

Estate / Court File Nos: 35-2721716
35-2721875
35-2721896

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
DREXLER CONSTRUCTION LIMITED OF THE TOWNSHIP OF ROCKWOOD
IN THE PROVINCE OF ONTARIO**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF
FOLMUR CONSTRUCTION (2004) LTD. OF THE TOWNSHIP OF ROCKWOOD
IN THE PROVINCE OF ONTARIO**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF
DOWN UNDER PIPE AND CABLE LOCATING LTD. OF THE TOWNSHIP OF
ROCKWOOD
IN THE PROVINCE OF ONTARIO**

**SUPPLEMENTARY REPORT TO THE FIRST REPORT
OF ALBERT GELMAN INC.,
IN ITS CAPACITY AS PROPOSAL TRUSTEE**

April 14, 2021

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Licensed Insolvency Trustee

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

**In the Matter of the Notice of Intention to Make a Proposal of
Drexler Construction Limited of the township of Rockwood
in the Province of Ontario**

**And In the Matter of the Notice of Intention to Make a Proposal of
Folmur Construction (2004) Ltd. of the township of Rockwood
in the Province of Ontario**

**And In the Matter of the Notice of Intention to Make a Proposal of
Down Under Pipe and Cable Locating Ltd. of the township of Rockwood
in the Province of Ontario**

**SUPPLEMENTARY REPORT TO THE FIRST REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE**

(Dated April 14, 2021)

I. INTRODUCTION

1. This Supplementary Report ("**Supplementary Report**") to the Proposal Trustee's First Report to Court dated April 12, 2021 ("**First Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as proposal trustee (the "**Proposal Trustee**") in connection with a Notice of Intention to Make a Proposal ("**NOI**") filed by Drexler Construction Limited ("**Drexler**"), Folmur Construction (2004) Ltd. ("**Folmur**") and Down Under Pipe and Cable Locating Ltd. ("**Down Under**"; and together with Drexler and Folmur, the "**Companies**") on March 19, 2021 under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**").
2. The Companies are making a motion to the Court, to be heard jointly, returnable April 16, 2021 (the "**April 16 Motion**") seeking various relief.

II. SCOPE AND TERMS OF REFERENCE

3. This Supplementary Report has been prepared for the use of this Court and the Companies' stakeholders as general information relating to the Companies and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this Supplementary Report may not be appropriate for any other purpose. The Proposal Trustee will not assume

responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Supplementary Report contrary to the provisions of this paragraph.

4. Terms not otherwise defined herein shall have the meanings ascribed to them in the First Report.

III. REVISED TERMS OF DIP FACILITY

5. On April 13, 2021, the Proposal Trustee issued its First Report which included, at paragraph 61, details of the manner by which the DIP Facility would be advanced by CMCI to Drexler, and subsequently to Folmur as a repayment of the inter-company unsecured indebtedness owing by Drexler to Folmur.

6. Following the release of the First Report, counsel to RBC contacted the Proposal Trustee to express its concern that the proposed method of funding of Folmur's working capital requirements, by way of a repayment by Drexler of its unsecured indebtedness to Folmur, was preferential in nature.

7. The Proposal Trustee understood RBC's concern and suggested an amendment to the CMCI mortgage financing commitment letter, for which CMCI would add Folmur as a borrower (along with Drexler) and funds would be advanced directly to Drexler and/or Folmur as necessary. In consideration for its loans to Folmur, CMCI would obtain a guarantee from Drexler collaterally secured by the mortgages against the Drexler Premises and the Vacant Development Land that are contemplated in paragraph 59 (e) and (f) of the First Report.

8. Both Drexler and Folmur have consented to the revised CMCI mortgage financing commitment letter dated April 13, 2021 ("**Revised Commitment Letter**") which is attached hereto as **Appendix "A"**.

9. Counsel for RBC has advised that the Revised Commitment Letter addresses the concern that was raised, and that RBC does not oppose the Revised Commitment Letter.

10. In the Trustee's opinion, the revised terms of the DIP Facility set out in the Revised Commitment Letter are reasonable and appropriate in the circumstances and the Proposal Trustee respectfully recommends that this Honourable Court make an Order approving, amongst other things, the DIP Facility and DIP Charge.

