

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF **MONTREAL**

**SUPERIOR COURT**

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended)

N<sup>o</sup>: 500-11-057549-194

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**IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF:**

**9227-1584 QUÉBEC INC.**

-and-

**9336-9262 QUÉBEC INC.**

Debtors

-and-

**KPMG INC.**

Petitioner / Monitor

-and-

**110302 CANADA INC.**

-and-

**9325-7277 QUÉBEC INC.**

Mises en cause

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**MOTION FOR (I) THE EXTENSION OF THE STAY OF PROCEEDINGS, AND (II) THE  
EXTENSION OF THE TERM OF THE INTERIM FINANCING AGREEMENT**  
(Sections 4, 5, 11 and *ff.* of the *Companies' Creditors Arrangement Act* ("CCAA"))

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**TO THE HONOURABLE JUSTICE PHILIPPE BÉLANGER, J.S.C., OR ANOTHER ONE OF  
THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL  
DIVISION FOR THE DISTRICT OF MONTREAL, PETITIONER / MONITOR, KPMG INC.,  
SUBMITS AS FOLLOWS:**

**1. INTRODUCTION AND REQUESTED RELIEF**

1. On October 8, 2019, KPMG Inc. ("**KPMG**") was appointed as administrative agent and manager over the assets and property of the Debtors 9227-1584 Québec Inc. ("**9227**") and 9336-9262 Québec Inc. ("**9336**"; collectively with 9227, the "**Debtors**") with powers tantamount to those of a receiver pursuant to the applicable provisions of the *Business*

*Corporations Act*<sup>1</sup> (“**QBCA**”), pursuant to an *Order Appointing an Administrative Agent and Manager and Issuing Other Orders for Redress*, as rectified on October 9, 2019 (the “**QBCA Order**”) in Superior Court file number 500-11-057283-190, the whole as appears from the Court record.

2. On November 20, 2019, KPMG, in its capacity as administrative agent and manager of the Debtors pursuant to the QBCA Order, filed a Motion for the Issuance of an Initial Order (the “**Motion for an Initial Order**”) pursuant to the CCAA, as appears from the Court record and from the copy of the copy of the Motion for an Initial Order communicated for convenience herewith as Exhibit **R-1**.
3. The Motion for an Initial Order provides a detailed description of the activities of the Debtors, their key stakeholders, and the circumstances surrounding the filing of the Motion for an Initial Order.
4. On November 22, 2019, the Honourable Peter Kalichman, J.S.C. issued an Initial Order herein (as rectified on November 25, 2019, amended and restated on December 2, 2019 and January 30, 2020, and corrected on March 20, 2020, the “**Corrected Second Amended and Restated Initial Order**”),<sup>2</sup> as appears from the Court record and from the copy of the Corrected Second Amended and Restated Initial Order communicated for convenience herewith as Exhibit **R-2**.
5. On January 30, 2021, this Court authorized 9227 to borrow from Caisse Desjardins de Terrebonne (“**Caisse**”) up to \$3,300,000 (the “**DIP Loan**”) on an interim basis (“**Interim Financing Agreement**”), secured by a superpriority charge of \$5,000,000 (the “**DIP Charge**”), as appears from the Corrected Second Amended and Restated Initial Order (Exhibit R-2).
6. On February 6, 2020, sections 1 and 13 of the Interim Financing Agreement were amended;
7. On May 21, 2020, this Honourable Court issued a Claims Procedure Order, *inter alia*, approving a claims procedure (the “**Claims Procedure**”) for the filing, review, determination and adjudication of claims against the Debtors and their respective directors and officers (the “**Claims Procedure Order**”), as appears from the Court record.
8. On June 25, 2020, 9227 and Caisse agreed to amend the Interim Financing Agreement, and notably section 11i) thereof, in order to increase the credit limit of the DIP Loan to \$4,300,000 and to extend its term to the earlier of a series of events, including the date of September 30, 2020, which was authorized by the Court on June 26, 2020 along with an increase of the DIP Charge to \$6,515,000, as appears from the Court record.
9. Subsequently, on two occasions, the Monitor, 9227 and Caisse agreed to extend the term of the Interim Financing Agreement and therefore to re-amend section 11i) thereof, which

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<sup>1</sup> CQLR c. S-31.1, ss. 450 and 451.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Corrected Second Amended and Restated Initial Order (Exhibit R-2).

was authorized by the Court on September 29, 2020 and January 29, 2021, as appears from the Court record.

