

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

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

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

MOTION RECORD

July 23, 2021

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**Lawyers for Claireville Property
Holdings Inc.**

TO: THE SERICE LIST

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TAB 1

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

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

Claireville Property Holdings Inc. (“**Claireville**” or the “**Debtor**”), will make a motion to the Court on July 28, 2021 at 9:30 a.m., or as soon after that time as the motion can be heard, at the Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R8.

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

THE MOTION IS FOR:

1. An Order, substantially in the form appended to the Motion Record, that, among other things:
 - a) grants an extension of time to make a proposal pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”) up to and including September 15, 2021;

- b) expands the powers of KSV Restructuring Inc. (“**KSV**”) in its capacity as proposal trustee of the Debtor (the “**Proposal Trustee**”) to permit the Proposal Trustee the authority to, among other things, control of the bank accounts of the Debtor and conduct a sale and investment process (the “**SISP**”);
- c) approves the SISP in relation to the assets, property and undertaking of the Debtor (the “**Property**”);
- d) approves debtor-in-possession financing (the “**DIP Loan**”) extended by Canconnect Mortgage Investment Corporation (the “**DIP Lender**”) on such terms set out in the commitment letter to be appended to first report of the Proposal Trustee (the “**First Report**”) which funding shall be used to pay outstanding municipal tax arrears and the indebtedness owing to DUCA Financial Services Credit Union Ltd. (“**DUCA**”), which indebtedness is secured over the Property;
- e) granting the following priority charges against the Property:
 - (i) FIRST – a charge in favour of the Proposal Trustee, its counsel, and counsel to the Debtor in respect of their fees and disbursements incurred in relation to this proceeding, up to a maximum of \$250,000; and
 - (ii) SECOND – a charge in favour of the DIP Lender in respect of amounts advanced under the DIP Loan up to a maximum of \$4.5 million (the “**DIP Charge**”);
- f) sealing Confidential Appendix “1” to the First Report; and

g) approving the fees and activities of the Proposal Trustee as set out in the First Report.

2. Such further and other relief as this honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

3. The Debtor is a corporation with leasehold interests in the Property municipally known as 350-358 Humberline Drive and 93-123 Claireville Drive, Etobicoke, Ontario (the “**Claireville Business Park**”). The buildings comprising the Claireville Business Park are leased to subtenants and the Debtor receives rents from the subtenants on a monthly basis.

4. The Debtor is a nominee and holds legal interest on behalf of various beneficial owners (the “**Beneficial Owners**”).

5. DUCA is the senior secured lender to the Debtor. Approximately \$2.2 million is currently owing and outstanding to DUCA. There have been no payment defaults under the DUCA loan, however the Debtor has accrued approximately \$1.9 million in municipal tax arrears. As a result of the tax arrears, DUCA served a demand on its loan and security and delivered a notice of intention to enforce under Section 244 of the BIA.

6. On July 2, 2021, the Debtor filed a notice of intention to make a proposal under the BIA to allow it to address its outstanding debts and liabilities as well as to preserve value for the Beneficial Owners. KSV was appointed as Proposal Trustee.

RELIEF SOUGHT

Extension of Time to Make a Proposal

7. The initial 30-day period to file a proposal under the BIA expires on August 1, 2021. The Debtor seeks a 45-day extension of time to make a proposal pursuant to Section 50.4(9) of the BIA, up to and including September 15, 2021.

8. The extension of time would, among other things, allow further time for the Debtor to develop a viable proposal and permit the Proposal Trustee to conduct the SISP (for which the Debtor seeks approval). No creditor would be materially prejudiced if the extension were granted.

Expanding the Powers of the Proposal Trustee

9. The Debtor corporation acts solely as a nominee holding legal interest in the Claireville Business Park on behalf of various Beneficial Owners. The Debtor has no employees. A property manager is engaged to manage the premises and deal with tenants.

10. To ensure that the interests of the Beneficial Owners are protected and the Property is preserved, the Debtor is seeking approval of expanded powers for the Proposal Trustee to authorize the Proposal Trustee to, among other things, take control of the bank accounts of the Debtor, administer payments, and conduct a SISP (as described below).

