



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

**December 8, 2021**

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COURT FILE NO.: 31-2749576

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

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

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

DECEMBER 8, 2021

## 1.0 Introduction

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as proposal trustee (in such capacity, the "Proposal Trustee") in connection with a Notice of Intention to Make a Proposal ("NOI") filed by Claireville Property Holdings Inc. (the "Company") on July 2, 2021 (the "Filing Date") pursuant to subsection 50.4(1) (the "NOI Proceedings") of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA").
2. The principal purpose of the NOI Proceedings has been to create a stabilized environment to provide the Company with an opportunity to consider its restructuring alternatives, including a refinancing of its principal secured obligations and realizing on the Company's business and assets pursuant to a court-supervised sale process in order to, potentially, formulate and present a restructuring plan for creditors in the context of a proposal ("Proposal").
3. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") issued on July 28, 2021 (the "July 28 Order"), the Court:
  - a) granted an extension of the deadline to file a Proposal and extended the corresponding stay of proceedings under the BIA to August 9, 2021, which was further extended to September 15, 2021 upon the filing on August 4, 2021 of a Certificate by the Proposal Trustee<sup>1</sup>;

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

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

## 1.1 Purposes of this Report

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

## 1.2 Restrictions

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

### 1.3 Currency

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

### 1.4 Court Materials

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

## 2.0 Background

### 2.1 Corporate Overview

1. The Company is privately owned and was incorporated under the *Business Corporations Act (Ontario)* in 2015. Based on a review of the corporate profile report, the sole registered director and officer of the Company is Mark Gross.
2. Mark Gross was also a director and officer of Prime, the Company's property manager. On July 29, 2021, Mark Gross resigned as a director and officer of Prime.<sup>2</sup>
3. Mark Gross and Sheldon Gross are also the sole registered directors and officers of Gross Capital Inc. ("GCI"), which is the Company's parent and a 50% shareholder of Prime. On July 25, 2021, GCI filed an assignment in bankruptcy and KSV was appointed Licensed Insolvency Trustee (in such capacity, the "Bankruptcy Trustee") of GCI's bankrupt estate, which appointment was affirmed at GCI's first meeting of creditors on July 15, 2021. GCI also owns several other real estate holding companies, certain of which are subject to separate receivership proceedings before this Court.

### 2.2 Assets

1. The Company's principal asset is its leasehold interest (the "Leasehold Interest") in 13 dual tenant industrial buildings municipally addressed as 18/20/22/24/26 Huddersfield Road, 350/354/358 Humberline Drive and 93/101/123/130/160 Claireville Drive (collectively, the "Real Property").
2. The Company is the registered owner of the Leasehold Interest, which it holds as bare trustee and nominee for and on behalf of 21 co-tenants (collectively, the "Co-Tenants"). GCI is one of the Co-Tenants, with a 7.3% beneficial interest in Claireville Properties Co-Tenancy (the "Co-Tenancy").

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

3. The Leasehold Interest is subject to a 99-year ground lease with Kornwood Investments Ltd. (“Kornwood”) dated September 1, 1973 (the “Ground Lease”) which expires on August 31, 2072. Rent under the Ground Lease is based on 9% of the fair market value of the Real Property. The fair market value and the corresponding lease payments reset periodically in accordance with the terms of the Ground Lease. The next reset date for rent under the Ground Lease is September 1, 2023.