10. The Stay Period has been extended by order of the Court from time to time and currently expires on June 30, 2021, as appears from the Court record;
11. On March 31, 2021, this Honourable Court issued an Order, the “**March 31 Order**”), *inter alia*:
  - a) amending the Corrected Second Amended and Restated Initial Order (Exhibit R-2) and further extending the Stay Period to June 30, 2021; and
  - b) authorizing the amendment of the Interim Financing Agreement in order to extend its term to the earlier of a series of events including the date of June 30, 2021;

as appears from the Court record and from the March 31 Order communicated herewith for convenience as Exhibit **R-3**.

12. On April 28, 2021, this Honourable Court issued a Plan Filing and Creditors’ Meeting Procedure Order in connection with two Motions to authorize the filing of a plan filed on one hand by 110302 Canada Inc. and Arthur H. Steckler and, on the other hand by 9325-7277 Québec Inc. and Marc-André Nadon, as appears from the Court record;
13. KPMG hereby seeks the issuance of an order substantially in the form of the draft order communicated herewith as Exhibit **R-4** (the “**Draft Order**”) to, *inter alia*:
  - a) amend the Corrected Second Amended and Restated Initial Order (Exhibit R-2) to extend the Stay Period to September 30, 2021 pursuant to sections 11.02 and 11.03 of the CCAA; and
  - b) authorize further amendment of the Interim Financing Agreement to extend the term thereof, as discussed further herein.
14. KPMG has prepared an Eleventh Report supporting the relief sought herein, a copy of which is communicated herewith as Exhibit **R-5**.

## **2. CASH FLOW FORECAST**

15. KPMG has prepared a revised cash flow forecast for the period ending September 30, 2021 (the “**Cash Flow Forecast**”), a copy of which is attached, *under seal*, as Appendices C and D *under seal* to its Eleventh Report (Exhibit R-5).
16. Based on the financial position of the Debtors and based on the assumptions set out in the Cash Flow Forecast, KPMG believes that the Cash Flow Forecast is fair and reasonable.
17. Based on the Cash Flow Forecast following the issuance by the Court of a Distribution Order (as defined below), and the ability of 9227 to reimburse amounts due to Caisse under the DIP Loan pursuant to the Distribution Order, the Debtors should be able to meet their post-filing obligations in the ordinary course until September 30, 2021.

**3. EXTENSION OF THE STAY PERIOD**

18. Since the issuance of the Initial Order, and in particular since the issuance of the September 29 Order and the March 31 Order (Exhibit R-3), KPMG has acted and continues to act in good faith and with due diligence. Among other things, KPMG has:
- a) updated its website to include Orders issued by the Court and reports of the Monitor;
  - b) continued to manage and ensure the stability of the Debtors' business, as it has done since the issuance of the QBCA Order;
  - c) secured and extended much-needed interim financing;
  - d) implemented procedures for the monitoring of the Debtors' business, operations and financial circumstances;
  - e) held meetings and discussions with the Debtors' principals, creditors, suppliers and other stakeholders—including many discussions and meetings with the principals of the Debtors' two undivided co-owners and with secured creditors—mainly for the purpose of gauging their respective visions and expectations for the restructuring, and to examine ways in which resolving the deadlock between the undivided co-owners can be accomplished;
  - f) continued its analysis of the nature and status of the Debtors' operations, being the development of the Square Candiac project;
  - g) prepared all necessary financial projections, including cash flow projections;
  - h) provided a weekly report to Desjardins and its financial advisor Raymond Chabot Grant Thornton detailing the following:
    - i) changes in cash compared to projected cash flow; and
    - ii) updates on (A) sales of land in the ordinary course of business, and (B) indivision proceedings;
  - i) coordinated and ensured the completion of infrastructure works including the creation of a joint ditch;
  - j) supervised and assisted the settlement process aimed at an acceptable split among the undivided co-owners of property owned by the Debtors;
  - k) coordinated efforts and discussions with Caisse to extend the term of the Interim Financing Agreement to ensure financing for the Debtors;
  - l) pursued its efforts to sell land with the objective of concluding transactions in the ordinary course of business;
  - m) developed and elaborated the Claims Procedure, obtained Court approval of the Claims Procedure by way of the Claims Procedure Order, and commenced

implementation of the Claims Procedure pursuant to the terms of the Claims Procedure Order;