All of which is respectfully submitted this 14th day of April, 2021

**ALBERT GELMAN INC., solely in its
capacity as Trustee of re the Notice of
Intention to Make a Proposal of Drexler
Construction Limited, Folmur Construction
(2004) Ltd. and Down Under Pipe and Cable Locating Ltd.
and not its Personal or any other Capacity**

Per:  Digitally signed
by Bryan
Gelman

Bryan Gelman, *CIRP, LIT*

Appendix "A"

CORWIN MORTGAGE CAPITAL INC.
 333 WILSON AVENUE, SUITE 300
 TORONTO, ONTARIO
 M3H 1T2

AMENDED COMMITMENT

9 pages by email to bgelman@albertgelman.com and bissell@gsnh.com

April 13, 2021

Drexler Construction Limited ("Drexler") and Folmur Construction (2004) Ltd ("Folmur")
 (collectively known as the "Borrowers")

Re: Mortgage Financing Commitment (the "Commitment")

Corwin Mortgage Capital Inc. ("Corwin"), licensed under the *Mortgage Brokers, Lenders and Administrators Act* as a mortgage brokerage, hereby provides its Amended Commitment, as an agent for the Lender (defined in Schedule B), to fund a loan (the "Loan") to be secured by a mortgage (the "Mortgage") to be registered on title to the Lands ("Title"). The terms of the Amended Commitment are as follows:

1. **Municipal Addresses:** 5274 Wellington Road 27, Rockwood, ON ("Well")
183 Catherine Street, Rockwood, ON ("Cath")
2. **Loan Amount and Priority:** \$1,500,000 to be advanced in draws. \$750,000 initial advance and subsequent advances at the Borrowers discretion. The Lender requires that the Borrowers provide at least 10 days notice to the Lender prior to requiring each advance. First Mortgage over Well. Second mortgage over Cath.
3. **Interest Rate:** 6.99% per annum, interest only.
4. **Term:** 1 year.
5. **Fees (collectively the "Fees"):**
 - i) **Brokerage:** \$15,000.00 to Corwin.
 - ii) **Lender's Legal Fees:** To be paid by the Borrowers.
 - iii) **Administration Fee:** \$1,200.00 to Corwin Admin Inc.
6. **Prepayment Privilege:** Open for repayment in full upon not less than 45 days written notice.
7. **Security:** As described hereafter in paragraph 4 of Schedule 'B'.
8. **Deposit:** \$5,000.00 by certified cheque payable to Corwin Admin Inc. (the "Deposit").

Acceptance

Initial 00 date 4/13/21

CORWIN MORTGAGE CAPITAL 333 WILSON AVENUE, SUITE 300
TORONTO, ONTARIO, M3H 1T2

9. **Court Approval:** **This Commitment must be approved by the Superior Court of Justice.**
10. **Closing Date:** On the fifth business day following Corwin confirming that the Closing Requirements as described hereafter in paragraph 6 of Schedule 'B' have been satisfied or waived by Corwin, or on a prior date set by Corwin and agreed to by the Borrowers (the "Closing Date").

Please signify your agreement to the Commitment by executing and dating a copy of each page and returning same with the Deposit. This Commitment is voidable at the option of Corwin if not accepted in accordance with its terms by April 23, 2021. **Before acceptance of the Commitment you are strongly advised to obtain legal advice.**

Yours very truly,
CORWIN MORTGAGE CAPITAL INC. (FSCO Licence
No. 12380)



Per: Kyle Fenwick
I have the authority to bind the Corporation

Acceptance

Initial BF date 4/13/21

CORWIN MORTGAGE CAPITAL 333 WILSON AVENUE, SUITE 300
TORONTO, ONTARIO, M3H 1T2

ACCEPTANCE

The Borrowers hereby accept the Commitment and confirms their agreement with all of the terms and conditions hereof, having either obtained legal advice independent of Corwin or having been satisfied that legal advice is not required.

Accepted at _____ this _____ day of _____, 2021.

Drexler Construction Limited

Folmur Construction (2004) Ltd


Per: Alfred Drexler


Per: Alfred Drexler

I have the authority to bind the Corporation

I have the authority to bind the Corporation

Acceptance

Initial AD date 4/13/21

CORWIN MORTGAGE CAPITAL 333 WILSON AVENUE, SUITE 300
TORONTO, ONTARIO, M3H 1T2

SCHEDULE 'A'

AUTHORIZATION, DIRECTION AND CONSENT

TO: City of Rockwood, Utility Suppliers, and any existing or future encumbrancers of the Lands as defined below

AND TO: Corwin Mortgage Capital Inc.,

FROM: Drexler Construction Limited and Folmur Construction (2004) Ltd.

