CANADA

PROVINCE OF QUÉBEC
DISTRICT OF **MONTRÉAL**

N°: **500-11-**

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)

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

9227-1584 QUÉBEC INC., a corporation incorporated pursuant to the laws of Québec, having its head office at 200-4360 Chemin de la Côte-de-Liesse, City and District of Montréal, Province of Québec, H4N 2P7

-and-

9336-9262 QUÉBEC INC., a corporation incorporated pursuant to the laws of Québec, having its head office at 200-4360, Chemin de la Côte-de-Liesse, City and District of Montréal, Province of Québec, H4N 2P7

Debtors

-and-

KPMG INC., in its capacity as administrative agent and manager of the Debtors' assets, a corporation incorporated pursuant to the laws of Canada having an establishment in Québec at 1500-600 De Maisonneuve Blvd. West, City and District of Montréal, Province of Québec, H3A 0A3

Petitioner / Proposed Monitor

-and-

110302 CANADA INC., a corporation incorporated pursuant to the laws of Canada, having its head office at 200-4360 Chemin de la Côte-de-Liesse, City and District of Montréal, Province of Québec, H4N 2P7

-and-

9325-7277 QUÉBEC INC., a corporation incorporated pursuant to the laws of Québec, having its head office at 455 Cartier Boulevard West, City and District of Laval, Province of Québec, H7N 2L7

Mises en cause

MOTION FOR THE ISSUANCE OF AN INITIAL ORDER
(Sections 4, 5, 11 and *ff.* of the *Companies' Creditors Arrangement Act* ("**CCAA**"))

TO THE HONOURABLE JUSTICE PETER KALICHMAN, J.S.C. OR ANOTHER ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE DEBTORS SUBMIT AS FOLLOWS:

1. INTRODUCTION AND REQUESTED RELIEF

1. KPMG Inc. ("**KPMG**") brings this Motion in its capacity as court-appointed administrative agent and manager of the Debtors, 9227-1584 Québec Inc. ("**9227**") and 9336-9262 Québec Inc. ("**9336**"; collectively with 9227, the "**Debtors**"). Indeed, pursuant to an order of this Court rendered by the Honourable Martin Castonguay, J.C.S., on October 8, 2019, KPMG was appointed as administrative agent and manager over the assets and property of 9227 and 9336 with powers tantamount of those of a receiver pursuant to the applicable provisions of the *Business Corporations Act*[1] ("**QBCA**").

2. KPMG hereby seeks the protection of the Debtors pursuant to the CCAA in order to maintain their business and operations and to protect the value of the Debtors' assets for the benefit of their creditors and other stakeholders through a court-supervised restructuring process (collectively, the "**Restructuring**").

3. More particularly, KPMG hereby seeks the issuance of a CCAA initial order substantially in the form and substance of the draft Initial Order communicated herewith as **Exhibit R-1** (the "**Draft Initial Order**"), providing for, *inter alia*, the following relief:

   a) a declaration that the Debtors are debtor companies to whom the CCAA applies;

   b) a stay of proceedings in favour of the Debtors and their respective directors and officers, and other general CCAA relief pursuant to, *inter alia*, sections 11, 11.02 and 11.03 thereof;

   c) authorization for KPMG to continue to conduct the Debtors' business activities and operations in the normal course in order to preserve their assets and to make payments related to the conduct of their business activities and operations, and for the continuation of certain of KPMG's other powers pursuant to the QBCA Order (as defined herein);

   d) the appointment of the Proposed Monitor, KPMG Inc. ("**KPMG**"), as Monitor pursuant to section 11.7 of the CCAA;

   e) the termination of KPMG's capacity as administrative agent and manager of the Debtors;

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[1] CQLR c. S-31.1, ss. 450 and 451.

f) authorization for KPMG to cause the Debtors to submit a plan of arrangement to their creditors at a later date, if applicable;

g) authorization to implement various measures required for the purpose of facilitating the Restructuring, including, notably, entering into or otherwise coordinating aspects of interim financing and the development and submission to the Court for approval of a sale process, if applicable and to the extent considered necessary by KPMG;

h) approval of an administrative consolidation as proposed herein;

i) the granting of an Administration Charge (as defined herein) pursuant to section 11.52 of the CCAA.

4. A version comparing the model CCAA Initial Order issued by the Commercial Division of the Superior Court of Québec (the "**Model Order**") with the Draft Initial Order is communicated herewith as **Exhibit R-1A**.

