



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

APPENDIX “A”

Estate Number: 31-2749576
Court File No.: 31-2749576

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE)	WEDNESDAY, THE
)	
JUSTICE PATTILLO)	28 th DAY OF JULY, 2021

**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***

ORDER

(RE: STAY EXTENSION, EXPANDED POWERS OF THE PROPOSAL TRUSTEE,
SISP, DIP LOAN, AND CHARGES)

THIS MOTION, made by Claireville Property Holdings Inc. (the “**Debtor**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”) to, among other things, (i) extend the time for the filing of a proposal; (ii) approve the expanded powers of KSV Restructuring Inc. in its capacity as proposal trustee of the Debtor (the “**Proposal Trustee**”), (iii) approve debtor-in-possession financing advanced by Cannect Mortgage Investment Corporation (the “**DIP Loan**”); (iv) approve certain priority charges; (v) approving a sale and investment solicitation process (“**SISP**”); and approving the First Report of the Proposal Trustee dated July 26, 2021 (the “**First Report**”) and the actions and activities of the Proposal Trustee set out therein, proceeded on this day by videoconference due to the COVID-19 crisis.

ON READING the Motion Record of the Debtor and the First Report and on hearing the submissions of counsel for the Debtor, the Proposal Trustee, and any other person listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Levi Rivers, filed and the affidavit of service of Susy Moniz, filed:

SERVICE

1. **THIS COURT ORDERS** that the service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF TIME TO FILE A PROPOSAL

2. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the period for the Proposal Trustee to file, on behalf of the Debtor, a proposal to creditors under the BIA be and is hereby extended to and including August 9, 2021 (the “**Stay Period**”).

3. **THIS COURT ORDERS** that if the Proposal Trustee files with the court on or before the expiry of the Stay Period a closing certificate confirming that: (a) the DIP Loan has closed; and (b) DUCA Financial Services Credit Union Ltd. (“**DUCA**”) has been indefeasibly repaid from the proceeds of the DIP Loan, which repayment shall be no greater than the amount of \$2,291,500.00 (the “**Maximum DUCA Payout Amount**”), the Stay Period is automatically extended to September 15, 2021.

EXPANDED POWERS OF THE PROPOSAL TRUSTEE

4. **THIS COURT ORDERS** that, in addition to the powers afforded to the Proposal Trustee under the BIA prior to the granting of this Order (which powers, for greater certainty, shall continue after the granting of this Order), the Proposal Trustee is also hereby empowered and authorized, but not obligated to, act at once in respect of the property, assets and undertaking of the Debtor (the “**Property**”) and, without in any way limiting the generality of the foregoing, the Proposal Trustee is expressly empowered and authorized to do any of the following where the Proposal Trustee considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property, including, without limitation, any bank account of the Debtor and any accounts maintained with suppliers, vendors and service providers, and any and all rents, proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Proposal Trustee’s powers and duties, including without limitation those conferred by this Order;

- (d) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (e) to settle, extend or compromise any indebtedness owing to the Debtor;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Proposal Trustee's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (g) to market any or all of the Property, including advertising and soliciting offers for sale or refinancing in respect of the Property and negotiating such terms and conditions of sale as the Proposal Trustee in its discretion may deem appropriate;
- (h) to conduct the SISP and steps related thereto, as set out in more detail in this Order;
- (i) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (j) to report to, meet with and discuss with such affected Persons (as defined below) as the Proposal Trustee deems appropriate on all matters relating to the Property and this proceeding, and to share information, subject to such terms of confidentiality as the Proposal Trustee deems advisable;
- (k) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (l) to exercise any co-tenancy, shareholder, partnership, joint venture or other rights which the Debtor may have in respect of the Property; and
- (m) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations

and in each case where the Proposal Trustee takes any such actions or steps, it shall be exclusively authorized and empowered to do so to the exclusion of all other Persons, including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE PROPOSAL TRUSTEE

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order shall forthwith advise the Proposal Trustee of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Proposal Trustee, and shall deliver all such Property to the Proposal Trustee upon the Proposal Trustee's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Proposal Trustee of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing collectively, the "**Records**") in that Person's possession or control, and shall provide to the Proposal Trustee or permit the Proposal Trustee to

make, retain and take away copies thereof and grant to the Proposal Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records or the granting of access to Records, which may not be disclosed or provided to the Proposal Trustee due to the privilege attaching to solicitor client communication or due to statutory provisions prohibiting such disclosure.

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

PROPOSAL TRUSTEE TO HOLD FUNDS

8. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Proposal Trustee from and after the making of this Order

from any source whatsoever, including, without limitation, the sale of all or any of the Property pursuant to the SISP and the collection of any rent amounts or accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Proposal Trustee (the “**Proposal Trustee Accounts**”) and the monies standing to the credit of such Proposal Trustee Accounts from time to time, net of any disbursements provided for herein, shall be held by the Proposal Trustee to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

9. **THIS COURT ORDERS** that the Proposal Trustee shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Proposal Trustee may specifically agree in writing to pay, or in respect to its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

10. **THIS COURT ORDERS** the Proposal Trustee that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Proposal Trustee shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property under the SISP and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one of more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of

the Sale, and if it does not complete a Sale, shall return all such information to the Proposal Trustee, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, shall return all other personal information to the Proposal Trustee, or ensure that all other personal information is destroyed.

LIMITATIONS ON ENVIRONMENTAL LIABILITIES

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

ADMINISTRATION CHARGE

12. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Debtor shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed the amount of \$250,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 22 hereof.

13. **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

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

APPROVAL OF THE FIRST REPORT

15. **THIS COURT ORDERS** that the First Report and the conduct and activities of the Proposal Trustee described therein be and are hereby approved.

DIP FINANCING AND CHARGE

16. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to obtain and borrow a DIP Loan from Cannect Mortgage Investment Corporation (the “**DIP Lender**”), and such DIP Loan shall not exceed \$4,500,000.00 unless permitted by further Order of this Court.

17. **THIS COURT ORDERS THAT** the DIP Loan shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Debtor and the DIP Lender dated as of July 23, 2021 (the “**DIP Term Sheet**”), filed.

18. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Debtor is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

19. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraph 22 hereof.

20. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon five (5) days notice to the Debtor and the Proposal Trustee, may exercise any and all of its rights and remedies against the Debtor or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Debtor and set off and/or consolidate any amounts owing by the DIP Lender to the Debtor against the obligations of the Debtor to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Debtor and for the appointment of a trustee in bankruptcy of the Debtor; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtor or the Property.

21. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any Proposal filed by the Debtor under the BIA with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES

22. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge (together, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$250,000); and

Second- the DIP Lender's Charge (to the maximum amount of \$4,500,000.00).

23. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

24. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall, subject to the priorities established in paragraph 22 herein, rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

25. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, no further Encumbrances shall be granted over any Property that rank in priority to, or *pari passu* with the Charges, unless the prior written consent of the Proposal Trustee and the DIP Lender is obtained, or by further Order of this Court.

26. **THIS COURT ORDERS** that the DIP Term Sheet, the Definitive Documents and the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Debtor entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Debtor pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not

constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SOLICITATION OF LISTING PROPOSALS

27. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized and empowered to obtain listing proposals from such brokers as it deems appropriate to solicit a sale and/or investment transaction in respect of the Property, and to execute and perform a listing agreement (the “**Listing Agreement**”) with such broker and on such terms as it deems appropriate.

28. **THIS COURT ORDERS** that the Proposal Trustee conduct the sale and investment solicitation process (“**SISP**”) as set out in Schedule “**A**” to this Order with respect to the solicitation of a sale and/or investment transaction in respect of the Property.

29. **THIS COURT ORDERS** that the Proposal Trustee will not execute a Listing Agreement until the earlier of: (a) repayment of Claireville’s obligations to DUCA up to the Maximum DUCA Payout Amount; and (b) August 10, 2021.

PAYMENT OF PROPERTY TAX ARREARS AND DUCA

30. **THIS COURT ORDERS** that, upon receipt by the Debtor of the net funds advanced under the DIP Loan, the Proposal Trustee shall be and is hereby authorized and directed to cause the Debtor to make distributions to (i) first, the City of Toronto on account of all property tax arrears due and owing by the Debtor; and (ii) second, DUCA Financial Services Credit Union Ltd. on account of the Debtor’s secured indebtedness owing to DUCA for principal, interest and costs, in full up to the Maximum DUCA Payout Amount and subject to the Proposal Trustee obtaining an

independent security opinion from its legal counsel confirming the validity and enforceability of DUCA's underlying security.

SEALING OF CONFIDENTIAL APPENDIX TO TRUSTEE'S REPORT

31. **THIS COURT ORDERS** that the Confidential Appendix "1" to the First Report shall be sealed, kept confidential and not form part of the public record, but shall be placed separate and apart from all other contents of the court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of this Court.

GENERAL

32. **THIS COURT ORDERS** that in addition to the rights and protections afforded to the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order save and except for any gross negligence or wilful misconduct on its part and nothing in this Order shall derogate from the protections afforded to the Proposal Trustee by the BIA or any applicable legislation. For greater certainty, and without in any way limiting the generality of the foregoing, none of the Proposal Trustee and any of its affiliates, partners, directors, employees, agents and controlling persons shall have any liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to an Person in connection with any of the powers granted to the Proposal Trustee under this Order, except to the extent that such losses, claims,

damages or liabilities result from gross negligence or wilful misconduct of the Proposal Trustee in performing its obligations under this Order.

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

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

35. **THIS COURT ORDERS** that nothing in this Order shall prevent the Proposal Trustee from acting as a trustee in bankruptcy of the Debtor, Gross Capital Inc. or any of their subsidiaries or related corporations.

36. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States, to give effect to this Order and to assist the Proposal Trustee and its respective 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, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Proposal Trustee and its respective agents in carrying out the terms of this Order.

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

38. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing

SCHEDULE “A”**SALE AND INVESTMENT SOLICITATION PROCESS**

Step	Deadline
Proposal Trustee to select and execute a Listing Agreement (the “ Listing Agent ”)	No later than August 13, 2021
Due diligence phase, during which the Listing Agent and Proposal Trustee will perform marketing outreach and advertising in such publications as are appropriate to solicit a sale or investment offer for the Property. The Listing Agent to provide access to a data room for interested parties who have executed a confidentiality agreement.	To be commenced as soon as the Property is listed on MLS
Bid Deadlines including whether a two phased sale process is pursued	To be determined by Proposal Trustee in consultation with Listing Agent Bid Deadlines to be communicated in advance to potential bidders
Court Approval of a Successful Bid and closing of the sale or investment transaction	To be determined by Proposal Trustee in consultation with Listing Agent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
(IN BANKRUPTCY AND INSOLVENCY)

Proceedings commenced at Toronto

ORDER
(RE EXPANDED POWERS OF PROPOSAL
TRUSTEE, CHARGES AND SISP)

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Lawyers for Claireville Property
Holdings Inc.

APPENDIX “B”



**Fourth Report to Court of
KSV Restructuring Inc.
as Proposal Trustee of
Claireville Property Holdings Inc.**

December 8, 2021

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COURT FILE NO.: 31-2749576

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST

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*

FOURTH REPORT OF KSV RESTRUCTURING INC. AS PROPOSAL TRUSTEE OF
CLAIREVILLE PROPERTY HOLDINGS INC.

DECEMBER 8, 2021

1.0 Introduction

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as proposal trustee (in such capacity, the "Proposal Trustee") in connection with a Notice of Intention to Make a Proposal ("NOI") filed by Claireville Property Holdings Inc. (the "Company") on July 2, 2021 (the "Filing Date") pursuant to subsection 50.4(1) (the "NOI Proceedings") of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA").
2. The principal purpose of the NOI Proceedings has been to create a stabilized environment to provide the Company with an opportunity to consider its restructuring alternatives, including a refinancing of its principal secured obligations and realizing on the Company's business and assets pursuant to a court-supervised sale process in order to, potentially, formulate and present a restructuring plan for creditors in the context of a proposal ("Proposal").
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:
 - a) granted an extension of the deadline to file a Proposal and extended the corresponding stay of proceedings under the BIA to August 9, 2021, which was further extended to September 15, 2021 upon the filing on August 4, 2021 of a Certificate by the Proposal Trustee¹;

¹ The automatic extension mechanism was dependent on the closing of the debtor-in-possession loan facility and corresponding repayment of the Company's secured obligations owing to DUCA Financial Services Credit Union Ltd. on or prior to August 9, 2021.

- b) expanded the powers of the Proposal Trustee to oversee the Company's operations and restructuring, including controlling receipts and disbursements;
 - c) granted a charge of up to \$250,000 on the Company's current and future property, assets and undertaking (collectively, the "Property") to secure the fees and disbursements of the Company's counsel, as well as the fees and disbursements of the Proposal Trustee and its counsel;
 - d) approved a debtor-in-possession loan facility (the "DIP Facility") in the amount of \$4.5 million from Cannect Mortgage Investment Corporation (the "DIP Lender" or "Cannect") and granted a charge on the Property in favour of the DIP Lender for advances under the DIP Facility; and
 - e) approved a sale and investment solicitation process ("SISP").
4. A copy of the July 28 Order is attached as Appendix "A".
 5. Pursuant to orders of the Court, including, most recently, the order issued on October 27, 2021, the Court granted an extension of the deadline to file a Proposal and extended the corresponding stay of proceedings under the BIA to and including December 14, 2021.
 6. Based on the results of the SISP (as summarized in this Report) and to provide the time necessary to complete a potential transaction identified through the SISP, it is now apparent to the Proposal Trustee that the Company will not be in a position to file a viable Proposal prior to January 1, 2022 (the "Outside Date"), being the six-month anniversary of the commencement of the NOI Proceedings and the date by which the Company is required to file a Proposal pursuant to the maximum deadline extension permissible under subsection 50.4(9) of the BIA. Accordingly, no further extension is being sought of the stay of proceedings in the NOI Proceedings.
 7. The Proposal Trustee has been working with Cannect, in its capacity as DIP Lender, to consider alternatives for the SISP to be completed in these circumstances. Cannect has served a receivership application returnable December 14, 2021, which, among other things, seeks an order (the "Receivership Order") appointing KSV as receiver and manager of the Company (in such capacity, the "Receiver"). The Proposal Trustee supports such a receivership application as being the only reasonable alternative in the circumstances.
 8. As a result of an extension of the stay of proceedings not being sought and a Proposal not being filed, the NOI Proceedings will automatically terminate on December 15, 2021, and the Company will be deemed to have made an assignment in bankruptcy pursuant to subsection 50.4(8) of the BIA upon or immediately after that time.

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) provide the Court with an update on the Proposal Trustee's activities since the Proposal Trustee filed its Third Report to Court dated October 20, 2021 (the "Third Report");
 - c) summarize the results of the SISP carried out by the Proposal Trustee with the assistance of CB Richard Ellis Limited ("CBRE"), including the status of a potential transaction with an arm's length party (the "Potential Purchaser") identified through the SISP for the sale of most of the Company's assets pursuant to a conditional Agreement of Purchase and Sale dated December 2, 2021 between the Proposal Trustee and the Potential Purchaser (the "APS") (the "Transaction");
 - d) report on the Company's actual cash flow relative to the cash flow forecast appended to the Third Report;
 - e) summarize the purpose of the proposed receivership proceedings;
 - f) discuss the Court-ordered charges in the NOI Proceedings and their treatment in the proposed Receivership Order;
 - g) set out the Proposal Trustee's recommendation regarding approval of the Receivership Order; and
 - h) recommend that this Court grant the relief sought.

1.2 Restrictions

1. In preparing this Report, the Proposal Trustee 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 Proposal Trustee 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 Proposal Trustee expresses no opinion or other level of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee 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 Proposal Trustee's website at <https://www.ksvadvisory.com/insolvency-cases/case/clairville-property-holdings-inc.>

2.0 Background

2.1 Corporate Overview

1. The Company is privately owned and was incorporated under the *Business Corporations Act (Ontario)* in 2015. Based on a review of the corporate profile report, the sole registered director and officer of the Company is Mark Gross.
2. Mark Gross was also a director and officer of Prime, the Company's property manager. On July 29, 2021, Mark Gross resigned as a director and officer of Prime.²
3. Mark Gross and Sheldon Gross are 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 July 25, 2021, GCI filed an assignment in bankruptcy and KSV was appointed Licensed Insolvency Trustee (in such capacity, the "Bankruptcy Trustee") of GCI's bankrupt estate, which appointment was affirmed at GCI's first meeting of creditors on July 15, 2021. GCI also owns several other real estate holding companies, certain of which are subject to separate receivership proceedings before this Court.

2.2 Assets

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 as bare trustee and nominee for and on behalf of 21 co-tenants (collectively, the "Co-Tenants"). GCI is one of the Co-Tenants, with a 7.3% beneficial interest in Claireville Properties Co-Tenancy (the "Co-Tenancy").

² In the First Report of the Proposal Trustee dated July 26, 2021 (the "First Report"), the Proposal Trustee reported that there was ambiguity regarding whether Mark Gross was a director and officer of Prime. Since that time, counsel to Mark Gross has confirmed that he was previously a director and officer of Prime, but as noted above, he has since resigned from both positions.

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 August 31, 2072. Rent under the Ground Lease is 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.

2.3 Investigation

1. KSV, in its capacity as Bankruptcy Trustee of GCI, is currently conducting an investigation into the assets and pre-bankruptcy operations of GCI and several of its subsidiaries and related parties (collectively, the “Gross Group”). The investigation was commenced due to, *inter alia*, accusations made by investors of misappropriation of investor funds by Mark and Sheldon Gross and/or entities controlled by Mark and Sheldon Gross. In respect of these allegations, on or around June 29, 2021, certain stakeholders of the Gross Group commenced a Court application (the “Application”) naming Mark Gross and other parties as respondents. The Application was originally returnable in Court on July 5, 2021 and sought various branches of relief against the respondents and in respect of the respondents’ properties and businesses, including the appointment of an investigative receiver. The Application was opposed by Mark Gross and several other respondents. In accordance with the Endorsement dated October 12, 2021 of the Honourable Mr. Justice Pattillo, the Application, as amended, was adjourned to a date to be set, and an interim motion was heard on October 12, 2021 by the Honourable Mr. Justice Cavanagh.
2. The substance of the hearing on October 12, 2021 was for leave to issue and register a Certificate of Pending Litigation on title to two properties in which GCI formerly had an interest, being 511 and 515 John Street, in Burlington, Ontario. As at the date of this Report, a decision has not yet been issued.
3. A portion of the Bankruptcy 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 on the Filing Date.
4. 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 of approximately \$3.3 million.
5. The Bankruptcy Trustee’s investigation of GCI is ongoing. The Bankruptcy Trustee has been and intends to continue reporting periodically to the inspectors of GCI’s estate in connection with its investigation.

2.4 Aqua Greens Inc.

1. One of the Company’s tenants is Aqua Greens Inc. (“Aqua”), which the Proposal Trustee understands specializes in indoor vertical farming. The Proposal Trustee understands that Aqua is indirectly partially owned by entities related to Mark and Sheldon Gross and that Mark Gross was previously the Chairman of Aqua.

2. During the NOI Proceedings, the Proposal Trustee became aware that as of November 2, 2021, Aqua was approximately \$380,000 in arrears on rent payments to the Company. On November 2, 2021, Aird & Berlis LLP (“A&B”), the Proposal Trustee’s counsel, sent a letter to Aqua demanding payment of the rental arrears.
3. On November 18, 2021, Aqua filed for protection under the *Farm Debt Mediation Act* (“FDMA”) The Proposal Trustee has demanded that Aqua pay post-filing rent. Counsel to Aqua has advised the Proposal Trustee that it is not in a position to make any payments to any creditor, even in respect of post-filing liabilities. Should the Receivership Order be granted, KSV, as Receiver, or the resulting purchaser of the premises, would reserve the right to pursue post-filing rent from Aqua for as long as Aqua continues to occupy the premises.

2.5 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, *inter alia*, 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, Mark Gross 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 late in the day 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 has no decision-making authority or control over the Company, including the SISP and the bank accounts.

3.0 Update on the Company’s and the Proposal Trustee’s Activities

1. The Company’s and Proposal Trustee’s activities since the Third Report include:
 - a) corresponding extensively with CBRE in connection with the SISP, including to populate the data room and to negotiate the APS with the Potential Purchaser;
 - b) corresponding with the DIP Lender concerning the Company’s cash flow and the status of the SISP;
 - c) corresponding with various beneficial owners of the Co-Tenancy concerning the status of these proceedings and the SISP;

- d) communicating with suppliers to secure goods and services during these proceedings and to address payment terms, including utility service providers, Prime, as property manager, and other vendors;
- e) corresponding regularly with Prime regarding, *inter alia*, operational and tenant issues;
- f) communicating with stakeholders more generally, as applicable;
- g) controlling the Company's receipts and disbursements in accordance with the July 28 Order;
- h) arranging for the payment of the Company's ongoing goods and services;
- i) engaging with A&B concerning various matters in these proceedings, principally related to the SISP, the Transaction and issues related to Aqua and its proceedings under the FDMA; and
- j) reviewing Cannect's receivership application materials and drafting this Report.

4.0 Cash Flow Forecast

1. The Company is operating in accordance with the cash flow forecast filed with the Court in support of its third extension motion heard October 27, 2021. In this regard, the Company's actual cash balance of approximately \$833,000 is less than its projected cash balance for the week ended December 4, 2021 by approximately \$134,000. The negative variance is largely attributed to rent arrears owing from Aqua.

5.0 SISP

5.1 Overview

1. The July 28 Order, *inter alia*, approved a SISP to market the Leasehold Interest for sale. The Proposal Trustee sought listing proposals from four commercial real estate brokerage firms. In consultation with the DIP Lender, the Proposal Trustee entered into a listing agreement with CBRE on August 25, 2021.
2. The SISP is summarized below.

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, *inter alia*, copies of the subleases, ground lease, environmental reports, building condition reports, rent rolls, financial budget 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.

Bid Deadline

- a) The SISP contemplated a bid deadline date of November 9, 2021 (the “Bid Deadline”).

5.2 SISP Results

1. A summary of the results of the SISP is as follows:
 - a) multiple parties executed the CA, were provided a copy of the CIM and given access to the data room;
 - b) certain of those parties visited the Real Property;
 - c) numerous parties, including the Potential Purchaser, submitted offers (the “Initial Offers”) on or prior to the Bid Deadline;
 - d) the Proposal Trustee, DIP Lender and CBRE interviewed the parties that made the strongest offers;
 - e) on December 2, 2021, in consultation with the DIP Lender, the Proposal Trustee entered into the APS with the Potential Purchaser;
 - f) the APS remains conditional on, among other things, the Potential Purchaser’s due diligence and Court approval.
2. Given that Cannect is the Company’s senior secured lender in these proceedings, the Proposal Trustee consulted with Cannect on each of the SISP steps summarized above.
3. CBRE prepared a summary of offers for the Leasehold Interest (the “Offer Summary”), a copy of which is attached as Confidential Appendix “1”.
4. The Proposal Trustee recommends that the Offer Summary be filed with the Court on a confidential basis and remain sealed pending further order of the Court as the availability of such information to other parties may negatively impact any future sale process for the Leasehold Interest if the Transaction does not close. In addition, the Offer Summary contains sensitive information, including the identity of bidders and the value of other bids received for the Leasehold Interest that similarly could adversely impact the future marketability of the Leasehold Interest should that become necessary.

5. The Proposal Trustee does not believe that any stakeholder will be prejudiced if the information is sealed. Keeping this information sealed pending further order of the Court is beneficial to maximizing value in these circumstances and maintains the integrity of the SISP through to its completion.

6.0 Receivership Application

1. Cannect is bringing the receivership application at this time as the Transaction will not be completed by the Outside Date. The Proposal Trustee believes it is just and convenient, and recommends that the Receivership Order be granted for the following reasons:
 - a) the Company will not be in a position to make a Proposal to its creditors on or prior to the Outside Date and, accordingly, there is no further purpose to the NOI Proceedings;
 - b) as noted above, the Company will be deemed to have made an assignment in bankruptcy on or immediately after December 15, 2021 because no Proposal will be filed or further extension of the stay of proceedings will be sought by that date;
 - c) the receivership proceedings will provide a framework to continue the SISP and complete the Transaction and, if the Transaction does not close, any future sale transaction for the Leasehold Interest;
 - d) the APS is conditional on Court approval and provides for a transition to receivership such that the Receiver will be able to bring a sale approval motion should the Prospective Purchaser be in a position to satisfy or waive its conditions; and
 - e) Cannect has advised the Proposal Trustee and the Company that it intends to fund the receivership proceedings for the purpose of advancing the SISP, should funding be required. At this time, the cash on deposit in the Company's bank account maintained by the Proposal Trustee is projected to be sufficient to fund the proposed receivership proceedings.

7.0 Court Ordered Charges³

1. The proposed Receivership Order creates two new priority charges and gives effect to the Court-ordered priority charges created in the NOI Proceedings, as discussed below:
 - a) **Receiver's Charge**

This charge is in favour of the Receiver and its counsel, A&B, for their respective fees and disbursements incurred in the receivership proceedings.

³ Capitalized terms in this section of the Report have the meanings ascribed to them in the July 28 Order, or in the proposed Receivership Order, as applicable.

b) **Receiver's Borrowings Charge (\$100,000)**

If required, Connect intends to fund the receivership proceedings provided its advances are secured by the Receiver's Borrowings Charge. The Receiver, if appointed, will issue a Receiver's Certificate to Connect in respect of each advance.

The outstanding principal amount shall not exceed \$100,000, unless further authorized by the Court.

As noted above, based on the cash on deposit in the Proposal Trustee's bank account, there is unlikely to be any funding requirement during the receivership period.

c) **Administration Charge (\$250,000)**

Pursuant to the July 28 Order, the Administration Charge secures the unpaid fees and disbursements of the Proposal Trustee and A&B.

d) **DIP Lender's Charge (\$4,500,000)**

Pursuant to the July 28 Order, the DIP Lender's Charge secures the senior secured super-priority DIP loan of up to a maximum amount of \$4.5 million.

2. The Proposal Trustee believes that the preservation and creation of the foregoing Court-ordered charges, as applicable, is fair and just in the circumstances, and will facilitate a seamless transition from the NOI Proceedings to the receivership proceedings. The Proposal Trustee also considers the prioritization of such Court-ordered charges, as set out in the proposed Receivership Order, to be commercially reasonable in these circumstances.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order in the form sought by Connect in its receivership application.

* * *

All of which is respectfully submitted,



**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS THE TRUSTEE ACTING *IN RE* THE PROPOSAL OF
CLAIREVILLE PROPERTY HOLDINGS INC.,
AND NOT IN ANY OTHER CAPACITY**

APPENDIX “C”

Estate/Court File No. 31-2749576

ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY AND INSOLVENCY]
(COMMERCIAL LIST)

THE HONOURABLE)	TUESDAY, THE 14 TH
)	
JUSTICE PATTILLO)	DAY OF DECEMBER, 2021

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*

ORDER

THIS MOTION, made by Cannect Mortgage Investment Corporation (“**Cannect**”), as the DIP lender in this proposal proceeding of Claireville Property Holdings Inc. (the “**Debtor**”), in which KSV Restructuring Inc. (“**KSV**”) is the proposal trustee of the Debtor (the “**Proposal Trustee**”), under the *Bankruptcy and Insolvency Act* R.S.C. 1985 c.B-3 (“**BIA**”) to, among other things, (i) terminate the period for making a proposal by the Debtor or Proposal Trustee in this BIA proposal proceeding (the “**Proposal Proceeding**”) and obtain ancillary relief in respect of same; (ii) lift the stay of proceedings with respect to Cannect in the Proposal Proceeding; (iii) permit the commencement of a receivership proceeding by Cannect against the Debtor *nunc pro tunc* by the issuance of the notice of application on the Commercial List (the “**Receivership Proceeding**”); and (iv) allow for the use of, reference to, and reliance upon the Affidavit of Marcus Tzaferis, and the Factum, filed in this motion, for the Receivership Proceeding, was heard on this day by videoconference due to the COVID-19 crisis.

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ON READING the Motion Record, Factum and Brief of Authorities of Cannect and the Fourth Report of the Proposal Trustee dated December 8, 2021 (the “**Fourth Report**”), and on hearing the submissions of counsel for Cannect, the Proposal Trustee, and any other person listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Michelle Pham, filed;

SERVICE

1. **THIS COURT ORDERS** that the service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

TERMINATION OF TIME TO FILE A PROPOSAL AND ANCILLARY RELIEF

2. **THIS COURT ORDERS** that pursuant to section 50.4 (11) of the BIA, the period for the Debtor or the Proposal Trustee, on behalf of the Debtor, to file a proposal to creditors in the Proposal Proceeding be and is hereby terminated.