RE: Corwin First and second Mortgage; 5274 Wellington Road 27, Rockwood, ON and 183 Catherine Street, Rockwood, ON

We, Drexler Construction Limited and Folmur Construction Ltd. the proposed Borrowers with respect to the above referenced transaction, hereby authorizes and directs that upon written request and from time to time you are to release to the intended and thereafter existing mortgagee of the Lands, Corwin Mortgage Capital Inc., and/or its solicitors, any and all records and information requested pertaining to the property and, in particular, accounts, building, zoning, fire, building permits, health issues or work orders and in case of a 1st mortgage loan a mortgage or loan statement for discharge or information purposes, an arrears statement and particulars of any default that has occurred or exists and particulars of any renewal, conversions or other changes made to the mortgage. This is your full and sufficient authority and direction to do so. You may rely on this authorization and direction and authorization as the consent of the undersigned for all purposes to release our personal information related in any manner to the Lands.

We also authorize and direct Corwin and/or its solicitors to release any information relating to the above-noted mortgage to any existing or future encumbrancers or creditors who have an interest in or whose claims bind the Lands.

DATED at Rockwood, this 13 day of April, 2021.

Drexler Construction Limited


Per: Alfred Drexler

I have the authority to bind the Corporation

Folmur Construction (2004) Ltd


Per: Alfred Drexler

I have the authority to bind the Corporation

Acceptance

Initial GD date 4/13/21

CORWIN MORTGAGE CAPITAL 333 WILSON AVENUE, SUITE 300
TORONTO, ONTARIO, M3H 1T2

SCHEDULE 'B'

1. **Lender:** The Lender for the Loan will be a syndicate of investors.
2. **Interest:** Calculated and payable monthly, interest only ("Interest") with no deemed reinvestment of monthly payments. Interest shall become due and payable the first of each month immediately following the Interest Adjustment Date as referred to hereunder and on the first of each month thereafter.
3. **Interest Adjustment Date:** The Interest Adjustment Date ("IAD") shall be the 1st of the month following the Closing Date as described hereunder.
4. **Security:**
 - i) First Mortgage to be registered on Title to Well;
 - ii) Second mortgage to be registered on Title to Cath subject to an existing first mortgage in favour of RBC with an outstanding balance of not greater than \$435,000;
 - iii) Postponement of all claims by any shareholder of the Borrowers;
 - iv) Corporate Guarantee collaterally secured by the mortgages referred to in sections 4(i) and (ii) from Drexler on all advances made to Folmur;
 - v) Assignment of insurance policies over the assets of the Borrowers at the Lands with loss payable to Corwin;
 - vi) Assignment of all material contracts and agreements pertaining to the Lands; and
 - vii) Such other legal documents reasonably considered necessary by Corwin's solicitors, to support Corwin's security.
5. **Borrowers Representations and Acknowledgements:**

The Borrowers represent and warrant to Corwin that as of the date of acceptance of this Commitment by the Borrowers and as of the Closing Date:

- The Borrowers have the power, capacity and authority to enter into this Commitment and to perform and complete the transaction contemplated herein, all of which have been duly authorized where required by all necessary corporate action, and that no consents are necessary for this transaction to be completed;
- The Borrowers have not withheld any information of a material nature relating to the Lands or the Borrowers;
- All financial information provided by the Borrowers to the Lender, including without limitation financial

Acceptance

Initial 180 date 7/13/21

CORWIN MORTGAGE CAPITAL 333 WILSON AVENUE, SUITE 300
TORONTO, ONTARIO, M3H 1T2

information provided in respect of the values and other matters pertaining to the Lands.

- **The Lands and all activities conducted thereon comply with all environmental laws in the Province of Ontario. The Lands contain no hazardous substances, have not been previously subject to any remediation or clean-up of hazardous substances and there is no prior, existing or threatened investigation, action, proceedings, notice, order, fine, conviction, judgment or lien of any nature or kind against or affecting the Lands or the Borrowers or the previous owners arising under or relating to environmental laws. All existing environmental assessments, audits, tests and reports relating to the Lands within the knowledge of the Borrowers has been delivered to Corwin;**
- On closing the Borrowers will be the registered owner and the sole beneficial owners of the Lands;
- The Lands and the building(s) thereon are owner occupied commercial/industrial properties;
- The current use of the Lands is legal in every respect, complying with all municipal, provincial, federal and regulatory laws, regulations and/or by-laws (governmental or otherwise).

