

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-026779-054

**SUPERIOR COURT
COMMERCIAL DIVISION
(In bankruptcy and insolvency)**

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

MINCO-DIVISION CONSTRUCTION INC.,
a legal person duly constituted under Part 1A of the
Companies Act (Québec), having its head office and
principal place of business at 715 Victoria Square,
Suite 500, in the City and District of Montréal,
Province of Québec H2Y 2H7 (“**Minco**”);

– and –

SLEB 1 INC., a legal person duly constituted under
Part 1A of the *Companies Act* (Québec), having its
head office and principal place of business at
715 Victoria Square, Suite 500, in the City and
District of Montréal, Province of Québec H2Y 2H7
 (“**Sleb**”);

Petitioners

– and –

LITWIN BOYADJIAN INC., in its capacity as
Trustee under the Notice of Intention filed by Minco
and Sleb, and as proposed Monitor under this
Petition, a legal person duly constituted under the
Canada Business Corporations Act, having its
principal place of business at 1 Place Ville Marie,
Suite 2720, in the City and District of Montréal,
Province of Québec H3B 4G4;

Monitor

**PETITION TO TAKE UP AND CONTINUE UNDER THE
COMPANIES’ CREDITORS ARRANGEMENT ACT PROCEEDINGS
COMMENCED UNDER PART III OF THE BANKRUPTCY AND INSOLVENCY ACT
AND FOR THE ISSUANCE OF AN INITIAL ORDER
(Sections 4, 5, 11 and 11.6 of the *Companies’ Creditors Arrangement Act*,
R.S.C. 1985, c. C-36)**

**TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION (FOR BANKRUPTCY AND INSOLVENCY MATTERS),
IN AND FOR THE DISTRICT OF MONTRÉAL, PETITIONERS RESPECTFULLY
SUBMIT THAT:**

1. As appears from the Court record, Petitioners commenced proceedings, on October 27, 2005, under Part III of the *Bankruptcy and Insolvency Act* (R.S.C. 1985, c. B-3) (the “**BIA**”) and filed a Notice of Intention. A copy of this Notice of Intention is filed in support of the present Petition as **Exhibit P-1**. These proceedings were commenced because of threatened proceedings from various creditors;

CORPORATE STRUCTURE

2. Petitioners are private companies incorporated under Part 1A of the *Companies Act* (R.S.Q., c. C-38);
3. As will be described more fully hereafter, each of Petitioners is a debtor company within the meaning of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”);
4. Minco was incorporated on February 3, 1999 under the name 9073-6323 Québec Inc. and changed its name to Minco-Division Construction Inc. by Articles of Amendment dated January 7, 2000;
5. Sleb was incorporated on December 20, 2002 and is a wholly-owned subsidiary of Minco;
6. Petitioners’ head offices are located in Montréal, Québec, where operational and financial management, as well as business records, are located;
7. From an operational point of view, the business and affairs of Minco and Sleb have, at all times, been consolidated in that the sole purpose of such companies is to develop, build and sell the condominium project more fully described hereafter;

PROJECT

8. Sleb is a sole purpose company set up to own and develop a real estate project on a 40 635 sq. ft. parcel of land located in the heart of Montréal, at the north-east corner of Saint-Laurent Boulevard and de Maisonneuve Boulevard, formerly known and designated as Lots 2 913 000 and 2 913 001 of the Cadastre of the Province of Québec, Land Registration Division of Montréal (the “**Immovable Property**”);
9. Minco is a construction company duly licensed with the *Office de la construction du Québec* to act as a general contractor. All of its resources are currently dedicated to the construction project on the Immovable Property;
10. Petitioners acquired the Immovable Property to redevelop it into residential condominiums in three phases to be built over a period of approximately four years (the “**Project**”);
11. Phase 1 of the Project is the retrofit of an existing 10-storey building located at 10 Ontario Street West, for conversion into residential condominiums with a pool and elevated deck on top of the building (“**Phase 1**”);
12. Phase 2 of the Project would first involve the excavation and construction of four levels of underground parking. Phase 2 would follow with the construction of:
 - (a) a 15-storey aboveground condominium building on Clark Street, together with a pool on top of the building; and
 - (b) three-storey buildings on Saint-Laurent Boulevard behind former office facades;(“**Phase 2**”);