3. **THIS COURT ORDERS** that the Fourth Report be and is hereby approved and the conduct and activities of the Proposal Trustee described therein be and are hereby approved.

4. **THIS COURT ORDERS** that Confidential Appendix “1” to the Fourth Report be and is hereby sealed until closing of the Transaction (as defined in the Fourth Report) or further Order of this Court.

5. **THIS COURT ORDERS** that, subject to paragraph 7 of this Order, KSV be and is hereby discharged and relieved from any further obligations, liabilities, responsibilities or duties in its

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capacity as Proposal Trustee, including, without limitation, as described in the Order of The Honourable Mr. Justice Pattillo made on July 28, 2021, provided however, that notwithstanding its discharge herein, the Proposal Trustee shall remain the Proposal Trustee for the performance of such incidental duties as may be required to complete the administration of the Proposal Proceeding including payment of any outstanding and reasonable fees and disbursements of Cannect's counsel incurred in the Proposal Proceeding.

6. **THIS COURT ORDERS** that, in addition to the protections in favour of the Proposal Trustee as set out in: (i) the BIA; (ii) any Order of this Court in the Proposal Proceeding; and (iii) any reasons provided by this Court in the Proposal Proceeding, the Proposal Trustee shall not be liable for any act or omission on the part of the Debtor, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Proposal Trustee.

7. **THIS COURT ORDERS** that the Proposal Trustee and its counsel be and are at liberty to bring a motion in the Receivership Proceeding to seek approval of the fees and disbursements of the Proposal Trustee and its counsel that have been incurred in the Proposal Proceeding and not yet been approved by the Court.

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LIFT THE STAY OF PROCEEDINGS

8. **THIS COURT ORDERS** that pursuant to section 69.4 of the BIA, the stay of proceedings in effect pursuant to section 69(1) of the BIA on the Debtor's filing of a notice of intention under section 50.4 of the BIA, is hereby lifted with respect to Cannect.

RECEIVERSHIP PROCEEDING

9. **THIS COURT ORDERS** that Cannect is hereby permitted and granted leave to commence the Receivership Proceeding against the Debtor *nunc pro tunc* by the issuance of the notice of application on the Commercial List, attached as **Schedule "A"** to this Order.

10. **THIS COURT ORDERS** that Cannect is hereby permitted to use, reference, and rely upon the Affidavit of Marcus Tzaferis sworn December 1, 2021, the Factum and Brief of Authorities, filed in this motion by Cannect, for the Receivership Proceeding, and Cannect shall file these materials in the Receivership Proceeding.

GENERAL

11. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order, and this Order is enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "J. J. J.", is written above a horizontal line.

(Signature of Judge)

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Schedule "A"



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Electronically issued : 01-Dec-2021
Délivré par voie électronique : 01-Dec-2021
Toronto

B E T W E E N:

(Court Seal)

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

and

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- ☐ In writing
- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

at the following location:

330 University Avenue, Toronto, Ontario or video conference

on a date and time to be fixed or set by the Commercial List Office or registrar, before a judge presiding over the Commercial List.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not

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have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date December 1 , 2021 Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: **Claireville Property Holdings Inc.**
c/o KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Noah Goldstein
Tel: (416) 932-6207
Email: ngoldstein@ksvadvisory.com

Proposal Trustee of Claireville Property Holdings Inc.

AND TO: **WEISZ FELL KOUR LLP**
200 Bay Street, Suite 2305
P.O. Box 120
Toronto, ON M5J 2J3

Caitlin Fell
Tel: (416) 613-8282
Email: cfell@wfkllaw.ca

Lawyers for Claireville Property Holdings Inc.

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APPLICATION

1. **THE APPLICANT**, Cannect Mortgage Investment Corporation (“Cannect”), makes an application for:

- (a) an Order abridging the time for service of this Notice of Application and the materials filed in support of the application, authorizing service via electronic mail and dispensing with further service thereof;
- (b) an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Claireville Property Holdings Inc. (the “**Debtor**”) including, but not limited to, the Debtor’s leasehold interest (the “**Leasehold Interest**”) in the premises or buildings municipally known as 18/20/22/24/26 Huddersfield Road, 350/354/358 Humberline Drive and 93/101/123/130/160 Claireville Drive, Toronto, Ontario (the “**Real Property**”), and more specifically described as: 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; and PIN 07368-0037 (LT): PT LT 38 CON 4 FRONTING THE HUMBER, PT 5 64R2980. ETOBICOKE; CITY OF TORONTO (collectively, the “**Property**”);

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- (c) staying all rights and remedies against the Debtor, the Receiver, or affecting the Property; and
- (d) such other relief as counsel may request and this Honourable Court may deem just.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

Background

- (a) The Debtor's principal asset is its Leasehold Interest.
- (b) The Debtor is the registered owner of the Leasehold Interest.
- (c) The Leasehold Interest is subject to a 99-year ground lease with Kornwood Investments Ltd. dated September 1, 1973, which expires on August 31, 2073.

Proposal Proceedings and DIP Loan

- (d) The Debtor filed a notice of intention ("NOI") to make a proposal under the BIA on July 2, 2021.
- (e) At the commencement of the NOI proceedings, the Debtor's principal secured creditor was DUCA Financial Services Credit Union Ltd. ("DUCA"), which was owed approximately \$2.4 million. The Debtor also had accrued unpaid property tax arrears of approximately \$2 million. DUCA issued a demand letter together with a Notice of Intention to Enforce Security pursuant to section 244 of the BIA

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in June 2021. The Debtor filed its NOI prior to the expiry of the statutory 10-day notice period.

- (f) In July 2021, the Debtor obtained a commitment from Cannect to repay DUCA and bring the outstanding property taxes current by way of a DIP loan in the principal amount of \$4.5 million. The July 28 Order (defined below) approved, among other things, the DIP loan, which funding was advanced on July 30, 2021 and used to repay DUCA and the property tax arrears.
- (g) On July 28, 2021 (the “**July 28 Order**”), the Honourable Justice Pattillo granted various relief including the following:
 - (i) approving the debtor-in-possession financing from Cannect in the principal amount of \$4.5 million (the “**DIP Loan**”), the debtor-in-possession financing term sheet between Cannect and the Debtor dated July 23, 2021 (the “**DIP Term Sheet**”), the priority charges to secure the DIP Loan (the “**DIP Lender's Charge**”) and certain professional costs (the “**Administration Charge**”), and a payout of property tax arrears and DUCA;
 - (ii) extending 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 the Debtor itself;
 - (iii) approving a sale and investment solicitation process (“**SISP**”);

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- (iv) extending the time for the Proposal Trustee to file a proposal on the Debtor's behalf under the BIA to and including September 15, 2021; and
 - (v) approving the First Report of the Proposal Trustee dated July 26, 2021 and the conduct and activities of the Proposal Trustee described therein.
- (h) On September 15, 2021 (the "**September 15 Order**"), the Honourable Justice Cavanagh granted various relief including the following:
- (i) extending the time for the Proposal Trustee to file a proposal on the Debtor's behalf under the BIA up to and including October 30, 2021;
 - (ii) approving the Second Report of the Proposal Trustee dated September 7, 2021 (the "**Second Report**"), and the conduct and activities of the Proposal Trustee described therein; and
 - (iii) approving the fees and disbursements of the Proposal Trustee and its lawyer as set out in the Second Report.
- (i) On October 27, 2021 (the "**October 27 Order**"), the Honourable Justice Koehnen granted various relief including the following:
- (i) extending the time for the Proposal Trustee to file a proposal on the Debtor's behalf under the BIA up to and including December 14, 2021;

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- (ii) approving the Third Report of the Proposal Trustee dated October 20, 2021 (the “**Third Report**”), and the conduct and activities of the Proposal Trustee described therein; and
- (iii) approving the fees and disbursements of the Proposal Trustee and its lawyer as set out in the Third Report.
- (j) During the NOI period and as further detailed in the various court reports of the Proposal Trustee, the Proposal Trustee has advanced the SISP through its sales advisor, CB Richard Ellis Limited (“**CBRE**”). In accordance with the July 28 Order, the Proposal Trustee solicited listing proposals from five commercial realtors to act as listing agent for the Leasehold Interest in the Real Property. Following consultation with Cannect, the Proposal Trustee entered into a listing agreement for the Leasehold Interest on or about August 25, 2021 with CBRE. CBRE subsequently made marketing materials available and created a data room to share these materials with potential purchasers; and the Proposal Trustee, in consultation with CBRE, set down a timeline to receive offers.
- (k) On or about December 1, 2021, the Proposal Trustee has entered into or is about to enter into an agreement of purchase and sale regarding the Leasehold Interest in the Real Property with the successful purchaser. The Proposal Trustee has indicated that it is not possible to complete or close this sale transaction, if it closes, by January 1, 2022 or during the NOI period.

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- (l) The Proposal Trustee or Debtor is not seeking an extension of the NOI stay of proceedings, which expires on December 15, 2021.
- (m) The time referenced in section 50.4(9) of the BIA and the October 27 Order currently expires on December 15, 2021, and the Court is not authorized pursuant to section 50.4(9) of the BIA to extend the time referenced in such section beyond January 1, 2022.
- (n) The Debtor will be deemed to have made an assignment in bankruptcy pursuant to section 50.4(8) of the BIA on the expiry of the stay period on December 15, 2021.

Appointing a Receiver

- (o) On December 14, 2021 or December 15, 2021, the Debtor will be indebted to Cannect in the amount of \$4.5 million plus interest and costs under the DIP Term Sheet
- (p) The maturity or termination date (the “**Termination Date**”) of the DIP Loan under the DIP Term Sheet is generally the earliest of the following: (a) on or about January 30, 2022; (b) the date the NOI stay of proceedings expires without being extended (i.e., December 15, 2021) or the date the NOI proceedings are terminated (i.e., December 14, 2021, if these proposal proceedings are terminated on that date) or the Debtor becomes bankrupt; and (c) an Event of Default.
- (q) The expiry of the NOI stay of proceedings, the termination of the BIA proposal proceedings or bankruptcy regarding the Debtor also constitute an Event of

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Default under the DIP Term Sheet. Also, any action (or inaction) of the Debtor which would, in the sole determination of Cannect, have a material adverse effect on the Debtor or the collateral (i.e., Leasehold Interest) constitutes an event of default under the DIP Term Sheet. In Cannect's sole determination, the intended failure of the Debtor to file a proposal during the NOI period and the resulting deemed bankruptcy will have a material adverse effect on the Debtor's collateral.

- (r) Upon the Termination Date (i.e., December 14 or 15, 2021) or the occurrence of an Event of Default under the DIP Term Sheet, all of the indebtedness of the Debtor to Cannect, together with all interest and other amounts owing under the DIP Term Sheet, shall become immediately due and payable and Cannect is entitled to enforce its security.
- (s) Cannect holds the following security (collectively, the “**Security**”) regarding the DIP Loan: a court-ordered super-priority DIP Lender's Charge (ranking behind the Administration Charge); a general security agreement (“**GSA**”) dated August 16, 2021, granted by the Debtor to Cannect; and an indenture regarding the assignment of rents (“**Assignment of Rents**”) dated August 17, 2021, granted by the Debtor to Cannect.
- (t) The GSA was perfected by registering under the *Personal Property Security Act* on or about August 12, 2021 and the Notice of Assignment of Rents was registered on title of the Real Property on or about October 20, 2021. Under the GSA and DIP Lender's Charge or July 28 Order, on default, Cannect may, among

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other things, apply to this Court for the appointment of a receiver against the Debtor.

- (u) Under the DIP Term Sheet and July 28 Order, before Cannect can enforce its Security, including applying to this Court for the appointment of a receiver, it must provide five (5) days' notice to the Debtor and the Proposal Trustee. The Debtor and the Proposal Trustee, or their counsel, are included on the Service List in this application or motion and will be provided approximately seven (7) days' notice of this application or motion for the appointment of a receiver.

Necessity for the Appointment of a Receiver

- (v) Cannect's need for the appointment of a receiver is apparent based on the current circumstances, including the following:
 - (i) The need for a quick transition from NOI proceedings to receivership proceedings in order to complete the above sale transaction and if it does not close, any future sale transaction;
 - (ii) Cannect is under a tight deadline;
 - (iii) Debtor's NOI stay expires at 12:01 AM on December 15, 2021, and there is no intention of extending it, especially given that an extension would only take the stay period to January 1, 2022, the outside date of the NOI proceedings;

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- (iv) This is not a restructuring, no longer debtor-driven and the Debtor's bankruptcy is imminent;
 - (v) In terms of timing or sequence of proceedings, Cannect does not want an intervening bankruptcy or deemed bankruptcy before the receivership;
 - (vi) as noted above, the Proposal Trustee has entered into or is about to enter into an agreement of purchase and sale with a potential purchaser of the Leasehold Interest but needs more time beyond the NOI period to possibly close the transaction, if it closes. This potential sale, and any other possible sale if this one does not close, can be completed by a court-appointed receiver or in receivership proceedings;
 - (vii) the Debtor is or will be in default of its obligations to Cannect;
 - (viii) to preserve, protect and ultimately realize on the collateral or Leasehold Interest subject to the Security;
 - (ix) the Security provides for the court-appointment of a receiver; and
 - (x) it is just and convenient to appoint a receiver.
- (w) KSV has consented to act as Receiver in this matter.
- (x) The Order sought by Cannect provides for the retention of independent counsel by the Receiver to address any issue or matter where there may be an actual or perceived conflict with Cannect, including any and all potential priority disputes.

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In all other situations, the draft Order provides authorization for the Receiver to use Cannect's counsel as a matter of cost efficiency.

- (y) Rules 2.03, 3.02, 14.05(2), 16, 41 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, Section 243(1) of the BIA and Section 101 of the CJA
- (z) Such further and other grounds as the lawyers may advise and this Court may deem just.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this application or motion:

- (a) the Affidavit of Marcus Tzaferis, to be sworn;
- (b) the consent of KSV Restructuring Inc. to act as Receiver; and
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 1 , 2021

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Lawyers for the Applicant,
Cannect Mortgage Investment Corporation

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43

CANNECT MORTGAGE INVESTMENT CORPORATION
Applicant

-and- CLAIREVILLE PROPERTY HOLDINGS INC.
Respondent

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

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**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**

Estate/Court File No. 31-2749576

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY AND INSOLVENCY]
(COMMERCIAL LIST)**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

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APPENDIX “D”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	TUESDAY, THE 14 TH
)	
JUSTICE PATTILLO)	DAY OF DECEMBER, 2021

B E T W E E N:

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

and

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by Cannect Mortgage Investment Corporation (the “**Applicant**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Claireville Property Holdings Inc. (the “**Debtor**”), was heard this day via videoconference in light of the COVID-19 pandemic.

ON READING the Affidavit of Marcus Tzaferis sworn December 1, 2021 and the Exhibits thereto and the Fourth Report of KSV in its capacity as Proposal Trustee of the Debtor and the

Appendices thereto, and on hearing the submissions of counsel for the Applicant, and such other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Michelle Pham sworn December 7, 2021, and on reading the consent of KSV to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application or Motion Record herein is hereby abridged and validated such that this Application or Motion is properly returnable today, hereby dispenses with further service thereof, and authorizes substitute service via electronic mail.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of all of the assets, undertakings, and properties of the Debtor, acquired for, or used in relation to the business carried on by the Debtor, and all proceeds thereof (the “**Property**”). Without limiting the generality of the foregoing, “Property” shall include the Debtor’s leasehold interest (the “**Leasehold Interest**”) in the premises or buildings municipally known as 18/20/22/24/26 Huddersfield Road, 350/354/358 Humberline Drive and 93/101/123/130/160 Claireville Drive, Toronto, Ontario and more specifically described in Schedule “A” hereto (the “**Real Property**”).

RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property including retaining a listing broker to market the Leasehold Interest for sale, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, including, without limitation, to continue the sale and investment solicitation process in respect of the Property that was previously approved by the Court on July 28, 2021;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property, including the Real Property;

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to

the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Property or the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with

leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to

the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

14. **THIS COURT ORDERS** that the Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect

of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or

other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

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

RECEIVER’S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on

the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and subject to and subordinate in priority to the BIA Charges (as defined below).

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

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

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person,

but subordinate in priority to the Receiver's Charge, the BIA Charges (as defined below) and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

BIA ORDER CHARGES

25. **THIS COURT ORDERS** that the Administration Charge and the DIP Lender's Charge, each as defined and granted under the BIA by the Order dated July 28, 2021, of the Ontario Superior Court of Justice (Commercial List) (In Bankruptcy and Insolvency) in *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*, Court File No. 31-2749576 (collectively, the "**BIA Charges**"), shall continue to be in force and effect until the amounts or liabilities secured under the BIA Charges are fully paid.

SERVICE AND NOTICE

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

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

GENERAL

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

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

30. **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.

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

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid

by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

34. **THIS COURT ORDERS** that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the creditors or any other stakeholders or other interested parties of the Debtor and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

35. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order, and this Order is enforceable without the need for entry and filing.

REGISTRATION ON TITLE

36. **THIS COURT ORDERS AND DIRECTS** that, as soon as practicable, the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) accept this Order for registration on title to the Real Property described in Schedule "A" hereto.



SCHEDULE “A”**Description of Real Property****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

and municipally known as 18/20/22/24/26 Huddersfield Road, 350/354/358 Humberline Drive and
93/101/123/130/160 Claireville Drive, Toronto, Ontario.

SCHEDULE “B”
RECEIVER CERTIFICATE

CERTIFICATE NO.

AMOUNT \$

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the “**Receiver**”) of the assets, undertakings and properties of Claireville Property Holdings Inc. (the “**Debtor**”), including, but not limited to, the Debtor’s leasehold interest (the “**Leasehold Interest**”) in the premises or buildings municipally known as 18/20/22/24/26 Huddersfield Road, 350/354/358 Humberline Drive and 93/101/123/130/160 Claireville Drive, Toronto, Ontario (the “**Real Property**”) acquired for, or used in relation to a business carried on by the Debtor (collectively, the “**Property**”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the 14th day of December, 2021 (the “**Order**”) made in an application having Court File No. CV-21- -00CL, has received as such Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$►, being part of the total principal sum of \$► which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to

the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

1. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

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

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

DATED the _____, day of December, 2021.

KSV Restructuring Inc., solely in its capacity as
Receiver of the Property, and not in its personal
capacity

Per:

Name:

Title:

CANNECT MORTGAGE INVESTMENT CORPORATION
Applicant

-and-

CLAIREVILLE PROPERTY HOLDINGS INC.
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(APPOINTING RECEIVER)**

FOGLER, RUBINOFF LLP

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Lawyers for the Applicant,
Cannect Mortgage Investment Corporation

APPENDIX “E”

Court File Number: 31-2349576Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Chineville Property Holdings Inc.

Plaintiff(s)

AND

Defendant(s)

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Facsimile No:
See attached App. 'A'		

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
- ☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- ☐ Adjourned to: _____
- ☐ Time Table approved (as follows): _____

Motion by Connect Mortgage Investment Corporation (Connect) in its capacity as the DIP lender to Chineville Property Holdings Inc. in this proposed proceeding under the BIA. Chineville a NO on July 2, 2021, KSV Restructuring is the Proposal Trustee. The proceedings and the stay have been extended, the last extension expires today at 11:59 pm. Chineville does not intend to seek a further extension. During the period, it engaged in DSSP but only recently received an offer to purchase. As a result of the conditions to the offer, however, the transaction cannot be completed prior to January 1, 2022 which

Dec 14, 2021

Date

Patello, J.

Judge's Signature

☒ Additional Pages 1

Court File Number: 31-2749576Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

in the end date of the stay period under the BIA. Connect seeks two orders: one terminating the time ^{"for Clairville"} to file a proposal and ancillary relief; and two appointing KSV as receiver and manager of Clairville. RR.

Based on the material filed and the submissions of counsel and with the consent of KSV, I am satisfied that the orders requested should issue.

It is clear from the material the Clairville will not be able to make a proposal before the expiration of the stay. Accordingly, the proposal is terminated pursuant to s.50.4 (11) of the BIA. Further, the stay proceedings in effect are lifted in connection with Connect.

Finally, I consider it just and convenient in the circumstances, to appoint KSV as receiver and manager of Clairville.

The fourth report of the Proposal Trustee is approved. In light of the confidential information in Confidential Appendix "I" to the Report regarding the STOP process, that Appendix shall be sealed pending completion of the sale.

Estate/Court File No. 31-2749576

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY AND INSOLVENCY]
(COMMERCIAL LIST)**

**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***

COUNSEL SLIP

**Hearing via Zoom before the Honourable Justice Pattillo
December 14, 2021, 11:30 a.m.**

FOGLER, RUBINOFF LLP

Vern W. DaRe (lawyer) Email: vdare@foglers.com

Lawyers for the DIP Lender, Cannect Mortgage Investment Corporation

AIRD & BERLIS LLP

Jeremy Nemers (lawyer) Email: jnemers@airdberlis.com

Lawyers for the Proposal Trustee

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Massimo (Max) Starnino (lawyer) Email: Max.Starnino@paliareroland.com

Janet Song (Articling Student) Email: Janet.Song@paliareroland.com

Lawyers for the Landlord

DOVERCOURT FINISHING GROUP**Rob Edwards**Email: rpedwards@dovercourt.biz

Self-represented party, Owner of Autotek Electroplating Ltd. and Olympic Coaters Ltd., Co-Tenants

WEN XUE, YAN PENG and FIANA PENG

Self-represented Parties, Co-Tenants

TANVIEW INVESTMENTS LIMITED

Self-represented Party, Co-Tenant

M. DROLET, Self-represented Party

KSV RESTRUCTURING INC.**David Sieradzki**Email: dsieradzki@ksvadvisory.com

Proposal Trustee/Proposed Receiver

APPENDIX “F”

DATED AS OF THE 1st DAY OF SEPTEMBER, A.D. 1973

GROUND LEASE

KORNWOOD INVESTMENTS LIMITED

LANDLORD

- and -

SLOUGH ESTATES (CANADA) LIMITED

TENANT

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THIS INDENTURE made as of the 1st day of September, 1973.
IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT.

B E T W E E N :

KORNWOOD INVESTMENTS LIMITED,
a Corporation incorporated under the
laws of the Province of Ontario,
(hereinafter referred to as the "Landlord")
OF THE FIRST PART

- a n d -

SLOUGH ESTATES (CANADA) LIMITED,
a Corporation incorporated under the
laws of the Province of Ontario,
(hereinafter referred to as the "Tenant")
OF THE SECOND PART

ARTICLE I

DEMISE

1.01 WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord hath demised and leased and by these presents, doth demise and lease unto the Tenant, those certain parcels or tracts of land (hereinafter referred to as the "lands") situate lying and being in the Borough of Etobicoke, in the Municipality of Metropolitan Toronto, and being composed of those parts of Lot 38, Concession 4, Fronting the Humber designated as Parts 5 and 8 on a Plan of Survey of Record registered in the Registry Office for the Registry Division of Toronto Boroughs and York

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South (No.64) as 64R-2980 and shown outlined in red on the sketch of survey attached hereto as Schedule "A".

ARTICLE II

TERM

2.01 TO HAVE AND TO HOLD the lands for a term (hereinafter referred to as the "Term") to commence on the 1st day of September, 1973 and to end on the 31st day of August, 2073.

ARTICLE III

DEFINITIONS

3.01 In this indenture the following terms shall have the meanings herein specified:

- (a) "Initial Rental Period" shall mean the first five (5) years of the Term, namely the period from the 1st day of September, 1973 to the 31st day of August, 1978;
- (b) "Second Rental Period" shall mean the period of fifteen (15) years immediately following the expiry of the Initial Rental Period, namely the period from the 1st day of September, 1978 to the 31st day of August, 1993;
- (c) "Third Rental Period" shall mean the period of fifteen (15) years immediately following the expiry of the Second Rental Period namely the period from the 1st day of September, 1993 to the 31st day of August, 2008;
- (d) "Fourth Rental Period" shall mean the period of fifteen (15) years immediately following the expiry of the Third Rental Period, namely the period from the 1st day of September, 2008 to the 31st day of August, 2023;
- (e) "Fifth Rental Period" shall mean the period of ten (10) years immediately following the expiry of the Fourth Rental Period namely the period from the 1st day of September, 2023, to the 31st day of August, 2033;
- (f) "Sixth Rental Period" shall mean the period of fifteen (15) years immediately following the expiry of the Fifth Rental Period, namely the period from the 1st day of September, 2033 to the 31st day of August, 2048;

- (g) "Seventh Rental Period" shall mean the period of ten (10) years immediately following the expiry of the Sixth Rental Period, namely the period from the 1st day of September, 2048 to the 31st day of August, 2058;
- (h) "Eighth Rental Period" shall mean the period of fifteen (15) years immediately following the expiry of the Seventh Rental Period, namely the period from the 1st day of September, 2058 to the 31st day of August, 2073;
- (i) "Mortgage" shall mean any mortgage, charge or other form of encumbrance or security of the leasehold interest created by this lease and shall include any deed of trust and mortgage securing bonds by any such mortgage, charge or other form of encumbrance;
- (j) "Mortgagee" shall mean any mortgagee or lender under a mortgage as herein defined and shall include any trustee for bondholders under a deed or trust and mortgage securing bonds by a mortgage as herein defined.

ARTICLE IVPAYMENT OF RENT

4.01 The Tenant covenants and agrees to pay to the Landlord or as the Landlord may, in writing, direct in lawful money of Canada at par in Toronto, without any set-off, deduction or abatement whatsoever as annual rent the amounts stipulated in this Article IV which shall be payable in advance in equal monthly instalments on the first day of each month.

4.02 The annual rental to be paid to the Landlord during the Initial Rental Period respecting the land designated as Part 5 on Plan 64R-2980 shall be the sum of SEVENTY-FOUR THOUSAND EIGHT HUNDRED EIGHTEEN DOLLARS AND EIGHTY CENTS (\$74,818.80).

4.03 The annual rental to be paid to the Landlord during the Initial Rental Period respecting the land designated as Part 8 on Plan 64R-2980 shall be the sum of FIFTY-THREE THOUSAND EIGHT HUNDRED TWELVE DOLLARS AND EIGHTY CENTS (\$53,812.80) commencing on January 1st, 1975, or the date on which a building permit is available for the said land, whichever shall first occur.

4.04 For the purposes of this lease, a building permit shall be deemed to be available at such time as the appropriate authority of the municipality in which the lands are situate would be prepared to issue a building permit for the erection of a building if only the following conditions remain to be fulfilled:

- (a) that plans for a building are filed and the same are in compliance with all applicable by-laws and requirements of the municipality and any other relevant governmental authorities;

(b) that all levies, imposts, contributions in lieu of parkland and servicing costs payable to the municipality with respect to the lands, will be paid prior to the issuance of the building permit; and

(c) that the usual building permit fee will be paid upon the issuance of the building permit.

4.05 The annual rental to be paid to the Landlord during the Second Rental Period, the Third Rental Period and the Fourth Rental Period, respectively, shall be the greater of:

(a) the sum of ONE HUNDRED TWENTY-EIGHT THOUSAND SIX HUNDRED THIRTY-ONE DOLLARS AND SIXTY CENTS (\$128,631.60); or

(b) nine percent (9%) of the fair market value of the lands, determined as hereinafter provided as of the date six (6) months prior to the expiration of the preceding rental period. ✓

4.06 The annual rental payable to the Landlord during the Fifth Rental Period, the Sixth Rental Period, the Seventh Rental Period and the Eighth Rental Period, respectively, shall be the greater of:

(a) nine percent (9%) of the fair market value of the lands, determined as hereinafter provided, as of the date six (6) months prior to the expiration of the preceding rental period; or

(b) a percentage of the fair market value of the lands which is two percent (2%) above the average of the prime lending rate of The Royal Bank of Canada on the last day of each month during the last two (2) years of the preceding rental period.

provided that, in no event, shall the annual rental for the lands for any rental period hereinbefore referred to in paragraphs 4.05 and 4.06 be less than ONE HUNDRED AND TWENTY-EIGHT THOUSAND SIX HUNDRED THIRTY-ONE DOLLARS AND SIXTY CENTS (\$128,631.60).