Approval of Sale and Investment Solicitation Process

11. The Debtor seeks approval of a SISP to be conducted by the Proposal Trustee to solicit offers for financing and/or purchase of the Property. The purpose of the SISP is to identify offers to finance or purchase that would form the basis of a viable restructuring proposal. A SISP conducted by the Proposal Trustee is necessary to allow the Beneficial Owners to assess their

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options, specifically whether it would be more advantageous to proceed with a refinancing or sale transaction.

12. In any event, the proposed SISP will maximize recovery for creditors and Beneficial Owners.

Approval of DIP Financing

13. The Debtor has secured an interim debtor-in-possession financing commitment from Cannect Mortgage Investment Corporation in the amount of \$4.5 million at 10% interest *per annum* for a term of 6 months. A 4% commitment fee is payable to the DIP Lender upon closing.

14. The DIP Loan will be utilized to pay down property tax arrears in the approximate amount of \$1.9 million and the secured obligations owed to DUCA in the approximate amount of \$2.2 million.

15. The interim financing is needed to satisfy the priority obligations of the Debtor, having regard to the demand delivered by DUCA and the Debtor's cash flow projections as will be appended to the First Report.

16. Payment of the priority amounts will avoid a potential receivership brought by the secured lender. Continuing the restructuring exercise within a debtor-in-possession proceeding is necessary to ensure that DIP funds are available to pay DUCA and to avoid the disruption to the various leases, including the head lease.

Approval of DIP Charge and Administration Charge

17. The Debtor seeks approval pursuant to Section 50.6 of the BIA of a DIP Charge to secure the advances made under the DIP Loan. The DIP Charge is a condition of the DIP Loan.

18. The Debtor also seeks approval of an Administration Charge to secure the fees and disbursements of the Proposal Trustee, its counsel, and counsel to the Debtor.

19. The proposed charges rank in priority to all other security interests, trusts, and liens and have the following priority relative to each other:

- a) FIRST – the Administration Charge up to a maximum of \$250,000; and
- b) SECOND – the DIP Charge up to a maximum of \$4.5 million.

Sealing of Confidential Appendix

20. The Debtor seeks the sealing of the appraisal appended as Confidential Appendix “1” to the First Report of the Proposal Trustee. The appraisal contains commercially sensitive information that would prejudice the Proposal Trustee’s ability to properly conduct the SISP.

21. Sections 50.4(9) and 50.6 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3;

22. Rules 1.04(1), 2.01(1), 2.03, 3.02 and 6 of the *Rules of Civil Procedure*, RSO 1990, Reg 194;

23. Such further and other grounds as counsel may advise and this honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

24. The First Report, to be filed;

25. Such further and other evidence as counsel may advise and this honourable Court may permit.

July 23, 2021

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Lawyers for Claireville Property Holdings Inc.

TO: **THE SERVICE LIST**

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

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

Proceedings commenced at Toronto

NOTICE OF MOTION

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**Lawyers for Claireville Property Holdings
Inc.**

TAB 2

Estate Number: 31-2749576
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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
(IN BANKRUPTCY AND INSOLVENCY)

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

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

ORDER

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

THIS MOTION, made by Claireville Property Holdings Inc. (the “**Debtor**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”) to, among other things, (i) extend the time for the filing of a proposal; (ii) approve the expanded powers of KSV Restructuring Inc. in its capacity as proposal trustee of the Debtor (the “**Proposal Trustee**”), (iii) approve debtor-in-possession financing advanced by Cannect Mortgage Investment Corporation (the “**DIP Loan**”); (iv) approve certain priority charges; (v) approving a sale and investment solicitation process (“**SISP**”); and approving the First Report of the Proposal Trustee dated July 1, 2021 (the “**First Report**”) and the actions and activities of the Proposal Trustee set out therein, proceeded on this day by videoconference due to the COVID-19 crisis.

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

SERVICE

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

EXTENSION OF TIME TO FILE A PROPOSAL

2. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the period for the Proposal Trustee to file, on behalf of the Debtor, a proposal to creditors under the BIA be and is hereby extended to and including September 15, 2021.