13. Phase 3 of the Project would see the construction of a 17-storey aboveground condominium building on de Maisonneuve Boulevard;
14. The commercial usage would be preserved on the ground floor, throughout Phases 1, 2 and 3, and on some mezzanines;
15. The plan filed in support of the Present Petition as **Exhibit P-2** illustrates the location of Phases 1, 2 and 3 of the Project on the Immovable Property;
16. Phase 1 rests in its entirety on former Lot 2913 000 of the Cadastre of the Province of Québec, Land Registration Division of Montréal, and Phases 2 and 3 rest in their entirety on Lot 2 913 001 of the Cadastre of the Province of Québec, Land Registration Division of Montréal;

17. Phases 1, 2 and 3 can be summarized as follows:

	PHASE 1	PHASE 2	PHASE 3	TOTAL
CONDOMINIUM UNITS	106	110	125	341
FLOORS ABOVEGROUND	10	15	17	N/A
UNDERGROUND LEVELS	1	4	4	N/A
PARKING UNITS	32	86*	99*	217
PRIVATE AREAS				
RESIDENTIAL	116 110 sq. ft.	79 550 sq. ft.	91 708 sq. ft.	287 368 sq. ft.
COMMERCIAL	12 792 sq. ft.	10 301 sq. ft.*	11 707 sq. ft.*	34 800 sq. ft.
COMMON AREAS	<u>19 550 sq. ft.</u>	<u>15 180 sq. ft.</u>	<u>26 186 sq. ft.</u>	<u>60 916 sq. ft.</u>
TOTAL AREA	148 452 sq. ft.	105 031 sq. ft.	129 601 sq. ft.	383 084 sq. ft.
PROJECTED CONSTRUCTION COSTS	\$29.3 million	\$47.0 million	\$36.6 million	\$111.0 million

* Apportioned between Phases 2 & 3 on a pro rata of the number of condominium units.

18. Phase 1 is tied to the completion of Phases 2 and 3 in that a number of parking areas sold as part of Phase 1 will be physically located in the underground levels of Phases 2 and 3;
19. On October 19, 2005, former Lot 2 913 000 of the Cadastre of the Province of Québec, Land Registration Division of Montréal was replaced by Lots 3400 839 to 3400 978 inclusively of the Cadastre of the Province of Québec, Land Registration Division of Montréal, in preparation of the sale of condominium units;

HUMAN RESOURCES

20. The governing mind, President and Chief Executive Officer of Petitioners is Mr. Luciano Minicucci. Mr. Minicucci has in excess of 25 years experience in the construction and real estate development fields and has been the driving force behind the Project;
21. Mr. Minicucci is indirectly a shareholder of Minco;
22. Petitioners currently employ 13 full-time employees, in addition to seven part-time employees and consultants;

HISTORY OF THE IMMOVABLE PROPERTY

23. 9088-5872 Québec Inc. acquired the Immovable Property from Les Halles de Longueuil Inc. by Deed of Sale executed before M^{trc.} Sheldon Merling, Notary, on November 23, 2000 and published at the Montréal Land Registry Office under number 5 216 977;
24. 9088-5872 Québec Inc. acquired the Immovable Property for \$5,975,000 and paid:
 - (a) \$2,063,734.22 by way of assumption of the hypothecary claim of Compagnie Montréal Trust, under and pursuant to the Deeds published at the Montréal Land Registry Office under numbers 4450 735, 4450 736, 5 205 067 and 5 206 832; and
 - (b) \$3,911,265.78 by way of balance of sale in favour of the vendors, secured by an hypothec against the Immovable Property;
25. Minco acquired the Immovable Property from 9088-5872 Québec Inc. by Deed of Sale executed before M^{trc.} Sheldon Merling, Notary, on November 23, 2000 and published at the Montréal Land Registry Office under number 5 216 978;
26. Minco acquired the Immovable Property for \$11,200,000 of which \$5,975,000 was paid by way of assumption of the hypothecary claims of Compagnie Montréal Trust and Les Halles de Longueuil Inc. referred to in paragraph 24 hereof;
27. Sleb acquired the Immovable Property from Minco by Deed of Sale executed before M^{trc.} Sheldon Merling, Notary, on July 1, 2003 and published at the Montréal Land Registry Office under number 10 562 993;
28. Sleb acquired the Immovable Property for \$14,577,118.54 and paid:
 - (a) \$1,571,140.54 by way of assumption of the hypothecary claim of Compagnie Montréal Trust;
 - (b) \$2,511,266 by way of assumption of the hypothecary claim of Les Halles de Longueuil Inc.; and
 - (c) \$10,494,712 by the issuance of class A shares in the capital stock of Sleb;
29. At the time of the acquisition of the Immovable Property by Minco, smaller commercial buildings occupied by commercial tenants stood on the Immovable Property;
30. From 2000 to 2004, Minco continued to operate the Immovable Property and gradually negotiated the termination of the leases in order to proceed to redevelop the Immovable Property;