ARTICLE V

FAIR MARKET VALUE OF LANDS

5.01 For the purpose of establishing the rental payable under this lease during each rental period after the Initial Rental Period, the Landlord and the Tenant, or their respective representatives, shall meet not less than six (6) months prior to the date on which each rental period is to commence in order to attempt to fix by agreement, the fair market value of the lands. If the Landlord and the Tenant shall fail to agree on the fair market value of the lands on or before a date ninety (90) days prior to the commencement of the next ensuing rental period, the determination of the fair market value of the lands shall be submitted to arbitration in accordance with Article XXIII hereof. In the event that the decision of the arbitrator or arbitrators appointed under Article XXIII is not given before the commencement date of the next ensuing rental period, the monthly instalments then payable by the Tenant shall continue to be paid on account of rental until the decision of the said arbitrator or arbitrators is made known at which time the unpaid difference, if any, which may have accrued in favour of the Landlord shall be paid by the Tenant forthwith.

Whenever the fair market value of the lands is to be determined, the lands shall be valued as if they were unimproved and immediately available for servicing, that is to say, that full services with sufficient capacity to service the lands exist at the boundary of the lands.

The fair market value of the lands shall be based on the lands being zoned only to permit such uses as are permitted

on September 1st, 1973; provided that if the Tenant is making a use of the lands which renders a higher fair market value than their value as hereinbefore determined, then such fair market value shall be utilized for the purposes of establishing the rental payable hereunder.

ARTICLE VI

NET LEASE

6.01 It is the intention of the parties hereto that this shall be a net lease, that the rent payable by the Tenant to the Landlord shall be absolutely net and free and clear of any costs, charges and expenses whatsoever, that the entire rental herein specified during the full term of this lease and all costs, expenses and obligations of every kind and nature whatsoever relating to the lands and any improvements erected thereon shall be paid by the Tenant, provided that this clause shall not be construed so as to obligate the Tenant to pay any charges or taxes personal to the Landlord such as succession duties, estate taxes, corporation taxes, income taxes or any other taxes upon the income derived by the Landlord from the lands.

ARTICLE VII

TAXES

7.01 The Tenant covenants to pay, when due, all realty taxes, including all charges for local improvements, assessments and other charges, rates, duties, license fees or levies of any kind or nature whatsoever which may be made, levied or imposed on the lands, and on the improvements thereon or upon the Landlord or the Tenant on account thereof, whether such taxes, assessments, charges, rates, duties, license fees or levies are charged by any municipal, school or other body and whether or not of a kind now existing or within the contemplation of the parties hereto (hereinafter called "Property Taxes"); provided however, that the Property Taxes shall not include any charges or taxes personal to the Landlord such as succession duties, estate taxes, corporation taxes, income taxes or any other taxes upon the income derived by the Landlord from the lands. The obligation of the Tenant to pay Property Taxes shall commence as of the commencement dates for payment of rent as hereinbefore defined, and shall be apportioned between the Landlord and the Tenant as at such date and the Tenant shall pay its proportionate share thereof. Upon the expiry or termination of this lease Property Taxes during the taxation year of termination shall be similarly apportioned between the parties as at the expiry or termination date.

The Tenant further covenants that upon the written request of the Landlord, it will promptly deliver to the Landlord for inspection, receipts or other reasonable evidence for the payment of any and all of the Property Taxes which were due and payable up to

thirty (30) days prior to the said request. The Tenant shall have the right and privilege in its own name, or if required and upon agreeing to indemnify the Landlord in respect of such action and all costs relating thereto, in the name of the Landlord (and the Landlord hereby agrees to consent to such proceedings) of appealing assessments or of applying for a reduction of any of the Property Taxes provided that the Tenant shall first either pay the Property Taxes under protest or furnish security for payment thereof by bond or otherwise, reasonably satisfactory to the Landlord, in the event of the failure of such appeal or application.

The Tenant shall have the further right from time to time to apply for the cancellation, reduction or refund of Property Taxes levied in any year in respect of any building or improvement on the lands that was razed by fire, demolished or otherwise or in respect of any overcharge of taxes levied on the lands and any such refund of taxes shall belong to the party which paid such taxes.

If and so often as the Tenant shall neglect or omit to pay the Property Taxes, the Landlord may, but shall not be obliged to, pay the same and may thereupon charge the same to the Tenant together with interest on the amount thereof at the rate of twelve percent (12%) per annum. The Tenant hereby covenants and agrees to pay the same to the Landlord forthwith upon receipt from the Landlord of a notice stating the amount thereof paid by it and the date of payment and the Tenant agrees that any and all of such amounts so paid by the Landlord shall be recoverable by the Landlord as if the same were and in the same manner as, rent reserved and in arrears under the terms of this lease.

ARTICLE VIIIREPAIRS AND MAINTENANCE

8.01 At all times during the Term, the management of the lands and the buildings and improvements thereon shall be the responsibility of the Tenant and shall be performed at its own expense by itself or such agency or agencies as it may, from time to time or at any time during the Term appoint. The Landlord shall not be obliged to furnish any services or facilities or to make repairs or alterations in or to the lands or the buildings or improvements thereon, the Tenant hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management thereof.

8.02 The Tenant shall, at its own cost and expense, during the entire Term, put and keep in good order and condition, reasonable wear and tear excepted, the lands and any buildings to be erected thereon and the improvements standing thereon at any time, and the appurtenances and equipment thereof, both inside and outside, including but not limited to, fixtures, walls, foundations, roofs, vaults, elevators and similar devices, heating and air conditioning equipment, sidewalks on the property, yards and water and sewer mains and connections, water, gas and electric pipes and conduits, and all other fixtures and appurtenances to the said lands and buildings erected thereon, and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and shall make any and all necessary repairs, replacements, substitutions, improvements and additions ordinary or extraordinary, foreseen or unforeseen, structural

or otherwise. Such repairs shall be completed in a good and workmanlike manner and in all respects consistent in quality and workmanship with the location and use of the said buildings, and shall meet the requirements of municipal or governmental regulations and the fire insurance underwriters. The Tenant shall suffer no waste or injury to the said lands and buildings erected thereon or any part thereof, and shall not use or occupy or permit to be used or occupied the lands and buildings erected thereon or any part thereof so as to constitute a nuisance or for any illegal or unlawful purpose, nor in any manner which may be extrahazardous, nor in any manner which may contravene any lawful restrictions of the use thereof by any municipal or governmental authorities and the Tenant shall, at all times, at its own expense, keep the sidewalks, and curbs adjacent to the lands and buildings erected thereon, clear from rubbish and reasonably clear from ice and snow, and shall not injure or disfigure the lands and buildings erected thereon or permit the same to be injured or disfigured in any way save and except as hereinafter provided.

8.03 Notwithstanding anything herein contained, at the expiration or other termination of this lease, the Tenant shall surrender and deliver up the lands to the Landlord together with any buildings or improvements then on the lands in good order and condition, reasonable wear and tear excepted.

8.04 The expression "reasonable wear and tear" whenever used herein shall have regard to the age of the building or buildings appurtenance or appurtenances or equipment with reference to which the expression is used.

ARTICLE IX

SERVICES AND ROADS

9.01 The Landlord covenants and agrees that in the event the municipality shall require any alteration in the boundaries of the roads shown on Schedule "A" annexed hereto, the Landlord will convey to the municipality for dedication as road allowance, such lands as may be required and will make pro rata adjustment in the rent payable hereunder which may result from such alteration.

9.02 The Tenant covenants that it will pay all levies, imposts, contributions in lieu of parklands and servicing costs with respect to the lands as and when such sums are payable and shall indemnify the Landlord and save it harmless from any liability with respect thereto.

9.03 The Tenant covenants that it will install or cause to be installed all municipal services required to be constructed and installed in connection with any plan of subdivision or development plan for the lands and shall pay all levies, imposts, deposits and charges required by the municipality or any public utility or other authority having jurisdiction, which services may be installed as a local improvement and the Tenant shall indemnify and save harmless the Landlord of and from all claims and demands relating thereto, it being the intention of the parties that the Landlord shall not be required, at any time, to pay any levies, imposts, deposits or other charges whatever in connection with the servicing or preparation of the lands from time to time for building, use or occupancy. Without limiting the generality of the foregoing, the Tenant shall, at its own expense, install or cause to be installed, such paved roadways, sanitary sewers, storm sewers, sidewalks, curbs, street lighting,

water pipes and underground hydro facilities as may be required by the municipality or other authorities having jurisdiction. The Tenant further covenants that it shall construct, renew and repair all services with respect to the lands and buildings thereon as the municipality, public utilities or other authorities having jurisdiction shall require from time to time without expense to or contribution from the Landlord.

ARTICLE X

COMPLIANCE WITH STATUTES, BY-LAWS, ETC.

10.01 (a) The Tenant covenants that it will comply with all provisions of law relating to the lands and the maintenance and use of every building and every improvement on the lands and in connection with the erection, alteration, improvement, demolition and replacement of the same and will indemnify and save harmless, the Landlord from each and every demand, action, cause of action and expense, including counsel and solicitors' fees on a solicitor and his client basis, by reason of failure so to do, or arising out of any act of omission or commission of the Tenant or any of its agents, employees or contractors in or about the lands, the operation, construction, improvement, maintenance, alteration, repair, demolition or replacement of any of the buildings or improvements on the lands or arising out of the breach of any of the covenants, terms and provisions of this lease binding upon or to be observed or performed by the Tenant. The Tenant covenants that at all times the use made of the buildings will be in conformity with the requirements of all applicable zoning and building by-laws. The Tenant shall comply with all police, fire and sanitary regulations imposed by any municipal or provincial or federal authority and every applicable regulation or order of the Canadian Fire Underwriters Association and of any liability or fire insurance company by which the Tenant may be insured and observe and obey all municipal and governmental regulations governing the conduct of any businesses carried on on the lands and the buildings erected thereon or with respect to the use of the lands and the buildings erected thereon, and save the Landlord harmless from any damages, charges, actions or costs arising out of non-compliance with or violation of any of the

said laws and regulations or from any liability for costs for damage or injury to a person or property resulting therefrom on and after the commencement of this lease. The Tenant shall have the right to contest by appropriate legal proceedings without cost or expense to the Landlord the validity of any law, ordinance, order, rule, regulation or requirement of the nature herein referred to and if, by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be held in abeyance without subjecting the Tenant or the Landlord to any liability of whatsoever nature for failure so to comply therewith, the Tenant may postpone compliance therewith until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all diligence and dispatch. Notwithstanding anything in this paragraph contained, the Landlord agrees that it will not seek to terminate this lease by reason of the Tenant's default under this paragraph so long as the Landlord does not become subject to any penalty by reason of such default.

ARTICLE XI

INDEMNITY

11.01 Throughout the Term, the Tenant covenants and agrees to indemnify the Landlord and to save the Landlord harmless from all claims, costs, losses, damages and expenses arising from injury to property or injury to any person, firm, partnership or corporation caused by the use and occupancy or presence of the Tenant or any other person, firm, partnership or corporation at, in or upon the lands or the buildings or improvements thereon.

ARTICLE XII

INSURANCE

12.01 (a) The Tenant covenants at its expense:

(i) to insure and keep insured the buildings and improvements on the lands, excluding foundations, in the sum of their full replacement value, against all risk of fire or loss or damage caused by or resulting from fire, lightning, explosion or collapse of any boilers, pipes or accessories in or about the said buildings and improvements or any peril defined in a standard fire insurance additional perils supplementary contract normally in use from time to time during the Term or any extension thereof for buildings and improvements in the Municipality of Metropolitan Toronto similar in nature to the buildings and improvements on the lands;

(ii) to maintain public liability and property damage insurance protecting and indemnifying the Tenant and the Landlord against any and all claims for damage or injury to persons or property or for the loss of life occurring in or upon the lands, and all buildings and improvements from time to time thereon, the limit whereof shall initially be not less than \$100,000.00 in respect of bodily injury or death of any one person and not less than \$2,000,000.00 in respect of any one occurrence and to the limit of not less than \$200,000.00 for property damage.

(b) All contracts of insurance required to be maintained under the provisions of this lease shall be with a company or companies licensed to do business within the Province of Ontario and approved

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by the Landlord (such approval not to be unreasonably withheld) and ordinarily engaged, inter alia, in the business of insuring against the risks herein described.

(c) All such contracts of insurance placed by the Tenant hereunder, insofar as they relate to the lands and the buildings and improvements thereon (other than those referred to in sub-paragraph (a)(ii) above, which contracts shall be written in the names of the Landlord and Tenant as joint insureds), shall show the Landlord, the Tenant and any mortgagee of the leasehold interest of the Tenant, as joint insureds, as their interests may, from time to time, appear.

(d) If the Tenant fails to obtain the policies of insurance required hereunder, the Landlord may, after obtaining and submitting to the Tenant, a written report from a professionally qualified insurance appraiser stating that in his opinion the insurance coverage presently in force constitutes a significant breach of the terms of this article, itself obtain such insurance policies and shall give the Tenant notice setting out the amounts and dates of payment of all costs and expenses incurred by the Landlord in connection therewith to the date of such notice; provided that if the Tenant disagrees with the opinion of the said appraiser the matter shall be referred to arbitration in accordance with the provisions of Article XXIII hereof. The Tenant will, with the next instalment of rent which becomes due pay the same to the Landlord with interest at twelve percent (12%) per annum, calculated on the various amounts from the respective dates of payment thereof by the Landlord. Any sum so expended by the Landlord, together with such interest as aforesaid, shall constitute rent hereunder and shall be collectible as such rent.

ARTICLE XIII

DAMAGE OR DESTRUCTION

13.01 The complete or partial destruction or damage by fire or other casualty of the building or buildings or improvements erected on the lands shall not terminate this lease or entitle the Tenant to surrender possession of the lands or to have or to demand any abatement or reduction of the rent or other charges payable under this lease, any law or statute to the contrary notwithstanding.

13.02 The Tenant covenants and agrees that at all times after the completion by it of buildings on the lands having a leaseable area of at least 300,000 square feet if damage to or the partial or total destruction of any building or buildings from time to time on the lands shall reduce the leaseable area of buildings on the lands to a figure below 300,000 square feet, the Tenant will, within three (3) months of the date of the damage or destruction (weather conditions permitting) cause to be begun, the repair, reconstruction or replacement of such damaged or destroyed buildings and improvements and, within twelve (12) months after such damage or destruction or such further time as may be reasonably necessary, due diligence having been shown, shall have repaired or reconstructed or replaced the said buildings and improvements with other buildings and improvements of the same type and character and of equal value as those so damaged or destroyed so that the leaseable area of buildings on the lands shall be maintained at a figure of at least 300,000 square feet.

13.03 Where a partial or complete destruction occurs to which Section 13.02 hereof does not apply, and subject to the provisions of Section 13.05, the Landlord shall release its interest in and to any insurance monies payable under any policy of

insurance referred to in Section 12.01 (a) (i) hereof so that the same shall be made available to the Tenant.

13.04 (i) Where a partial or complete destruction occurs to which Section 13.02 hereof applies, any insurance monies payable under any policy of insurance referred to in Section 12.01 (a) (i) hereof shall be paid to a trustee on behalf of the Landlord, the Tenant and any mortgagee according to their respective interest. Work in progress shall be paid for in instalments as progress payments out of the insurance proceeds, and provision shall be made to ensure that no increase in the cost over the amount of the original estimate shall fall on the Landlord or the trustee, so that the trustee, at all times, shall retain in its hands, sufficient of the insurance proceeds to pay for the estimated cost of repair outstanding at the date it makes any progress payment;

(ii) Before any contract is entered into by the Tenant or a Tenant's mortgagee for the carrying out of any repair work pursuant to sub-clause (i) above, copies of the estimates for any work and the contracts for the completion of the work shall be submitted to the trustee, and it shall distribute such copies to such of the Landlord, the Landlord's mortgagees, the Tenant and the Tenant's mortgagees as shall not be parties to such contracts;

(iii) Any progress payments to be made under this Section 13.04 by the trustee to either the Tenant or a Tenant's mortgagee, shall not be made without the submission of a statement, certified by the architect or engineer of the party to whom the payments are to be made, stating the estimated amount required to complete the work of repair at the date of the certificate; the amount claimed by individual contractors at that date, the amount owing on work already

done, and the amount of any payments made at the date for work already done, and verifying the standard and quality of the work already done, and the trustee shall be required to retain in its hands at the date of any payment an amount sufficient to pay the estimated outstanding cost of completion, even though that has the effect of reducing the payment made below the amount certified to be due;

(iv) In making any payment under this Section 13.04, the trustee shall have regard to mechanics' lien legislation applicable in the province and shall retain within its control for the period specified in such legislation, the amount of any hold-back required;

(v) In case of dispute over the outstanding cost or the filing of liens against the lands arising out of the work of repair, the trustee shall not be under any obligation to make or authorize any progress or lump sum payment until the dispute is settled or the lien discharged, since the primary duty of repair falls on the Tenant;

(vi) Where, at the time of the occurrence of the damage or the completion of its repair, the Tenant is in default under the terms of any mortgage of its interest, the mortgagee shall be subrogated to the rights and obligations of the Tenant;

(vii) The fees and expenses of the trustee shall be borne by the Tenant and shall be paid out of the monies held by the trustee;

(viii) In case of any dispute as to the terms of any contract or the amount of any estimate or any matter relating to the actual work of repair, such dispute shall be decided by a qualified professional person appointed by the trustee whose decision shall be final;

(ix) In case of any dispute as to the terms of this paragraph 13.04 apart from those in sub-clause (viii) above, such dispute shall be the subject of arbitration, such arbitrator or board of

arbitration to be appointed in accordance with the procedure set forth in Article XXIII hereof;

(x) Should the insurance monies, if any, be insufficient to pay the entire cost of the work of restoring and repairing the buildings, the Tenant agrees to pay the deficiency or the entire cost as the case may be. On the completion of such work and payment in full therefor by the Tenant, the Landlord shall, upon receipt of proof that such work has been paid for in full and that there is no outstanding lien claim, release to the Tenant, any insurance monies then remaining and in possession or control of the Landlord;

13.05 In the event that a partial or complete destruction shall occur after the expiration of the eightieth (80th) lease year to which Sections 13.02 and 13.04 do not apply, then notwithstanding the provisions of Section 13.03 and Article XXVIII, if the Tenant elects not to restore or repair the damaged or destroyed building or buildings all proceeds of insurance payable in respect of such destruction or damage shall be paid to the Landlord and the Tenant as their respective interests may appear, in accordance with the formula set out in Schedule "B" attached hereto.

ARTICLE XIVASSIGNING AND SUBLETTING

14.01 The Tenant may, at any time or times, assign, mortgage or otherwise deal with the remainder of the Term, and provided the same shall not extend beyond the expiration of the Term and there is no prepayment of rent other than the current periodic rent by a sub-lessee, the Tenant may, at any time and from time to time, sublet by way of mortgage or otherwise, the whole or any part of the lands and the buildings erected thereon or either or both of them, all without any consent, approval or permission of the Landlord being required, provided that no assignment or subletting shall relieve the Tenant from its obligation to observe, keep and perform the covenants, provisoes and conditions herein contained.

14.02 If this lease is terminated or disclaimed pursuant to a statute granting such right after assignment hereof by the Tenant, and such termination or disclaimer does not arise by a surrender in writing accepted by the Landlord, then at the option of the Landlord, the Tenant shall execute a new lease of the lands between the Landlord as landlord and the Tenant as tenant for a term equal in duration to the residue of the term remaining unexpired at the date of such termination or such disclaimer. Such lease shall contain the like Landlord's and Tenant's covenants respectively and the like covenants, provisoes, agreements and conditions in all respects (including the proviso for re-entry) as are contained in this lease. This covenant is a personal covenant by the named Tenant and is intended to enure to the benefit of the Landlord, its successors and assigns, and to survive any assignment of this lease by the Tenant and any subsequent termination or disclaimer thereof as hereinbefore referred to.

ARTICLE XV

CHANGES AND ALTERATIONS

15.01 Notwithstanding anything provided herein but subject to the provisions of paragraph 15.02 hereof, the Tenant shall have the right at any time or times without obtaining the consent of the Landlord to make any replacements, alterations, additions, changes, demolitions, substitutions or improvements in or to the buildings and improvements on the lands.

15.02 The Tenant covenants not to construct any building on the lands or to make any major structural alterations, additions or changes to any building on the lands without first submitting to the Landlord, all building and elevation plans and all grading and landscaping plans. In the event that the Landlord wishes to object to the plans submitted by the Tenant, the Landlord shall do so within seven (7) days of the receipt of the plans and shall notify the Tenant of its objections. Any objection submitted by the Landlord must be reasonable and must contain a statement signed by a professionally qualified architect stating that the building or buildings as proposed in the plans submitted by the Tenant will substantially diminish the value of the Landlord's interest in the lands. In the event that the Tenant receives an objection in the form herein specified, the Tenant may, at its option, either:

- (a) withdraw the plans and re-submit amended plans for further consideration by the Landlord; or
- (b) submit the matter to arbitration in accordance with the provisions of Article XXIII hereof. If the arbitration findings confirm that the Landlord's objection meets the criteria hereinbefore set out,

the Tenant will withdraw the plans which were the subject matter of arbitration.

15.03 Such repairs, replacements, alterations, additions, changes, demolitions, substitutions or improvements shall meet the lawful requirements of all municipal, provincial, federal and other governmental or other authorities.

ARTICLE XVI

MECHANICS' LIENS

16.01 The Tenant covenants and agrees not to permit any mechanics' liens, labourer's, materialman's or similar lien to stand against the lands for any labour or materials furnished to, or with the consent of the Tenant, its agents or contractors in connection with work of any character performed or claimed to have been performed on the lands or buildings and improvements erected by or at the direction or sufferance of the Tenant; provided however, that the Tenant shall have the right to contest the validity of or the amount claimed under or in respect of any such lien if such contestation shall involve no forfeiture, foreclosure or sale of the premises or any part thereof, but pending a final determination of such contest the Tenant shall immediately cause such lien to be discharged and released.

ARTICLE XVII

DISTRESS

17.01 The Tenant hereby waives and renounces (so far as it may be permitted to do so by applicable legislation) the benefit of any present or future legislation of the legislature of the Province of Ontario which takes away or limits the Landlord's right of distress, and agrees that all goods and chattels of the Tenant from time to time on the lands shall be subject to distress for rent.

ARTICLE XVIIIBANKRUPTCY

18.01 If the Term hereby granted shall, at any time, be seized or taken in execution by any creditor of the Tenant, or if the Tenant shall make a general assignment for the benefit of its creditors or be adjudicated a bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against itself or shall file an application or petition or answer or consent, seeking re-organization or re-adjustment of its indebtedness under The Bankruptcy Act or any law of Canada or any province thereof relating to bankruptcy or insolvency or shall consent to the filing of any such application or petition or shall consent to the appointment of a receiver, or if a receiver, interim receiver, trustee or liquidator of property shall be appointed or applied for by it or if a judgment, decree or order shall be entered by a court of competent jurisdiction adjudging it bankrupt or insolvent or subject to the provisions of the Bankruptcy Act or determining that proceedings for re-organization, arrangements, adjustment, composition, liquidation, ~~dissolution~~, or winding up or any similar relief under the Bankruptcy Act or any law of Canada or any province thereof relating to bankruptcy or insolvency have been properly instituted ~~otherwise than by the Tenant~~, rent for the then current month together with rent for the three (3) months next ensuing after the then current month shall immediately become due and payable and this lease shall, at the option of the Landlord, immediately become terminated. Provided however, that such termination shall be entirely without prejudice to the rights of the Landlord to recover arrears of rent or damages for any antecedent breach of covenant on the part of the Tenant and provided further that notwithstanding

such termination, the Landlord may subsequently recover from the tenant, all costs and damages suffered by reason of the lease having been prematurely determined.

ARTICLE XIX

REMEDIES

19.01 Provided and it is hereby expressly agreed that if and whenever the rent, levies or taxes hereby reserved or any part thereof shall be unpaid and such default shall continue for fifteen (15) days after written notice thereof, then it shall be lawful for the Landlord at any time thereafter, into and upon the lands or any part thereof, in the name of the whole to re-enter and the same have again, repossess and enjoy, as of his former estate, anything herein to the contrary notwithstanding.

19.02 It is mutually agreed that if the Tenant shall be in default in performing any of the terms, covenants or provisions of this lease other than the provisions requiring the payment of rent, levies and taxes and if the Landlord shall give to the Tenant notice in writing of such default and if the Tenant shall fail to commence to cure such default within twenty (20) days after the date of receipt of such notice and to proceed with due diligence thereafter then and in such event the Landlord may enter the lands and improvements thereon and may cure the default for the account of and at the cost and expense of the Tenant and such cost and expense shall be paid by the Tenant to the Landlord forthwith upon demand.

19.03 If the Tenant shall be in default in the payment of any monies reserved hereunder and such default shall continue for fifteen (15) days after written notice thereof, the Landlord, in addition to all other rights which it may have under this lease or otherwise, shall have the right to enter the lands and buildings thereon as the agent of the Tenant without being liable for any prosecution therefor and to re-let the same as the agent of the Tenant for whatever term

and under whatever conditions the Landlord may deem advisable and to receive the rent therefor and as agent of the Tenant, to take possession of any buildings, chattels, furniture or other property of the Tenant on the lands and to lease the same or sell the same at public or private sale with or without notice and to apply the proceeds of such lease or sale and any rent derived from re-letting the premises on account of the rent or other charges under this lease.

19.04 The Landlord covenants not to exercise the remedies set forth in this Article XIX with respect to the breach or non-performance of the provisions contained in Article VIII respecting repairs and maintenance unless in the opinion of the Landlord, the cost of curing the breach or non-performance exceeds a sum equal to 10% of the then market value of the building or buildings appurtenance or appurtenances or equipment with respect to which the breach or non-performance relates provided that if the Tenant disagrees with the opinion of the Landlord, the matter shall be referred to arbitration in accordance with the provisions of Article XXIII hereof.

19.05 It is mutually agreed that if the Landlord shall re-enter the lands and enter the improvements erected thereon as provided in paragraph 19.01 hereof or if the lease shall be terminated, all payments for which the Tenant is liable under this lease, shall immediately become due and payable and be paid up to the time of such re-entry, entry or termination, together with the reasonable expenses of the Landlord including but not restricted to legal costs, solicitors' fees on a solicitor and his client basis, brokerage charges and the expense of keeping the lands and improvements thereon in good order and preparing the lands and improvements thereon for re-letting.

Upon such entry, re-entry or termination, the Tenant shall

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assign to the Landlord, the benefit of the Tenant's interest in all leases, licence agreements and other agreements and rights benefiting the lands or buildings as the case may be if the Landlord shall require such benefits to be so assigned.

19.06 Mention in this lease of any particular remedy shall not preclude the Landlord from any other remedy in law or in equity subject always to the express provisions of this lease.

19.07 Any condoning, excusing or overlooking by the Landlord of any default, breach or non-observance by the Tenant at any time or times in respect of any covenant, proviso, condition or obligation contained in this lease, shall not operate as a waiver of the Landlord's rights hereunder in respect of any continuing or subsequent default, breach or non-observance nor so as to defeat or affect in any way, the rights of the Landlord hereunder in respect of any such continuing or subsequent default, breach or non-observance and all rights and remedies herein contained of the Landlord shall be deemed to be cumulative and alternative.

19.08 Whenever the Landlord shall have paid or expended any monies which, under the terms of this lease, it is the obligation of the Tenant to pay, but which the Tenant has refused or neglected so to pay, then upon the Landlord giving written notice to the Tenant of such payment, the monies so paid or expended together with interest thereon at the rate of twelve percent (12%) per annum from the date of their payment or expenditure until reimbursement by the Tenant, shall be collectible as rent.

ARTICLE XX

OVERHOLDING

20.01 If, upon the termination of this lease or any extension thereof by the effluxion of time, the Landlord permits the Tenant to remain in possession of the lands and accepts rent in respect thereof, a tenancy from year to year shall not be created by implication of law but the Tenant shall be deemed to be a monthly tenant only at a rental payable in advance at the rate of one-twelfth of the annual rent immediately theretofore payable and otherwise on the terms and conditions herein contained.

ARTICLE XXI

MORTGAGE

21.01 The Tenant is hereby given the right, at any time and from time to time, to mortgage its interest in the lands and in the buildings and improvements thereon by mortgage; provided however:

(a) that no mortgagee or anyone claiming by, through or under such mortgagee shall, by virtue thereof, acquire any greater rights in the lands and in the buildings or improvements thereon or any portion of either of them than the Tenant then had under this lease; and

(b) that such mortgage shall be subject and subordinate to all conditions and covenants of this lease and to the rights of the Landlord hereunder.

21.02 If the leasehold estate or the buildings or improvements on the lands shall, from time to time, be conveyed by mortgage by the Tenant and if the Landlord shall be notified in writing of such mortgage, then so long as such mortgage shall continue in force, notice of default in the performance of the covenants of this lease (as is required to be given to the Tenant under Article XIX hereof) shall simultaneously be given to said mortgagee and such mortgagee shall have the right during the time limited to the Tenant to remedy such default and to take such action or to make such payment as may be necessary to cure any such default to the same extent and with the same effect as though done by the Tenant.

