



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

April 5, 2022

Contents	Page
1.0 Introduction.....	1
2.0 Developments Since the Issuance of the First Report.....	1
2.1 Purpose of this Supplemental Report.....	3
2.2 Restrictions.....	3
3.0 Transaction.....	3
3.1 Recommendation re: Transaction	5
4.0 Next Steps in these Proceedings	7
5.0 Conclusion and Recommendation	7

Appendices

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



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

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

APRIL 5, 2022

1.0 Introduction

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

2.0 Developments Since the Issuance of the First Report

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

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

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

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

2.1 Purpose of this Supplemental Report

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

2.2 Restrictions

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

3.0 Transaction¹

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

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

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

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

3.1 Recommendation re: Transaction

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

² Being 1180554 Ontario Limited.

³ Being 40 King West Holdings Inc.

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

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

4.0 Next Steps in these Proceedings

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

5.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

APPENDIX “A”



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

March 2, 2022

Contents	Page
1.0 Introduction.....	1
1.1 Purposes of this Report	3
1.2 Restrictions.....	3
1.3 Currency	3
1.4 Court Materials	4
2.0 Background	4
2.1 Corporate Overview	4
2.2 Leasehold Interest	4
2.3 Investigation	5
2.4 DIP Financing and Expanded Powers.....	5
3.0 SISP	6
3.1 Expressions of Interest by Kornwood and the DIP Lender, and Related Matters	7
3.2 Sealing Order	8
4.0 Conditions Precedent to APS	8
4.1 Landlord Estoppel Certificate	9
4.2 Tenant Estoppel Certificates	12
4.3. Recommendation re: APS	12
5.0 Receivership Bid Process	13
6.0 Conclusion and Recommendation	14

List of Appendices

Appendix	Tab
Court Order dated July 28, 2021.....	A
Fourth Report of the Proposal Trustee (without appendices)	B
NOI Termination Order	C
Receivership Order	D
Endorsement	E
Ground Lease	F
APS – redacted.....	G
Email exchange between Proposal Trustee’s counsel and Kornwood’s counsel.....	H
Kornwood APS – redacted version	I
Form of Landlord Estoppel Certificate submitted to Kornwood.....	J
Receiver’s email to Kornwood dated January 13, 2022.....	K
Original and blacklined copies of the executed Landlord Estoppel Certificate	L
Email exchange dated January 31, 2022 between the Receiver and the Attempted Purchaser.....	M
Email from the Attempted Purchaser dated February 1, 2022	N
Mark-Up and email dated February 9, 2022 from the Attempted Purchaser.....	O
Email dated February 11, 2022 from Minden Gross	P
Email dated February 11, 2022 from the Receiver to the Attempted Purchaser	Q
Email dated February 15, 2022 from the Attempted Purchaser to Aird & Berlis	R
Email dated February 16, 2022 from Aird & Berlis to the Attempted Purchaser	S
Email dated February 17, 2022 from the Attempted Purchaser to Aird & Berlis	T
 Confidential Appendix	 Tab
Offer Summary	1
APS – unredacted version	2
Kornwood APS – unredacted version	3

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.

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

APPENDIX “B”

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

TO THE SERVICE LIST:

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

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

- (a) not to seek at Tuesday's hearing paragraphs 3, 4 or 5 of the draft Order that was appended to the Receiver's motion record (being the three paragraphs in the draft Order entitled "Relief Regarding the Marketing and Sale of the Property"); and
- (b) to ask the Court on Tuesday for an additional hearing date to hear an approval and vesting motion in connection with the Attempted Transaction. In the same way as the Receiver served its last motion on proper service to the full Service List and with the support of a Receiver's report, the Receiver would do the same thing for the approval and vesting motion.