FINANCING

31. In order to start the Project, Minco sought an initial bridge financing of \$6 million;
32. On July 4, 2003, Sleb obtained a \$6.1 million mezzanine financing from Financière Équidim (Québec) Inc. ("FEQ") to bridge the demolition and initial construction costs of the Project;
33. The financing with FEQ was used, *inter alia*:
 - (a) to pay in full the outstanding indebtedness to Compagnie Montréal Trust referred to in subparagraph 28(a) hereof; and
 - (b) to pay \$575,000 against the balance of sale of Les Halles de Longueuil Inc. referred to in subparagraph 28(b) hereof;

34. This financing was conditional upon a minimum number of pre-sales of Phase 1 being attained before November 30, 2003. The deadline was not met and this mezzanine financing was terminated;
35. Demolition of the interior of the building started in the early fall of 2003 and construction of Phase 1 started in the late spring 2004;
36. On March 8, 2004, Sleb contracted a loan for the maximum principal amount of \$17.5 million with the Canadian Imperial Bank of Commerce (the “**CIBC**”), at the Prime Rate plus 1.35% per annum, the whole as appears from a copy of the Credit Agreement filed in support of the present Petition as **Exhibit P-3**;
37. In April 2004, Sleb attained sufficient pre-sales required to start the Project;
38. In April 2004, Sleb entered into a Loan Agreement with TCC (Sleb 1) Limited Partnership (“**TCC**”) for a loan in the maximum aggregate principal amount of \$10 million, at an interest rate of 22.5% per annum calculated and compounded monthly in arrears, the whole as appears from a copy of the Credit Agreement filed in support of the present Petition as **Exhibit P-4**;
39. Out of the proceeds from the loan from TCC:
 - (a) \$3,169,500 was used to repay FEQ in full; and
 - (b) \$2,466,270.20 was used to pay down the balance of sale owing to Les Halles de Longueuil Inc.;
40. As at June 30, 2004, Sleb had a shareholders’ equity of \$10,729,712, the whole as appears from the Audited Financial Statements of Sleb as at June 30, 2004 filed in support of the present Petition as **Exhibit P-5**;
41. As at December 31, 2004, Minco had a shareholders’ equity of \$10,393,576, the whole as appears from the Audited Financial Statements of Minco as at December 31, 2004 filed in support of the present Petition as **Exhibit P-6**;
42. In order to give CIBC and TCC first ranking hypothecs, the outstanding balance of sale of \$400,000 owing to Les Halles de Longueuil Inc. following the payments referred to in subparagraphs 33(b) and 39(b) hereof was converted into a third ranking hypothecary loan from Mercury Realities Inc., a related company of Les Halles de Longueuil Inc.;
43. On April 19, 2004, Sleb accordingly entered into a Loan Agreement with Mercury Realities Inc. for a loan in the aggregate principal amount of \$400,000, at an interest rate of 5% per month or 60% per annum, the whole as appears from a copy of the Credit Agreement filed in support of the present Petition as **Exhibit P-7**;
44. CIBC, TCC and Mercury Realities Inc. have each registered hypothecs against Phase 1, namely:
 - (a) CIBC has a first ranking hypothec in the principal amount of \$20,000,000, with interest thereon at the rate of 25% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 131 322;
 - (b) TCC has a second ranking hypothec in the principal amount of \$13,000,000, with interest thereon at the rate of 35% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 216 622; and
 - (c) Mercury Realities Inc. has a third ranking hypothec in the principal amount of \$700,000 with interest thereon at the rate of 60% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 237 638;

the whole as appears from copies of the said deeds of hypothecs and a copy of the index of immovables for Lot 2 913 000 of the Cadastre of the Province of Québec, Land Registration Division of Montréal, filed, en liasse, in support of the present Petition as **Exhibit P-8**;

45. CIBC, TCC and Mercury Realities Inc. have each registered hypothecs against Phases 2 and 3, namely:
- (a) CIBC has a first ranking hypothec in the principal amount of \$2.5 million, with interest thereon at the rate of 25% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 131 323;
 - (b) TCC has a second ranking hypothec in the principal amount of \$10 million, with interest thereon at the rate of 35% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 216 623; and
 - (c) Mercury Realities Inc. has a third ranking hypothec in the principal amount of \$700,000, with interest thereon at the rate of 60% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 237 638;

the whole as appears from copies of the said deeds of hypothecs and a copy of the index of immovables for Lot 2 913 001 of the Cadastre of the Province of Québec, Land Registration Division of Montréal, filed, en liasse, in support of the present Petition as **Exhibit P-9**;