21.03 If the Tenant breaches this lease by reason of the occurrence of any of the contingencies set forth in Article XVIII hereof, the Landlord agrees that it will not terminate this lease or invoke its right to take possession of the lands and the buildings and improve-

ments thereon if any existing mortgagee performs fully all of the other obligations of the Tenant under this lease as required of the Tenant.

ARTICLE XXII

ESTOPPEL CERTIFICATES

22.01 The Landlord and the Tenant each agree at any time and from time to time so long as this lease shall remain in effect and provided no default then exists, upon not less than twenty (20) days' prior request by the other party, to execute, acknowledge and deliver to the other party, a statement in writing certifying that this lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, stating the modifications) and the dates to which the rent and other charges have been paid in advance, if any, and whether or not there is any existing default on the part of the other to which the party executing the acknowledgement has notice, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser of the Landlord's fee simple interest in the lands or of the Landlord's remainder interest in the buildings and improvements thereon or any mortgagee or lender or assignee of any mortgage upon the fee of the lands or upon the Landlord's remainder interest in the buildings and improvements thereon or by any assignee or mortgagee of the Tenant's leasehold estate or the Tenant's interest in the buildings and improvements thereon or by a sub-lessee of the lands, as the case may be.

ARTICLE XXIII

ARBITRATION

23.01 If the Landlord and the Tenant do not agree as to any of the matters which, if no agreement is reached upon them are by the provisions of this lease to be determined by arbitration, any such disagreement shall be referred to a single arbitrator if the Landlord and the Tenant agree on one or, failing such agreement, to three (3) arbitrators to be selected as herein provided.

23.02 All arbitration proceedings specified in this lease as available to the parties in the event of a dispute, shall be commenced and carried out as follows:

(a) Arbitration proceedings shall be commenced by either party giving notice to the other party of its desire to submit the matter(s) in difference to arbitration, at which time the party giving notice of arbitration shall give the name of the arbitrator who is its nominee. Within fifteen (15) days of the receipt of such notice, the other party shall give notice of the name of its arbitrator to the party desiring such arbitration. If such other party fails to appoint an arbitrator and to notify the other party of such appointment, the party who has appointed the arbitrator may apply to a Judge of the Supreme Court of Ontario to appoint an arbitrator to be the representative of the other party. The two arbitrators so appointed shall, within fifteen (15) days of the later of the appointments, appoint a third arbitrator and if they fail to agree on such appointment within such period, the third arbitrator shall be appointed by a

Judge of the Supreme Court of Ontario on application of either party;

(b) The three arbitrators appointed as aforesaid, shall forthwith proceed to arbitrate the dispute between the parties and they shall, within thirty (30) days or so soon thereafter as may be practicable, render their decision in writing; provided that any decision or decisions shall be final and binding and there shall be no appeal therefrom. The decision of the majority of the arbitrators so appointed shall prevail in all matters, and failing a majority, the decision of the third arbitrator appointed as hereinbefore mentioned, shall be deemed to be the decision of the majority;

(c) In the event of the death, resignation, incapacity, neglect or refusal to act of any arbitrator appointed under these provisions and of such neglect or refusal continuing for a period of seven (7) days after notice thereof has been given by either party, another arbitrator shall be appointed to replace such arbitrator by the party whose representative he was, or by the two arbitrators if he was appointed as the third arbitrator; and failing the making of such appointment, the vacancy shall be filled by a Judge of the Supreme Court of Ontario upon application by either party;

(d) The total cost of the arbitration shall be apportioned equally between the parties;

(e) Nothing in this Article shall be deemed to relieve the Tenant of its obligations to pay the rent or other charges

as hereinbefore reserved on the days hereinbefore specified.

ARTICLE XXIV

PLANNING ACT

24.01 This lease is entered into on the express condition that it is to be effective only if the provisions of Section 29 of The Planning Act, as amended, are complied with.

ARTICLE XXVRENEWAL

25.01 Provided the Tenant is not in default, the Tenant shall have the option to renew this lease for a further term of one hundred (100) years on such terms and conditions as the Landlord and Tenant shall agree upon during the one hundredth year of the Term, as hereinafter provided. The Tenant shall exercise its option by giving written notice to the Landlord of its intention to renew this lease during the first three (3) months of the one hundredth year of the Term. Within one (1) month of receipt of the Tenant's notice, the Landlord and Tenant or their agents will meet to settle the terms and conditions of the lease for the renewal term. If the Landlord and the Tenant or their agents are unable to reach agreement in writing as to the terms and conditions of the new lease within six (6) months of the date of receipt of the Tenant's notice of intention to renew, the Tenant's right of renewal as hereinabove set forth shall be null and void and neither the Landlord nor the Tenant shall have any claim against the other on account of their failure to agree on the terms and conditions of the renewal term.

ARTICLE XXVI

RIGHT OF FIRST REFUSAL

26.01 The Landlord covenants with the Tenant that if, during the term of this lease the Landlord should receive a bona fide offer to purchase (hereinafter referred to as the "offer") the lands which offer the Landlord desires to accept, the Landlord shall, upon receipt of the offer, inform the Tenant in writing of receipt of the offer and shall forward a copy thereof to the Tenant. The Tenant shall thereupon have the right and option to purchase the lands on the same terms and conditions as may be contained in the offer; provided however that such right must be exercised within seven (7) days of the delivery of the said notice and copy of offer by delivery to the Landlord of an offer and deposit (if applicable) within the same time and upon the same terms and conditions. Failing exercise of the said right and option within the time as aforesaid, the Tenant must, within the said seven (7) day period, indicate by written offer, the terms and conditions upon which he would be willing to purchase the lands. The Landlord shall then be at liberty to sell the lands to a third party at any time within twelve (12) months of the date of the notice by the Landlord to the Tenant as aforesaid on such terms and conditions as the Landlord sees fit provided that in no event shall the Landlord sell the lands on terms and conditions less favourable to the Landlord than the terms and conditions offered by the Tenant to the Landlord as aforesaid.

26.02 In the event that the Landlord does not sell the lands to a third party within twelve (12) months of the date of notice to the Tenant of the offer, the Landlord shall not sell the lands without first observing all of the provisions of this Article.

ARTICLE XXVIIADDITIONAL LANDS

27.01 In the event that at any time during the Term the Landlord acquires additional land contiguous to and west of the lands as a result of the re-alignment of Highway 427, the Landlord and the Tenant hereby covenant that the additional lands will form part of the lands and will be subject to the same terms and conditions set forth in this lease. The Tenant covenants to pay rent on the additional lands in the same per acre amount as is then being paid for the lands commencing from the date that the Landlord advises the Tenant that it has obtained title of the said additional land.

ARTICLE XXVIII

OWNERSHIP OF BUILDINGS

28.01 The parties hereto agree that the Tenant shall be the owner and shall have the right, title and interest in and right to possession of all buildings, improvements, installations, fixtures, alterations, changes or additions on the lands (hereinafter in this paragraph called "buildings") notwithstanding any rule of law as to the immediate vesting of the title to and ownership of the buildings in the Landlord as owner of the lands. The Landlord shall not be the owner of and shall not have any right, title or interest in the buildings until the termination of this lease either by effluxion of time or otherwise and the Tenant shall grant to the Landlord without compensation, all right, title and interest in the buildings free of all encumbrance on the termination of this lease and covenants with the Landlord to execute on or after the said date, such further and other documents as may be necessary or as the Landlord may require to perfect the conveyance to the Landlord of any right, title and interest and ownership which the Tenant may have in the buildings or to provide proof and evidence of the Landlord's absolute right, title and interest in and ownership of the said buildings and the Tenant hereby irrevocably appoints the Landlord as its agent and attorney to execute the said documents. The agreements and covenants contained in this section shall be binding upon and enure to the benefit of the successors and assigns of the Landlord and the Tenant.

28.02 Provided nevertheless that all sub-lessees shall have the right to remove their fixtures and the Tenant shall have the right to remove all fixtures installed by it other than equipment, machinery, fixtures and other facilities therein, thereon or used in connection

therewith which are necessary to the operation of such buildings but the Tenant shall make good any damage caused to such buildings that shall result from the removal of such fixtures.

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ARTICLE XXIXSUBORDINATION

29.01 The Tenant acknowledges that the within lease shall and will rank prior to all other interests in the lands and that the Landlord will not subordinate its interest to that of any mortgagee. The Landlord covenants not to register any mortgage or charge affecting the lands within seven (7) days after the execution of this lease.

ARTICLE XXX

NOTICE

30.01 Any notice, statement or request herein required or permitted to be given by either party to the other shall be in writing and shall be deemed to have been sufficiently and effectually given if signed by or on behalf of the party giving the notice and mailed by prepaid registered post in the case of the Landlord addressed to the Landlord at 3089 Bathurst Street, Suite ²¹¹201, Toronto, Ontario, with a copy being sent to Messrs. Minden, Gross, Grafstein & Greenstein, Barristers and Solicitors, Suite 607, 111 Richmond Street West, Toronto, Ontario M5H 2H5, to the attention of Laurence A. Lebovic, and in the case of the Tenant, addressed to the Tenant at 2815 Thamesgate Drive, Mississauga, Ontario or if served personally upon an executive officer of the party for whom it is intended. Any such notice given as aforesaid shall be conclusively deemed to have been given and received, if delivered, on the date of such delivery, or if mailed, on the third mail delivery day next following the date of mailing. Either party may, from time to time by notice to the other, change the address to which notices are to be given.

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ARTICLE XXXIMISCELLANEOUS

31.01 All payments of rent shall be remitted or delivered to the Landlord at the address provided in Article XXX hereof or to such other address as the Landlord may advise the Tenant in writing.

31.02 It is understood and agreed that nothing contained in the lease nor in any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

31.03 The Tenant and the Landlord acknowledge that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this lease save as expressly set out in this lease and that this lease constitutes the entire agreement between the Landlord and the Tenant and may not be modified except as herein explicitly provided or except by subsequent agreement in writing of equal formality hereto executed by the Landlord and the Tenant.

1.04 Should any provision of this lease be held to be illegal or not enforceable it shall be considered separate and severable from the lease and its remaining provisions shall remain in force and be binding upon the parties hereto as though the said illegal or unenforceable provision had never been included.

1.05 Time shall be of the essence of this lease save as herein otherwise specified.

1.06 This lease shall be read with all changes of number and order as the context may require.

31.07 The headings introducing the articles are for convenience of reference only and shall, in no way, affect the interpretation of this lease.

31.08 This lease and everything herein contained shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns and other legal representatives, as the case may be, of each and every of the parties hereto and every reference herein to any party hereto shall include the heirs, executors, administrators, successors and assigns and other legal representatives of such party and this lease shall be interpreted according to the laws of the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf.

KORNWOOD INVESTMENTS LIMITED

PER: *A. Labrecque* c/s
SEC. TREASURER

SLOUGH ESTATES (CANADA) LIMITED

PER: *J. H. Archibald*
Executive Vice President

PER: *J. H. Archibald* x c/s
Vice President Finance

APPENDIX “G”

AGREEMENT OF PURCHASE AND SALE

BETWEEN

KSV RESTRUCTURING INC.,
solely in its capacity as the proposal trustee of Claireville Property
Holdings Inc., and not in its personal capacity or in any other
capacity

- and -

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

Dated: December 2, 2021

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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made 2nd day of December, 2021.

BETWEEN:

KSV RESTRUCTURING INC.,
solely in its capacity as the proposal trustee of Claireville Property Holdings Inc.,
and not in its personal capacity or in any other capacity

(in such capacity, the “**Proposal Trustee**”)

- and -

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

(the “**Purchaser**”)

WHEREAS Claireville Property Holdings Inc. (the “**Debtor**”) filed a notice of intention to make a proposal (“**NOI**”) pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) on July 2, 2021, pursuant to which KSV Restructuring Inc. was named as the Proposal Trustee;

AND WHEREAS a sale and investment solicitation process with respect to the assets and business of the Debtor (the “**Sale Process**”) and the expansion of the Proposal Trustee’s powers were both approved pursuant to an order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on July 28, 2021 (the “**Sale Process Order**”), a copy of which Sale Process Order is attached as Schedule “C” hereto;

AND WHEREAS pursuant to the provisions of the Sale Process Order, the Proposal Trustee has the power to, amongst other things, sell, convey, transfer, lease or assign the Purchased Assets (as defined herein) or any part or parts thereof out of the ordinary course of business with the approval of the Court;

AND WHEREAS the time referenced in section 50.4(9) of the BIA currently expires on December 14, 2021, and the Court is not authorized pursuant to section 50.4(9) of the BIA to extend the time referenced in such section beyond January 1, 2022;

AND WHEREAS the Purchaser wishes to purchase the Purchased Assets upon the terms and subject to the conditions set out herein;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement (as defined herein), and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined herein), the Parties agree as follows:

ARTICLE 1 DEFINED TERMS

1.1 Definitions.

In this Agreement:

“Accounts Payable” means all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services in the ordinary course of business;

“Agreement” means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to **“article”**, **“section”** or **“schedule”** mean the specified article, section of, or schedule to this Agreement and the expressions **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“hereby”** and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“Approval and Vesting Order” means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement and conveying to the Purchaser all of the Debtor’s right, title and interest in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in the form, in all material respects, of the draft order attached as **Schedule “A”** hereto;

“Assignable Assets” has the meaning given in section 3.1(3) herein;

“Assumption Agreement” has the meaning given in section 15.10 herein;

“BIA” has the meaning set out in the recitals hereof;

“Books and Records” means the files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) pertaining to the Purchased Assets;

“Business” means the business previously carried on by the Debtor;

“Business Day” means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

“Cash” means all of the Debtor’s cash and cash equivalents, except for the Debtor’s cash and cash equivalents that consist of: (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;

“Claims” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Debtor or the Purchased Assets, and **“Claim”** means any one of them;

“Closing” means the successful completion of the Transaction;

“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;

“Closing Time” means 2:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

“Co-Tenancy Agreement” means the co-tenancy agreement effective August 7, 2015 amongst Gross Capital Inc., MGZ Holdings Inc., Avraham Barbalat, Earl Levy, Randall Y. C. Ho, The Dead End Capital Corp., Ava Gross, J. Zachery Jones, Janie L. Lai Trustee, Stanley Salcedo, Fleishman Family Trust, Alexander Dashefsky, Seymour Kazimirski, Bruce Bucky Revocable Living Trust, Kristy Luciani, Tanbros Investments Limited, Tanview Investment Limited, Wen Xue and Yan Peng, Patrick J. Carroll and M. Marley Carroll, jointly, Johann Strasser, Mark C. Gross and the Debtor, as may have been amended from time to time;

“Conditional Period Termination Date” means the date that is 20 Business Days following the date of execution by the Parties of this Agreement;

“Consents and Approvals” means the consents and approvals of all relevant third parties;

“Contracts” means, except for the Excluded Contracts, all of the contracts, licences, leases, subleases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party, or by which the Debtor, in its capacity as owner of the Purchased Assets is bound, including, without limitation, the Debtor’s right, title and interest in and to the Ground Lease;

“Court” has the meaning set out in the recitals hereof;

“Debtor” has the meaning set out in the recitals hereof;

“Demand Debenture” means the demand debenture dated August 7, 2015 between and amongst the Debtor, as debtor, and SREIT (Rexdale) Ltd. and Niagara Acquisition LP, by its general partner Niagara Acquisition GP Inc., in the principal amount of \$10,000,000;

“Deposits” has the meaning given in section 4.2 herein;

“DIP Documents” means: (i) the debtor-in-possession financing term sheet dated July 23, 2021 between the Debtor, as borrower, and the DIP Lender, as lender; (ii) the general security agreement dated August 16, 2021 and granted by the Debtor to the DIP Lender; and (iii) the indenture dated August 17, 2021 and granted by the Debtor to the DIP Lender;

“DIP Lender” means Cannect Mortgage Investment Corporation;

“Encumbrances” means all liens, charges, security interests, pledges, title retention agreements, mortgages, charging, or creating a security interest in, the Purchased Assets or any part thereof or interest therein and any restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances affecting title to the Purchased Assets;

“ETA” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

“Excluded Assets” means all the Debtor’s right, title and interest in and to the Property other than the Purchased Assets, which Excluded Assets include the Debtor’s right, title and interest, if any, in and to the following:

- (a) the Cash;
- (b) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Debtor that do not relate exclusively or primarily to any of the Purchased Assets;
- (c) the benefit of any refundable Taxes payable or paid by the Debtor 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 Debtor to any refund, rebate, or credit of Taxes for the period prior to the Closing Date; and
- (d) the Excluded Contracts;

“Excluded Contracts” means: (i) the Co-Tenancy Agreement; (ii) the Demand Debenture and (iii) the DIP Documents;

“Excluded Liabilities” has the meaning given in section 3.3 herein;

“First Deposit” has the meaning given in section 4.2 herein;

“First Tenant” means Slough Estates Canada Limited, previously known as Slough Estates (Canada) Limited;

“Governmental Authority” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation,

province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and “**Governmental Authority**” means any one of them;

“**Ground Lease**” means, collectively: (i) the lease in respect of the Real Property dated as of September 1, 1973 between Kornwood Investments Limited, as landlord, and the First Tenant, as tenant, notice of which was registered on title to the Real Property on April 23, 1974; (ii) the assignment and assumption of ground lease dated on or about October 15, 2001 amongst the First Tenant, the Second Tenant and the Indemnitor, notice of which was registered on title to the Real Property on October 19, 2001; (iii) an agreement dated February 11, 2009 amongst Kornwood Investments Limited, the Second Tenant, and the Indemnitor; and (iv) the assignment and assumption of ground lease between the Second Tenant and the Debtor, notice of which was registered on title to the Real Property on August 7, 2015;

“**HST**” means harmonized sales tax imposed under Part IX of the ETA;

“**Indemnitor**” means The Trustees of Summit Real Estate Investment Trust;

“**Interim Period**” means the period from and including the date of this Agreement to and including the Closing Date;

“**TTA**” means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

“**Non-Disclosure Agreement**” means the confidentiality agreement delivered to the Proposal Trustee (amongst others) by 1180554 Ontario Limited on behalf of the Purchaser dated October 25, 2021, to which the Purchaser hereby acknowledges it is bound;

“**Notice**” has the meaning given in section 15.3 herein;

“**Parties**” means the Proposal Trustee and the Purchaser;

“**Permits**” means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Purchased Assets;

“**Permitted Encumbrances**” means all those Encumbrances described in **Schedule “B”** hereto;

“**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

“**Property**” has the meaning set out in the Sale Process Order;

“**Proposal Trustee**” has the meaning set out in the recitals hereof;

“**Proposal Trustee’s Certificate**” has the meaning set out in section 6.3 herein;

“Purchase Price” has the meaning set out in section 4.1 herein;

“Purchased Assets” means all of the Debtor’s right, title and interest in and to the Property other than the Excluded Assets and the Excluded Liabilities, which Purchased Assets include the Debtor’s right, title and interest in and to the following:

- (a) the Contracts;
- (b) 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;
- (c) the Permits, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees; and
- (d) the Warranty Rights;

“Purchaser” has the meaning set out in the recitals hereof;

“Real Property” means the 13 industrial buildings municipally addressed as 18, 20, 22, 24 and 26 Huddersfield Road in Toronto, Ontario, 350, 354 and 358 Humberline Drive in Toronto, Ontario and 93, 101, 123, 130 and 160 Claireville Drive in Toronto, Ontario;

“Rights” has the meaning given in section 3.1(3) herein, but only has such meaning in such section;

“Sale Process Order” has the meaning set out in the recitals hereof;

“Second Deposit” has the meaning given in section 4.2 herein;

“Second Tenant” means SREIT (Rexdale) Ltd.;

“Taxes” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“Third Party” has the meaning given in section 3.1(3) herein;

“Transaction” means the transaction of purchase and sale contemplated by this Agreement; and

“Warranty Rights” means the full benefit of all warranties, warranty rights, performance bonds and indemnities (implied, express or otherwise) of the Debtor 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.

ARTICLE 2 SCHEDULES

2.1 Schedules.

The following schedules are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule A	Approval and Vesting Order
Schedule B	Permitted Encumbrances
Schedule C	Sale Process Order

ARTICLE 3 AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets.

- (1) Relying on the representations and warranties herein and the powers granted to it by, amongst other things, the Sale Process Order, the Proposal Trustee hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase the Purchased Assets, free and clear of all Encumbrances other than the Permitted Encumbrances.
- (2) Upon the Closing, the Proposal Trustee shall hereby remise, release and forever discharge all of its rights, claims and demands whatsoever in and to the Purchased Assets.
- (3) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this section 3.1(3), collectively, the “**Rights**”) under any Permits or Consents and Approvals (collectively, the “**Assignable Assets**”) that form part of the Purchased Assets and which are not assignable by the Proposal Trustee to the Purchaser without the required consent and/or approval of the other party or parties thereto (collectively, the “**Third Party**”). The Proposal Trustee will use its reasonable best efforts to obtain any Third Party consent or approval which may be required in order to assign the Assignable Assets to the Purchaser on Closing. To the extent any such consent is required and is not obtained by the Proposal Trustee prior to the Closing Date, then, to the extent permitted by Applicable Law:
 - (a) the Proposal Trustee will, at the request, direction and sole cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and on a commercially reasonable best-efforts basis, in applying for and obtaining all Third Party consents and/or approvals required to assign the Assignable Assets to the Purchaser in a form satisfactory to the Proposal Trustee and the Purchaser, acting reasonably, and take such actions and do such things as may be reasonably and lawfully designed to attempt to provide the benefits of the Assignable Assets to the Purchaser, including

holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment;

- (b) the Proposal Trustee will only deal with or make use of such Rights in accordance with the directions of the Purchaser; and
- (c) in the event that the Proposal Trustee receives funds with respect to those Assignable Assets, the Proposal Trustee will promptly pay over to the Purchaser all such funds collected by the Proposal Trustee, net of any outstanding costs provided in subsection (a) above.

3.2 Excluded Assets.

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities.

With the exception of the Permitted Encumbrances, the Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or the Proposal Trustee or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Purchased Assets or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "**Excluded Liabilities**"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with the Accounts Payable or any employees of the Debtor;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment arising from or associated with any of the Excluded Assets; and
- (e) any liability, obligation or commitment of the Debtor in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date or arising after the Closing Date but relating to the period prior to the Closing Date.

ARTICLE 4 PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price.

The purchase price for the Purchased Assets shall be the sum of [REDACTED]
[REDACTED] (the "Purchase Price").

4.2 Deposits.

- (1) The Parties agree that the Purchaser shall pay to the Proposal Trustee, by no later than 2 Business Days from the date of execution of this Agreement by the Parties hereto, a deposit in immediately available funds equal to [REDACTED] (the "**First Deposit**"), which First Deposit shall be held in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.
- (2) The Parties agree that the Purchaser shall pay to the Proposal Trustee, by no later than 2 Business Days from the Conditional Period Termination Date, an additional deposit in immediately available funds equal to [REDACTED] (the "**Second Deposit**" and, together with the First Deposit, the "**Deposits**"), which Second Deposit shall be held in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.
- (3) The Parties agree that the Proposal Trustee shall cause the Deposits to be placed in a daily interest bearing account (with a Canadian chartered bank) and the Deposits and interest earned thereon shall be credited to the Purchaser on the Closing Date.

4.3 Satisfaction of Purchase Price.

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposits shall be applied against the Purchase Price; and
- (b) the remainder of the Purchase Price, being the net amount owing after deducting the Deposits from the Purchase Price, shall be paid by the Purchaser to the Proposal Trustee on Closing.

4.4 Allocation of Purchase Price.

The Parties shall use their reasonable efforts to allocate the Purchase Price amongst the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this section of the Agreement such that each Party shall be free to make its own reasonable allocation.

4.5 Adjustment of Purchase Price.

- (1) The Purchase Price shall be adjusted as of the Closing Time in a manner and amount to be agreed upon by the Parties, acting reasonably, for any property taxes (including interest thereon), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a Court-supervised sale, including, without limitation, prepaid rent, prepaid operating costs or expenses and security deposits (if any). The Proposal Trustee shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval by no later than 10 Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably, and such estimate shall be subject to readjustment once the necessary information is available to make a final determination.
- (2) Other than as provided for in this section 4.5, there shall be no adjustments to the Purchase Price.

ARTICLE 5 TAXES

5.1 Taxes.

The Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Proposal Trustee will not collect HST if the Purchaser provides to the Proposal Trustee a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least 5 Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Proposal Trustee in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing and Closing Procedure.

Closing shall take place at the Closing Time on the Closing Date at the offices of the Proposal Trustee's lawyers, Aird & Berlis LLP, located in Toronto, Ontario, or at such other time or at such other place as the Parties may agree in writing.

6.2 Tender.

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party.

6.3 Proposal Trustee's Closing Deliverables.

The Proposal Trustee covenants to execute, where applicable, and deliver or obtain and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (1) a copy of the issued and entered Approval and Vesting Order and the attached Proposal Trustee's Certificate;
- (2) a statement of adjustments prepared in accordance with section 4.5 hereof;
- (3) an undertaking by the Proposal Trustee to readjust the adjustments set out in section 4.5 hereof;
- (4) an assignment and assumption agreement for all Warranty Rights, Permits, Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser as contemplated in section 3.1(3);
- (5) a certificate from the Proposal Trustee, dated as of the Closing Date, certifying (collectively, the **"Proposal Trustee's Certificate"**):
 - (a) that, except as disclosed in the certificate, the Proposal Trustee has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction;
 - (b) that all representations, warranties and covenants of the Proposal Trustee contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (c) the non-merger specified in section 15.2 and elsewhere herein;
- (6) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.1 hereof has been fulfilled, performed or waived as of the Closing Time;
- (7) the estoppel certificate from the Landlord (as defined in the Ground Lease) stipulated by section 22.01 of the Ground Lease;
- (8) an estoppel certificate addressed to the Purchaser, in form acceptable to the Purchaser, acting reasonably, from each current tenant of leased space in the Real Property, other than Aqua Greens Inc., as to the status of such tenant's lease and confirming the material terms of such tenant's lease, that there are no rights of set-off or abatement, that there

are no outstanding claims by the tenant against the Debtor and that there is no subsisting default under such lease by the tenant or the Debtor; and

- (9) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Purchaser, acting reasonably, Applicable Law or any Government Authority.

6.4 Purchaser's Closing Deliverables.

The Purchaser covenants to execute, where applicable, and deliver the following to the Proposal Trustee at Closing or on such other date as expressly provided herein:

- (1) the indefeasible payment and satisfaction in full of the Purchase Price according to section 4.3 hereof;
- (2) an undertaking by the Purchaser to readjust the adjustments set out in section 4.5 hereof;
- (3) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.3 hereof has been fulfilled, performed or waived as of the Closing Time;
- (4) an assignment and assumption agreement for all Warranty Rights, Permits, Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser as contemplated in section 3.1(3);
- (5) a certificate from the Purchaser, dated as of the Closing Date, certifying:
 - (a) that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (b) the non-merger specified in section 15.2 and elsewhere herein;
- (6) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with section 5.1 hereof; and
- (7) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Proposal Trustee, acting reasonably, Applicable Law or any Government Authority.

6.5 Proposal Trustee's Certificate.

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in section 7.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Proposal Trustee of all of the conditions contained in section 7.1, the Proposal Trustee shall forthwith deliver to the Purchaser the Proposal Trustee's Certificate comprising Schedule "A" of the Approval and Vesting Order, and shall file same with the Court.

ARTICLE 7
CONDITIONS PRECEDENT TO CLOSING

7.1 Conditions in Favour of the Proposal Trustee.

The obligation of the Proposal Trustee to complete the Transaction is subject to and conditional upon the satisfaction of the following conditions on or before the Closing Date:

- (1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (3) the Purchaser shall have complied with all the terms contained in this Agreement applicable to the Purchaser prior to the Closing Date and all of the Purchaser's closing deliverables required pursuant to section 6.4 hereof shall have been provided to the Proposal Trustee;
- (4) there shall be no Claim, litigation or proceedings commenced after the date of the Sale Process Order, or order issued by a Governmental Authority after the date of the Sale Process Order, against either of the Parties for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (5) the Court shall have issued the Approval and Vesting Order.