6. Closing Requirements:

The Lender's review of any items required shall be solely for the Lender's benefit, and the Borrowers shall not be entitled to rely on the Lender's review for any purpose. The Lender makes no representation to the Borrowers about the accuracy or completeness of any item or the qualifications of any person providing any item, whether or not ordered or selected by the Lender.

- Satisfactory inspection of the Lands;
- Satisfactory receipt and review of application and credit bureau for Alfred Drexler;
- Satisfactory interview of Alfred Drexler by Corwin;
- Satisfactory appraisal of reports of Cath and Well confirming a collective value of not less than \$5,000,000;
- Corwin may in its sole discretion refuse to advance the Loan if it is not satisfied with the Borrowers ability to service or repay the Loan.
- **This Commitment must be approved by the Superior Court of Justice.**

7. Termination of Commitment:

In the event the Loan is not advanced and the Commitment is terminated the Deposit shall not be refundable to the Borrowers and may be retained by Corwin as liquidated damages except in the event of Corwin's default. In addition to the foregoing, the Borrowers shall be responsible for and pay the deficiency between the Fees and the Deposit to Corwin forthwith on demand which are deemed to be earned and payable by the Borrowers upon acceptance by the Borrowers hereof. The Borrowers acknowledge that the Fees are a reasonable estimate of Corwin's costs incurred in sourcing, investigating, underwriting and preparing the Loan and holding monies available to fund the Loan and that said Fees are earned irrespective of whether the Loan is advanced, save for Corwin's default.

No termination of this Commitment shall limit, restrict or otherwise affect in any way: (i) the obligations of the Borrowers to pay to Corwin the Fees or any third party fees, costs and expenses of Corwin in connection with the Loan specified in this Commitment; and (ii) the right of Corwin in respect of any deposits paid to it, including its right to retain the Deposit and/or to apply the Deposit for third party fees, costs and expenses as

Acceptance

Initial CO date 4/13/21

CORWIN MORTGAGE CAPITAL 333 WILSON AVENUE, SUITE 300
TORONTO, ONTARIO, M3H 1T2

set out herein.

It is understood that Corwin has entered into this Commitment based on representations made by the Borrowers and, if at any time, there is or has been any material discrepancy or inaccuracy in any written or oral information, statements, or representations heretofore or hereafter made or furnished to Corwin by or on behalf of the Borrowers concerning the security or the Borrowers financial condition and responsibility, then Corwin shall be entitled in its sole discretion to withdraw or cancel any obligation hereunder and decline to advance funds, and in addition to forfeiture of the Deposit, the Borrowers shall be liable to pay all Fees as hereinbefore recited.

8. Extension and Assignment of Commitment:

In the event the Loan is not advanced by the Closing Date the Commitment may be terminated at the option of Corwin unless the Borrowers pre-pays interest to Corwin for one month for each one-month extension or part thereof of the Closing Date together with all Fees.

Corwin may sell, transfer, assign or syndicate the Loan, or any interest therein, from time to time without notice to, or consent of, the Borrowers. The Borrowers acknowledge and agree that the Loan may be sold, transferred assigned or syndicated without further notice to, or the consent of, the Borrowers.

Corwin from time to time may release, disclose, exchange, share, transfer and assign, as it may determine in its sole discretion, all financial and other information and materials provided to or obtained by Corwin or its agents and representatives, without restriction and without notice to or the consent of the Borrowers as follows:

- i. to any subsequent or proposed purchaser of the Loan, including any subsequent lender and their respective third party advisors such as lawyers, accountants, consultants, appraisers and credit verification sources; and
- ii. to any person in connection with the sale or assignment of the Loan.

The Borrowers consent to the release, disclosure, exchange and sharing of all such information and materials and to any publicity or advertising that refers to the financing of the Lands.

The rights or obligations of the Borrowers under or in respect of this Commitment or the Loan may not be assigned to or performed by any other party.

9. Realty Taxes:

The Charge may include a provision for the collection of property taxes by the Lender or anyone instructed by the Lender.

10. Expenses:

The Borrowers agree to pay all fees (including legal fees), costs and expenses incurred by Corwin in

Acceptance

Initial CD date 4/13/21

CORWIN MORTGAGE CAPITAL 333 WILSON AVENUE, SUITE 300
TORONTO, ONTARIO, M3H 1T2

connection with the preparation, negotiation and documentation of this Commitment and the security provided for herein and the operation or enforcement of this Commitment and the security provided for herein.