5. The Draft Initial Order essentially reflects the conclusions of the QBCA Order (as defined herein) and the Model Order.

2. BACKGROUND

2.1 The Debtors

6. The Debtors are Montreal-based companies incorporated pursuant to the laws of Québec, as appears from the corporate profiles for the Debtors communicated as herewith as **Exhibit R-2**, *en liasse*.

7. 110302 Canada Inc. ("**Canada Inc.**"), represented by Mr. Arthur Steckler ("**Mr. Steckler**") and 9325-7277 Québec Inc. ("**9325**"; collectively with Canada Inc., the "**Shareholders**"),[2] represented by Mr. Marc-André Nadon ("**Mr. Nadon**"), are undivided co-owners of the beneficial ownership interests in and to the asset of the Debtors, as appears from a *Convention d'indivision* between Canada Inc., 9325 and 9227 dated as of July 24, 2015 (the "**9227 Indivision Agreement**") which will be filed under seal of confidentiality at the hearing of the present Motion as **Exhibit R-3** and from an *Agreement of Indivision* between Canada Inc., 9325 and 9336 dated as of April 13, 2016 (the "**9336 Indivision Agreement**"; collectively with the 9227 Indivision Agreement, the "**Indivision Agreements**") communicated herewith as **Exhibit R-4**.

8. 9227 acts as nominee for the beneficial interests of the Shareholders to hold title to various real estate properties comprising the lots 6 022 112 ("**Lot 112**"), 6 022 113 ("**Lot 113**"), 6 022 115 ("**Lot 115**"), 6 022 117 ("**Lot 117**"), 6 022 119 ("**Lot 119**"), 6 022 120 ("**Lot 120**"), 6 022 121 ("**Lot 121**"), 6 022 122 ("**Lot 122**"), 6 073 665 ("**Lot 665**"), 6 073 666 ("**Lot 666**"), 6 073 692 ("**Lot 692**"), 6 073 693 ("**Lot 693**"), 6 073 694 ("**Lot 694**") and 6 265 849 ("**Lot 849**") at the Land Register (or as may have been or may eventually be subdivided, collectively, the "**Project Properties**") in the city of Candiac, Québec known

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[2] The term "Shareholders" is used for convenience; the relationship between the parties is in fact governed by an undivided co-ownership agreement, as discussed below.

as the Square Candiac Project, as appears from the *Convention de mandat* between Canada Inc., 9325 and 9227 dated as of July 24, 2015 (the "**9227 Nominee Agreement**"), which will be filed under seal of confidentiality at the hearing of the present Motion as **Exhibit R-5**.

9. As appears from the 9336 Indivision Agreement (Exhibit R-4), 9336 acts as nominee for the beneficial interests of the Shareholders to hold title to an immovable adjacent to the Square Candiac Project, bearing civic address 170 de l'Industrie Boulevard in Candiac, and comprising lot number 2 094 091 at the Land Register. It was acquired for the purposes of serving, in the short term, as a sales office and to showcase model units of the Square Candiac Project (the "**170 de l'Industrie Property**"), and to subdivided and/or developed where necessary, including with the installation of infrastructure, for other commercial purposes in the long term and for the sale of building lots.

10. The Debtors have no employees.

2.2 The Square Candiac Project and the Project Properties

11. The Square Candiac Project is a years-long, complex and multifaceted mixed-used construction and development project of the Project Properties on approximately 45 acres of mixed-used aggregation lots, located on the south shore of Montréal in Candiac.

12. KPMG understands the Project Properties were purchased by 9227, as nominee of the Shareholders, on or about December 1, 2016.

13. KPMG understands that the 170 de l'Industrie Property was purchased by 9336, as nominee for the Shareholders, on or about August 25, 2016.

14. The 170 de l'Industrie Property is an important value-added feature of the Square Candiac Project, as a result of its potential to provide (both in the short-term and long-term) important synergy to the rest of the Square Candiac Project by serving as a sales office for 9227 and builder-purchasers on the Square Candiac Project, with the ultimate goal of being redeveloped as a commercial property.

15. A series of aerial photographs of the Square Candiac Project site is communicated herewith as **Exhibit R-6**, *en liasse*.

16. Initial financing for the Square Candiac Project was provided by way of equity investment, term loan and line of credit, as well as from revenues generated throughout the implementation of the Square Candiac Project.

2.3 Status of the Square Candiac Project and Sales of the Project Properties

17. While there are several past and contemplated transactions in respect of the Square Candiac Project, portions of the Square Candiac Project remain to be completed (such as the infrastructure) and/or sold, as applicable, and the Debtors do not have the immediately available liquidity to accomplish this.