7.2 Conditions in Favour of Proposal Trustee Not Fulfilled.

If any of the conditions contained in section 7.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Proposal Trustee, then the Proposal Trustee may, at its sole discretion, and without limiting any rights or remedies available to it at law or in equity:

- (1) terminate this Agreement by notice to the Purchaser, in which event the Proposal Trustee shall be released from its obligations under this Agreement to complete the Transaction; or
- (2) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

7.3 Conditions in Favour of the Purchaser.

The obligation of the Purchaser to complete the Transaction is subject to and conditional upon the satisfaction of each of the following conditions on or before the Closing Date (or on or before such other date as is specified below):

- (1) the Purchaser shall have satisfied itself, in its sole and unfettered discretion, in respect of all due diligence matters by no later than the Conditional Period Termination Date, and shall have given notice in writing to the Proposal Trustee that it is satisfied by no later than the Conditional Period Termination Date and failing delivery of such notice by the Purchaser, the Purchaser shall be deemed not to be satisfied with its due diligence and this Agreement shall be automatically terminated and at an end, the Purchaser and the Proposal Trustee shall be released from their obligations to complete the Transaction and the Deposits and accrued interest thereon shall be forthwith returned to the Purchaser;
- (2) all the representations and warranties of the Proposal Trustee contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (3) all the covenants of the Proposal Trustee under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Proposal Trustee;
- (4) the Proposal Trustee shall have complied with all the terms contained in this Agreement applicable to the Proposal Trustee prior to the Closing Date and all of the Proposal Trustee's closing deliverables required pursuant to section 6.3 hereof shall have been provided to the Purchaser;
- (5) there shall be no Claim, litigation or proceedings commenced after the date of the Sale Process Order, or order issued by a Governmental Authority after the date of the Sale Process Order, against either of the Parties for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (6) the Court shall have issued the Approval and Vesting Order.

7.4 Conditions in Favour of Purchaser Not Fulfilled.

If any of the conditions contained in section 7.3 hereof is not fulfilled on or prior to the Closing Date (or such other date as is referenced in section 7.3 hereof) and the non-fulfillment of any such condition (other than the condition set out in section 7.3(1) which condition shall be and remain in the Purchaser's sole and unfettered discretion) as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (1) terminate this Agreement by notice to the Proposal Trustee, in which event the Purchaser and the Proposal Trustee shall be released from their obligations under this Agreement to complete the Transaction and the Deposits and accrued interest thereon shall be forthwith returned to the Purchaser; or
- (2) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

ARTICLE 8
REPRESENTATIONS & WARRANTIES OF THE PROPOSAL TRUSTEE

The Proposal Trustee represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (1) the Proposal Trustee has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Proposal Trustee, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Proposal Trustee enforceable in accordance with its terms;
- (2) the Court has granted to the Proposal Trustee the full right, power and authority to enter into this Agreement, perform its obligations hereunder, and convey the Purchased Assets to the Purchaser; and
- (3) the Proposal Trustee and the Debtor are not non-residents of Canada for the purposes of the ITA.

ARTICLE 9
REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Proposal Trustee as follows, with the knowledge and expectation that the Proposal Trustee is placing complete reliance thereon and, but for such representations and warranties, the Proposal Trustee would not have entered into this Agreement:

- (1) the Purchaser is (or, at least 5 Business Days prior to the Closing shall be) a corporation duly formed and validly subsisting under the laws of the Province of Ontario;
- (2) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Government Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (3) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (4) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has

been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

ARTICLE 10 COVENANTS

10.1 Mutual Covenants.

Each of the Proposal Trustee and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 7 hereof.

10.2 Proposal Trustee Covenants.

The Proposal Trustee hereby covenants and agrees that, from the date hereof until Closing, it shall take all such actions as are necessary to provide to the Purchaser all necessary information in respect of the Debtor and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with section 5.1 hereof and to execute all necessary forms related thereto.

10.3 Purchaser Covenants.

The Purchaser hereby covenants and agrees that, except as expressly contemplated in this Agreement, from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Proposal Trustee all necessary information in respect of the Purchaser reasonably required to complete the applicable tax elections in accordance with section 5.1 hereof and to execute all necessary forms related thereto.

ARTICLE 11 POSSESSION AND ACCESS PRIOR TO CLOSING

11.1 Possession of Purchased Assets.

At the Closing Time, the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Proposal Trustee has waived all the delivery requirements outlined in section 7.1 hereof.

11.2 Examination of Title and Access to the Purchased Assets.

- (1) The Purchaser acknowledges and agrees that it shall, at its own cost and expense (regardless of results), examine title to the Purchased Assets and the Real Property, and

satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Purchased Assets and the Real Property, satisfy itself as to the use of the Purchased Assets and the Real Property being in accordance with applicable zoning requirements and satisfy itself that any and all buildings and structures on the Real Property may be insured to the satisfaction of the Purchaser. The Purchaser further acknowledges that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions in regard to any outstanding work orders, deficiency notices or orders to comply issued by any Government Authorities. The Purchaser further acknowledges and agrees that it shall not call upon the Proposal Trustee to produce any title deed, abstract of title, survey or other evidence of title that is not within the Proposal Trustee's possession or control.

- (2) Subject to the rights of any occupants of the Real Property, the Purchaser and its agents and representatives may have reasonable access to the Purchased Assets and the Real Property during normal business hours in the Interim Period for the purpose of enabling the Purchaser, at its sole cost and expense (regardless of results), to conduct such non-destructive, non-invasive inspections of the Purchased Assets and the Real Property as it deems appropriate, provided that such inspections shall not unduly interfere (and the Purchaser undertakes to use its best efforts, which the Purchaser represents and warrants shall not be less than reasonable commercial efforts, not to so interfere) with the use, operation and enjoyment of the Purchased Assets or the Real Property. The Purchaser agrees that such tests and inspections shall not include any tests or inspections by any Governmental Authority and specifically acknowledges and agrees that it shall not request or, through its actions, prompt or cause any tests or inspections to be made by any Governmental Authority. Such inspection may, if the Proposal Trustee so desires, be conducted in the presence of a representative of the Proposal Trustee.
- (3) The Purchaser covenants and agrees to repair or pay the costs to repair any damage occasioned during or resulting from the inspection of the Purchased Assets or the Real Property conducted by the Purchaser or its authorized representatives, as outlined above, and to return the Purchased Assets and the Real Property to substantially the condition same were in prior to such inspections. The Purchaser covenants and agrees to indemnify and save the Proposal Trustee harmless from and against all losses, costs, claims, third party claims, damages, expenses (including actual legal costs) which the Proposal Trustee may suffer as a result of the inspection of the Purchased Assets or the Real Property conducted by the Purchaser or its authorized representatives, as outlined above.
- (4) The Proposal Trustee shall forthwith following execution of this Agreement by the Parties deliver to the Purchaser (or deposit same in an electronic data site to which the Purchaser and its authorized representatives shall have unrestricted access) copies of all non-privileged information and documents in the possession or under the control of the Proposal Trustee pertaining to the Real Property or the Purchased Assets, including without limitation: (i) all such non-privileged Books and Records (to the extent that they are in the Proposal Trustee's possession) ; (ii) the Ground Lease (to the extent that they are in the Proposal Trustee's possession); and (iii) all Contracts (to the extent that they are in the Proposal Trustee's possession). With the exception of the Ground Lease, all

information and documents provided to the Purchaser under this section 11.2(4) shall be governed pursuant to the terms of the Non-Disclosure Agreement as "Confidential Information" thereunder.

11.3 Risk.

- (1) The Purchased Assets shall be at the risk of the Purchaser from and after Closing.
- (2) If, prior to Closing, the Real Property is substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within 15 calendar days after notification to the Purchaser by the Proposal Trustee of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), in which event this Agreement shall be terminated automatically and the Deposits and accrued interest thereon shall be forthwith returned to the Purchaser. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this section, substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Real Property exceeds 10% of the Purchase Price.
- (3) If, prior to the Closing Date, all or a material part of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Real Property is issued by any Governmental Authority, the Proposal Trustee shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within 3 Business Days after the Purchaser receives Notice in writing from the Proposal Trustee of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Proposal Trustee or Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Proposal Trustee and the Purchaser in this Agreement (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposits and accrued interest thereon shall be returned to the Purchaser forthwith. For the purposes of this section a material part of the Real Property shall mean any portion of the Real Property the value of which exceeds 10% of the Purchase Price.

ARTICLE 12 AS IS, WHERE IS

12.1 Condition of the Purchased Assets.

The Purchaser acknowledges that the Proposal Trustee is selling and the Purchaser is purchasing the Purchased Assets on an “*as is, where is*” and “*without recourse*” basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Proposal Trustee nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Proposal Trustee to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Proposal Trustee concerning the accuracy of such description.

ARTICLE 13 POST-CLOSING MATTERS

13.1 Books and Records.

The Purchaser shall keep and maintain the Books and Records for a period of two years from the Closing Date, or for any longer period as may be required by Applicable Law or Governmental Authority. Upon reasonable advance notice, during such two year period after the Closing Date, the Purchaser will grant the Proposal Trustee and its representatives, reasonable access during normal business hours to use and copy the Books and Records at the sole cost of the Proposal Trustee.

ARTICLE 14 TERMINATION

14.1 Termination of this Agreement.

This Agreement may be terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to section 7.2 hereof by the Proposal Trustee;

- (3) by the failure of the Purchaser to provide the written notice to the Proposal Trustee pursuant to section 7.3(1) hereof;
- (4) pursuant to section 7.4 hereof by the Purchaser; or
- (5) pursuant to section 11.3 hereof.

14.2 Remedies for Breach of Agreement.

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Proposal Trustee, any Deposits and accrued interest thereon paid by the Purchaser to the Proposal Trustee, without deduction, shall be returned to the Purchaser forthwith, and this shall be the Purchaser's sole right and remedy pursuant to this Agreement or at law as a result of the Proposal Trustee's breach. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposits and accrued interest thereon shall be forfeited to the Proposal Trustee as liquidated damages and not as a penalty, which Deposits and interest thereon the Parties agree are a genuine estimate of the liquidated damages that the Proposal Trustee would suffer in such circumstances, and this shall be the Proposal Trustee's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

14.3 Termination If No Breach of Agreement.

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then:

- (1) all obligations of each of the Proposal Trustee and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (2) any Deposits and accrued interest paid by the Purchaser to the Proposal Trustee, without deduction, shall be returned to the Purchaser forthwith; and
- (3) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein.

ARTICLE 15 GENERAL CONTRACT PROVISIONS

15.1 Further Assurances.

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof.

15.2 Survival Following Completion.

Notwithstanding any other provision of this Agreement, section 4.5, article 8, article 9, section 14.2 and section 14.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of KSV Restructuring Inc. as the Proposal Trustee, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

15.3 Notice.

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "Notice") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

- (a) to the Proposal Trustee:

KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Attention: David Sieradzki and Noah Goldstein
Email: dsieradzki@ksvadvisory.com / ngoldstein@ksvadvisory.com

and a copy to the Proposal Trustee's counsel to:

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Attention: Kyle Plunkett, Jeremy Nemers and Rachel Rice
Email: kplunklett@airdberlis.com / jnemers@airdberlis.com / rrice@airdberlis.com

- (b) to the Purchaser:

c/o Bennett Jones LLP
Suite 3400, 1 First Canadian Place
Toronto, ON M5X 1A4

Attention: S. Paul Mantini
Email: mantinisp@bennettjones.com

and a copy to the Purchaser's counsel to:

Bennett Jones LLP
Suite 3400, 1 First Canadian Place
Toronto, ON M5X 1A4

Attention: Simon Crawford
Email: crawfords@bennettjones.com

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the 3rd Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the 1st Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the 4th Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

15.4 Waiver.

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

15.5 Consent.

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

15.6 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario sitting in Toronto. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes between them, regardless of whether or not such disputes arose under this Agreement.

15.7 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

15.8 Time of the Essence.

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

15.9 Time Periods.

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

15.10 Assignment.

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Parties hereby acknowledge and agree that the Proposal Trustee's interest in this Agreement may be assigned, including, without limitation, to any licensed insolvency trustee (whether receiver, bankruptcy trustee or otherwise) appointed in respect of the Purchased Assets, and, for greater certainty, the Parties hereby acknowledge and agree that no discount whatsoever shall be applied to the Purchase Price as a result of the receivership of the Debtor and/or the bankruptcy of the Debtor, as applicable. The Purchaser may not assign this Agreement without the Proposal Trustee's prior written approval, which approval will not be unreasonably withheld or delayed, provided however that no approval shall be required for an assignment to an Ontario corporation controlled by the Purchaser. Up until Closing, the Purchaser shall have the right to direct that title to the Purchased Assets be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided that the assignee shall, if such assignment occurs prior to Closing, agree in writing to assume and be bound by the terms and conditions of this Agreement (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 hereunder.

15.11 Expenses.

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

15.12 Severability.

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

15.13 No Strict Construction.

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

15.14 Cumulative Remedies.

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

15.15 Currency.

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

15.16 Proposal Trustee's Capacity.

It is acknowledged by the Purchaser that the Proposal Trustee is entering into this Agreement solely in its capacity as the proposal trustee and that the Proposal Trustee shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

15.17 Planning Act.

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

15.18 No Third Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns, nothing in this Agreement shall be construed to create any rights or obligations except amongst the Parties and no other person or entity shall be regarded as a third party beneficiary of this Agreement.

15.19 Number and Gender.

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

15.20 Independent Legal Advice.

Each of the Parties acknowledges and declares that:

- (1) it has had an adequate opportunity to read and consider this Agreement and to obtain such advice in regard to it as it considers advisable, including, without limitation, independent legal advice;

- (2) it fully understands the nature and effect of this Agreement; and
- (3) this Agreement has been duly executed voluntarily.

15.21 Counterparts.

This Agreement may be executed in counterparts and by PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Purchaser has duly executed this Agreement as of the date first above written.

Mary Bonifazi
Witness

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

ACCEPTED by the Proposal Trustee this 2nd day of December, 2021.

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

Per: noah goldstein
Name: Noah Goldstein
Title: Managing Director

**SCHEDULE A
APPROVAL AND VESTING ORDER**

Court File No. 31-2749576

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN BANKRUPTCY AND INSOLVENCY




THE HONOURABLE)	[REDACTED] DAY, THE [REDACTED]
)	
JUSTICE)	DAY OF [REDACTED], 202[REDACTED]

**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***

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the proposal trustee (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] 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 between the Proposal Trustee, as vendor pursuant to 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 [REDACTED] (the “Purchaser”), as purchaser, dated [REDACTED], 2021 (the “Sale Agreement”), a copy of which is attached as Confidential Appendix “[REDACTED]” to the Report of the Proposal Trustee dated [REDACTED], 202[REDACTED] (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 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  sworn , 202, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Proposal Trustee is hereby authorized and approved, with such minor amendments as the Proposal Trustee may deem necessary. The Proposal Trustee 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’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Proposal Trustee'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) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “C”** 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 Trustee’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 Proposal Trustee to file with the Court a copy of the Proposal Trustee'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 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 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 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, as an officer

of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

Schedule "A" – Form of Proposal Trustee's Certificate

Court File No. 31-2749576

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN BANKRUPTCY AND INSOLVENCY

**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***

PROPOSAL TRUSTEE'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**").
- 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, 2021 (the "**Sale Process Order**"), the Court approved a sale investment solicitation process with respect to the assets and business of the Debtor to be conducted by the Proposal Trustee, and expanded the powers of the Proposal Trustee with respect to the Debtor.
- III. Pursuant to an Order of the Court dated [REDACTED], 202[REDACTED], the Court approved the agreement of purchase and sale between the Proposal Trustee, as vendor pursuant to the Sale Process Order, and [REDACTED] (the "**Purchaser**"), as purchaser, dated [REDACTED], 2021 (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 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 and the Purchaser; and (iii) that the Transaction has been completed to the satisfaction of the Proposal Trustee.

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 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 and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Proposal Trustee; and
4. This Proposal Trustee's Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., solely in its capacity as the proposal trustee of the Debtor, 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.

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*

Court File No. 31-2749576

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN BANKRUPTCY AND INSOLVENCY**

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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

Jeremy Nemers (LSO # 66410Q)

Tel: (416) 865-7724

Fax: (416) 863-1515

Email: jnemers@airdberlis.com

Lawyers for the Proposal Trustee

**SCHEDULE B
PERMITTED ENCUMBRANCES**

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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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		
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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.

SCHEDULE C
SALE PROCESS ORDER

Attached.

APPENDIX “H”

From: Jeremy Nemers
Sent: December 13, 2021 4:50 PM
To: Max.Starnino@paliarerland.com; vdare@foglers.com
Cc: Ren.Bucholz@paliarerland.com; janet.song@paliarerland.com; jfried@foglers.com; ngoldstein@ksvadvisory.com; dsieradzki@ksvadvisory.com; Kyle Plunkett
Subject: Re: In the Matter of the Notice of Intention to Make a Proposal of Claireville Property Holdings Inc. - Court File No. 31-2749576 - Motion of the DIP Lender, Connect Mortgage Investment Corporation returnable December 14, 2021

Thanks for your email Max, and for your confirmation that you are not opposing tomorrow's motion. I will let Vern circulate the Zoom/calendar information to you, given that this is his motion. I understand that the hearing is at 11:30 a.m. tomorrow.

In terms of your question, I wasn't aware that the terms of the transaction had been shared with you or your client, as approval of the transaction is not being sought at this time (and Fred has not been in contact with me, regarding a transaction or otherwise, since his notice of appearance was served over the summer). To the extent you or your client has any evidence of the Gross' being involved (or any other specific concerns), please bring this to our attention right away. Rest assured that approval of the transaction would only be sought on proper notice to you (and if its conditionality is adequately dealt with). To the extent your client intends on submitting something for the proposed receiver to consider, please ensure that such submission is made as soon as possible.

I understand that the purchaser and its counsel have been served with Vern's materials (including the draft Order) and the Proposal Trustee's Fourth Report. I have not heard from them in respect of tomorrow's motion.

Thanks,

Jeremy

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From: Max.Starnino@paliarerland.com <Max.Starnino@paliarerland.com>
Sent: Monday, December 13, 2021 4:05 PM
To: vdare@foglers.com; Jeremy Nemers
Cc: Ren.Bucholz@paliarerland.com; janet.song@paliarerland.com; jfried@foglers.com; ngoldstein@ksvadvisory.com; dsieradzki@ksvadvisory.com; Kyle Plunkett
Subject: RE: In the Matter of the Notice of Intention to Make a Proposal of Claireville Property Holdings Inc. - Court File No. 31-2749576 - Motion of the DIP Lender, Connect Mortgage Investment Corporation returnable December 14, 2021

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Vern and Jeremy,

As discussed with Vern this morning, we reviewed the history of this matter yesterday and took instructions from our client, and we will not be opposing the relief being sought tomorrow.

Kornwood remains concerned, however, regarding the identity and resources of the purchaser. It has difficulty seeing the commercial sense in the deal and therefore suspects that the purchaser has collateral objectives. This leads it to surmise that Gross (who has an interest in one of the tenants) may be involved. To the extent that the purchaser's interest is collateral to the lease, Kornwood is also concerned about the increased risk of a future default.

In light of the foregoing, Kornwood is considering whether it has an interest in putting in an offer for the Lease or the debt owed to Cannect. As discussed with Vern, it appears to us that Cannect and the Receiver have flexibility regarding the enforcement of the security and the sale of the Lease, inasmuch as the debtor's process has failed, and we are now embarking on a new process. Indeed, paragraph 3(j) of the Receivership order is clear that, while the Receiver has the discretion to continue the debtor's process, it is not obliged to do so. If you have a different view please let me know. We appreciate that time is of the essence and we will let you know our client's intentions as soon as possible

In the meantime, if there is an appointment for the hearing tomorrow, can you please forward it to me, so that we may attend.

Thank you,

MS

APPENDIX “I”

AGREEMENT OF PURCHASE AND SALE

BETWEEN

KSV RESTRUCTURING INC.,

solely in its capacity as the Receiver of Claireville Property Holdings Inc., and not in its personal capacity or in any other capacity

- and -

WIMBLEDON PURPLE HOLDINGS INC.

Dated: January 3, 2022

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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 3rd day of January, 2022.

BETWEEN:

KSV RESTRUCTURING INC.,

solely in its capacity as the court-appointed receiver of the property, assets and undertakings of
Claireville Property Holdings Inc.,
and not in its personal capacity or in any other capacity

(in such capacity, the “**Receiver**”)

- and -

WIMBLEDON PURPLE HOLDINGS INC.

(the “**Purchaser**”)

WHEREAS Claireville Property Holdings Inc. (the “**Debtor**”) filed a notice of intention to make a proposal (“**NOI**”) pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) on July 2, 2021, pursuant to which KSV Restructuring Inc. (“**KSV**”) was named as the Debtor’s proposal trustee (the “**Proposal Trustee**”);

AND WHEREAS a sale and investment solicitation process (the “**Sale Process**”) with respect to the assets and business of the Debtor (the “**Property**”) and the expansion of the Proposal Trustee’s powers were both approved pursuant to an order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on July 28, 2021 (the “**Sale Process Order**”);

AND WHEREAS the Debtor failed to make a proposal pursuant to the BIA and was deemed to have filed an assignment in bankruptcy, and by order of the Court dated December 14, 2021 (the “**Receivership Order**”), KSV was appointed as receiver of the Property.

AND WHEREAS pursuant to the provisions of the Receivership Order, the Receiver has the power to, amongst other things, sell, convey, transfer, lease or assign the Property (as defined in the Receivership Order) or any part or parts thereof out of the ordinary course of business with the approval of the Court;

AND WHEREAS the Purchaser wishes to purchase the Purchased Assets (as defined herein) upon the terms and subject to the conditions set out herein;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement (as defined herein), and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined herein), the Parties agree as follows:

ARTICLE 1 DEFINED TERMS

1.1 Definitions.

In this Agreement:

“Accounts Payable” means all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services in the ordinary course of business;

“Agreement” means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to **“article”**, **“section”** or **“schedule”** mean the specified article, section of, or schedule to this Agreement and the expressions **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“hereby”** and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“Approval and Vesting Order” means the approval and vesting order issued by the Court, on notice to such persons as the Purchaser may require, acting reasonably, approving this Agreement and the transactions contemplated by this Agreement and conveying to the Purchaser all of the Debtor’s right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form mutually satisfactory to the Receiver and the Purchaser, acting reasonably, substantively similar to the draft order attached as **Schedule “A”** hereto;

“Assignable Assets” has the meaning given in section 3.1(3) herein;

“Assumption Agreement” has the meaning given in section 15.10 herein;

“BIA” has the meaning set out in the recitals hereof;

“Books and Records” means the files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) pertaining to the Purchased Assets that have been delivered by the Receiver to the Purchaser at or before Closing;

“Business” means the business previously carried on by the Debtor;

“Business Day” means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

“Claims” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or

otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Debtor or the Purchased Assets, and “**Claim**” means any one of them;

“**Closing**” means the successful completion of the Transaction;

“**Closing Date**” means, unless otherwise agreed in writing by the Parties, the date that is the later of: (i) the first Business Day following the date that is ten days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) the fifth Business Day following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined, provided that in no event shall the Closing Date be later than December 31, 2023;

“**Closing Time**” means 2:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

“**Co-Tenancy Agreement**” means the co-tenancy agreement effective August 7, 2015 amongst Gross Capital Inc., MGZ Holdings Inc., Avraham Barbalat, Earl Levy, Randall Y. C. Ho, The Dead End Capital Corp., Ava Gross, J. Zachery Jones, Janie L. Lai Trustee, Stanley Salcedo, Fleishman Family Trust, Alexander Dashefsky, Seymour Kazimirski, Bruce Bucky Revocable Living Trust, Kristy Luciani, Tanbros Investments Limited, Tanview Investment Limited, Wen Xue and Yan Peng, Patrick J. Carroll and M. Marley Carroll, jointly, Johann Strasser, Mark C. Gross and the Debtor, as may have been amended from time to time;

“**Consents and Approvals**” means the consents and approvals of all relevant third parties;

“**Contracts**” means, except for the Excluded Contracts, all of the contracts, licences, leases, subleases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party, or by which the Debtor, in its capacity as owner of the Purchased Assets is bound, provided that nothing shall be deemed to be a Contract unless it is included in documents made available by the Proposal Trustee in its data room prior to the execution of this Agreement, and provided, for the avoidance of doubt, that the Contracts do include, without limitation, the Ground Lease and all of the Lessees’ legal and equitable interests therein;

“**Court**” has the meaning set out in the recitals hereof;

“**Debtor**” has the meaning set out in the recitals hereof;

“**Demand Debenture**” means the demand debenture dated August 7, 2015 between and amongst the Debtor, as debtor, and SREIT (Rexdale) Ltd. and Niagara Acquisition LP, by its general partner Niagara Acquisition GP Inc., in the principal amount of \$10,000,000;

“**Deposit**” has the meaning given in section 4.2 herein;

“DIP Documents” means: (i) the debtor-in-possession financing term sheet dated July 23, 2021 between the Debtor, as borrower, and the DIP Lender, as lender; (ii) the general security agreement dated August 16, 2021 and granted by the Debtor to the DIP Lender; and (iii) the indenture dated August 17, 2021 and granted by the Debtor to the DIP Lender;

“DIP Lender” means Cannect Mortgage Investment Corporation;

“Encumbrances” means all liens, charges, security interests, pledges, title retention agreements, mortgages, charging, or creating a security interest in, the Purchased Assets or any part thereof or interest therein and any restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances affecting title to the Purchased Assets;

“ETA” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

“Excluded Assets” means all the Debtor’s right, title and interest in and to the Property other than the Purchased Assets, which Excluded Assets include the Debtor’s right, title and interest, if any, in and to the following:

- (a) any of the Debtor’s cash or cash equivalents;
- (b) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Debtor that do not relate exclusively or primarily to any of the Purchased Assets;
- (c) the benefit of any refundable Taxes payable or paid by the Debtor in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor to any refund, rebate, or credit of Taxes for the period prior to the Closing Date; and
- (d) the Excluded Contracts;

“Excluded Contracts” means: (i) the Co-Tenancy Agreement; (ii) the Demand Debenture and (iii) the DIP Documents;

“Excluded Liabilities” has the meaning given in section 3.3 herein;

“First Tenant” means Slough Estates Canada Limited, previously known as Slough Estates (Canada) Limited;

“Governmental Authority” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative,

policy, regulatory or taxing authority or power, and “**Governmental Authority**” means any one of them;

“**Ground Lease**” means, collectively: (i) the lease in respect of the Real Property dated as of September 1, 1973 between Kornwood Investments Limited, as landlord, and the First Tenant, as tenant, notice of which was registered on title to the Real Property on April 23, 1974; (ii) the assignment and assumption of ground lease dated on or about October 15, 2001 amongst the First Tenant, the Second Tenant and the Indemnitor, notice of which was registered on title to the Real Property on October 19, 2001; (iii) an agreement dated February 11, 2009 amongst Kornwood Investments Limited, the Second Tenant, and the Indemnitor; and (iv) the assignment and assumption of ground lease between the Second Tenant and the Debtor, notice of which was registered on title to the Real Property on August 7, 2015;

“**HST**” means harmonized sales tax imposed under Part IX of the ETA;

“**Indemnitor**” means The Trustees of Summit Real Estate Investment Trust;

“**Interim Period**” means the period from and including the date of this Agreement to and including the Closing Date;

“**ITA**” means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

“**Lessees**” means all holders of legal and beneficial interests, as tenants, pursuant to the Ground Lease;

“**Notice**” has the meaning given in section 15.3 herein;

“**Parties**” means the Receiver and the Purchaser;

“**Permits**” means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Purchased Assets;

“**Permitted Encumbrances**” means all those Encumbrances described in **Schedule “B”** hereto;

“**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

“**Property**” has the meaning set out in the recitals hereof;

“**Receiver**” has the meaning set out in the recitals hereof;

“**Purchase Price**” has the meaning set out in section 4.1 herein;

“Purchased Assets” means all of the Debtor’s right, title and interest in and to the Property other than the Excluded Assets and the Excluded Liabilities, which Purchased Assets include the Debtor’s right, title and interest, if any, in and to the following:

- (a) the Contracts;
- (b) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Contracts;
- (c) the Permits, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees; and
- (d) the Warranty Rights;

“Purchaser” has the meaning set out in the recitals hereof;

“Real Property” means the 13 dual tenant industrial buildings municipally addressed as 18, 20, 22, 24 and 26 Huddersfield Road in Toronto, Ontario, 350, 354 and 358 Humberline Drive in Toronto, Ontario and 93, 101, 123, 130 and 160 Claireville Drive in Toronto, Ontario;

“Receiver’s Certificate” has the meaning set out in section 6.3 herein;

“Rights” has the meaning given in section 3.1(3) herein, but only has such meaning in such section;

“Sale Process Order” has the meaning set out in the recitals hereof;

“Second Tenant” means SREIT (Rexdale) Ltd.;

“Taxes” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“Third Party” has the meaning given in section 3.1(3) herein;

“Transaction” means the transaction of purchase and sale contemplated by this Agreement; and

“Warranty Rights” means the full benefit of all warranties, warranty rights, performance bonds and indemnities (implied, express or otherwise) of the Debtor 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.