CURRENT FINANCIAL SITUATION

46. A number of fundamental factors have adversely impacted the original construction budget, namely:
- (a) refinancing of the mezzanine loan, as mentioned in paragraph 34 hereof, was not included in the original budget;
 - (b) the conversion costs of an existing building, as was envisaged under Phase 1, are very difficult to estimate and the construction costs of Phase 1 were underestimated by approximately \$4 million;
 - (c) construction in Montréal has been booming for the last two years with the immediate consequence that subcontractors have been overbooked and could not meet the original construction schedule;
 - (d) the construction of the entire Project is running about two years behind the original schedule which has entailed considerable additional soft costs; and
 - (e) demand for condominiums has softened and sales have not yet materialized as previously expected and budgeted;

47. As at August 31, 2005, Petitioners owed approximately \$31.1 million to their creditors, broken down as follows:

Trade creditors/legal hypothecs	\$ 4,750,000
Canadian Imperial Bank of Commerce	\$12,022,948
TCC (Sleb 1) Limited Partnership	\$13,669,000
Mercury Realities Inc.	\$ <u>700,000</u>
	<u>\$31,141,948</u>

48. Mr. Daniel Bergeron prepared a report, addressed to Petitioners and CIBC, confirming that, as at August 31, 2005, the construction of Phase 1 was approximately 79%

completed, the whole as appears from a copy of the report prepared by Mr. Bergeron filed in support of the present Petition as **Exhibit P-10**;

49. As at the present date, it appears that trade creditors with claims in the approximate aggregate amount of \$5.3 million can assert legal hypothecs against the Immovable Property which would rank in priority to the hypothecs referred to in paragraphs 44 and 45 hereof;
50. Petitioners estimate that approximately \$4.6 million of construction costs will have to be incurred in order to complete construction of Phase 1, the whole as appears from a copy of the Costs to Complete Budget filed in support of the present Petition as **Exhibit P-11**;
51. The aggregate credit available to Petitioners under the CIBC Credit Facility referred to in paragraph 36 hereof (Exhibit P-3) is limited, as a function of pre-sales, to \$14.5 million. Of that \$14.5 million, \$1.3 million is reserved for work on Phase 2 of the Project;
52. \$1,200,000 remains available to Petitioners under the CIBC Credit Facility towards the completion of Phase 1, but Petitioners are effectively unable to draw on this credit because they are unable to obtain the releases of all persons entitled to hypothecs for work already performed on the Project;
53. The CIBC Credit Facility expires on October 31, 2005 at which time all sums advanced by CIBC shall be due and payable;
54. 74 units of Phase 1 have been pre-sold with 52 parking spaces, and the closing of such sales will yield to Petitioners, net of commissions and monies already received and excluding the parking spaces, the sum of \$16,379,850.79;
55. Of the 52 parking spaces which have been pre-sold, 20 are located in the basement of Phase 1, and 32 would actually be located in the underground levels of Phase 2 for which construction has not started;
56. The sale of the 20 pre-sold units located in the basement of Phase 1 will yield to Petitioners, net of commissions and monies already received, an additional sum of \$588,000;
57. With respect to the remaining pre-sold units of Phase 1 for which 32 parking spaces will not be immediately available, 13 purchasers have agreed to proceed to the purchase of their condominium units, notwithstanding the fact that their parking space will not be immediately available;
58. Construction of Phase 2 has not started but is being aggressively marketed and 23 units have already been pre-sold;
59. As of September 30, 2005, Petitioners' consolidated assets and liabilities were approximately as follows:

Assets

Cash	\$ 393,614
Cash in Trust	\$ 820,669
Sales Tax Receivables	\$ 524,760
Prepaid Expenses and Deposits	\$ 199,389
Investment in Capital Project	\$46,707,522
Capital Assets	\$ 111,695
Future Income Taxes	\$ <u>3,520</u>
	<u>\$48,761,169</u>

Liabilities

Bank Construction Loan	\$12,022,948
Accounts Payable	\$ 6,141,943
Deposits from Condo Owners	\$ 4,091,337
Loans Payable	\$14,251,135

Loan from Shareholders	\$ <u>1,860,229</u>
	<u>\$38,367,592</u>
Shareholders' Equity	
Capital Stock	\$10,430,353
Deficit	<u>(\$ 36,771)</u>
	<u>\$10,393,576</u>
	<u>\$48,761,169</u>

as appears from Petitioners' unaudited consolidated balance sheet as at September 30, 2005 filed in support of the present Petition as **Exhibit P-12**;