18. The Project Properties and transactions concluded or underway in relation thereto are more fully described on the charts communicated herewith as **Exhibit R-7**, *en liasse*. In summary:

a) Lot number 6 022 126 was sold on October 31, 2019 for a price of $6,000,000, of which $2,500,000 remains outstanding and will be payable in May 2020; and

b) Lot 665, Lot 666, Lot 693 and Lot 694 are subject to promises to purchase for an aggregate amount of $6,080,000, though no transaction has yet closed.

19. Additionally, a series of plans indicating (i) the Project Properties that remain for sale as of July 2019, (ii) a breakdown of completed contracts of sale and ongoing contracts, and (iii) receivables collectable in respect of such offers to purchase that have not yet closed, is communicated herewith as **Exhibit R-8**, *en liasse*.

20. The Square Candiac Project is at a critical juncture for several reasons:

a) While some aspects of the Square Candiac Project have been completed and certain Project Properties have been sold, portions of the Square Candiac Project remain to be completed (such as the infrastructure) and/or sold, as applicable, and the Debtors do not have the immediately available liquidity to accomplish this;

b) Notwithstanding the issuance of the QBCA Order, the Square Candiac Project remains stalled pending additional financing, as described further below;

c) Numerous trade creditors, secured creditors and lien holders remain unpaid and/or are awaiting confirmation and undertakings by 9227;

d) Several trade creditors have registered legal hypothecs (the "**Construction Hypothecs**"), along with a prior notice of the execution of rights thereunder pursuant to the applicable provisions of the *Civil Code of Québec* and s. 244 of the *Bankruptcy and Insolvency Act* ("**BIA**"), as appears from the prior notice communicated herewith as **Exhibit R-9** and as discussed more fully at para. 36 below; and

e) Marketing initiatives of the Square Candiac Project require financial investment and other forms of input from 9227.

2.4 The QBCA Order

21. On October 8, 2019, with the consent of all parties, the honourable Martin Castonguay, J.C.S. issued 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, as appears from the QBCA Order communicated herewith as **Exhibit R-10**, *en liasse*.

22. The QBCA Order was issued following the filing by Canada Inc. and Mr. Steckler of an *Originating Motion for the Appointment of an Administrative Agent and Manager and for the Issuance of Other Orders for Redress* (the "**QBCA Motion**"), seeking, *inter alia*, the appointment of KPMG as administrative agent and manager, with powers tantamount to those of a receiver pursuant to the applicable provisions of the QBCA.

23. Although 9325 and Mr. Nadon contested the allegations of the QBCA Motion, it was agreed by all parties that the appointment of KPMG as administrative agent and manager was necessary as a result of a deadlock between the Shareholders and their respective

representatives, Mr. Steckler and Mr. Nadon. The parties therefore consented to the issuance of the QBCA Order (Exhibit R-10), as appears therefrom.

24. The QBCA Motion was filed concurrently with an application by Canada Inc. seeking to partition the Shareholders respective undivided interest in the Property (the "**Motion for Partition**"), in accordance with the Indivision Agreements (Exhibits R-3 and R-4) and the *Civil Code of Québec*.

25. The QBCA Order (Exhibit R-10), notably:

    a) appointed KPMG (Dev Coossa, LIT, CIRP) as administrative agent and manager of the assets of the Debtors, until (i) the end of the indivision between the Shareholders, or (ii) the issuance of a court order terminating KPMG's mandate (para. 9);

    b) authorized KPMG to take possession of the Debtors' property (the "**Property**"), as sole administrator thereof (para. 11);

    c) ordered that KPMG shall have all the powers in relation to the preservation of the Property (para. 14), to the Debtors' operations (para. 15) and to the disposition of sale of the Property (para. 16);

    d) ordered KPMG to petition the court for authorization to sell all or any part of the Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances (para. 20);

    e) granted KPMG all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, within the performance of its duties regarding the Property (para. 21).

26. The *raison d'être* of the QBCA Order was to allow KPMG to manage, protect and maximize the value of the Property, in light of the apparent deadlock between the Shareholders, while at the same time attempting to market and sell the Property if deemed necessary or advisable.

27. KPMG informed certain of the Debtors' secured creditors and holders of Construction Hypothecs of its appointment pursuant to the QBCA Order.