ARTICLE 2 SCHEDULES

2.1 Schedules.

The following schedules are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule A	Approval and Vesting Order
Schedule B	Permitted Encumbrances

ARTICLE 3 AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets.

- (1) Relying on the representations and warranties herein and the powers granted to it by, amongst other things, the Receivership Order, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase the Purchased Assets, free and clear of all Encumbrances other than the Permitted Encumbrances. For the avoidance of doubt, the Parties agree that interest of the Lessees in the Ground Lease is hereby transferred to the Purchaser and that the Lessees shall not have any continuing legal or beneficial interest therein.
- (2) Upon the Closing, the Receiver shall hereby remise, release and forever discharge all of its rights, claims and demands whatsoever in the Purchased Assets, including, for the avoidance of doubt, the interest of the Lessees in the Ground Lease.
- (3) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this section 3.1(3), collectively, the “**Rights**”) under any Permits or Consents and Approvals (collectively, the “**Assignable Assets**”) that form part of the Purchased Assets and which are not assignable by the Receiver to the Purchaser without the required consent and/or approval of the other party or parties thereto (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:
 - (a) the Receiver will, at the request, direction and sole cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and on a commercially reasonable best-efforts basis, in applying for and obtaining all Third Party consents and/or approvals required to assign the Assignable Assets to the Purchaser in a form satisfactory to the Receiver and the Purchaser, acting reasonably, and take such actions and do such things as may be reasonably and lawfully designed to attempt to provide the benefits of the Assignable Assets to the Purchaser, including holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment;

- (b) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser; and
- (c) in the event that the Receiver receives funds with respect to those Assignable Assets, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs provided in subsection (a) above.

3.2 Excluded Assets.

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities.

With the exception of the Permitted Encumbrances, the Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or the Receiver or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Purchased Assets or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "**Excluded Liabilities**"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with the Accounts Payable or any employees of the Debtor;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment associated with any of the Excluded Assets;
- (e) any liability to the other Lessees in respect of the Ground Lease, including, without limitation, any liabilities arising under the Co-Tenancy Agreement; and
- (f) any liability, obligation or commitment of the Debtor in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

ARTICLE 4

PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price.

The purchase price for the Purchased Assets shall be the aggregate of [REDACTED]
[REDACTED] (the “**Purchase Price**”).

4.2 Deposit.

- (1) The Parties agree that the Purchaser shall pay to the Receiver, by no later than two Business Days from the date of acceptance of this Agreement by the Receiver, a deposit in immediately available funds equal to [REDACTED] (the “**Deposit**”), being an amount equal to ten percent (10%) of the Purchase Price, which Deposit shall be held in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.
- (2) The Parties agree that the Receiver shall cause the Deposit to be placed in a non-interest bearing account and shall be credited to the Purchaser on the Closing Date.

4.3 Satisfaction of Purchase Price.

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price; and
- (b) the remainder of the Purchase Price, being the net amount owing after deducting the Deposit from the Purchase Price, shall be paid by the Purchaser to the Receiver on Closing.

4.4 Allocation of Purchase Price.

The Parties, acting reasonably and in good faith, covenant to use best efforts to agree to allocate the Purchase Price amongst the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this section of the Agreement such that each Party shall be free to make its own reasonable allocation. N/A

4.5 Adjustment of Purchase Price.

- (1) The Purchase Price shall be adjusted as of the Closing Time in a manner and amount to be agreed upon by the Parties, acting reasonably, for any property taxes (including interest thereon), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a Court-supervised sale, including, without limitation, rents for the month of closing, prepaid

rent and security deposits (if any). The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval by no later than three Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably, and such estimate shall serve as a final determination.

- (2) Other than as provided for in this section 4.5, there shall be no adjustments to the Purchase Price.

ARTICLE 5 TAXES

5.1 Taxes.

The Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least five Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing and Closing Procedure.

Closing shall take place at the Closing Time on the Closing Date at the offices of the Receiver's lawyers, Aird & Berlis LLP, located in Toronto, Ontario, or at such other time or at such other place as the Parties may agree in writing.

6.2 Tender.

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party.

6.3 Receiver's Closing Deliverables.

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (1) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate;
- (2) a statement of adjustments prepared in accordance with section 4.5 hereof;
- (3) an undertaking by the Receiver to readjust the adjustments set out in section 4.5 hereof;
- (4) an assignment and assumption agreement for all Warranty Rights, Permits, Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser;
- (5) a certificate from the Receiver, dated as of the Closing Date, certifying (collectively, the "**Receiver's Certificate**"):
 - (a) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction;
 - (b) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (c) the non-merger specified in section 15.2 and elsewhere herein;
- (6) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.1 hereof has been fulfilled, performed or waived as of the Closing Time;
- (7) a direction addressed to all subtenants of the Real Property informing them of the Assignment of the Ground Lease and directing them to make all future rents payable to the Purchaser or as it may otherwise direct;
- (8) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Purchaser, acting reasonably, Applicable Law or any Government Authority.

6.4 Purchaser's Closing Deliverables.

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (1) the indefeasible payment and satisfaction in full of the Purchase Price according to section 4.3 hereof;
- (2) an undertaking by the Purchaser to readjust the adjustments set out in section 4.5 hereof;

- (3) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.3 hereof has been fulfilled, performed or waived as of the Closing Time;
- (4) an assignment and assumption agreement for all Warranty Rights, Permits, Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser;
- (5) a certificate from the Purchaser, dated as of the Closing Date, certifying:
 - (a) that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (b) the non-merger specified in section 15.2 and elsewhere herein;
- (6) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with Article 5 hereof; and
- (7) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, Applicable Law or any Government Authority.

6.5 Receiver's Certificate.

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in section 7.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in section 7.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate comprising Schedule "A" of the Approval and Vesting Order, and shall file same with the Court.

ARTICLE 7 CONDITIONS PRECEDENT TO CLOSING

7.1 Conditions in Favour of the Receiver.

The obligation of the Receiver to complete the Transaction is subject to and conditional upon the satisfaction of the following conditions on or before the Closing Date:

- (1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (3) the Purchaser shall have complied with all the terms contained in this Agreement applicable to the Purchaser prior to the Closing Date;

- (4) there shall be no Claim, litigation or proceedings commenced after the date of the Sale Process Order, or order issued by a Governmental Authority after the date of the Sale Process Order, against either of the Parties for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (5) the Court shall have issued the Approval and Vesting Order.

7.2 Conditions in Favour of Receiver Not Fulfilled.

If any of the conditions contained in section 7.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion, and without limiting any rights or remedies available to it at law or in equity:

- (1) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction; or
- (2) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

7.3 Conditions in Favour of the Purchaser.

The obligation of the Purchaser to complete the Transaction is subject to and conditional upon the satisfaction of the following conditions on or before the Closing Date:

- (1) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (3) the Receiver shall have complied with all the terms contained in this Agreement applicable to the Receiver prior to the Closing Date;
- (4) there shall be no Claim, litigation or proceedings commenced after the date of the Sale Process Order, or order issued by a Governmental Authority after the date of the Sale Process Order, against either of the Parties for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (5) the Court shall have issued the Approval and Vesting Order.

7.4 Conditions in Favour of Purchaser Not Fulfilled.

If any of the conditions contained in section 7.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or

omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (1) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction; or
- (2) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

ARTICLE 8 REPRESENTATIONS & WARRANTIES OF THE RECEIVER

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (1) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;
- (2) the Court has granted to the Receiver the full right, power and authority to enter into this Agreement, perform its obligations hereunder, and convey the Purchased Assets to the Purchaser;
- (3) the Receiver and the Debtor are not non-residents of Canada for the purposes of the ITA; and
- (4) The buildings on the Real Property are fully insured to their replacement value with insurance policies that a prudent owner of similar properties would obtain

ARTICLE 9 REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (1) the Purchaser is a corporation duly formed and validly subsisting under the laws of the Province of Ontario;
- (2) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any

judgment or order of a court of competent jurisdiction or any Government Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;

- (3) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (4) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

ARTICLE 10 COVENANTS

10.1 Mutual Covenants.

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 7 hereof.

10.2 Receiver Covenants.

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall take all such actions as are necessary to provide to the Purchaser all necessary information in respect of the Debtor and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with section 5.1 hereof and to execute all necessary forms related thereto.
N/A

10.3 Purchaser Covenants.

The Purchaser hereby covenants and agrees that, except as expressly contemplated in this Agreement, from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Receiver all necessary information in respect of the Purchaser reasonably required to complete the applicable tax elections in accordance with section 5.1 hereof and to execute all necessary forms related thereto.

ARTICLE 11

POSSESSION AND ACCESS PRIOR TO CLOSING

11.1 Possession of Purchased Assets.

At the Closing Time, the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in section 7.1 hereof.

11.2 Examination of Title and Access to the Purchased Assets.

- (1) The Purchaser acknowledges and agrees that it shall, at its own cost and expense (regardless of results), examine title to the Purchased Assets and the Real Property, and satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Purchased Assets and the Real Property, satisfy itself as to the use of the Purchased Assets and the Real Property being in accordance with applicable zoning requirements and satisfy itself that any and all buildings and structures on the Real Property may be insured to the satisfaction of the Purchaser. The Purchaser further acknowledges that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions in regard to any outstanding work orders, deficiency notices or orders to comply issued by any Government Authorities. The Purchaser further acknowledges and agrees that it shall not call upon the Receiver to produce any title deed, abstract of title, survey or other evidence of title that is not within the Receiver's possession or control.
- (2) Subject to the rights of any occupants of the Real Property, the Purchaser and its agents and representatives may have reasonable access to the Purchased Assets and the Real Property during normal business hours in the Interim Period for the purpose of enabling the Purchaser, at its sole cost and expense (regardless of results), to conduct such non-destructive, non-invasive inspections of the Purchased Assets and the Real Property as it deems appropriate, provided that such inspections shall not unduly interfere (and the Purchaser undertakes to use its best efforts, which the Purchaser represents and warrants shall not be less than reasonable commercial efforts, not to so interfere) with the use, operation and enjoyment of the Purchased Assets or the Real Property. The Purchaser agrees that such tests and inspections shall not include any tests or inspections by any Governmental Authority and specifically acknowledges and agrees that it shall not request or, through its actions, prompt or cause any tests or inspections to be made by any Governmental Authority. Such inspection may, if the Receiver so desires, be conducted in the presence of a representative of the Receiver.
- (3) The Purchaser covenants and agrees to repair or pay the costs to repair any damage occasioned during or resulting from the inspection of the Purchased Assets or the Real Property conducted by the Purchaser or its authorized representatives, as outlined above, and to return the Purchased Assets and the Real Property to substantially the condition same were in prior to such inspections. The Purchaser covenants and agrees to

indemnify and save the Receiver harmless from and against all losses, costs, claims, third party claims, damages, expenses (including actual legal costs) which the Receiver may suffer as a result of the inspection of the Purchased Assets or the Real Property conducted by the Purchaser or its authorized representatives, as outlined above.

11.3 Risk.

- (1) The Purchased Assets shall be at the risk of the Purchaser from and after Closing.
- (2) If, prior to Closing, any one of the buildings on the Real Property is substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within 15 calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this section, substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Real Property exceeds 15% of the total Purchase Price (inclusive of the Deposit).
- (3) If, prior to the Closing Date, all or a material part of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Real Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Receiver or Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser in this Agreement (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith.

ARTICLE 12 AS IS, WHERE IS

12.1 Condition of the Purchased Assets.

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an “*as is, where is*” and “*without recourse*” basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions,

impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, other than the right of the Receiver to sell, assign, convey or transfer same, as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

ARTICLE 13 POST-CLOSING MATTERS

13.1 Books and Records.

The Purchaser shall keep and maintain the Books and Records for a period of two years from the Closing Date, or for any longer period as may be required by Applicable Law or Governmental Authority. Upon reasonable advance notice, during such two year period after the Closing Date, the Purchaser will grant the Receiver and its representatives, reasonable access during normal business hours to use and copy the Books and Records at the sole cost of the Receiver.

ARTICLE 14 TERMINATION

14.1 Termination of this Agreement.

This Agreement may be validly terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to section 7.2 hereof by the Receiver;
- (3) pursuant to section 7.4 hereof by the Purchaser; or
- (4) pursuant to section 11.3 hereof.

14.2 Remedies for Breach of Agreement.

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Deposit, without deduction, shall be returned to the Purchaser forthwith, and this shall be the Purchaser's sole right and remedy pursuant to this

Agreement or at law as a result of the Receiver's breach. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

14.3 Termination If No Breach of Agreement.

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then:

- (1) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (2) the Deposit, without deduction, shall be returned to the Purchaser forthwith; and
- (3) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein.

ARTICLE 15 GENERAL CONTRACT PROVISIONS

15.1 Further Assurances.

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof.

15.2 Survival Following Completion.

Notwithstanding any other provision of this Agreement, section 4.5, article 8, article 9, section 14.2 and section 14.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of KSV Restructuring Inc. as the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

15.3 Notice.

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "**Notice**") shall be in writing and be sufficiently given if personally delivered or sent or transmitted by email, addressed to the Party to whom it is given, as follows:

- (a) to the Receiver:

KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Attention: David Sieradzki and Noah Goldstein
Email: dsieradzki@ksvadvisory.com / ngoldstein@ksvadvisory.com

and a copy to the Receiver's counsel to:

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Attention: Kyle Plunkett, Jeremy Nemers and Rachel Rice
Email: kplunkett@airdberlis.com / jnemers@airdberlis.com /
rrice@airdberlis.com

(b) to the Purchaser:

Wimbledon Purple Holdings Inc
201 Bridgeland Ave.
North York, ON M6A 1Y7

Attention: Ronald C. Rutman
Email: rcr@zeifmans.ca

With a copy to :

Wimbledon Purple Holdings Inc
201 Bridgeland Ave.
North York, ON M6A 1Y7

Attention: Sharon Chin
Email: sls@zeifmans.ca

and a copy to the Purchaser's counsel to:

Harris, Sheaffer LLP
Yonge Sheppard Centre
4881 Yonge Street, 8th Floor
Toronto, ON M2N 5X3

Attention: Mark Karoly
Email: mkaroly@harris-sheaffer.com

or such other address of which Notice has been given. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

15.4 Waiver.

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

15.5 Consent.

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

15.6 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario sitting in Toronto. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes between them, regardless of whether or not such disputes arose under this Agreement.

15.7 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

15.8 Time of the Essence.

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

15.9 Time Periods.

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

15.10 Assignment.

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval. Up until Closing, the Purchaser shall have the right to direct that title to the Purchased Assets be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided that the assignee shall, in writing and prior to Closing, agree to assume and be bound by the terms and conditions of this Agreement (the "**Assumption Agreement**") and a copy of such Assumption Agreement is delivered to the Receiver 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 hereunder.

15.11 Expenses.

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

15.12 Severability.

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

15.13 No Strict Construction.

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

15.14 Cumulative Remedies.

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

15.15 Currency.

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

15.16 Receiver's Capacity.

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as the Receiver and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

15.17 Planning Act.

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

15.18 No Third Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns, nothing in this Agreement shall be construed to create any rights or obligations except amongst the Parties and no other person or entity shall be regarded as a third party beneficiary of this Agreement.

15.19 Number and Gender.

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

15.20 Independent Legal Advice.

Each of the Parties acknowledges and declares that:

- (1) it has had an adequate opportunity to read and consider this Agreement and to obtain such advice in regard to it as it considers advisable, including, without limitation, independent legal advice;
- (2) it fully understands the nature and effect of this Agreement; and
- (3) this Agreement has been duly executed voluntarily.

15.21 Counterparts.

This Agreement may be executed in counterparts and by PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

15.22 Irrevocable

This offer shall be irrevocable and open for acceptance until 1:00 p.m. on January 7, 2022.

/SIGNATURE PAGE FOLLOWS./

IN WITNESS WHEREOF the Purchaser has duly executed this Agreement as of the date first above written.

WIMBLEDON PURPLE HOLDINGS INC.

Per: 

Name: Ronald C. Rutman

Authorized Signing Officer

ACCEPTED by the Receiver this _____ day of January, 2022.

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 A TO SALE AGREEMENT
APPROVAL AND VESTING ORDER**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	<*>DAY, THE <*>
)	
JUSTICE)	DAY OF <*>, 2022

B E T W E E N:

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 Receiver (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 between the Receiver, as vendor pursuant to the Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made December 14, 2021 (the “**Receivership Order**”), and Wimbledon Purple Holdings Inc. (the “**Purchaser**”), as purchaser, dated January 3, 2022 (the “**Sale Agreement**”), a copy of which is attached as Confidential Appendix “<*>” to the Report of the Receiver dated <*>, 2022 (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 <*> sworn <*>, 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 rights, titles and interests of the Debtor and of any person for whom the Debtor acts as trustee or nominee 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 Order of Court made July 28, 2021 (the “**Sale Process Order**”) or the Receivership Order; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “C”** 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 including, without limitation, the claims of the Debtor and of the

holders of the beneficial interest in the Ground Lease, 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 or any holders of beneficial interests in the Ground Lease and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor or any holders of beneficial interests in the Ground Lease,

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 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” TO VESTING ORDER - FORM OF RECEIVER’S CERTIFICATE

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

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. (“**KSV**”) was named as the Debtor’s Receiver (in such capacity, the “**Receiver**”).

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, 2021 (the “**Sale Process Order**”), the Court approved a sale investment solicitation process with respect to the assets and business of the Debtor to be conducted by the Receiver, and expanded the powers of the Receiver with respect to the Debtor.

III. Pursuant to an Order of the Court made December 14, 2021 (the “**Receivership Order**”), the Court appointed KSV as receiver of the property, assets and undertakings of the Debtor (the “**Property**”), including, without limitation and for the avoidance of doubt, the legal and beneficial leasehold

interests of all persons arising from the Ground Lease (as defined in the Sale Agreement, defined below), with the power to sell the Property.

IV. Pursuant to an Order of the Court dated <*>, 2022, the Court approved the agreement of purchase and sale between the Receiver, as vendor pursuant to the Sale Process Order, and Wimbledon Purple Holdings Inc. (the “**Purchaser**”), as purchaser, dated January 3, 2022, (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.

V. 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 of the Debtor, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

SCHEDULE "B" TO VESTING ORDER**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” TO VESTING ORDER
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” TO VESTING ORDER
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

and

	<p>ONTARIO</p> <p>SUPERIOR COURT OF JUSTICE</p> <p>COMMERCIAL LIST</p> <p>IN BANKRUPTCY AND INSOLVENCY</p> <p>Proceedings commenced at Toronto</p> <hr/> <p>APPROVAL AND VESTING ORDER</p> <hr/> <p>AIRD & BERLIS LLP Barristers and Solicitors Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9</p> <p>Jeremy Nemers (LSO # 66410Q) Tel: (416) 865-7724 Fax: (416) 863-1515 Email: jnemers@airdberlis.com</p> <p><i>Lawyers for the Receiver</i></p>
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**SCHEDULE B TO SALE AGREEMENT
PERMITTED ENCUMBRANCES**

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.

APPENDIX “J”

From: Noah Goldstein
Sent: January 11, 2022 1:19 PM
To: Larry Lebovic <larry@runnymede-dev.com>
Cc: David Sieradzki <dsieradzki@ksvadvisory.com>
Subject: Estoppel Certificate from Landlord (Kornwood)

Larry,

I just tried calling you.

Please see attached estoppel certificate, which is being sent to you pursuant to section 22.01 of the Ground Lease. Please return this certificate within 20 days as stipulated under section 22.01.

Thank you,

Noah

ESTOPPEL CERTIFICATE

TO: Claireville Property Holdings Inc.

RE: Ground Lease of those certain parcels or tracts of land situate lying and being composed of those parts of Lot 38, Concession 4, Fronting the Humber, designated as Parts 5 and 8 on Plan 64R-2980, in the Borough of Etobicoke, in the Municipality of Metropolitan Toronto, and shown outlined in red on the sketch of survey attached to the Ground Lease as Schedule "A" and consisting of 34.491 acres (the "**Lands**")

To whom it may concern,

Kornwood Investments Limited (the "**Landlord**") under that certain Ground Lease dated September 1, 1973 by and between the Landlord and Slough Estates (Canada) Limited (the "**First Tenant**"), as amended by the agreements described in Paragraph 1 below (collectively, the "**Ground Lease**"), for the Lands, hereby certifies as follows:

1. The Ground Lease is unmodified and in full force and effect and was not amended or modified except as set forth below:
 - (a) the assignment and assumption of ground lease dated October 15, 2001 amongst the First Tenant, SREIT (Rexdale) Ltd. (the "**Second Tenant**") and The Trustees of Summit Real Estate Investment Trust as indemnitor (the "**Indemnitor**") notice of which was registered on title to the Lands on October 19, 2001;
 - (b) an agreement dated February 11, 2009 amongst the Landlord, the Second Tenant, and the Indemnitor; and
 - (c) the second ground lease assignment dated August 7, 2015 between the Second Tenant, as assignor, Niagara Acquisition LP, as the assignor's indemnitor, Claireville Property Holdings Inc. as assignee, (the "**Tenant**"), and Gross Properties Inc. as the assignee's indemnitor, notice of which was registered on title to the Lands on August 7, 2015.
2. The dates to which the rent and other charges have been paid in advance, if any, are as follows:
 - (a) [● list the nature and amount of all prepaid amounts]
3. There is no existing default on the part of the Tenant to which the Landlord has notice [except as follows]:
 - (a) [●]

- 2 -

4. This certificate is being delivered pursuant to Section 22.01 of the Ground Lease, and therefore may be relied upon by any assignee or mortgagee of the Tenant's leasehold estate or the Tenant's interest in the buildings and improvements thereon or by a sub-lessee of the Lands.

IN WITNESS WHEREOF, the Landlord has signed this certificate on this ____ day of _____, 2022.

KORNWOOD INVESTMENTS LIMITED

Per: _____
Name:
Title:

Per: _____
Name:
Title:

47164451.4

ARTICLE XXII

ESTOPPEL CERTIFICATES

22.01 The Landlord and the Tenant each agree at any time and from time to time so long as this lease shall remain in effect and provided no default then exists, upon not less than twenty (20) days' prior request by the other party, to execute, acknowledge and deliver to the other party, a statement in writing certifying that this lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, stating the modifications) and the dates to which the rent and other charges have been paid in advance, if any, and whether or not there is any existing default on the part of the other to which the party executing the acknowledgement has notice, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser of the Landlord's fee simple interest in the lands or of the Landlord's remainder interest in the buildings and improvements thereon or any mortgagee or lender or assignee of any mortgage upon the fee of the lands or upon the Landlord's remainder interest in the buildings and improvements thereon or by any assignee or mortgagee of the Tenant's leasehold estate or the Tenant's interest in the buildings and improvements thereon or by a sub-lessee of the lands, as the case may be.

APPENDIX “K”

From: Noah Goldstein
Sent: January 13, 2022 2:56 PM
To: Larry Lebovic <larry@runnymede-dev.com>
Cc: Justin Di Ciano <jdiciano@primerealestategroup.ca>; David Sieradzki <dsieradzki@ksvadvisory.com>
Subject: RE: KORNWOOD

Thanks, but we have reviewed the lease and do not see any such term. Please advise upon which term(s) of the lease you are referring.

Thank you,

Noah

-----Original Message-----

From: Larry Lebovic <larry@runnymede-dev.com>
Sent: January 13, 2022 2:04 PM
To: Noah Goldstein <ngoldstein@ksvadvisory.com>
Cc: Justin Di Ciano <jdiciano@primerealestategroup.ca>
Subject: KORNWOOD

In accordance with the terms of the lease KORNWOOD has arranged for a structural engineering firm to inspect the buildings and the parking areas next week. Please instruct Justin to make arrangements with The tenants to allow access to our engineers to all buildings.

Please deal with this today so I can firm up the dates for the inspections Thanks Sent from my iPhone

APPENDIX “L”

ESTOPPEL CERTIFICATE

TO: Claireville Property Holdings Inc.

RE: Ground Lease of those certain parcels or tracts of land situate lying and being composed of those parts of Lot 38, Concession 4, Fronting the Humber, designated as Parts 5 and 8 on Plan 64R-2980, in the Borough of Etobicoke, in the Municipality of Metropolitan Toronto, and shown outlined in red on the sketch of survey attached to the Ground Lease as Schedule "A" and consisting of 34.491 acres (the "**Lands**")

To whom it may concern,

Kornwood Investments Limited (the "**Landlord**"), the Landlord under a Ground Lease dated September 1, 1973 by and between the Landlord and Slough Estates (Canada) Limited ("**Slough Estates**"), as Tenant, as amended (the "**Ground Lease**"), hereby certifies as follows:

1. To the best of my knowledge, the Ground Lease is in full force and effect and has not been assigned, amended or modified except as set forth below:
 - (a) Pursuant to an Assignment and Assumption of Ground Lease dated October 15, 2001 among Slough Estates, SREIT (Rexdale) Ltd. and the Trustees of Summit Real Estate Investment Trust as indemnitor (the "**Indemnitor**"), notice of which was registered on title to the Lands on October 19, 2001, Slough Estates sold, assigned, conveyed, transferred and set over its interest in the Ground Lease to SREIT (Rexdale) Ltd. on the terms and conditions set out therein, including but not limited to the agreement by SREIT (Rexdale) Ltd. and the Indemnitor to indemnify Slough Estates in respect of any breach of the Ground Lease;
 - (b) Pursuant to an Agreement dated February 11, 2009 among SREIT (Rexdale) Ltd., the Landlord and the Indemnitor, the parties agreed that the fair market value of the Lands as of March 1, 2008 was \$700,000.00 an acre and in accordance with the formula set forth in the Ground Lease, the annual net rent was increased to \$2,172,933.00 for the period commencing on September 1, 2008 and continuing until the next renewal period, being September 1, 2023;
 - (c) Pursuant to a Second Ground Lease Assignment dated August 7, 2015 among SREIT (Rexdale) Ltd., Niagara Acquisition LP, Claireville Property Holdings Inc. ("**Claireville**") and Gross Properties Inc. as the assignee's indemnitor, notice of which was registered on title to the Lands on August 7, 2015, SREIT (Rexdale) Ltd. assigned, transferred and set over its right, title and interest in the Ground Lease to Claireville on the terms set out therein, including a prohibition on any further transfer without the prior written consent of SREIT (Rexdale) Ltd. and a covenant in favour of SREIT (Rexdale) Ltd. and the Indemnitor to perform all of the obligations under the Ground Lease.

2. The dates to which the rent and other charges have been paid in advance, if any, are as follows:
 - (a) January 31, 2022
3. There are no defaults on the part of the Tenant to which the Landlord has notice except as follows:
 - (a) The Tenant repeatedly defaulted in the payment of realty taxes, in breach of Article VII of the Ground Lease;
 - (b) The Tenant has failed to perform repairs and maintenance to the Lands and the buildings erected thereon, in breach of Article VIII of the Ground Lease;
 - (c) The Tenant has failed to obtain adequate insurance, or has failed to provide evidence of adequate insurance, in breach of Article XII of the Ground Lease;
 - (d) Claireville, as second assignee of the Tenant, filed a Notice of Intention to File a Proposal pursuant to the Bankruptcy and Insolvency Act (“**BIA**”) on July 2, 2021 pursuant to subsection 50.4(1) of the Bankruptcy and Insolvency Act and was thereafter adjudged bankrupt and a Receiver was appointed over the Tenant’s interest in the Ground Lease, all of which are defaults under Article XVIII of the Ground Lease;
4. The Landlord reserves its right to rely on such further defaults and to particularize the defaults upon being provided with access to the buildings, as previously requested, for the purpose of conducting an inspection.
5. This certificate is being delivered pursuant to Section 22.01 of the Ground Lease, without prejudice to the Landlord’s position that the obligation to provide an estoppel certificate is contingent upon the Tenant not being in default under the terms of the Ground Lease.

- 3 -

IN WITNESS WHEREOF, the Landlord has signed this certificate on this 31st day
of January, 2022.

KORNWOOD INVESTMENTS LIMITED

Per: _____
Name: LAURENCE LEBOVIC
Title: VICE PRESIDENT

Per: _____
Name:
Title:

47164451.4

ESTOPPEL CERTIFICATE

TO: Claireville Property Holdings Inc.