- n) protected the interests of the Debtors in the proceedings commenced against 9227 and others by Mr. Daniel Abandonato (the “**Abandonato Proceedings**”);
  - o) prepared and filed its various reports to the Court;
  - p) obtained payment of the balance owing from 9361-4048 Québec Inc. for the sale of certain lots;
  - q) continued proceedings for recovery of unpaid rent from Groupe Xpansion Québec Inc.;
  - r) continued proceedings for a declaratory judgement, a safeguard order, a Paulian action and other relief in relation to the preservation of 9227’s beneficial interest in the “Pür Urbain” project undertaken by 9344-8181 Québec Inc. (“**9344**”) and in the “Liberty Triplex” project undertaken by 9361-4048 Québec Inc. (“**9361**”), and exercised its investigative powers in relation thereto;
  - s) continued discussion with companies controlled by Mr. Jean Pessoa in order to attempt, if possible, to reach a global settlement of all pending issues with the latter;
  - t) protected the interests of the Debtors in the proceedings commenced against 9227 and others by Gerpro Construction inc. regarding its claim; and
  - u) been informed by various stakeholders of their intent to elaborate a plan of arrangement for the benefit of 9227;
  - v) been involved in discussions concerning an eventual sale of the building located at 170 de L’Industrie, Candiac which may entail the end of the restructuring process for 9336;
  - w) complied with all the requirements of the Plan Filing and Creditors’ Meeting Procedure Order dated April 28, 2021, and more precisely:
    - i) supervised, prepared, and sent the Meeting Materials to Creditors;
    - ii) published on its Website an electronic copy of the Meeting Materials;
    - iii) held and presided the Creditors’ Meeting.
19. It is respectfully submitted that the extension of the Stay Period to September 30, 2021 is required to provide the KPMG and the Debtors with sufficient time to, *inter alia*:
- a) continue to manage and ensure the stability of the Debtors’ business;
  - b) continue its analysis of the nature and status of the Debtors’ operations;
  - c) continue discussions with and reporting to Caisse in relation to the DIP Loan;

- d) interface with various stakeholders, including, *inter alia*, the City of Candiac, the Mises en cause and their principals, as well as secured creditors, prospective purchasers, and counterparties to various contracts (including deeds of sale and offers to purchase), in order to, *inter alia*, better understand and circumscribe their respective positions and potential claims;
- e) analyze the existence, validity, and quantum of various claims against the Debtors and their Property pursuant to the Claims Procedure, and pursue the payment of any sums due to the Debtors;
- f) generally oversee and, if it considers advisable, provide assistance in relation to Debtors' involvement in the proceedings for a partition of the respective beneficial interests of the undivided co-owners in the property of 9227;
- g) continue to defend 9227's interests in the Abandonato Proceedings and to pursue 9227's interests in other proceedings;
- h) pursue opportunities for selling certain property of the Debtors;
- i) failing settlement with entities controlled by Mr. Jean Pessoa, pursue the existing recourses already filed in the court record;
- j) complete and finalize all the requirements of the Plan Filing and Creditors' Meeting Order Procedure;
- k) opine on the opportunity for the Court to sanction the Steckler Plan; and
- l) such other matters that may arise throughout the process.

#### 4. EXTENSION OF THE INTERIM FINANCING AGREEMENT

- 20. As appears from the Cash Flow Forecast, without extending the term of the Interim Financing Agreement, the Debtors will be unable to meet their post-filing obligations in the ordinary course as of June 30, 2021.
- 21. Caisse also agreed to further amend the Interim Financing Agreement to extend the term of the Interim Financing Agreement to the earlier of a series of events including the date of September 30, 2021, subject to the terms of an agreement (the "**Seventh Amending Agreement**") to be finalized in the coming days and filed at the hearing of the present motion.
- 22. Therefore, pursuant to the Draft Order (Exhibit R-4), KPMG is asking the Court, *inter alia*, to authorize the Seventh Amending Agreement.

## 5. PROCEDURAL MATTERS

### 5.1 Confidentiality

23. KPMG submits that, regardless of the outcome of the present Motion, the Cash Flow Forecast filed as Appendices C and D *under seal* to KPMG's Eleventh Report (Exhibit R-5) should be kept strictly confidential and shall be filed under seal.
24. Such information will be made available to creditors of the Debtors who execute a confidentiality agreement.
25. It is submitted that public disclosure of such sensitive financial information and documentation would be very prejudicial to the Petitioners, notably due to the potential use of this information by potential purchasers or competitors.
26. At the same time, the proposed measure would cause no prejudice to creditors, as the information would nevertheless be filed with this Honourable Court and could be made available to certain creditors upon signature of a confidentiality agreement.