28. Following the issuance of the QBCA Order and the entry of KPMG into its functions thereunder, it became apparent to KPMG that the Debtors are insolvent, and that the proper continuation or restructuring of the Debtors' operation requires both additional liquidities and a stay of proceedings.

29. In particular, despite the value of the Project Properties, the Debtors are suffering from an immediate lack of liquidity and are therefore generally unable to meet their obligations as they generally come due at the present time.

3. SELECTED FINANCIAL DATA

3.1 Results of Operations

30. For the fiscal years ending August 31, 2018 and April 30, 2019, 9227 has earned net profits, while 9336 has experienced moderate losses, as appears, respectively, from 9227's financial statements as at August 31, 2018 and April 30, 2019 and from 9336's financial statements as at April 30, 2019 (collectively, the "**Debtors' Financial Statements**") which will be filed under seal of confidentiality at the hearing of the present Motion, as **Exhibit R-11**, *en liasse*.

3.2 Assets

31. The aggregate net book values of the assets of the Debtors as of April 30, 2018 and April 30, 2019, are respectively found in the balance sheets included in Debtor's Financial Statements, Exhibit R-11.

32. The estimated value of the Property appears to exceed the book value thereof, as appears from the sum of the estimated values of the Property indicated in the abridged report prepared by Groupe Altus dated September 12, 2019 (the "**Evaluation Report**") which will be filed under seal of confidentiality at the hearing of the present Motion as **Exhibit R-12**. KPMG has yet to conduct an independent review of the conclusions of the Evaluation Report, which was filed by one of the parties in the litigation in relation to the Motion for Partition and is not necessarily admitted by the other party in other respects.

33. However, the Debtors are currently facing a liquidity crisis and are unable to pay their obligations as they come due, as discussed further below.

4. INDEBTEDNESS

4.1 Secured Liabilities

34. The Debtors appear to have estimated outstanding secured liabilities of nearly $13.5 million as at October 31, 2019, based on the most recent available data as well as the Land Register indexes and the RDPRM security search report communicated herewith, respectively, as **Exhibit R-13**, *en liasse* and **Exhibit R-14**, which can be summarized as follows:

[table on next page]

Creditor	Credit Agreement	Debtor / Guarantor	Amount of Security	Description of Collateral (Summary)	Amount due (at October 31, 2019)
Caisse Desjardins de Terrebonne ("**Desjardins**")	Offer of Financing dated March 14, 2018, as amended as of April 13, 2018	9227 Guaranteed by each of the Shareholders	$7,500,000 with interest of 15% per year plus additional hypothec of 20%	Lot 117, Lot 119, Lot 666, Lot 693 and Lot 694, and all present and future movables incorporated, attached or united thereto. No. 23 743 978 (April 6, 2018), La Prairie	**$4,193,026**
			$7,500,000 with interest of 15% per year plus additional hypothec of 20%	All right, title and interest of 9227 or any other entity having rights in the building situated in Lot 117, Lot 119, Lot 666, Lot 692, Lot 693 and Lot 694, in (i) all movable property, tangible and intangible, present and future, related to the building, including rent, leases, insurance indemnities regarding the building, plans and drawings, construction contracts and other contracts, construction bonds, permits, approvals, equipment, receivables, inventory, intellectual property, marketing documentation, revenues and all claims of said parties, (ii) the insurance rights and indemnities covering the above property and claims described above, as well as any indemnity to which 9227 may be entitled if the property is damages, lost, destroyed or otherwise affected or if the claims cannot be collected in whole or in part, including the indemnities for loss of income or equipment breakdown, if applicable, and (iii) the claims, instruments or monies arising from the rental, sale or other alienation of the hypothecated property, including sums deposited at any financial institution. No. 18-0553829-0001 (May 24, 2018)	
Garadex Inc.	Deed of hypothecary loan dated June 21, 2019	9227	$3,400,000, with interest of 10% per year, plus 20% additional hypothec	Lot 849, and all present and future rents produced thereby and indemnities paid under insurance contracts to cover the rents. No. 24 709 836 (June 24, 2019), La Prairie	**$3,400,000**