60. Petitioners are currently insolvent in that they are not able to meet their obligations generally as they become due;

URGENCY

61. As a result of Petitioners' dire financial position, there are currently no workers on the job site of the Project and work on Phase 1 has completely stalled;
62. It is essential that Petitioners immediately make arrangements to heat the Project in order to ensure that the building and interior finishing not deteriorate as temperatures decline to near or below freezing;
63. There are numerous purchasers who are extremely anxious to take possession of their pre-sold units and unless work recommences immediately on the site, such pre-sales will be lost to Petitioners;
64. Petitioners must complete the construction of Phase 1 in order to be in a position to not only conclude the current pre-sales but also to sell the remaining 32 units of Phase 1;
65. Petitioners estimate that :
- (a) the sale of the 74 pre-sold units will generate net proceeds of \$16.4 million, as set forth in paragraph 54 hereof;
 - (b) the sale of the first 20 parking spaces will generate additional net proceeds of \$588,000, as set forth in paragraph 56 hereof;
 - (c) the eventual sale of the remaining 32 residential units of Phase 1 should yield between \$9 and \$11 million in the aggregate; and
 - (d) the eventual sale of the commercial units of Phase 1 should yield approximately \$2.5 million;
66. It is only by diligently proceeding to complete construction of Phase 1 and selling the units as soon as possible that the best value can be realized for all stakeholders;
67. Petitioners do not have the financial resources or available funding to effect the essential work on Phase 1 required to allow for the delivery of condominium units to purchasers;
68. In order to permit the closing of sales and the delivery of units, Petitioners must first obtain from the municipality an occupancy permit for the building;
69. As a condition to the issuance of an occupancy permit, Petitioners must, at a minimum, install and complete the permanent electrical entry into the building, complete and calibrate the control systems for the ventilation systems and air make-up on the roof, complete the work for the heating in the corridors and effect other work to close and seal the building;
70. Such immediate and urgent work necessary to begin delivering units will cost approximately \$750,000;

71. It is essential that Petitioners be authorized to borrow under the DIP Facility (hereafter defined) in order to immediately commence such work as well as to effect all other work necessary to finish Phase 1 in its entirety;
72. Petitioners currently have less than \$50,000 of liquidity;
73. Subcontractors have started to register legal hypothecs against the Immovable Property, the whole as appears from copies of such legal hypothecs filed, en liasse, in support of the present Petition as **Exhibit P-13** and such legal hypothecs amount, in the aggregate, to approximately \$635,000;
74. Petitioners need time to reorganize their affairs and desperately require interim financing as referred to hereafter;
75. Because subcontractors and suppliers have not been paid, without court protection and adequate interim financing, it is virtually impossible for Petitioners to convince any of such parties to continue working on and/or supplying materials to the Project;
76. Petitioners wish to continue working with the existing subcontractors and suppliers of the Project and believe that under court protection arrangements can be made with such parties to permit the continuation of the work and a fair treatment of such parties;
77. If Petitioners are unable to restructure their affairs as herein envisaged, the result to creditors and other stakeholders would be disastrous in that:
 - (a) the construction of Phase 1 would cease and the unfinished building would quickly deteriorate;
 - (b) the construction of Phase 1 would not be completed in the time necessary to close the sales of the pre-sold units;
 - (c) the purchasers of the 74 pre-sold units would likely attempt to cancel or annul their accepted offers of purchase;
 - (d) a bankruptcy petition or foreclosure proceedings would likely be instituted against Petitioners, thus making it virtually impossible to complete Phase 1 in an orderly fashion and destroying the efforts of Petitioners to develop Phases 2 and 3; and
 - (e) the recovery to all stakeholders would be significantly less than if the restructuring is successful.
78. The cash flow projection for the period from the date hereof to January 31, 2006, filed in support of the present Petition as **Exhibit P-14**, illustrates the expected cash requirements of Petitioners to complete the construction of Phase 1;

INTERIM FINANCING

79. It is estimated that three to four months will be required in order to complete construction of Phase 1 at a total cost, from the date of the Initial Order, of approximately \$5.7 million, including \$4.6 million to be paid to subtrades and \$1.1 million of general administrative costs, the whole as appears from a copy of the Costs to Complete Budget (Exhibit P-11);
80. In order to complete the construction of Phase 1, close the sales on the 74 pre-sold units thereof and commence selling the remaining units, Petitioners require interim financing in an amount of up to \$5 million;
81. Although asked to commit additional funding, none of the existing lenders to the Project has made any commitment to Petitioners to make available interim financing;