11. Title Insurance:

At the Borrowers expense, Corwin's solicitors will obtain a title insurance policy from title insurer with coverage satisfactory to Corwin's solicitors in their sole and absolute discretion.

12. Insurance:

The Borrowers shall deliver evidence of fire and liability insurance, including any other coverage required by Corwin, showing the interest of Corwin as first and second mortgagee and loss payee. On closing, the insurance premium for 1 year from the date of closing shall be paid in full.

13. Possession:

In the event of default under the Mortgage by the Borrowers, Corwin obtaining possession of the Lands and determining, in its sole discretion, that the Lands require work and improvements in order to market the Lands, then Corwin shall have the right, at its sole option, to complete such work on such terms as it deems advisable. The cost of completion of the servicing and work by Corwin and its agents and all expenses incidental thereto shall be added to the Loan Amount, together with a management fee of fifteen per cent (15%) of the costs of the work and improvements completed by Corwin. All costs and expenses, as well as said management fee, shall bear interest at the rate as herein provided for and shall form part of the Loan secured hereunder and Corwin shall have the same rights and remedies with respect to collection of same as it would have with respect to collection of Mortgage principal and Interest hereunder or at law.

14. Deliveries:

Such financial and other information, statements and documents as Corwin and/or its solicitors may require in connection with the underwriting or closing of the Loan.

15. Non-Merger:

The provisions of this Commitment shall not merge with any security provided to the Lender, but shall continue in full force and effect for the benefit of the parties hereto.

16. General Provisions and Independent Legal Advice:

- Mortgage advance is to be payable to the registered owner of the Lands;
- Attorney pursuant to power of attorney cannot execute Mortgage document;
- Independent Legal Advice shall be required for any party guaranteeing the Mortgage, consenting to or guaranteeing the Mortgage or postponing their interest to Corwin's security unless waived by Corwin;
- Prior to advance of funds, all security and loan documentation is to be delivered to Corwin in form

Acceptance

Initial CR date 4/13/21

CORWIN MORTGAGE CAPITAL 333 WILSON AVENUE, SUITE 300
TORONTO, ONTARIO, M3H 1T2

- satisfactory to Corwin and its solicitors; and
- No subsequent financing.

17. **Lender's Legal Fees:**

The Lender's Legal Fees are for performance of the following legal services:

- i. due diligence searches as required by the Lender and review of such searches;
- ii. preparation of the mortgage and security documentation;
- iii. placement of title insurance;
- iv. registration of the mortgage and security documents as required; and
- v. correspondence with the Borrowers solicitors.

If any other work is required to be completed by the Lender's solicitors which is outside the scope of the foregoing, including but not limited to, (a) work completed as a result of the Borrowers non-disclosure of existing encumbrances which relate to the security being provided under the mortgage, (b) negotiating the mortgage and security documentation in response to changes requested by Borrowers, (c) revising the mortgage and security documentation to reflect changes requested by the Borrowers and agreed to by the Lender, (d) investigating the Land's compliance with applicable laws and regulations, and (e) conducting the closing of the transaction, then in addition to the amount of the Lender's Legal Fees indicated on page 1 of the Commitment, the Lender's solicitors may charge, and the Borrowers must pay on closing, the additional legal fees of the Lender's solicitors which will be charged at the Lender's solicitors' hourly rate.

Acceptance

Initial CM date 4/13/21

IN THE MATTER(S) OF THE NOTICE(S) OF INTENTION TO MAKE A PROPOSAL OF:

- (1) **DREXLER CONSTRUCTION LIMITED,**
 - (2) **FOLMUR CONSTRUCTION (2004) LTD., and**
 - (3) **DOWN UNDER PIPE AND CABLE LOCATING LTD.**
- OF THE TOWNSHIP OF ROCKWOOD, IN THE PROVINCE OF ONTARIO**

Estate / Court File Nos: 35-2721716, 35-2721875, and 35-2721896

ONTARIO

**SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

Proceedings Commenced at TORONTO

**SUPPLEMENTARY REPORT TO THE
FIRST REPORT OF ALBERT GELMAN
INC., IN ITS CAPACITY AS PROPOSAL
TRUSTEE**

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Licensed Insolvency Trustee