Creditor	Credit Agreement	Debtor / Guarantor	Amount of Security	Description of Collateral (Summary)	Amount due (at October 31, 2019)
Société Immobilière Gagné Inc.	Deed of hypothec dated December 1, 2016	9227	$9,592,219, with interest of 25% per year, plus an additional hypothec of 20%	Lot 5 854 295, as subdivided into, *inter alia*, Lot 112, Lot 113, Lot 115, Lot 117, Lot 119, Lot 121 and Lot 122. No. 22 775 349 (December 2, 2016), La Prairie	**$4,439,156**
Business Development Bank of Canada	Offer Letter dated June 1, 2017	9336	$1,550,000, with interest of 25% per year and an additional hypothec of 20%	The 170 de l'Industrie Property, and (a) all present and future rents and revenues produced by the 170 de l'Industrie Property, (b) all present or future movable property attached or united to the 170 de l'Industrie Property, and (c) indemnities payable under any insurance contract covering the 170 de l'Industrie Property and the property mentioned in the foregoing points (a) and (b). No. 23 163 395 (June 15, 2017), La Prairie	**$1,441,767**

35. Independent reviews of the validity, enforceability and ranking of the foregoing security interests and loan documentation have yet to be conducted by KPMG.

36. Additionally, as appears from Exhibit R-13, more than $4,000,000 of Construction Hypothecs have been registered against the Project Properties as a result of Debtors' liquidity crisis, discussed further below. These Construction Hypothecs can be summarized as follows:

Creditor	Description of Hypothec	Debtor	Amount of Security	Project Properties Charged
Gerpro Construction Inc. (subject to a subrogation by Groupe Stecknar, No. 24 609 427)	Construction Hypothec, No. 24 799 711 (July 31, 2019), La Prairie	9227	$3,359,101.60	Lot 119, Lot 120
A. & J.L. Bourgeois ltée	Construction Hypothec, No. 24 841 372 (August 21, 2019), La Prairie Prior notice – Sale under judicial authority, No. 24 985 433 (October 24, 2019), La Prairie	9227	$776,902.54	Lot 119, Lot 120
Groupe ABS Inc.	Construction Hypothec, No. 24 963 906 (October 15, 2019), La Prairie	9227	$41,140.13	Lot 119, Lot 120

Excavation René St-Pierre Inc.	Construction Hypothec, No. 24 973 604 (October 18, 2019), La Prairie	9227	$137,759.95	Lot 119, Lot 120
			$4,314,904.22	

37. Independent reviews of the validity, enforceability and ranking of the foregoing Constructions Hypothecs have yet to be conducted.

4.2 Unsecured Liabilities

38. As of October 31, 2019, based on the most recent information available, the Debtors' indebtedness to their suppliers and other unsecured creditors amounted to approximately $5,521,603.

39. Reported unsecured liabilities, which remain subject to independent review by KPMG, include, *inter alia*:

   a) $4,011,906 of reported related company advances;

   b) $1,359,697 of trade accounts payable;

   c) $150,000 of shareholder advances.

5. THE CURRENT FINANCIAL DIFFICULTIES

5.1 Causes of Financial Difficulties

40. As mentioned above, while there are several past and contemplated transactions in respect of the Square Candiac Project, portions of the Square Candiac Project remain to be completed (such as the infrastructure) and/or sold, as applicable, and the Debtors do not have the immediately available liquidity to accomplish this.

41. While some transactions have been concluded and others are in progress, this has been insufficient to generate the short-term cashflow necessary to continue to advance the Square Candiac Project.

42. Despite the apparent profitability of the Square Candiac Project (see para. 30 above) and the value of the Property that appears to exceed the Debtors' liabilities (see paras. 31 and 32 above), the Debtors temporarily find themselves without liquidity to meet their obligations as they generally come due and they have in many cases ceased to pay their current obligations in the ordinary course of business as they generally become due, such that the Debtors are insolvent.

43. This has resulted in the filing of $4,314,904.22 of Construction Hypothecs against the Project Properties, as discussed above, with the validity and the quantum of such Construction Hypothecs not having been confirmed independently by KPMG, and also subject to contestation in certain respects by the Shareholders and related parties in their litigation proceedings.

44. The net result of the foregoing is that the entire Square Candiac Project risks being jeopardized without CCAA protection for the Debtors, including in particular the protection afforded by the stay of proceedings during the Stay Period (as defined below) and the ability to explore and conclude an agreement for interim financing for the Debtors, subject to eventual Court approval.

5.2 Liquidities and Interim Financing to be Sought

45. With the protection of the initial 10-day Stay Period, KPMG is seeking, *inter alia*, to prevent the exercise by secured creditors of their security over the Property, as well as to prevent eventual enforcement action by unsecured creditors.