RE: Ground Lease of those certain parcels or tracts of land situate lying and being composed of those parts of Lot 38, Concession 4, Fronting the Humber, designated as Parts 5 and 8 on Plan 64R-2980, in the Borough of Etobicoke, in the Municipality of Metropolitan Toronto, and shown outlined in red on the sketch of survey attached to the Ground Lease as Schedule "A" and consisting of 34.491 acres (the "**Lands**")

To whom it may concern,

Kornwood Investments Limited (the "**Landlord**"), the Landlord under ~~that certain~~ Ground Lease dated September 1, 1973 by and between the Landlord and Slough Estates (Canada) Limited (~~the "First Tenant Slough Estates"~~), as Tenant, as amended ~~by the agreements described in Paragraph 1 below (collectively,~~ (the "**Ground Lease**"), ~~for the Lands,~~ hereby certifies as follows:

1. ~~The~~ To the best of my knowledge, the Ground Lease is ~~unmodified and~~ in full force and effect and ~~was~~ has not been assigned, amended or modified except as set forth below:
 - (a) ~~the assignment~~ Pursuant to an Assignment and ~~assumption of ground lease~~ Assumption of Ground Lease dated October 15, 2001 ~~amongst the First Tenant~~ among Slough Estates, SREIT (Rexdale) Ltd. (~~the "Second Tenant"~~) and ~~The~~ the Trustees of Summit Real Estate Investment Trust as indemnitor (the "**Indemnitor**"), notice of which was registered on title to the Lands on October 19, 2001;
 - ~~(b) — an agreement,~~ Slough Estates sold, assigned, conveyed, transferred and set over its interest in the Ground Lease to SREIT (Rexdale) Ltd. on the terms and conditions set out therein, including but not limited to the agreement by SREIT (Rexdale) Ltd. and the Indemnitor to indemnify Slough Estates in respect of any breach of the Ground Lease;
 - ~~(b)~~ Pursuant to an Agreement dated February 11, 2009 ~~amongst~~ among SREIT (Rexdale) Ltd., the Landlord, and the Indemnitor, the parties agreed that the fair market value of the Lands as of March 1, 2008 was \$700,000.00 an acre and in accordance with the formula set forth in the Ground Lease, the annual net rent was increased to \$2,172,933.00 for the period commencing on September 1, 2008 and continuing until the next renewal period, being September 1, 2023;
 - ~~(c)~~ Pursuant to a ~~Second Tenant, and the Indemnitor; and~~
 - ~~(e) — the second ground lease assignment~~ Ground Lease Assignment dated August 7, 2015 ~~between the Second Tenant, as assignor~~ among SREIT (Rexdale) Ltd., Niagara Acquisition LP, ~~as the assignor's indemnitor,~~ Claireville Property Holdings Inc. ~~as assignee, (the "Tenant" ("Claireville"))~~, and Gross Properties Inc. as the assignee's indemnitor, notice of which was registered on title to the Lands

on August 7, 2015~~-~~, SREIT (Rexdale) Ltd. assigned, transferred and set over its right, title and interest in the Ground Lease to Clairville on the terms set out therein, including a prohibition on any further transfer without the prior written consent of SREIT (Rexdale) Ltd. and a covenant in favour of SREIT (Rexdale) Ltd. and the Indemnitor to perform all of the obligations under the Ground Lease.

- 3 -

2. The dates to which the rent and other charges have been paid in advance, if any, are as follows:

~~(a) — [• list the nature and amount of all prepaid amounts]~~

(a) January 31, 2022

3. There ~~is~~are no ~~existing default~~defaults on the part of the Tenant to which the Landlord has notice ~~[except as follows]:~~

~~(a) — [•]~~

(a) The Tenant repeatedly defaulted in the payment of realty taxes, in breach of Article VII of the Ground Lease;

(b) The Tenant has failed to perform repairs and maintenance to the Lands and the buildings erected thereon, in breach of Article VIII of the Ground Lease;

(c) The Tenant has failed to obtain adequate insurance, or has failed to provide evidence of adequate insurance, in breach of Article XII of the Ground Lease;

(d) Claireville, as second assignee of the Tenant, filed a Notice of Intention to File a Proposal pursuant to the Bankruptcy and Insolvency Act ("BIA") on July 2, 2021 pursuant to subsection 50.4(1) of the Bankruptcy and Insolvency Act and was thereafter adjudged bankrupt and a Receiver was appointed over the Tenant's interest in the Ground Lease, all of which are defaults under Article XVIII of the Ground Lease;

4. The Landlord reserves its right to rely on such further defaults and to particularize the defaults upon being provided with access to the buildings, as previously requested, for the purpose of conducting an inspection.

5. ~~4-~~ This certificate is being delivered pursuant to Section 22.01 of the Ground Lease, ~~and therefore may be relied upon by any assignee or mortgagee of~~ without prejudice to the Landlord's position that the obligation to provide an estoppel certificate is contingent upon the Tenant's ~~leasehold estate or the Tenant's interest~~ not being in default under the ~~buildings and improvements thereon or by a sub-lessee~~ terms of the ~~Lands~~ Ground Lease.

IN WITNESS WHEREOF, the Landlord has signed this certificate on this 31st day of January, 2022.

KORNWOOD INVESTMENTS LIMITED



Per:

Name:

LAURENCE LEBOVIC Title: VICE PRESIDENT

Per:
Name:
Title:
47164451.4

Document comparison by Workshare Compare on February 9, 2022 12:37:48 PM

Input:	
Document 1 ID	iManage://wsc.airdberlis.com/cm/47164451/4
Description	#47164451v4<wsc.airdberlis.com> - Estoppel Certificate from Landlord (Kornwood) - Ground Lease
Document 2 ID	iManage://wsc.airdberlis.com/CM/47551591/1
Description	#47551591v1<wsc.airdberlis.com> - DOCS1-#5089981-v1-DOCS1-#5085819-v1-Estoppel_Certificate_from_Landlord_(Kornwood)_-_Ground_Lease(47164451_4)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	53
Deletions	42
Moved from	0
Moved to	0
Style changes	0
Format changes	0

Total changes	95
---------------	----

APPENDIX “M”

From: Paul Mantini <MANTINISP@bennettjones.com>
Sent: January 31, 2022 3:34 PM
To: Noah Goldstein <ngoldstein@ksvadvisory.com>
Cc: David Sieradzki <dsieradzki@ksvadvisory.com>
Subject: RE: Kornwood

Noah, this estoppel certificate is not, in a number of respects, in accordance with Section 22.01 of the Ground Lease and accordingly is not acceptable.

The landlord cannot be in a position to terminate the Ground Lease for alleged past defaults. The Court Order must cleanse any past defaults of the existing tenant.



S. Paul Mantini
Partner, Bennett Jones LLP

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
 T. [416 777 4837](tel:4167774837) | F. [416 863 1716](tel:4168631716) | M. [416 720 5502](tel:4167205502)
 E. mantinisp@bennettjones.com
BennettJones.com

From: Noah Goldstein <ngoldstein@ksvadvisory.com>
Sent: Monday, January 31, 2022 2:47 PM
To: Paul Mantini <MANTINISP@bennettjones.com>
Cc: David Sieradzki <dsieradzki@ksvadvisory.com>
Subject: Kornwood

Paul,

Attached is the estoppel from Kornwood.

Thank you,

Noah



Noah Goldstein
 Managing Director

T 416.932.6207
 M 416.844.4842
 W www.ksvadvisory.com

required in order to enter our offices. Those who are not fully vaccinated should request to attend meetings via video or audio conference.

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APPENDIX “N”

From: Paul Mantini <MANTINISP@bennettjones.com>
Sent: February 1, 2022 10:52 AM
To: Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: FW: Assignment Order

Noah, further to our telephone conversation here is the suggested language from Sean.

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 as not being in compliance with the requirements under the Agreement of Purchase and Sale.



S. Paul Mantini
Partner, Bennett Jones LLP

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
 T. [416 777 4837](tel:4167774837) | F. [416 863 1716](tel:4168631716) | M. [416 720 5502](tel:4167205502)
 E. mantinisp@bennettjones.com
BennettJones.com

From: Sean Zweig <ZweigS@bennettjones.com>
Sent: Tuesday, February 1, 2022 10:30 AM
To: Paul Mantini <MANTINISP@bennettjones.com>
Subject: Assignment Order

Here is one from Golf Town, which was a CCAA. There are lots of other precedents, but this is good language. See in particular para 7.



Sean Zweig
Partner, Bennett Jones LLP*
 *Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
 T. [416 777 6254](tel:4167776254) | F. [416 863 1716](tel:4168631716)
 E. zweigs@bennettjones.com

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Court File No.: CV-16-11527-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE NEWBOULD

)
)
)

THURSDAY, THE 27TH
DAY OF OCTOBER, 2016

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF GOLF TOWN CANADA HOLDINGS
INC., GOLF TOWN CANADA INC. AND
GOLF TOWN GP II INC.

Applicants

ASSIGNMENT ORDER

THIS MOTION, made by Golf Town Canada Holdings Inc., Golf Town Canada Inc. (“**GT Canada**”), Golf Town GP II Inc., Golf Town Operating Limited Partnership (“**Golf Town LP**”) and Golfsmith International Holdings LP (collectively, the “**Golf Town Entities**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an Order approving the assignment of certain real property leases (the “**Assignment**”) to Golf Town Limited (formerly 9918167 Canada Inc.) (the “**Purchaser**”) as contemplated by a Purchase Agreement dated as of September 14, 2016 (the “**Purchase Agreement**”) between GT Canada and Golf Town LP (together, the “**Vendors**”) and the Purchaser was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of David Roussy sworn September 13, 2016 and October 21, 2016, the affidavit of Robert White sworn September 23, 2016 and the third report (the “**Third Report**”) of FTI Consulting Canada Inc., in its capacity as monitor of the Golf Town Entities (the “**Monitor**”) in the within proceedings, and on hearing the submissions of counsel

- 2 -

for the Golf Town Entities, the Purchaser, certain landlords in respect of the Assigned Leases, the Monitor and such other counsel as were present and wished to be heard:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings given to them, as applicable, in the Approval and Vesting Order granted in these proceedings on September 30, 2016 (as amended, the “**Approval and Vesting Order**”) or the Purchase Agreement.

ASSIGNMENT OF AGREEMENTS

3. **THIS COURT ORDERS** that upon delivery of the Monitor’s Certificate referred to in the Approval and Vesting Order (the “**Monitor’s Certificate**”), all of the rights and obligations of the Vendors under the real property leases set out in Schedule “A” hereto, including all associated or related agreements, schedules, appendices, addendum, amendments, supplements, restatements or other modifications (each an “**Assigned Lease**” and collectively, the “**Assigned Leases**”) shall be assigned to the Purchaser pursuant to section 11.3 of the CCAA.
4. **THIS COURT ORDERS** that upon delivery of the Monitor’s Certificate, the Purchaser shall be entitled to all of the rights and benefits and subject to all of the obligations and restrictions as tenant pursuant to the terms of the Assigned Leases and registrations thereof and may enter into and upon and hold and enjoy each such premises contemplated by the Assigned Leases and, if applicable, any renewals thereof, for its own use and benefit, all in accordance with the terms of the Assigned Leases, without any interruption from the Vendors, any landlord under an Assigned Lease or any other person claiming through or under the Vendors or a landlord under the Assigned Leases.
5. **THIS COURT ORDERS** that the assignment of the Assigned Leases to the Purchaser pursuant to this Order is valid and binding upon all of the counterparties to the Assigned Leases

- 3 -

notwithstanding any restriction or prohibition contained in any such Assigned Leases relating to the assignment thereof, including, without limitation, any provision requiring the consent of any party to the assignment.

6. **THIS COURT ORDERS** that the Vendors' right, title and interest in and to the Assigned Leases shall vest absolutely in the Purchaser as Purchased Assets in accordance with the provisions of the Approval and Vesting Order, provided that, except as may otherwise be agreed to by the Purchaser and the applicable counterparty to an Assigned Lease (a "**Landlord**"), nothing in the Approval and Vesting Order shall affect the rights and remedies of such Landlord against the Purchaser that may exist or arise under or in respect of an Assigned Lease.

7. **THIS COURT ORDERS** that each Landlord is prohibited from exercising any right or remedy as against the Purchaser by reason of any defaults thereunder arising from the assignment of the Assigned Lease, the insolvency of the Vendors, the commencement of these CCAA proceedings or proceedings in respect of affiliates of the Vendors pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 ("**Chapter 11**"), or the Vendors having breached a non-monetary obligation under the Assigned Lease, unless such non-monetary breach arises or continues after the Assigned Lease is assigned to the Purchaser, such non-monetary default is capable of being cured by the Purchaser, and the Purchaser has failed to remedy the default after having received notice of such default pursuant to the terms of the Assigned Lease. For clarification purposes, no Landlord shall rely on a notice of default sent to the Vendors to terminate an Assigned Lease as against the Purchaser.

8. **THIS COURT ORDERS** that all monetary defaults in relation to an Assigned Lease existing prior to Closing, if applicable, other than those arising by reason only of the insolvency of the Vendors or their affiliates, the commencement of the CCAA or Chapter 11 proceedings, or the failure to perform a non-monetary obligation under the Assigned Lease, shall be paid to the applicable Landlord no later than three (3) business days following the delivery of the Monitor's Certificate.

9. **THIS COURT ORDERS** the Vendors to send a copy of this Order to each Landlord to an Assigned Lease.


- 4 -

10. **THIS COURT ORDERS** that, notwithstanding anything contained in this Order, nothing shall derogate from the obligations of the Purchaser to assume the Assumed Liabilities and to perform its obligations in respect of the Assigned Leases pursuant to the Purchase Agreement.

11. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to take such actions as it deems necessary or appropriate in the circumstances to assist the Vendors in the assignment and transfer of the Assigned Leases.

GENERAL

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order and to assist the Golf Town Entities, the Monitor and their respective 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 Golf Town Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding or to assist the Golf Town Entities and the Monitor and their respective agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 27 2016

PER / PAR: 

**SCHEDULE A
ASSIGNED LEASES**

Store No.	City and Province	Address	Lease Date	Landlord / Notice Party
503	Woodbridge, ON	55 Colossus Dr., Unit 122	Feb. 7, 2000	RioTrin Properties (Vaughan 2) Inc. c/o RioCan Real Estate Investment Trust
504	Calgary, AB	47 Shawville Blvd. SE	Sept. 23, 2000	Telsec Property Corporation and Dallas Development Corporation.
505	Edmonton, AB	1940 99th St. NW	Jan. 11, 2001	Riokim Holdings (Alberta) Inc. c/o Riocan Management Inc.
507	Richmond, BC	9751 Bridgeport Rd., Unit 130	Apr. 9, 2001	Airport Gateway Plaza Ltd. c/o Cape Developments Corp.
515	St. Hubert, QC	1571 Boulevard des Promenades	Apr. 10, 2003	Capital Property Development CPD Inc.
519	Montreal, QC	6745 Metropolitaine Est	July 4, 2000	Marche de la Tour St-Leonard
525	London, ON	1250 Fanshawe Park Rd. W, Unit B3	Mar. 28, 2005	Calloway REIT (London N) Inc., Calloway REIT (SW Ontario) Inc., and Canadian Property Holdings (Ontario) Inc. c/o Smart Centres Management Inc.
527	Calgary, AB	11450 Sarcee Trail	May 15, 2006	Trinity Properties Alberta Limited and 2113362 Ontario Limited c/o RioCan Property Services
536	Saskatoon, SK	3015 Clarence Ave. S, Unit 110	Nov. 3, 2006	Saskashop Centres Inc. c/o Smart Centres Management Inc.
549	Toronto, ON	147 Laird Dr., Unit 600	Dec. 22, 2006	Calloway REIT (Leaseside) Inc.
560	Edmonton, AB	5000 Emerald Dr., #300	Sept. 26, 2011	1445006 Alberta Ltd. c/o One Properties Limited Partnership

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
GOLF TOWN CANADA HOLDINGS INC., GOLF TOWN CANADA INC. AND
GOLF TOWN GP II INC.

Court File No: CV-16-11527-00CL

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ASSIGNMENT ORDER

GOODMANS LLP

Barristers & Solicitors

333 Bay Street, Suite 3400

Toronto, Canada M5H 2S7

Robert J. Chadwick LSUC#: 35165K
rchadwick@goodmans.ca

Melaney Wagner LSUC#: 44063B
mwagner@goodmans.ca

Bradley Wiffen LSUC#: 64279L
bwiffen@goodmans.ca

Tel: (416) 979-2211

Fax: (416) 979-1234

Lawyers for the Applicants

APPENDIX “O”

From: Mary Bonifazi <BonifaziM@bennettjones.com> on behalf of Paul Mantini <MANTINISP@bennettjones.com>
Sent: February 9, 2022 11:45 AM
To: Jeremy Nemers
Cc: ngoldstein@ksvadvisory.com; dsieradzki@ksadvisory.com; Sean Zweig
Subject: Claireville
Attachments: Estoppel Certificate - Ground Lease (Kornwood) - SPM Comments.PDF

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Jeremy,

As promised I am following up on our discussion of yesterday.

Section 22.01 of the Ground Lease provides that:

"The Landlord and the Tenant each agree at any time and from time to time so long as this lease shall remain in effect and provided no default then exists, upon not less than twenty (20) days' prior request by the other party, to execute, acknowledge and deliver to the other party, a statement in writing certifying that this lease is unmodified and in full force and effect for (or, if there have been modifications, that the same is in full force and effect as modified, stating the modifications) and the dates to which the rent and other charges have been paid in advance, if any, and whether or not there is any existing default on the part of the other to which the party executing the acknowledgment has notice....".

Pursuant to Section 6.3 of the Agreement of Purchase and Sale the Proposed Trustee has covenanted to obtain and deliver to the Purchaser on Closing, amongst other things, "the estoppel certificate from the Landlord (as defined in the Ground Lease) stipulated by section 22.01 of the Ground Lease;"

As previously advised, the estoppel certificate provided by the Landlord is not in compliance with the provisions of Section 22.01 of the Ground Lease and accordingly is not acceptable.

Further to our telephone conference of yesterday I confirm that your client will again request from the Landlord an estoppel certificate which complies with Section 22.01 of the Ground Lease. I note that the failure of the Landlord to provide an estoppel certificate as contemplated by Section 22.01 of the Ground Lease could constitute a default by the Landlord under the Ground Lease.

For your assistance, I attach the form of estoppel certificate previously provided by the Landlord on which I have noted what I believe are the areas of non-compliance which need to be addressed.

Regards,

Paul



S. Paul Mantini
Partner, Bennett Jones LLP

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
P. [416 777 4837](tel:4167774837) | F. [416 863 1716](tel:4168631716) | C. [416 720 5502](tel:4167205502)
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ESTOPPEL CERTIFICATE

TO: Claireville Property Holdings Inc.

RE: Ground Lease of those certain parcels or tracts of land situate lying and being composed of those parts of Lot 38, Concession 4, Fronting the Humber, designated as Parts 5 and 8 on Plan 64R-2980, in the Borough of Etobicoke, in the Municipality of Metropolitan Toronto, and shown outlined in red on the sketch of survey attached to the Ground Lease as Schedule "A" and consisting of 34.491 acres (the "**Lands**")

To whom it may concern,

Kornwood Investments Limited (the "**Landlord**"), the Landlord under a Ground Lease dated September 1, 1973 by and between the Landlord and Slough Estates (Canada) Limited ("**Slough Estates**"), as Tenant, as amended (the "**Ground Lease**"), hereby certifies as follows:

1. To the best of my knowledge [**•NTD: Section 22.01 of the Ground Lease requires that the Landlord certify the prescribed factual matters. A "best of knowledge" response is not a certification.**], the Ground Lease is in full force and effect and has not been assigned, amended or modified except as set forth below:
 - (a) Pursuant to an Assignment and Assumption of Ground Lease dated October 15, 2001 among Slough Estates, SREIT (Rexdale) Ltd. and the Trustees of Summit Real Estate Investment Trust as indemnitor (the "**Indemnitor**"), notice of which was registered on title to the Lands on October 19, 2001, Slough Estates sold, assigned, conveyed, transferred and set over its interest in the Ground Lease to SREIT (Rexdale) Ltd. on the terms and conditions set out therein, including but not limited to the agreement by SREIT (Rexdale) Ltd. and the Indemnitor to indemnify Slough Estates in respect of any breach of the Ground Lease;
 - (b) Pursuant to an Agreement dated February 11, 2009 among SREIT (Rexdale) Ltd., the Landlord and the Indemnitor, the parties agreed that the fair market value of the Lands as of March 1, 2008 was \$700,000.00 an acre and in accordance with the formula set forth in the Ground Lease, the annual net rent was increased to \$2,172,933.00 for the period commencing on September 1, 2008 and continuing until the next renewal period, being September 1, 2023;
 - (c) Pursuant to a Second Ground Lease Assignment dated August 7, 2015 among SREIT (Rexdale) Ltd., Niagara Acquisition LP, Claireville Property Holdings Inc. ("**Claireville**") and Gross Properties Inc. as the assignee's indemnitor, notice of which was registered on title to the Lands on August 7, 2015, SREIT (Rexdale) Ltd. assigned, transferred and set over its right, title and interest in the Ground Lease to Claireville on the terms set out therein, including a prohibition on any further transfer without the prior written consent of SREIT (Rexdale) Ltd. and a covenant in favour of SREIT (Rexdale) Ltd. and the Indemnitor to perform all of the obligations under the Ground Lease. [**•NTD: The reference to the prohibition on any further transfer is not relevant or appropriate and should be deleted.**]

2. The dates to which the rent and other charges have been paid in advance, if any, are as follows:
 - (a) January 31, 2022
3. There are no defaults on the part of the Tenant to which the Landlord has notice except as follows: **[●NTD: Section 22.01 of the Ground Lease requires that the party giving the estoppel certificate advise as to whether there is any "existing default". The responses in (a) through (c) below are, at best, incorrect or intentionally misleading.]**
 - (a) The Tenant repeatedly defaulted in the payment of realty taxes, in breach of Article VII of the Ground Lease; **[●NTD: This purports to address past defaults. This should only deal with defaults in respect of which notice was given pursuant to Section 19.02 of the Ground Lease and which were not remedied or waived as provided for in Section 19.02 and are subsisting.]**
 - (b) The Tenant has failed to perform repairs and maintenance to the Lands and the buildings erected thereon, in breach of Article VIII of the Ground Lease; **[●NTD: This purports to address past defaults. This should only deal with defaults in respect of which notice was given pursuant to Section 19.02 of the Ground Lease and which were not remedied or waived as provided for in Section 19.02 and are subsisting.]**
 - (c) The Tenant has failed to obtain adequate insurance, or has failed to provide evidence of adequate insurance, in breach of Article XII of the Ground Lease; **(NTD: This purports to address past defaults. This should only deal with defaults in respect of which notice was given pursuant to Section 19.02 of the Ground Lease and which were not remedied or waived as provided for in Section 19.02 and are subsisting.)**
 - (d) Claireville, as second assignee of the Tenant, filed a Notice of Intention to File a Proposal pursuant to the Bankruptcy and Insolvency Act ("BIA") on July 2, 2021 pursuant to subsection 50.4(1) of the Bankruptcy and Insolvency Act and was thereafter adjudged bankrupt and a Receiver was appointed over the Tenant's interest in the Ground Lease, all of which are defaults under Article XVIII of the Ground Lease;
4. The Landlord reserves its right to rely on such further defaults and to particularize the defaults upon being provided with access to the buildings, as previously requested, for the purpose of conducting an inspection. **[●NTD: This "reservation" is not contemplated by the Ground Lease, is inappropriate, and in effect serves to negate the purpose and benefit of obtaining the estoppel certificate.]**
5. This certificate is being delivered pursuant to Section 22.01 of the Ground Lease, without prejudice to the Landlord's position that the obligation to provide an estoppel certificate is contingent upon the Tenant not being in default under the terms of the Ground Lease. **NTD: This "without prejudice" provision is not contemplated by Section 22.01 of the Ground Lease and is inappropriate. Section 22.01 of the Ground Lease permits the Landlord not to provide the certification required if a default then exists but does not permit or contemplate a "without prejudice" response.]**

- 3 -

IN WITNESS WHEREOF, the Landlord has signed this certificate on this 31st day
of January, 2022.

KORNWOOD INVESTMENTS LIMITED

Per: _____
Name: LAURENCE LEBOVIC
Title: VICE PRESIDENT

Per: _____
Name:
Title:

47164451.4

APPENDIX “P”

From: Catherine Francis <CFrancis@mindengross.com>
Sent: February 11, 2022 4:11 PM
To: Jeremy Nemers
Cc: 'Noah Goldstein'; 'David Sieradzki'; Kyle Plunkett
Subject: RE: Estoppel Certificate from Landlord (Kornwood)

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Jeremy,

I confirm that Kornwood will not be providing an amended Estoppel Certificate.

Catherine Francis* | T: 416.369.4137 | F: 416.864.9223 | www.mindengross.com

*Partner through Professional Corporation



MERITAS LAW FIRMS WORLDWIDE

From: Jeremy Nemers [mailto:jnemers@airdberlis.com]
Sent: Friday, February 11, 2022 1:12 PM
To: Catherine Francis <CFrancis@mindengross.com>
Cc: Noah Goldstein <ngoldstein@ksvadvisory.com>; David Sieradzki <dsieradzki@ksvadvisory.com>; Kyle Plunkett <kplunkett@airdberlis.com>
Subject: Re: Estoppel Certificate from Landlord (Kornwood)

Hi Catherine,

Just following-up regarding the below. We would ask that you please advise by no later than the close of business on Tuesday, February 15, failing which we will proceed on the basis that your client is not prepared to amend the certificate.

Thanks, and enjoy the weekend,

Jeremy

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From: Jeremy Nemers <jnemers@airdberlis.com>
Sent: Wednesday, February 9, 2022 1:39 PM
To: Catherine Francis
Cc: Noah Goldstein; David Sieradzki; Kyle Plunkett
Subject: RE: Estoppel Certificate from Landlord (Kornwood)

Hi Catherine,

Thanks again for providing us with the estoppel certificate. The proposed purchaser has reviewed same, and has:

- indicated to us its belief that the estoppel certificate is not in compliance with Section 22.01 of the Ground Lease for the reasons set out in red in the proposed purchaser's attached markup;
- asked that we make a further request of your client to provide an estoppel certificate which complies with Section 22.01 of the Ground Lease; and
- indicated to us its belief that the failure of your client to provide an estoppel certificate as contemplated by section 22.01 of the Ground Lease could constitute a default by your client under the Ground Lease.

At this time, our client's intention is not to get involved in a dispute between your client and the proposed purchaser. Please advise us if your client is prepared to amend the certificate to respond to the attached concerns articulated by the proposed purchaser (and, if it is, we would ask that you please provide such an amended certificate). It is our client's intention to share your client's response with the proposed purchaser, and then ask the proposed purchaser whether it is prepared or not to move forward with the transaction and step into the shoes of the tenant (subject to the standard terms of an AVO).

For convenience, we have also attached a blackline, reflecting the changes that you/your client made to the certificate in comparison to the original draft certificate that was provided to your client for completion.

We look forward to hearing from you.

Thanks,

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: Noah Goldstein <ngoldstein@ksvadvisory.com>

Sent: January 31, 2022 2:38 PM

To: Catherine Francis <CFrancis@mindengross.com>; Jeremy Nemers <jnemers@airdberlis.com>

Cc: David Sieradzki <dsieradzki@ksvadvisory.com>; Kyle Plunkett <kplunkett@airdberlis.com>

Subject: RE: Estoppel Certificate from Landlord (Kornwood)

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Thank you

From: Catherine Francis <CFrancis@mindengross.com>

Sent: January 31, 2022 2:35 PM

To: Noah Goldstein <ngoldstein@ksvadvisory.com>; 'Jeremy Nemers' <jnemers@airdberlis.com>

Cc: David Sieradzki <dsieradzki@ksvadvisory.com>; 'Kyle Plunkett' <kplunkett@airdberlis.com>

Subject: RE: Estoppel Certificate from Landlord (Kornwood)

yes

Catherine Francis* | T: 416.369.4137 | F: 416.864.9223 | www.mindengross.com

*Partner through Professional Corporation
MERITAS LAW FIRMS WORLDWIDE



From: Noah Goldstein [<mailto:ngoldstein@ksvadvisory.com>]
Sent: Monday, January 31, 2022 1:56 PM
To: Catherine Francis <CFrancis@mindengross.com>; 'Jeremy Nemers' <jnemers@airdberlis.com>
Cc: David Sieradzki <dsieradzki@ksvadvisory.com>; 'Kyle Plunkett' <kplunkett@airdberlis.com>
Subject: RE: Estoppel Certificate from Landlord (Kornwood)

Hi Catherine, will you be sending us the estoppel today?