EXPANDED POWERS OF THE PROPOSAL TRUSTEE

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

- (a) to take possession of and exercise control over the Property, including, without limitation, any bank account of the Debtor and any accounts maintained with suppliers, vendors and service providers, and any and all rents, proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Proposal Trustee's powers and duties, including without limitation those conferred by this Order;
- (d) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (e) to settle, extend or compromise any indebtedness owing to the Debtor;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Proposal Trustee's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

- (g) to market any or all of the Property, including advertising and soliciting offers for sale or refinancing in respect of the Property and negotiating such terms and conditions of sale as the Proposal Trustee in its discretion may deem appropriate;
- (h) to conduct the SISP and steps related thereto, as set out in more detail in this Order;
- (i) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (j) to report to, meet with and discuss with such affected Persons (as defined below) as the Proposal Trustee deems appropriate on all matters relating to the Property and this proceeding, and to share information, subject to such terms of confidentiality as the Proposal Trustee deems advisable;
- (k) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (l) to exercise any co-tenancy, shareholder, partnership, joint venture or other rights which the Debtor may have in respect of the Property; and
- (m) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations

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

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

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

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

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service

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

PROPOSAL TRUSTEE TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATIONS ON ENVIRONMENTAL LIABILITIES

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

ADMINISTRATION CHARGE

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

respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 20 hereof.

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

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

APPROVAL OF THE FIRST REPORT

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

DIP FINANCING AND CHARGE

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

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

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

18. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraph 20 hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon five (5) days notice to the Debtor and

the Proposal Trustee, may exercise any and all of its rights and remedies against the Debtor or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Debtor and set off and/or consolidate any amounts owing by the DIP Lender to the Debtor against the obligations of the Debtor to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Debtor and for the appointment of a trustee in bankruptcy of the Debtor; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtor or the Property.

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

VALIDITY AND PRIORITY OF CHARGES

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

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

Second- the DIP Lender's Charge.

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

23. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall, subject to the priorities established in paragraph 20 herein, rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

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

25. **THIS COURT ORDERS** that the DIP Term Sheet, the Definitive Documents and the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings,

incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Debtor entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Debtor pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SOLICITATION OF LISTING PROPOSALS

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

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

PAYMENT OF PROPERTY TAX ARREARS AND DUCA

28. **THIS COURT ORDERS** that, upon receipt by the Debtor of any funds advanced under the DIP Loan, the Proposal Trustee shall be and is hereby authorized and directed to cause the Debtor to make distributions to (i) first, the City of Toronto on account of all property tax arrears due and owing by the Debtor; and (ii) second, DUCA Financial Services Credit Union Ltd. on account of the Debtor’s secured indebtedness owing to DUCA for principal, interest and costs, in full, subject to the Proposal Trustee obtaining an independent security opinion from its legal counsel confirming the validity and enforceability of DUCA’s underlying security.

SEALING OF CONFIDENTIAL APPENDIX TO TRUSTEE’S REPORT

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

GENERAL

30. **THIS COURT ORDERS** that in addition to the rights and protections afforded to the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no

liability or obligation as a result of its appointment or the carrying out of the provisions of this Order save and except for any gross negligence or wilful misconduct on its part and nothing in this Order shall derogate from the protections afforded to the Proposal Trustee by the BIA or any applicable legislation. For greater certainty, and without in any way limiting the generality of the foregoing, none of the Proposal Trustee and any of its affiliates, partners, directors, employees, agents and controlling persons shall have any liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to an Person in connection with any of the powers granted to the Proposal Trustee under this Order, except to the extent that such losses, claims, damages or liabilities result from gross negligence or wilful misconduct of the Proposal Trustee in performing its obligations under this Order.

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

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

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

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

35. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Proposal Trustee and to any other

party likely to be affected by the order sought or upon such other notice, if any, as this Court may Order.

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

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

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

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

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

Proceedings commenced at Toronto

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

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**Lawyers for Claireville Property
Holdings Inc.**

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

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

Proceedings commenced at Toronto

MOTION RECORD

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