46. That said, in order to meet their obligations as they come due for the purpose of completing the development and/or sale of the Project Properties, the Debtors will require additional liquidity, as appears from the weekly cash flow projections of the Debtors for the 13-week period commencing November 23, 2019 and ending February 22, 2020 (the "**Cash Flow Forecast**"), which will be filed under seal of confidentiality at the hearing of the present Motion as **Exhibit R-15**.

47. In light of the foregoing, KPMG is exploring options for interim financing for the Debtors, and intends to seek approval of such interim financing at the comeback hearing for the renewal of the initial 10-day Stay Period or at a subsequent hearing.

6. CASH FLOW FORECAST

48. Based on the financial position of the Debtors and based on the assumptions set out in the Cash Flow Forecast (Exhibit R-15), KPMG believes that the Cash Flow Forecast is fair and reasonable.

49. The Cash Flow Forecast (Exhibit R-15) has been prepared by KPMG, the Proposed Monitor, in its capacity as administrative agent and manager pursuant to the QBCA Order. KPMG will also be filing a pre-filing report containing its observations on the Cash Flow Forecast.

50. Based on the Cash Flow Forecast (Exhibit R-15), the Debtors should be able to meet their post-filing obligations in the ordinary course for the initial 10-day Stay Period, as described above, but will eventually need interim financing to satisfy selected pre-filing and post-filing obligations which are essential to their restructuring efforts.

7. PROPOSED RESTRUCTURING

51. The Debtors are currently insolvent, with limited cash resources that are insufficient to pay liabilities as they come due.

52. Based on the Cash Flow Forecast (Exhibit R-15), KPMG anticipates that the Debtors will have sufficient funding and liquidity to cover anticipated post-filing costs and expenses during the initial 10-day Stay Period, but will need interim financing to meet its liquidity need during the 13-week forecast period.

53. The Debtors require the benefit of the relief requested in this Motion, including a stay of proceedings, in order to allow them to continue to develop the Project Properties, explore

marketing or sale opportunities if deemed appropriate and advisable by KPMG, engage in further discussions with key stakeholders such as suppliers, lenders and others under the stability and guidance of a court-supervised process, and possibly develop an eventual plan of arrangement.

54. With the protection from Debtors' creditors requested herein, the KPMG will focus their resources on, *inter alia*:

a) continuing to manage and ensure the stability of the Debtors' business, as it has done since the issuance of the QBCA Order;

b) obtaining interim financing to maximize the value of the Debtors' Property;

c) continuing steps to market and sell the Property in the ordinary course of business, or outside the ordinary course by way of a solicitation and sale if and as deemed appropriate by KPMG, or otherwise developing a restructuring strategy;

d) eventually developing a plan of arrangement, and causing the Debtors to submit such plan to their creditors;

e) based on the availability of resources, taking other steps to preserve and maintain the value of the Debtors' assets and properties;

f) generally oversee and, if it considers advisable, provide assistance in relation to Debtors' involvement in the proceedings in respect of the Motion for Partition; and

g) such other matters that may arise throughout the process.

8. RELIEF SOUGHT

8.1 General

55. KPMG is deeply concerned that unless the stay of proceedings is granted under the CCAA, certain suppliers, creditors and other stakeholders may attempt to take steps to try to improve their positions in comparison to other similarly situated stakeholders.

56. This would jeopardize and potentially deplete the value of the Debtors' Property to the detriment of all stakeholders and disrupt KPMG's ongoing efforts.

57. The stay of proceedings sought herein will preserve the status quo and permit KPMG to continue its efforts to maximize the value of the Debtors' Property.

58. CCAA proceedings are therefore necessary to preserve the value of the business of the Debtors with minimal disruption.

59. In the event of a liquidation and termination of the development and sale of the Project Properties, the value of the Property of the Debtors will be substantially impaired.

60. On this present Motion, KPMG seeks an initial stay period of 10 days (the "**Stay Period**") in respect of the Debtors and the Mises en Cause.

61. Before the expiry of the initial Stay Period, KPMG will return to this Court for a hearing or hearings, on notice to interested parties for, *inter alia*, an extension of the Stay Period and any other matters which may require the Court's attention at that time.

62. KPMG therefore request a stay of proceedings in respect of the Debtors until **December 2, 2019**, the whole as set forth in the Draft Initial Order, Exhibit R-1, in order to preserve the *status quo*, for the benefit of all stakeholders generally.

63. The Shareholders have approved the commencement CCAA proceedings by KPMG on behalf of the Debtors, as appears from the resolutions communicated herewith as **Exhibit R-16**, *en liasse*.

8.2 Administrative Consolidation

64. The Debtors' business activities have always been intertwined such that neither of them functions independent of the other.