Thank you,

Jeremy

Get [Outlook for iOS](#)

From: Jeremy Nemers <jnemers@airdberlis.com>
Sent: Thursday, March 3, 2022 4:06 PM
To: Kyle Plunkett; Tamie Dolny; ngoldstein@ksvadvisory.com; dsieradzki@ksvadvisory.com; skour@wfkllaw.ca; cfell@wfkllaw.ca; dmagisano@lernalers.ca; mark@grosscapital.ca; jdiciano@primerealestategroup.ca; Lawrence.hansen@devrylaw.ca; jbunting@tyrllp.com; Kristin.pereira@meridianonecap.ca; Joanna.alford@meridiancu.ca; vdare@foglers.com; jfried@foglers.com; mkaplan@foglers.com; asugar@foglers.com; juanita@bluechipleasing.com; info@bluechipleasing.com; Lossrecovery@leasedirect.com;

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

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

TO THE SERVICE LIST:

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

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

Meeting ID: 892 5711 9248

Passcode: 125523

One tap mobile

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

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

Dial by your location

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

Meeting ID: 892 5711 9248

Passcode: 125523

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

Thank you,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724

E jnemers@airdberlis.com

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

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

Sent: March 2, 2022 3:15 PM

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

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

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

Importance: High

SENT ON BEHALF OF JEREMY NEMERS

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

Eunice Baltkois

Assistant to Ian Aversa & Jeremy Nemers

T 416.863.1500 x4505
 F 416.863.1515
 E ebaltkois@airdberlis.com

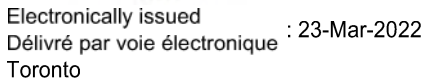
Aird & Berlis LLP | Lawyers

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



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

APPENDIX “C”



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

)

)

)

B E T W E E N :

Applicant

- and -

Respondent

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

ANCILLARY ORDER

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

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

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

SERVICE

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

APPROVAL OF FIRST REPORT


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

SEALING

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

MISCELLANEOUS

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



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

-and-

Applicant

Respondent

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

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

Proceedings commenced at Toronto

ORDER

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

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

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

Lawyers for the Receiver



SUPERIOR COURT OF JUSTICE
COUNSEL SLIP/ENDORSMENT

COURT FILE

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

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

NAMES OF COUNSEL AND PARTY:

- ☐ APPLICANT(S)
☐ PLAINTIFF(S)

PHONE _____

EMAIL _____

NAMES OF COUNSEL AND PARTY:

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

PHONE _____

EMAIL _____

PHONE _____

EMAIL _____

NAMES OF COUNSEL AND OTHER PARTIES:

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

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

- ☐ Self-Represented Parties Patrick Carroll

ENDORSEMENT OF JUSTICE KIMMEL :

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

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

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

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

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

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

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

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

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

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

KIMMEL J.

APPENDIX “D”

AMENDING AND ASSUMPTION AGREEMENT
(this "Amending and Assumption Agreement")

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

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

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

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

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

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

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

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

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

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

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

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

- 3 -

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

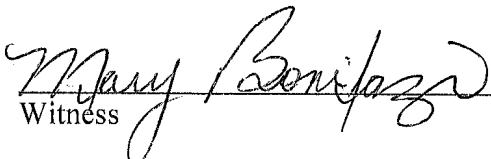
IN WITNESS WHEREOF the undersigned have executed this Amending and Assumption Agreement this 24th day of March, 2022.

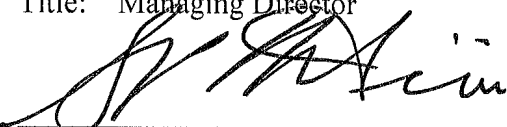
KSV RESTRUCTURING INC., solely in its capacity as the Receiver and not in its personal capacity or in any other capacity

By: 

Name: Noah Goldstein

Title: Managing Director


Witness


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

200 TOWN CENTRE COURT INC.

By: 

Name: S. Paul Mantini

Title: Director, President and Secretary

APPENDIX “E”

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

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

BETWEEN:

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

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

SWORN DECLARATION

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

SOLEMNLY DECLARE THAT:

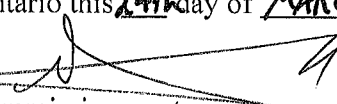
1. Unless otherwise stated, all capitalized terms herein are defined in the Agreement of Purchase and Sale between KSV Restructuring Inc., in its capacity as the proposal trustee of the Respondent (in such capacity, the “**Proposal Trustee**”), as vendor, and S. Paul Mantini, in trust for an Ontario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

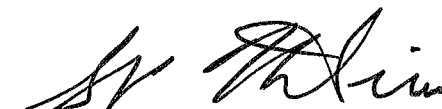
family or any companies which, to my knowledge, are controlled by Mark Gross or his family.

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

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

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


A Commissioner, etc.



SERAFINO PAUL MANTINI