82. Petitioners have consequently agreed to enter into a \$5 million credit facility (the “**DIP Facility**”) to be provided by Olymbec Finance Corporation Inc. (the “**DIP Lender**”), the whole as described in the Term Sheet filed in support of the present Petition as **Exhibit P-15**;
83. The DIP Lender is a highly sophisticated owner and developer of real estate in the Montréal market place and has the expertise and financial strength to ensure that Phase 1 will be completed in a timely and cost effective manner, for the benefit and in the interests of all of the relevant stakeholders;
84. The DIP Lender is part of the Olymbec Group of Companies which owns in excess of 140 commercial, industrial and residential properties throughout the Province of Québec with an aggregate leasable area in excess of 12,000,000 square feet;
85. The Olymbec Group of Companies is also very active in the development of residential property and is currently the promoter of a 250 condominium unit project along the AMT Station in Sainte-Thérèse;
86. The DIP Lender requires that the DIP Facility be secured by a first charge against the universality of all present and future property, movable and immovable, tangible and intangible, of Petitioners ranking *pari passu* with the Administration Charge to be granted hereunder and in priority to all other charges, encumbrances or security on the property (including the Immovable Property) of Petitioners;
87. The DIP Facility should not have to be registered or published to be valid and set up against third persons and should be deemed to be valid and effective notwithstanding any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens or security in any existing agreements of Petitioners or security documents executed by the latter;
88. It is essential that the DIP Facility be approved by this Court in order to preserve the value of Phase 1 and to maximize realization from the sale of the units thereof for the benefit of all stakeholders of Petitioners;
89. The DIP Facility will provide Petitioners with sufficient interim financing at a reasonable cost to enable Phase 1 to be preserved and completed and sales to close in a timely manner, the whole to the obvious benefit of all stakeholders of Petitioners;
90. Petitioners believe that they are in the best position to convince existing subcontractors and suppliers to continue to provide services and materials after the date of the Initial Order being sought hereunder and the DIP Facility will best ensure that such existing subcontractors and suppliers will be given the opportunity to continue working on and to complete the Project;
91. Petitioners have reviewed with their auditors the terms and conditions of the DIP Financing and consider them to be commercially reasonable under the circumstances;
92. Petitioners consider that the cost of inaction would be considerably greater than the incremental cost of the DIP Financing, if any;
93. Petitioners believe that all, or the vast majority, of the 74 pre-sales of Phase 1 can be completed by December 17, 2005, if the DIP Facility is approved by this Court;
94. In view of the foregoing, it is likely that all advances made under the DIP Facility will be repaid by December 31, 2005;
95. Furthermore, the existence of adequate funding to complete Phase 1 will give confidence to suppliers and subcontractors and it is Petitioners’ firm belief that the job site will become active again as soon as the DIP Facility is approved;

96. Finally, with the DIP Facility and the right of Monitor to transfer title to purchasers free and clear of all charges (as sought in the conclusions hereof), the purchasers will then be able to close sales in the knowledge that Phase 1 will be completed in a timely manner;

PLAN OF ARRANGEMENT

97. Petitioners seek Court protection in order to be able to work with their creditors and complete the construction of Phase 1 which would allow Petitioners to deliver the units currently pre-sold, as well as to proceed to sell the remaining units of Phase 1;
98. Petitioners intend to propose a consolidated plan of arrangement to their creditors that will yield to such creditors and to other stakeholders a far superior result than would otherwise be attained in a forced liquidation or bankruptcy scenario;
99. Petitioners seek the application of the CCAA, given the possibility that its restructuring will likely:
- (a) involve the termination of contracts to which Petitioners are party;
 - (b) require more time to define a plan of arrangement than the time allowed under the BIA;
 - (c) require more flexibility than is granted by the BIA; and
 - (d) ultimately provide a better outcome for Petitioners, their unsecured creditors, their secured creditors and their employees, than a bankruptcy;

APPOINTMENT OF MONITOR

100. Petitioners request this Court to appoint the current Trustee under the Notice of Intention, Litwin Boyadjian Inc., through its administrator, Mr. Noubar Boyadjian, C.A., as Monitor in conformity with the provisions of the CCAA and the Initial Order to be rendered by this Court;
101. In addition to any powers and obligations provided for by the CCAA, Petitioners hereby request that this Court grant Monitor the powers, rights and obligations detailed in the conclusions of the present Petition;