65. Both Debtors are controlled in indivision by the same Shareholders, such that they are affiliated debtor companies pursuant to section 3 of the CCAA.

66. The Debtors share common management, accounting, finance and operations functions.

67. In light of their intertwined operating relationship, the administrative consolidation of the proceedings in respect of the Debtors is appropriate and necessary, and will provide greater administrative efficiency.

8.3 Appointment of the Proposed Monitor

68. In its role as administrative agent and manager pursuant to the QBCA Order, KPMG is familiar with the Debtors' Property, businesses and stakeholders. In this role, KPMG has obtained significant information in respect of the businesses, operations and Property of the Debtors, an understanding of the many issues faced by the Debtors and relevant to their restructuring efforts and a familiarity with the Shareholders of the Debtors. KPMG is therefore best qualified to act as Monitor and it is appropriate that KPMG be appointed Monitor.

69. KPMG is prepared to act as the monitor during these CCAA proceeding and to manage the Debtors' restructuring pursuant to, and subject to, the terms of the Initial Order of the Court and the statutory provisions of the CCAA.

70. KPMG is also prepared to accept expanded powers as monitor, in continuance of its expanded role pursuant to the QBCA Order (Exhibit R-10), to, *inter alia*:

    a) exercise possession of the Debtors' Property, as sole administrator thereof;

    b) analyze the proper course of action and restructuring options, including, *inter alia*, the possible development and implementation of a solicitation and sale process for all or part of the Property, subject to Court approval;

c) exercise all necessary powers in relation to the preservation of the Property, to the Debtors' operations and to the solicitation and sale of the Property, subject to court approval of the sale of Property outside the ordinary course of business.

71. As mentioned above, these extended powers are necessary in light of the apparent deadlock between the Shareholders mentioned above, which resulted in the issuance of the QBCA Order with the consent of the Shareholders (Exhibit R-10), and they are for the most part a continuance of KPMG powers pursuant to the QBCA Order, albeit in an insolvency context.

72. Subject to court approval, KPMG has consented to act as Monitor of the Debtors in their CCAA proceedings.

73. KPMG is a licensed trustee within the meaning of section 2 of BIA. KPMG is not subject to any of the restrictions on who may be appointed monitor as set out in section 11.7(2) of the CCAA.

74. At no time during the preceding two years has KPMG been:

a) a director, officer or employee of the Debtors;

b) related to the Debtors or to any former director or officer of the Debtors; or

c) the Debtors' auditor, accountant or legal counsel, or a partner or employee of the auditor, accountant or legal counsel of the Debtors.

75. KPMG is not a trustee under a trust indenture issued by the Debtors or any person related to the Debtors, and is not a holder of a power of attorney granted by the Debtors or by any person related to the Debtors. KPMG is not related to a trustee or holder of a power of attorney noted above.

76. Therefore, KPMG is qualified to act as Monitor and there is no restriction on KPMG being appointed Monitor in these CCAA proceedings.

8.4 Administration Charge

77. KPMG as Proposed Monitor and KPMG's counsel are essential to the restructuring efforts contemplated in these proceedings.

78. They are prepared to provide or continue to provide professional services to the Debtors only if they are protected by a charge over the assets of the Debtors.

79. It is contemplated that invoicing will take place and that fees and expenses of the beneficiaries of the charge will be paid on a weekly basis and a court ordered charge is sought as security for the fees and disbursements relating to services rendered up to a maximum amount of $250,000 with the priority set out in the Draft Initial Order (the "**Administration Charge**").

80. The amount of the Administration Charge has been determined not on the basis of the total fees payable to these professionals during the proceedings but on an assessment of

what could be an amount outstanding to these professionals at any given time in the proceedings.

8.5 Confidentiality

81. KPMG submits that the 9227 Indivision Agreement (Exhibit R-3), the 9227 Nominee Agreement (Exhibit R-5), the Debtors' Financial Statements (Exhibits R-11), the Evaluation Report (Exhibit R-12) and the Cash Flow Forecast (Exhibit R-15) produced and/or communicated in the context of the present proceedings, should be kept strictly confidential and filed under seal.

82. Such information will be made available to creditors who execute a confidentiality agreement.

83. It is submitted that public disclosure of such sensitive financial information and documentation would be very prejudicial to the Debtors, notably due to the potential use of this information by competitors or potential purchasers of the Debtor's Property.