## 2.3 Investigation

1. KSV, in its capacity as Bankruptcy Trustee of GCI, is currently conducting an investigation into the assets and pre-bankruptcy operations of GCI and several of its subsidiaries and related parties (collectively, the “Gross Group”). The investigation was commenced due to, *inter alia*, accusations made by investors of misappropriation of investor funds by Mark and Sheldon Gross and/or entities controlled by Mark and Sheldon Gross. In respect of these allegations, on or around June 29, 2021, certain stakeholders of the Gross Group commenced a Court application (the “Application”) naming Mark Gross and other parties as respondents. The Application was originally returnable in Court on July 5, 2021 and sought various branches of relief against the respondents and in respect of the respondents’ properties and businesses, including the appointment of an investigative receiver. The Application was opposed by Mark Gross and several other respondents. In accordance with the Endorsement dated October 12, 2021 of the Honourable Mr. Justice Pattillo, the Application, as amended, was adjourned to a date to be set, and an interim motion was heard on October 12, 2021 by the Honourable Mr. Justice Cavanagh.
2. The substance of the hearing on October 12, 2021 was for leave to issue and register a Certificate of Pending Litigation on title to two properties in which GCI formerly had an interest, being 511 and 515 John Street, in Burlington, Ontario. As at the date of this Report, a decision has not yet been issued.
3. A portion of the Bankruptcy Trustee’s investigation is focused on the Company. The Company has historically been profitable - it has most recently generated annual income of over \$1 million in 2018 and 2019; however, notwithstanding the recurring income stream, the Company was insolvent on the Filing Date.
4. Historically, funds generated by the Leasehold Interest were advanced by the Company to other entities in the Gross Group which contributed to the Company’s insolvency. In this regard, the Co-Tenancy’s financial statements as at December 31, 2020 reflect an intercompany advance owing from GCI of approximately \$3.3 million.
5. The Bankruptcy Trustee’s investigation of GCI is ongoing. The Bankruptcy Trustee has been and intends to continue reporting periodically to the inspectors of GCI’s estate in connection with its investigation.

## 2.4 Aqua Greens Inc.

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

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

## 2.5 DIP Financing and Expanded Powers

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

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

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



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

## 4.0 Cash Flow Forecast

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

## 5.0 SISP

### 5.1 Overview

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

#### Pre-marketing Phase

- a) CBRE, with the Proposal Trustee's assistance, prepared:
  - a portfolio flyer detailing the offering and investment highlights for the Leasehold Interest (the "Investment Summary");
  - a confidentiality agreement ("CA");
  - a virtual data room, which contained, *inter alia*, copies of the subleases, ground lease, environmental reports, building condition reports, rent rolls, financial budget and property tax bills; and

- a confidential information memorandum (“CIM”), which included more detailed information on the Leasehold Interest and details concerning the SISP.

### **Marketing**

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

### **Bid Deadline**

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

## **5.2 SISP Results**

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

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

## 6.0 Receivership Application

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

## 7.0 Court Ordered Charges<sup>3</sup>

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

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

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

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

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

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

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

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

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

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

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

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

## 8.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

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

## **Appendix “A”**

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

THE HONOURABLE	)	WEDNESDAY, THE
	)	
JUSTICE PATTILLO	)	28 <sup>th</sup> DAY OF JULY, 2021

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

**ORDER**

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

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

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

## **SERVICE**

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

## **EXTENSION OF TIME TO FILE A PROPOSAL**

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

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

## **EXPANDED POWERS OF THE PROPOSAL TRUSTEE**

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

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



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

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

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

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

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

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

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

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

#### **PROPOSAL TRUSTEE TO HOLD FUNDS**

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

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

## **EMPLOYEES**

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

## **PIPEDA**

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

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

### **LIMITATIONS ON ENVIRONMENTAL LIABILITIES**

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

## **ADMINISTRATION CHARGE**

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

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

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

## **APPROVAL OF THE FIRST REPORT**

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

**DIP FINANCING AND CHARGE**

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

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

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

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

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

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



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

#### **VALIDITY AND PRIORITY OF CHARGES**

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

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

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

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

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

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

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

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

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

### **SOLICITATION OF LISTING PROPOSALS**

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

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

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

### **PAYMENT OF PROPERTY TAX ARREARS AND DUCA**

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

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

#### **SEALING OF CONFIDENTIAL APPENDIX TO TRUSTEE'S REPORT**

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

#### **GENERAL**

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

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

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

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

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

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

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

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





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

<b>Step</b>	<b>Deadline</b>
Proposal Trustee to select and execute a Listing Agreement (the “ <b>Listing Agent</b> ”)	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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