***STAY OF PROCEEDINGS
AND LIMITATION OF CERTAIN RIGHTS***

102. As appears from paragraph 1 hereof, by the filing of a Notice of Intention pursuant to the BIA, each of the Petitioners benefits from a stay of all proceedings of creditors for a period of 30 days commencing from the date of filing on October 27, 2005;
103. It is in the interests of Petitioners, their employees and the mass of their creditors to preserve the *status quo* and to order a Stay of Proceedings pursuant to the terms hereof and to limit certain rights of third parties, the whole as more fully detailed in the conclusions of the present Petition;
104. In light of the foregoing, the issuance of an Initial Order pursuant to the CCAA is necessary, and it is in the best interests of Petitioners that this Court order a Stay of Proceedings for an initial period to expire at midnight on November 30, 2005, subject to such further extensions as the Court may consider appropriate, the whole as more fully detailed in the conclusions of the present Petition;
105. In addition, it is in the best interests of Petitioners that this Court limit the rights of third parties having business relations with Petitioners, so as to avoid any disruption of Petitioners' efforts to marshal and maximize the value of their assets and to present a plan of arrangement to their creditors, the whole as more fully described in the conclusions of the present Petition;

CONCLUSIONS SOUGHT

106. In light of the above, Petitioners respectfully submit that the present Petition should be granted as per its conclusions;
107. Petitioners require the interim relief requested in the present Petition in order to reorganize and restructure their affairs;
108. Considering the urgency of the situation, including Petitioners' precarious financial situation, Petitioners respectfully submit that the service of a Notice of Presentation of the present Petition is not necessary and would not serve the interests of their creditors and/or of justice in general;
109. This Court has jurisdiction to hear the present Petition *ex parte*;
110. Therefore, as detailed in the conclusions of the present Petition, Petitioners request this Court to, *inter alia*:
 - (a) declare the CCAA is applicable to Petitioners and that they qualify as "affiliated debtor companies" within the meaning of Sections 2 and 3 of the CCAA;
 - (b) allow for the filing of a Plan of Arrangement or compromise by Petitioners;
 - (c) order the convocation of a creditors' meeting for the purpose of voting on the Plan of Arrangement or compromise;
 - (d) appoint Litwin Boyadjian Inc. as Monitor;
 - (e) render an Order staying all proceedings, limiting certain rights and permitting certain restructuring acts; and
 - (f) declare that the Order to be rendered hereunder be declared executory notwithstanding appeal;
111. The present Petition is well-founded in fact and in law.

WHEREFORE, MAY PLEASE THIS HONORABLE COURT TO:

- [1] GRANT the Petition;
- [2] DECLARE that the proceedings commenced by the Petitioners under Part III of the *Bankruptcy and Insolvency Act* (R.S.C. 1985, c. B-3) (the "BIA") have been taken up and continued under the CCAA;
- [3] ISSUE an order, pursuant to Sections 4, 5 and 11 of the CCAA, (the "Initial Order"), divided under the following headings:
 - (a) Service;
 - (b) Application of the CCAA;
 - (c) Effective Time;
 - (d) Plan of Arrangement;
 - (e) Stay of Proceedings Against the Petitioners, the Property, the Directors or others;
 - (f) Possession of Property and Carrying on Business;
 - (g) Restructuring;
 - (h) Interim Financing;

- (i) Directors Indemnification and Charge;
- (j) Powers of the Monitor;
- (k) Priorities and General Provisions Relating to CCAA Charges; and
- (l) General;

SERVICE

- [4] EXEMPT the Petitioners from having to serve the Petition and from any notice of presentation;

APPLICATION OF THE CCAA

- [5] DECLARE the Petitioners are affiliated debtor companies to which the CCAA applies;

EFFECTIVE TIME

- [6] DECLARE that from immediately after midnight (Montréal time) on the day prior to the Order (the “**Effective Time**”) to the time of the granting of the Order, any act or action taken or notice given by any Person in respect of the Petitioners, the Directors or the Property (as those terms are defined hereinafter), are deemed not to have been taken or given, as the case may be, to the extent such act, action or notice would otherwise be stayed after the granting of the Order;

PLAN OF ARRANGEMENT

- [7] ORDER that the Petitioners file with this Court and submit to their creditors one or more plans of compromise or arrangement under the CCAA (collectively, the “**Plan**”) between, among others, the Petitioners and one or more classes of their creditors as the Petitioners may deem appropriate, on or before the Stay Termination Date (as defined hereinafter) or such other time or times as may be allowed by this Court;