From: Catherine Francis <CFrancis@mindengross.com>
Sent: January 28, 2022 10:39 AM
To: 'Jeremy Nemers' <jnemers@airdberlis.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Cc: David Sieradzki <dsieradzki@ksvadvisory.com>; 'Kyle Plunkett' <kplunkett@airdberlis.com>
Subject: RE: Estoppel Certificate from Landlord (Kornwood)

Thanks, Jeremy. Much appreciated.

Catherine Francis* | T: 416.369.4137 | F: 416.864.9223 | www.mindengross.com

*Partner through Professional Corporation



From: Jeremy Nemers [<mailto:jnemers@airdberlis.com>]
Sent: Friday, January 28, 2022 10:37 AM
To: Noah Goldstein <ngoldstein@ksvadvisory.com>; Catherine Francis <CFrancis@mindengross.com>
Cc: David Sieradzki <dsieradzki@ksvadvisory.com>; Kyle Plunkett <kplunkett@airdberlis.com>
Subject: Re: Estoppel Certificate from Landlord (Kornwood)

Hi Catherine,

Hope all is well. Kyle and I are on for the Receiver. Attached are the three documents that you requested.

Thanks,

Jeremy

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From: Noah Goldstein <ngoldstein@ksvadvisory.com>
Sent: Thursday, January 27, 2022 6:54 PM
To: Catherine Francis
Cc: David Sieradzki; Jeremy Nemers
Subject: Re: Estoppel Certificate from Landlord (Kornwood)

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Hi Catherine,

We will check what we have. Back to you tomorrow.

Thanks.

Noah

Noah Goldstein
416.844.4842

On Jan 27, 2022, at 6:50 PM, Catherine Francis <CFrancis@mindengross.com> wrote:

Noah,

I am assisting Kornwood in relation to the estoppel certificate. Can you please send to me asap the following:

- (a) the assignment and assumption of ground lease dated October 15, 2001 amongst the First Tenant, SREIT (Rexdale) Ltd. (the "Second Tenant") and The Trustees of Summit Real Estate Investment Trust as indemnitor (the "Indemnitor") notice of which was registered on title to the Lands on October 19, 2001;
- (b) an agreement dated February 11, 2009 amongst the Landlord, the Second Tenant, and the Indemnitor; and
- (c) the second ground lease assignment dated August 7, 2015 between the Second Tenant, as assignor, Niagara Acquisition LP, as the assignor's indemnitor, Claireville Property Holdings Inc. as assignee, (the "Tenant"), and Gross Properties Inc. as the assignee's indemnitor, notice of which was registered on title to the Lands on August 7, 2015.

Thank you.

Catherine Francis* | T: 416.369.4137 | F: 416.864.9223 | www.mindengross.com

*Partner through Professional Corporation



Begin forwarded message:

From: Noah Goldstein <ngoldstein@ksvadisory.com>
Date: January 11, 2022 at 1:18:56 PM EST
To: Larry Lebovic <larry@runnymede-dev.com>
Cc: David Sieradzki <dsieradzki@ksvadisory.com>
Subject: Estoppel Certificate from Landlord (Kornwood)

Larry,

I just tried calling you.

Please see attached estoppel certificate, which is being sent to you pursuant to section 22.01 of the Ground Lease. Please return this certificate within 20 days as stipulated under section 22.01.

Thank you,

Noah

APPENDIX “Q”

From: Jeremy Nemers
Sent: February 11, 2022 5:08 PM
To: Paul Mantini
Cc: ngoldstein@ksvadvisory.com; David Sieradzki; Sean Zweig
Subject: RE: Claireville

Hi Paul,

We received confirmation from the landlord's counsel within the last hour that the landlord will not be providing an amended estoppel certificate. No reasons were provided for the landlord's decision. I also understand that all tenant estoppel certificates have been provided to you, some mirroring the template tenant estoppel certificate that you drafted, and others containing modifications made by the applicable tenants. As previously discussed, it is not our client's intention to get involved in a dispute between yourself and the landlord, or between yourself and any of the tenants.

Accordingly, so that we can confirm whether or not it will be possible to close the Transaction (as defined in the agreement of purchase and sale dated December 2, 2021 (the "**APS**")), please advise us by the end of the day on Tuesday, February 15, 2022 whether sections 6.3(7) and 6.3(8) of the APS (being the sections addressing the landlord and tenant estoppel certificates) have been met to the satisfaction of the Purchaser (as defined in the APS), or, alternatively, are being waived by the Purchaser.

Thanks, and have a good weekend,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724
E jnemers@airdberlis.com

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If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

APPENDIX “R”

From: Mary Bonifazi <BonifaziM@bennettjones.com> on behalf of Paul Mantini <MANTINISP@bennettjones.com>
Sent: February 15, 2022 1:44 PM
To: Jeremy Nemers
Cc: Sean Zweig
Subject: Claireville

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Jeremy,

I acknowledge receipt of your email of February 11, 2022.

Your email purports to impose an obligation on my part to make a decision by an arbitrary deadline. This is not contemplated by the Agreement of Purchase and Sale dated December 2, 2021 between KSV Restructuring Inc. (the "**Proposal Trustee**") and myself, in trust (the "**Purchaser**") (the "**APS**").

Unless expressly defined herein, all capitalized words or terms used herein shall have the meaning ascribed to such words or terms in the APS.

Section 6.3 of the APS provides that the Proposal Trustee covenants to obtain and deliver to the Purchaser at Closing, amongst other things, (i) the estoppel certificate from the Landlord stipulated by Section 22.01 of the Ground Lease; and (ii) an estoppel certificate addressed to the Purchaser, in form acceptable to the Purchaser, acting reasonably, from each current tenant of the leased space in the Real Property (other than Aqua Greens Inc.) as to the status of such tenant's lease and confirming the material terms of such tenant's lease, that there are no rights of set-off or abatement, that there are no outstanding claims by the tenant against the Debtor and that there is no subsisting default under such lease by the tenant or the Debtor.

I have not yet been provided with an acceptable estoppel certificate from the Landlord as prescribed by Section 6.3(7) of the APS or acceptable estoppels from each of the space tenants (other than Aqua Greens) as prescribed by Section 6.3(8) of the APS.

Section 7.4 of the APS provides that if any of the conditions in favour of the Purchaser (which includes the delivery of the estoppel from the Landlord and the tenant estoppels as contemplated by Section 6.3) is not fulfilled on or prior to the Closing Date "**the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity: (1) terminate this Agreement by notice to the Proposal Trustee, in which event the Purchaser and the Proposal Trustee shall be released from their obligations under this Agreement to complete the Transaction and the Deposits and accrued interest thereon shall be forthwith returned to the Purchaser; or (2) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.**".

Section 10.01 of the APS requires the Proposal Trustee to until Closing "**take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable**

efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 7 hereof."

It is clear from the APS that the Proposal Trustee has an obligation to continue to try to satisfy the conditions in Sections 6.3 and 7.3 up until the Closing Date and there is no obligation on the part of the Purchaser to make the election to waive or to terminate pursuant to Section 7.4 until the Closing Date.

As you are aware, the Landlord is obliged to provide the estoppel certificate contemplated by Section 22.01 of the Ground Lease provided no default then exists. The refusal by the Landlord to provide an estoppel certificate as prescribed by the Ground Lease (unless it refuses to do so because a default by the Tenant under the Ground Lease is then subsisting) would constitute a default by the Landlord under the Ground Lease.

You state in your email that it is not your client's intention to get involved in a dispute between myself and the Landlord under the Ground Lease or between myself and any of the tenants. Unfortunately this is not a position that your client is entitled to take. As purchaser I have no standing or contractual relationship with either the Landlord under the Ground Lease or the space tenants. The Proposal Trustee is the only entity which can compel performance by the Landlord under the Ground Lease or the space tenants and is obliged by the APS to take all reasonable steps necessary to do so.

If the Landlord under the Ground Lease is taking the position that it is not obliged to provide the required estoppel because of a subsisting default your client, as vendor, and I, as purchaser, are entitled to know this and are also entitled to know the nature and the particulars of the default that is being relied upon by the Landlord.

It is clear from the Landlord's conduct to date that it intends, whether it is entitled to do so or not, to take any and all steps necessary to frustrate the Transaction so that it can acquire the leasehold interest. The position which you have taken in your email of February 11, 2022 serves to assist the Landlord in subverting the court approved sale process and would allow the Landlord to achieve its clear goal of forcing the termination of the APS. The Proposal Trustee cannot and should not permit the Landlord to do so and should do whatever is necessary to ensure that the integrity of the court sale process is upheld.

The APS constitutes a binding agreement of purchase and sale between the Proposal Trustee and the Purchaser and the Proposal Trustee is obliged to continue to take all necessary steps to comply with its obligations under the APS including, without limitation, its obligations under Section 6.3.

Regards,

Paul



S. Paul Mantini
Partner, Bennett Jones LLP

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
P. [416 777 4837](tel:4167774837) | F. [416 863 1716](tel:4168631716) | C. [416 720 5502](tel:4167205502)
E. mantinisp@bennettjones.com
BennettJones.com

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APPENDIX “S”

From: Jeremy Nemers
Sent: February 16, 2022 11:47 AM
To: Paul Mantini
Cc: Sean Zweig; crawfords@bennettjones.com; Noah Goldstein; David Sieradzki; Kyle Plunkett; Rachel Rice
Subject: RE: Claireville

Hi Paul,

Thanks for your email. For convenience, we've used the same capitalized terms as in your email, unless otherwise indicated.

We disagree with several aspects of your email, including, without limitation, the nature of the obligations under the APS, and the APS constituting a binding agreement of purchase and sale between the Proposal Trustee and the Purchaser.

Section 15.2 of the APS is clear that *"upon the discharge of KSV Restructuring Inc. as the Proposal Trustee, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof."* As you know, the Proposal Trustee was discharged on December 14, 2021 pursuant to the Order of The Honourable Mr. Justice Pattillo. As you also know, the Receiver was appointed by a separate Order from His Honour on that same date (the **"Receivership Order"**).

Notwithstanding the Proposal Trustee's discharge, the Receiver has been working with the Purchaser in good faith over the past few months (and to the exclusion to-date of other potential purchasers who have expressed an interest in the opportunity), with a view to determining if the Transaction could still be consummated, this time between the Receiver and the Purchaser. In this regard, you will recall that section 15.10 of the APS provides that *"the Proposal Trustee's interest in this Agreement may be assigned, including, without limitation to any licensed insolvency trustee (whether receiver, bankruptcy trustee or otherwise),"* [emphasis added] but there has been no such assignment to-date.

The Receiver is not prepared to take an assignment of the APS and continue to pursue the Transaction unless the Receiver sees a realistic pathway to closing the Transaction with the Purchaser. If the Purchaser is not satisfied with the estoppel certificates that have been provided (as you have indicated), and if the Landlord and/or applicable space tenant(s) are not prepared to revise those certificates to satisfy the Purchaser's wishes notwithstanding the repeated requests of the Receiver (as they have indicated), then the Receiver is not going to take an assignment of the APS unless the Purchaser confirms, in writing, that the Purchaser is waiving whatever purported defects it sees with these certificates.

We reiterate that the Receiver is not prepared (and has no obligation) to get involved in a dispute between the Purchaser and the Landlord (or in a dispute between the Purchaser and any of the space tenants). Section 12.1 of the APS is clear about the Transaction being *"as is, where is,"* and the Purchaser was to have already satisfied itself *"in respect of all due diligence matters"* pursuant to section 7.3(1).

The Purchaser has been considering this opportunity for months now. Absent written confirmation by the Purchaser that it is waiving its remaining discretionary deliverable conditions under the APS (being sections 6.3(7) to 6.3(9) of the APS), or that such conditions have been met to the Purchaser's satisfaction, the Receiver sees no realistic pathway to closing the Transaction and will therefore need to move on by taking steps to go back to the market, as already authorized pursuant to section 3(j) of the Receivership Order. (As previously discussed with you, the Purchaser would be welcome to resubmit an offer as part of that process.) On the other hand, should the Purchaser provide this written

confirmation, the Receiver would take an assignment of the APS and expeditiously work to seek Court approval of the Transaction.

We look forward to hearing from you, and ask that you please confirm one way or the other so that we can move forward.

Thanks,

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: Mary Bonifazi <BonifaziM@bennettjones.com> **On Behalf Of** Paul Mantini
Sent: February 15, 2022 1:44 PM
To: Jeremy Nemers <jnemers@airdberlis.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>
Subject: Claireville

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Jeremy,

I acknowledge receipt of your email of February 11, 2022.

Your email purports to impose an obligation on my part to make a decision by an arbitrary deadline. This is not contemplated by the Agreement of Purchase and Sale dated December 2, 2021 between KSV Restructuring Inc. (the "**Proposal Trustee**") and myself, in trust (the "**Purchaser**") (the "**APS**").

Unless expressly defined herein, all capitalized words or terms used herein shall have the meaning ascribed to such words or terms in the APS.

Section 6.3 of the APS provides that the Proposal Trustee covenants to obtain and deliver to the Purchaser at Closing, amongst other things, (i) the estoppel certificate from the Landlord stipulated by Section 22.01 of the Ground Lease; and (ii) an estoppel certificate addressed to the Purchaser, in form acceptable to the Purchaser, acting reasonably, from each current tenant of the leased space in the Real Property (other than Aqua Greens Inc.) as to the status of such tenant's lease and confirming the material terms of such tenant's lease, that there are no rights of set-off or abatement, that there are no outstanding claims by the tenant against the Debtor and that there is no subsisting default under such lease by the tenant or the Debtor.

I have not yet been provided with an acceptable estoppel certificate from the Landlord as prescribed by Section 6.3(7) of the APS or acceptable estoppels from each of the space tenants (other than Aqua Greens) as prescribed by Section 6.3(8) of the APS.

Section 7.4 of the APS provides that if any of the conditions in favour of the Purchaser (which includes the delivery of the estoppel from the Landlord and the tenant estoppels as contemplated by Section 6.3) is not fulfilled on or prior to the Closing Date "**the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity: (1) terminate this**

Agreement by notice to the Proposal Trustee, in which event the Purchaser and the Proposal Trustee shall be released from their obligations under this Agreement to complete the Transaction and the Deposits and accrued interest thereon shall be forthwith returned to the Purchaser; or (2) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition."

Section 10.01 of the APS requires the Proposal Trustee to until Closing **"take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 7 hereof."**

It is clear from the APS that the Proposal Trustee has an obligation to continue to try to satisfy the conditions in Sections 6.3 and 7.3 up until the Closing Date and there is no obligation on the part of the Purchaser to make the election to waive or to terminate pursuant to Section 7.4 until the Closing Date.

As you are aware, the Landlord is obliged to provide the estoppel certificate contemplated by Section 22.01 of the Ground Lease provided no default then exists. The refusal by the Landlord to provide an estoppel certificate as prescribed by the Ground Lease (unless it refuses to do so because a default by the Tenant under the Ground Lease is then subsisting) would constitute a default by the Landlord under the Ground Lease.

You state in your email that it is not your client's intention to get involved in a dispute between myself and the Landlord under the Ground Lease or between myself and any of the tenants. Unfortunately this is not a position that your client is entitled to take. As purchaser I have no standing or contractual relationship with either the Landlord under the Ground Lease or the space tenants. The Proposal Trustee is the only entity which can compel performance by the Landlord under the Ground Lease or the space tenants and is obliged by the APS to take all reasonable steps necessary to do so.

If the Landlord under the Ground Lease is taking the position that it is not obliged to provide the required estoppel because of a subsisting default your client, as vendor, and I, as purchaser, are entitled to know this and are also entitled to know the nature and the particulars of the default that is being relied upon by the Landlord.

It is clear from the Landlord's conduct to date that it intends, whether it is entitled to do so or not, to take any and all steps necessary to frustrate the Transaction so that it can acquire the leasehold interest. The position which you have taken in your email of February 11, 2022 serves to assist the Landlord in subverting the court approved sale process and would allow the Landlord to achieve its clear goal of forcing the termination of the APS. The Proposal Trustee cannot and should not permit the Landlord to do so and should do whatever is necessary to ensure that the integrity of the court sale process is upheld.

The APS constitutes a binding agreement of purchase and sale between the Proposal Trustee and the Purchaser and the Proposal Trustee is obliged to continue to take all necessary steps to comply with its obligations under the APS including, without limitation, its obligations under Section 6.3.

Regards,

Paul



S. Paul Mantini
Partner, Bennett Jones LLP

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
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APPENDIX “T”

From: Mary Bonifazi <BonifaziM@bennettjones.com> on behalf of Paul Mantini <MANTINISP@bennettjones.com>
Sent: February 17, 2022 10:24 AM
To: Jeremy Nemers
Cc: ngoldstein@ksvadvisory.com; dsieradzki@ksadvisory.com; Kyle Plunkett; Rachel Rice
Subject: RE: Claireville

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Jeremy,

I acknowledge receipt of your email below.

For ease of reference my responses are set out in red in your email.

My position remains unchanged. The APS constitutes a binding agreement of purchase and sale between the Proposal Trustee and the Purchaser and the Proposal Trustee is obliged to continue to take all necessary steps to comply with its obligations under the APS including, without limitation, its obligations under Section 6.3.

While I hope that it is not necessary, I do intend to vigorously pursue all rights and remedies that I 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.

Having regard to the business relationship between Bennett Jones LLP and your client, it would be inappropriate for Bennett Jones LLP to be involved in this dispute so I will now proceed to retain independent litigation counsel in the event that litigation is necessary.

Regards,

Paul



S. Paul Mantini
Partner, Bennett Jones LLP

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
 T. [416 777 4837](tel:4167774837) | F. [416 863 1716](tel:4168631716) | M. [416 720 5502](tel:4167205502)
 E. mantinisp@bennettjones.com
BennettJones.com

From: Jeremy Nemers <jnemers@airdberlis.com>
Sent: Wednesday, February 16, 2022 11:47 AM
To: Paul Mantini <MANTINISP@bennettjones.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>; Simon Crawford <CrawfordS@bennettjones.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; David Sieradzki <dsieradzki@ksvadvisory.com>; Kyle Plunkett

<kplunkett@airdberlis.com>; Rachel Rice <rrice@airdberlis.com>

Subject: RE: Claireville

Hi Paul,

Thanks for your email. For convenience, we've used the same capitalized terms as in your email, unless otherwise indicated.

We disagree with several aspects of your email, including, without limitation, the nature of the obligations under the APS, and the APS constituting a binding agreement of purchase and sale between the Proposal Trustee and the Purchaser. **You are free to disagree. My position remains as stated in my email to you of February 15, 2022.**

Section 15.2 of the APS is clear that *"upon the discharge of KSV Restructuring Inc. as the Proposal Trustee, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof."* As you know, the Proposal Trustee was discharged on December 14, 2021 pursuant to the Order of The Honourable Mr. Justice Pattillo. As you also know, the Receiver was appointed by a separate Order from His Honour on that same date (the **"Receivership Order"**). **Your position in respect of Section 15.2 is untenable and is clearly not supported by either your client's conduct to date or by the plain meaning and intended purpose of Section 15.2.**

Section 15.2, as its title clearly indicates, is meant to deal with listed provisions of the APS that were intended to survive the termination of the APS and the completion of the Transaction. Section 15.2 was not intended to be utilized by your client to arbitrarily terminate the APS and be released from its obligations thereunder. Rather, its purpose is to ensure that your client has no ongoing obligations after the termination of the APS pursuant to its terms. In that regard I note that the APS sets forth specific rights of termination in Sections 14.1 and 14.2.

Notwithstanding the Proposal Trustee's discharge, the Receiver has been working with the Purchaser in good faith over the past few months (and to the exclusion to-date of other potential purchasers who have expressed an interest in the opportunity), with a view to determining if the Transaction could still be consummated, this time between the Receiver and the Purchaser. **Your client has a clear obligation under the APS and at law to proceed in good faith. To suggest that it has somehow done me a favour by its "exclusion to date of other potential purchasers" strikes me as somewhat disingenuous.** In this regard, you will recall that section 15.10 of the APS provides that *"the Proposal Trustee's interest in this Agreement may be assigned, including, without limitation to any licensed insolvency trustee (whether receiver, bankruptcy trustee or otherwise),"* [emphasis added] but there has been no such assignment to-date. **I agree that Section 15.10 permits the Proposal Trustee's interest to be assigned, including to a receiver; however, Section 15.10 is permissive; it does not require an assignment and the lack of an assignment by your client (in its capacity as Proposal Trustee) to itself (in its capacity as receiver) does not terminate or otherwise impair your client's obligations under the APS. Surely you are not suggesting that your client can take advantage of and rely on its own failure to assign the APS to itself as receiver as a means of circumventing a court approved sale process and a binding agreement of purchase and sale.**

The Receiver is not prepared to take an assignment of the APS and continue to pursue the Transaction unless the Receiver sees a realistic pathway to closing the Transaction with the Purchaser. If the Purchaser is not satisfied with the estoppel certificates that have been provided (as you have indicated **I note, for what it is worth, that your client has acknowledged that the estoppel certificate from the Landlord and the estoppel certificates from some of the space tenants are not in compliance with the provisions of Section 6.3 of the APS**), and if the Landlord and/or applicable space tenant(s) are not prepared to revise those certificates to satisfy the Purchaser's wishes notwithstanding the repeated requests of the Receiver (as they have indicated), then the Receiver is not going to take an assignment of the APS unless the Purchaser confirms, in writing, that the Purchaser is waiving whatever purported defects it sees with these certificates. **Your client does not have the right or the option not to continue to pursue the Transaction. It is obliged to do so under the APS and to do so in compliance with the terms and provisions of the APS.**

We reiterate that the Receiver is not prepared (and has no obligation) to get involved in a dispute between the Purchaser and the Landlord (or in a dispute between the Purchaser and any of the space tenants). **I disagree. As stated in my prior email the Proposal Trustee is clearly obliged to obtain the estoppels as required by the APS and the Proposal Trustee is the only party that is in a position to deal with the Landlord and the space tenants in respect thereof. To be clear, the current situation is not due to a dispute between the Purchaser and the Landlord or a dispute between the Purchaser and the space tenants. It results from the Landlord and the space tenants failing to do what they are obliged to do and which obligations can only be enforced by the Proposal Trustee. In the case of the Landlord, its actions are clearly self-serving and are intended to put the Landlord in a position where it can thwart the APS so that it can acquire the leasehold interest.** Section 12.1 of the APS is clear about the Transaction being “as is, where is,” and the Purchaser was to have already satisfied itself “in respect of all due diligence matters” pursuant to section 7.3(1). **The “as is, where is” nature of the Transaction does not change the covenant of your client to provide to the Purchaser on Closing the closing deliverables prescribed by Section 6.3.**

The Purchaser has been considering this opportunity for months now. **You imply that I am treating this Transaction as conditional and have had enough time to determine whether I should proceed, which is both inaccurate and misleading. I waived my “due diligence” conditions some time ago and paid the second deposit. I have no obligation to (and should not be expected to) waive requirements that are to be fulfilled by your client except if and when required to do so by the terms of the APS.** Absent written confirmation by the Purchaser that it is waiving its remaining discretionary deliverable conditions under the APS (being sections 6.3(7) to 6.3(9) of the APS), or that such conditions have been met to the Purchaser’s satisfaction, the Receiver sees no realistic pathway to closing the Transaction and will therefore need to move on by taking steps to go back to the market, as already authorized pursuant to section 3(j) of the Receivership Order. **Obviously, your client is free to do so but it does so at its risk. I believe that Section 3(j) of the Receivership Order permits your client to do so only if the current Transaction fails to be completed in accordance with its terms and again was not meant to be used by your client to frustrate a binding agreement.** (As previously discussed with you, the Purchaser would be welcome to resubmit an offer as part of that process.) On the other hand, should the Purchaser provide this written confirmation, the Receiver would take an assignment of the APS and expeditiously work to seek Court approval of the Transaction.

We look forward to hearing from you, and ask that you please confirm one way or the other so that we can move forward.

Thanks,

Jeremy Nemers
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From: Mary Bonifazi <BonifaziM@bennettjones.com> **On Behalf Of** Paul Mantini

Sent: February 15, 2022 1:44 PM

To: Jeremy Nemers <jnemers@airdberlis.com>

Cc: Sean Zweig <ZweigS@bennettjones.com>

Subject: Claireville

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Jeremy,

I acknowledge receipt of your email of February 11, 2022.

Your email purports to impose an obligation on my part to make a decision by an arbitrary deadline. This is not contemplated by the Agreement of Purchase and Sale dated December 2, 2021 between KSV Restructuring Inc. (the "**Proposal Trustee**") and myself, in trust (the "**Purchaser**") (the "**APS**").

Unless expressly defined herein, all capitalized words or terms used herein shall have the meaning ascribed to such words or terms in the APS.

Section 6.3 of the APS provides that the Proposal Trustee covenants to obtain and deliver to the Purchaser at Closing, amongst other things, (i) the estoppel certificate from the Landlord stipulated by Section 22.01 of the Ground Lease; and (ii) an estoppel certificate addressed to the Purchaser, in form acceptable to the Purchaser, acting reasonably, from each current tenant of the leased space in the Real Property (other than Aqua Greens Inc.) as to the status of such tenant's lease and confirming the material terms of such tenant's lease, that there are no rights of set-off or abatement, that there are no outstanding claims by the tenant against the Debtor and that there is no subsisting default under such lease by the tenant or the Debtor.

I have not yet been provided with an acceptable estoppel certificate from the Landlord as prescribed by Section 6.3(7) of the APS or acceptable estoppels from each of the space tenants (other than Aqua Greens) as prescribed by Section 6.3(8) of the APS.

Section 7.4 of the APS provides that if any of the conditions in favour of the Purchaser (which includes the delivery of the estoppel from the Landlord and the tenant estoppels as contemplated by Section 6.3) is not fulfilled on or prior to the Closing Date "**the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity: (1) terminate this Agreement by notice to the Proposal Trustee, in which event the Purchaser and the Proposal Trustee shall be released from their obligations under this Agreement to complete the Transaction and the Deposits and accrued interest thereon shall be forthwith returned to the Purchaser; or (2) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.**".

Section 10.01 of the APS requires the Proposal Trustee to until Closing "**take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 7 hereof.**".

It is clear from the APS that the Proposal Trustee has an obligation to continue to try to satisfy the conditions in Sections 6.3 and 7.3 up until the Closing Date and there is no obligation on the part of the Purchaser to make the election to waive or to terminate pursuant to Section 7.4 until the Closing Date.

As you are aware, the Landlord is obliged to provide the estoppel certificate contemplated by Section 22.01 of the Ground Lease provided no default then exists. The refusal by the Landlord to provide an estoppel certificate as prescribed by the Ground Lease (unless it refuses to do so because a default by the Tenant under the Ground Lease is then subsisting) would constitute a default by the Landlord under the Ground Lease.

You state in your email that it is not your client's intention to get involved in a dispute between myself and the Landlord under the Ground Lease or between myself and any of the tenants. Unfortunately this is not a position that your client is entitled to take. As purchaser I have no standing or contractual relationship with either the Landlord under the Ground Lease or the space tenants. The Proposal

Trustee is the only entity which can compel performance by the Landlord under the Ground Lease or the space tenants and is obliged by the APS to take all reasonable steps necessary to do so.

If the Landlord under the Ground Lease is taking the position that it is not obliged to provide the required estoppel because of a subsisting default your client, as vendor, and I, as purchaser, are entitled to know this and are also entitled to know the nature and the particulars of the default that is being relied upon by the Landlord.

It is clear from the Landlord's conduct to date that it intends, whether it is entitled to do so or not, to take any and all steps necessary to frustrate the Transaction so that it can acquire the leasehold interest. The position which you have taken in your email of February 11, 2022 serves to assist the Landlord in subverting the court approved sale process and would allow the Landlord to achieve its clear goal of forcing the termination of the APS. The Proposal Trustee cannot and should not permit the Landlord to do so and should do whatever is necessary to ensure that the integrity of the court sale process is upheld.

The APS constitutes a binding agreement of purchase and sale between the Proposal Trustee and the Purchaser and the Proposal Trustee is obliged to continue to take all necessary steps to comply with its obligations under the APS including, without limitation, its obligations under Section 6.3.

Regards,

Paul



S. Paul Mantini
Partner, Bennett Jones LLP

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CONFIDENTIAL – APPENDIX “1”

(Subject to a request for a sealing order)

CONFIDENTIAL – APPENDIX “2”

(Subject to a request for a sealing order)

CONFIDENTIAL – APPENDIX “3”

(Subject to a request for a sealing order)