<p>KSV RESTRUCTURING INC. 150 King Street West, Suite 2308 Toronto, ON M5H 1J9</p> <p>Noah Goldstein Tel: (416) 932-6207 Email: ngoldstein@ksvadvisory.com</p> <p>David Sieradzki Tel: (416) 932-6030 Email: dsieradzki@ksvadvisory.com</p> <p>Receiver</p>
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AND TO:	GROSS CAPITAL INC. 200 Ronson Drive, Suite #101 Toronto, ON M9W 5Z9 Mark Gross Email: mark@danimax.ca
AND TO:	PRIME REAL ESTATE GROUP 200 Ronson Drive, Suite #101 Toronto, ON M9W 5Z9 Justin Diciano Tel: (437) 914-9062 Email: jdiciano@primerealestategroup.ca
AND TO:	DEVRY SMITH FRANK LLP 100-95 Barber Greene Rd. Toronto, ON M3C 3E9 Lawrence Hansen Tel: (416) 446-5097 Email: lawrence.hansen@devrylaw.ca Lawyers for Prime Real Estate Group
AND TO:	TYR LLP 160 John Street – Suite 500 Toronto, ON M5V 2E5 James Bunting Tel: (647) 519-6607 Email: jbunting@tyrllp.com Lawyers for Mark Gross

AND TO:	MERIDIAN ONECAP CREDIT CORP. Suite 1500, 4710 Kingsway Burnaby, BC V5H 4M2 Kristin Pereira Email: Kristin.pereira@meridianonecap.ca Joanna Alford Email: Joanna.alford@meridiancu.ca
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AND TO:	FLEISHMAN FAMILY TRUST 426 Boreham Blvd. Winnipeg, MB R3P 0J8 -and to- 1710 Newport Centre 330 Portage Avenue Winnipeg, MB R3C 0C9
AND TO:	ELLEN FLEISHMAN The Dr. Harold and Brownie Fleishman Family Trust 100-1 Evergreen PL. Winnipeg, MB R3L 0E9 Tel: (204) 997-0951 Email: ekfleishman@levergreenlaw.com
AND TO:	ALEX DASHEFSKY 32 Bard PL. Winnipeg, MB R3P 2N4 Tel: (204) 296-0202 Email: adashefsky@gmail.com
AND TO:	THOMPSON DORFMAN SWEATMAN LLP 1700 – 242 Hargrave Street Winnipeg, Manitoba R3C 0V1 G. Bruce Taylor Tel: (204) 934-2566 Email: gbt@tdslaw.com Lawyers for The Dr. Harold and Brownie Fleishman Family Trust and Alex Dashefsky

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AND TO:	<p>FRED TAYAR & ASSOCIATES 65 Queen St. West, Suite 1200 Toronto, ON M5H 2M5</p> <p>Fred Tayar Tel: (416) 363-1800 Email: fred@fredtayar.com</p> <p>Lawyer for Kornwood Investments Limited</p>
AND TO:	<p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Massimo (Max) Starnino Tel: (416) 646-7431 Fax: (416) 646-4301 Email: max.starnino@Paliareroland.com</p> <p>Lawyer for Kornwood Investments Limited</p>

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AND TO:	BUSINESS DEVELOPMENT BANK OF CANADA 5, Place Ville Marie, Ground Floor Montreal, Quebec H3B 5E7
AND TO:	SREIT (REXDALE) LTD. 5991 Spring Garden Road, Suite 900 Halifax, NS B3H 1Y6
AND TO:	AUTOTEK ELECTROPLATING INC. 20 Huddersfield Road, Unit 505 Toronto, ON M9W 5Z6
AND TO:	OLYMPIC COATERS INC. 354 Humberline Drive, Unit 502 Toronto, ON M9W 5S3
AND TO:	CLUB COFFEE L.P. 55 Carrier Drive Toronto, ON M9W 5V9
AND TO:	DE LAGE LANDEN FINANCIAL SERVICES CANADA INC. 1-3450 Superior Court Oakville, ON L6L 0C4