### 5.2 Execution Notwithstanding Appeal

27. In view of the urgency and severity of the circumstances confronting the Debtors, it is essential that execution of the order requested be granted notwithstanding appeal.

### 5.3 Service

28. Pursuant to paragraph 67a) of the Corrected Second Amended and Restated Initial Order (Exhibit R-2), all motions in these CCAA Proceedings are to be brought on not less than five (5) calendar days' notice to all Persons on the service list. Each Motion must specify a date (the "**Initial Return Date**") and time for the hearing.
29. Paragraph 67b) of the Corrected Second Amended and Restated Initial Order (Exhibit R-2) requires that an Person wishing to object to the relief sought on a motion in the CCAA Proceedings must serve responding motion materials or a notice stating the objection to the motion and ground for such objections (a "**Notice of Objection**") in writing to the moving party and the Monitor, with a copy to all persons on the service list, by no later than 5 p.m. Montréal time on the date that is three (3) calendar days prior to the Initial Return Date (the "**Objection Deadline**"), i.e, prior to June 26, at 16:30 with respect to this Motion.
30. Pursuant to the Order of June 26, 2020, paragraph 67a) of the Corrected Second Amended was amended to ensure that the Objection Deadline will never be less than three (3) business days following service of a motion.
31. Paragraph 67c) of the Corrected Second Amended and Restated Initial Order (Exhibit R-2), as amended on April 24, 2020, further provides that if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of the motion may determine whether a hearing is necessary, whether such hearing will be in person, by telephone, by videoconference or in writing and the parties from whom submissions are required (collectively, the "**Hearing Details**").

32. Paragraph 67d) of the Corrected Restated Initial Order (Exhibit R-2) provides that KPMG shall communicate with the Judge and the service list with respect to the Hearing Details.
33. Paragraph 67e) of the Corrected Second Amended and Restated Initial Order (Exhibit R-2), as amended on April 24, 2020, provides that, if a Notice of Objection is served by the Objection Deadline, the Court will advise the parties if the hearing will be in person, by telephone, by videoconference or by written submissions only, and then the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time or such other time as may be directed by the Court, to either proceed with a hearing, or establish a schedule for delivery of materials, for a hearing and for other matters.

**6. CONCLUSIONS**

34. Given the present circumstances in which the COVID-19 pandemic has slowed or stalled ongoing sales of land as well as of the sale processes, and for the reasons set forth above, KPMG believes that it is both appropriate and necessary that the relief being sought herein be granted for the purposes of maximizing the restructuring and realization efforts of the Debtors for the benefit of their stakeholders, and that the requested extension of the Stay Period be granted.
35. KPMG respectfully submits that the notices given of the present motion are proper and sufficient and that this motion should be granted in accordance with its conclusions.
36. The present motion is well-founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present *Motion for (i) the Extension of the Stay of Proceedings, and (ii) the Extension of the Term of the Interim Financing Agreement;*

**ISSUE** an Order in the form of the Draft Order communicated in support hereof as Exhibit R-4;

**THE WHOLE WITHOUT COSTS**, save and except in case of contestation.

Montréal, June 23, 2021

*Blake, Cassels & Graydon L.L.P.*

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**BLAKE, CASSELS & GRAYDON LLP**

Attorneys for the Petitioner / Monitor

(Court Code: BB-8098)

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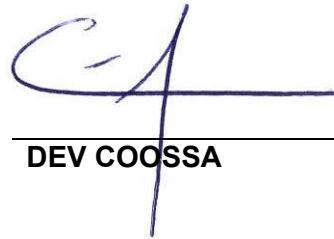
Our reference: 72396-22



**AFFIDAVIT**

I, the undersigned, **Dev Coossa**, LIT, CIRP, practicing my profession at KPMG Inc., having a place of business at 1500-600 De Maisonneuve Blvd. West, in the city of Montréal, Québec, solemnly affirm that all the facts alleged in the present *Motion for (i) the Extension of the Stay of Proceedings, and (ii) the Extension of the Term of the Interim Financing Agreement* are true.