84. At the same time, this would cause no prejudice to their creditors, as the information would nevertheless be filed with this Honourable Court and could be made available to creditors upon signature of a confidentiality agreement as mentioned above.

8.6 Execution Notwithstanding Appeal

85. 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.

9. SERVICE

86. The Debtors' secured creditors have received notice of the hearing of the present Motion and the Motion materials have been provided to them in advance.

87. This notice followed various discussions on November 20, 2019, pursuant to which KPMG informed the Debtors' secured creditors and holders of Construction Hypothecs of the imminent filing of the present proceedings.

10. CONCLUSION

88. The Draft Initial Order, Exhibit R-1, sought by this Motion is based on the Model Order approved by the Superior Court of Québec, Commercial Division as well as the QBCA Order, and reflects recent amendments to the CCAA. A black-lined version comparing the Model Order to the Draft Initial Order is communicated as Exhibit R-1A.

89. For the reasons set forth above, KPMG submits that it is both appropriate and necessary that the relief being sought in the Draft Initial Order, Exhibit R-1, be granted for the purposes of maximizing the value of the Debtors business and Property for the benefit of their stakeholders.

90. Considering the urgency of the situation, 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.

91. 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 the Issuance of an Initial Order*;

ISSUE an Initial Order in the form of the Draft Initial Order communicated in support hereof as Exhibit R-1;

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

Montréal, November 20, 2019

Blake, Cassels & Graydon

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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 the Issuance of an Initial Order* are true.

AND I HAVE SIGNED:

DEV COOSSA

SOLEMNLY DECLARED before me
at Montréal, Québec
this 20th day of November, 2019

Commissioner of Oaths for the Province of Québec

Commissaire à l'assermentation
MAXIME CODERE
198545
Pour le Québec

NOTICE OF PRESENTATION

To: SERVICE LIST

TAKE NOTICE that the present *Motion for the Issuance of an Initial Order* will be presented for adjudication before the Honourable Peter Kalichman, J.S.C., or another Justice of the Superior Court of Québec, sitting in the commercial division for the district of Montréal on **November 22, 2019 at 9:30 a.m.** or so soon thereafter as counsel may be heard, in **Room 16.12** of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, November 20, 2019

Blake, Cassels & Graydon

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Our reference: 72396-22

CANADA

PROVINCE OF QUÉBEC DISTRICT OF **MONTRÉAL**	**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°: **500-11-**	**IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:** **9227-1584 QUÉBEC INC.** **9336-9262 QUÉBEC INC.** Debtors -and- **KPMG INC.** Petitioner / Proposed 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 the Issuance of an Initial Order*)

R-1 Draft Initial Order

R-1A Blacklined Draft Initial Order against Model Order

R-2 Corporate profiles of the Debtors

R-3 UNDER SEAL: 9227 Indivision Agreement

R-4 9336 Indivision Agreement

R-5 UNDER SEAL: 9227 Nominee Agreement

R-6 Aerial photographs of the Square Candiac Project site, *en liasse*

R-7 Charts describing Project Properties and transactions concluded or underway, *en liasse*

R-8 Plans indicating (i) the Project Properties that remain for sale as of July 2019, (ii) a breakdown of completed contracts of sale and ongoing contracts, and (iii) receivables collectable in respect of such offers to purchase that have not yet closed, *en liasse*

R-9 Prior Notice of Exercise of a Hypothecary Right of Sale by Judicial Authority filed by A. & J.L. Bourgeois Ltée in the Land Register on October 24, 2019 under inscription number 24 985 433

R-10 QBCA Order

R-11 UNDER SEAL: Debtors' Financial Statements, *en liasse*

R-12 UNDER SEAL: Evaluation Report

R-13 Land Register indexes, *en liasse*

R-14 RDPRM security search report

R-15 UNDER SEAL: Cash Flow Forecast

R-16 Resolutions, *en liasse*

The exhibits, with the exception of those that will be filed under seal of confidentiality at the hearing of the present Motion, can be downloaded at the following link:

https://blakes.sharefile.com/d-s758e351bf6f461ba

Montréal, November 20, 2019

Blake, Cassels & Graydon

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Our reference: 72396-22

N°: 500-11-

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

9227-1584 QUÉBEC INC.
9336-9262 QUÉBEC INC.

Debtors

-and-
KPMG INC.

Petitioner / Proposed Monitor

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

Mises en cause

MOTION FOR THE ISSUANCE OF AN INITIAL ORDER
(Sections 4, 5, 11 and *ff.* of the CCAA)

ORIGINAL

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