AND TO:	ADD CAPITAL CORP. 500 Cochrane Drive, Unit 2 Markham, ON L3R 8E2
AND TO:	TRADE ELECTRICAL CONTRACTORS INC. 81 Zenway Blvd., Unite 5 Woodbridge, ON L4H 0S3 Antonio Conte A. Conte Professional Corporation Tel: (905) 660-4775 Email: a.conte@contelaw.ca
AND TO:	BRIGHTROOF II GP INC. METIS NATION OF ONTARIO – BRIGHTROOF SOLAR LP Attn: Andrew Hope General Counsel Potentia Renewables Inc. 200 Wellington Street West Suite 1120 M5V 3C7 M: 416.707.8406 O: 647.475.9485 E: ahope@potentiarenewables.com
AND TO:	NATIONAL BANK OF CANADA Corporate Banking Group 130 King Street West, Suite 3200 Toronto, ON M5X 1J9

AND TO:	<p>ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON</p> <p>Diane Winters Tel: (647) 256-7459 Email: diane.winters@justice.gc.ca</p> <p>Rakhee Bhandari Tel: (416) 952-8563 Email: Rakhee.bhandari@justice.gc.ca</p>
AND TO:	<p>MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 6th Floor – 33 King Street West Oshawa, ON L1H 8H5</p> <p>Email: insolvency.unit@ontario.ca</p>
AND TO:	<p>ATTEMPTED PURCHASER c/o Bennett Jones LLP Suite 3400, 1 First Canadian Place Toronto, ON M5X 1A4</p> <p>S. Paul Mantini Email: mantinisp@bennettjones.com</p>
AND TO:	<p>BENNETT JONES LLP Suite 3400, 1 First Canadian Place Toronto, ON M5X 1A4</p> <p>Simon Crawford Email: crawfords@bennettjones.com</p> <p>Lawyers for the Attempted Purchaser</p>

AND TO:	CHAITONS LLP 5000 Yonge Street, 10 th Floor Toronto, ON M2N 7E9 Maya Poliak Tel: (416) 218-2262 Email: maya@chaitons.com Lawyers for Aqua Greens Inc.
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Co-Tenancy Agreement Parties:¹

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AND TO:	MGZ HOLDINGS INC. 200 Ronson Drive, Suite 101 Toronto, ON M9W 5Z9
AND TO:	AVRAHAM BARBALAT 74 Brickstone Circle Thornhill, ON L4J 6M4
AND TO:	EARL LEVY 10 Edyth Drive Toronto, ON M4V 2V7

¹ Served with notification of material via letter enclosing electronic location of documents on Receiver's website.

AND TO:	RANDALL Y. C. HO 3876 Nikolo Street Honolulu, Hawaii, 96815
AND TO:	THE DEAD END CAPITAL CORP. 255 Duncan Mill Road Suite 510, Toronto, ON, M3B3H9
AND TO:	AVA GROSS 3800 Yonge St., PH18 Toronto, ON M4N 3P7
AND TO:	J. ZACHERY JONES 159 Kailuana Loop Kailua, HI 96734
AND TO:	JANIS L. LAI TRUSTEE P.O. Box 10870 Honolulu, Hawaii 96816
AND TO:	STANLEY SALCEDO 1325 Wilder Avenue, PH Mauka Honolulu, Hawaii 96822
AND TO:	SEYMOUR KAZIMIRSKI 2505 Aha Aina Place Honolulu, Hawaii 96821
AND TO:	BRUCE BUCKY REVOCABLE LIVING TRUST 60 Poipu Drive Honolulu, Hawaii 96825
AND TO:	KRISTY LUCIANI 2160 Bayview Avenue Toronto, ON M4N 0A4
AND TO:	TANBROS INVESTMENTS LIMITED 10 Director Court, Unit 101 Woodbridge, ON L4L 7E8
AND TO:	TANVIEW INVESTMENTS LIMITED 10 Director Court, Unit 101 Woodbridge, ON L4L 7E8
AND TO:	WEN XUE and YAN PENG 6134 Red Willow Drive Ottawa, ON K1C 7J8

AND TO:	PATRICK J. CARROLL and M. MARLEY CARROLL 1706 Caverly Crt. Mississauga, ON L5L 3L7
AND TO:	JOHANN STRASSER 5388 Poole Street Honolulu, Hawaii 96821
AND TO:	MARK C. GROSS 110 Kilbarry Road Toronto, ON M5P 1K9

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**CANNECT MORTGAGE INVESTMENT
CORPORATION**

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Applicant

Respondent

CV-21-00672999-00CL

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

Proceedings commenced at Toronto

**MOTION RECORD
(returnable April 14, 2022)**

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Lawyers for the Court-appointed Receiver