AND I HAVE SIGNED:



\_\_\_\_\_

**DEV COOSSA**

SOLEMNLY DECLARED before me  
at Montréal, Québec  
this 23<sup>rd</sup> day of June, 2021



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Commissioner of Oaths for the Province of  
Québec

## NOTICE OF PRESENTATION

### To: SERVICE LIST

#### 1. PRESENTATION OF THE APPLICATION

**TAKE NOTICE** that the present *Motion for (i) the Extension of the Stay of Proceedings, and (ii) the Extension of the Term of the Interim Financing Agreement* will be presented for adjudication **virtually** before the Honourable Philippe Bélanger, J.S.C., or another Justice of the Superior Court of Québec, sitting in the commercial division for the district of Montréal on **June 29, 2021 at 9:00 a.m. in room 16.02** or so soon thereafter as counsel may be heard, in a forum to be further announced to the Service List.

#### 2. HOW TO JOIN THE HEARING

The coordinates to join the hearing in room **16.02** are as follows:

##### A. Using Teams

To open the permanent link established for room **16.02** click [here](#)<sup>3</sup>.

You must then fill in your name and click “*Join Now*”.

In order to facilitate the process and the identification of the parties, we invite you to fill in your name as follows:

**Attorneys:** Mtre. “Name”, “Surname” (name of the party being represented)

**Trustees:** “Name”, “Surname” (Trustee)

**Superintendent :** Name”, “Surname” (Superintendent)

**Parties not represented by an attorney:** “Name”, “Surname” (specify: Petitioner, Respondent, creditor or other)

##### B. By telephone

Dial one of the following numbers and ID of the conference:

CANADA (toll-free): 1 (833) 450-1741

CANADA, QUÉBEC (charges will apply): +1 581-319-2194

Conference ID: : 177 110 814#

##### C. By videoconference

Email address: [teams@teams.justice.gouv.qc.ca](mailto:teams@teams.justice.gouv.qc.ca)

VTC Conference ID: 1180976201

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<sup>3</sup> The permanent links for the Montreal Courthouse rooms can also be found in the document entitled *Liens TEAMS pour rejoindre les salles du Palais de justice de Montréal en matière commerciale, civile et familiale* under the heading “Audiences virtuelles” found on the Superior Court of Quebec website at : <https://coursuperieureduquebec.ca/roles-de-la-cour/audiences-virtuelles>

**D. In person**

If and only if the above-mentioned means are not available, you can then go to room 16.02 of the Montreal Courthouse located at 1, Notre-Dame East, Montréal, Québec.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, June 23, 2021

*Blake, Cassels & Graydon L.L.P.*

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**BLAKE, CASSELS & GRAYDON LLP**

Attorneys for the Petitioner / Monitor

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Our reference: 72396-22

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF **MONTREAL**

**SUPERIOR COURT**  
Commercial Division  
(Sitting as a court designated pursuant to the CCAA)

N°: **500-11-057549-194**

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9336-9262 QUÉBEC INC.**

Debtors

-and-

**KPMG INC.**

Petitioner / Monitor

-and-

**110302 CANADA INC.  
9325-7277 QUÉBEC INC.**

Mises en cause

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**LIST OF EXHIBITS**

(in support of the *Motion for (i) the Extension of the Stay of Proceedings, and (ii) the Extension of the Term of the Interim Financing Agreement*)

- 
- R-1** Motion for an Initial Order
  - R-2** Corrected Second Amended and Restated Initial Order
  - R-3** March 31 Order
  - R-4** Draft Order
  - R-5** KPMG's Eleventh Report (Appendices C and D *under seal*)

Montréal, June 23, 2021

*Blake, Cassels & Graydon L.L.P.*

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**BLAKE, CASSELS & GRAYDON LLP**  
Attorneys for the Petitioner / Monitor

N°: 500-11-057549-194

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**SUPERIOR COURT**  
(Commercial Division)  
**DISTRICT OF MONTRÉAL**

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**IN THE MATTER OF THE COMPROMISE OR  
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**MOTION FOR (I) THE EXTENSION OF THE STAY OF  
PROCEEDINGS, AND (II) THE EXTENSION OF THE  
TERM OF THE INTERIM FINANCING AGREEMENT  
AFFIDAVIT AND NOTICE OF PRESENTATION**

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**ORIGINAL**

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The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script.

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**BB-8098**

Our File: 72396-22