***STAY OF PROCEEDINGS AGAINST THE PETITIONERS,
THE PROPERTY, THE DIRECTORS OR OTHERS***

- [8] ORDER that, until and including Midnight on November 30, 2005, or such later date as the Court may order (the “**Stay Termination Date**”, the period from the date of the Order to the Stay Termination Date being referred to as the “**Stay Period**”), no right, legal or conventional, may be exercised and no proceeding, at law or under a contract, by reason of this Order or otherwise, however and wherever taken (collectively, the “**Proceedings**”) may be commenced or proceeded with by anyone, whether a person, firm, partnership, corporation, stock exchange, government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions (collectively, “**Persons**” and, individually, a “**Person**”) against or in respect of the Petitioners, or any of the present or future property, assets, rights and undertakings of the Petitioners, of any nature and in any location, whether held directly or indirectly by the Petitioners, in any capacity whatsoever, or held by others for the Petitioners (collectively, the “**Property**”), and all Proceedings already commenced against the Petitioners or any of the Property, are stayed and suspended until the Court authorizes the continuation thereof, the whole subject to the provisions of the CCAA;
- [9] ORDER that, without limiting the generality of the foregoing, during the Stay Period, all Persons having agreements, contracts or arrangements with the Petitioners or in connection with any of the Property, whether written or oral, for any subject or purpose:
- (a) are restrained from accelerating, terminating, canceling, suspending, refusing to modify or extend on reasonable terms such agreements, contracts or arrangements or the rights of the Petitioners or any other Person thereunder;

- (b) are restrained from modifying, suspending or otherwise interfering with the supply of any goods, services, or other benefits by or to such Person thereunder (including, without limitation, any directors' and officers' insurance, any telephone numbers, any form of telecommunications service, any oil, gas, electricity or other utility supply); and
- (c) shall continue to perform and observe the terms and conditions contained in such agreements, contracts or arrangements, so long as the Petitioners pay the prices or charges for such goods and services received after the date of the Order as such prices or charges become due in accordance with the law or as may be hereafter negotiated (other than deposits whether by way of cash, letter of credit or guarantee, stand-by fees or similar items which the Petitioners shall not be required to pay or grant), unless the prior written consent of the Petitioners and the Monitor is obtained or the leave of this Court is granted;

- [10] ORDER that, without limiting the generality of the foregoing and subject to Section 18.1 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Petitioners with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by the Petitioners and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioners' account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn;
- [11] ORDER that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, bond or guarantee (the "**Issuing Party**") at the request of the Petitioners shall be required to continue honouring any and all such letters, bonds and guarantees, issued on or before the date of the Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid therefore;
- [12] DECLARE that, to the extent any rights, obligations, or time or limitation periods, including, without limitation, to file grievances, relating to the Petitioners or any of the Property may expire, other than the term of any lease of real property, the term of such rights or obligations, or time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners becomes bankrupt or a receiver within the meaning of paragraph 243(2) of the BIA is appointed in respect of the Petitioners, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30-day periods referred to in Sections 81.1 and 81.2 of the BIA;
- [13] ORDER that no Person may commence, proceed with or enforce any Proceedings against any former, present or future director or officer of the Petitioners or any person that, by applicable legislation, is treated as a director of the Petitioners or that will manage in the future the business and affairs of the Petitioners (each, a "**Director**", and collectively, the "**Directors**") in respect of any claim against such Director that arose before this Order was issued and that relates to obligations of the Petitioners for which such Director is or is alleged to be liable (as provided under Section 5.1 of the CCAA) until further order of this Court or until the Plan, if one is filed, is refused by the creditors or is not sanctioned by the Court;

- [14] ORDER that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, officers, employees, legal counsel or financial advisers of the Petitioners, or the Monitor, for or in respect of the Restructuring (as defined hereinafter) or the formulation and implementation of the Plan without first obtaining leave of this Court, upon seven days written notice to the Petitioners' *ad litem* counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings;

***POSSESSION OF PROPER TY
AND CARRYING ON BUSI NESS***

- [15] ORDER that, subject to the terms of the Order, the Petitioners shall remain in possession of the Property until further order in these proceedings;
- [16] ORDER that the Petitioners shall continue to carry on their business and financial affairs in a manner consistent with the commercially reasonable preservation thereof;

RESTRUCTURING

- [17] DECLARE that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**"), the Petitioners shall have the right, subject to approval of the Monitor or further order of the Court, to:
- (a) permanently or temporarily cease, downsize or shut down any of its operations or locations as they deem appropriate and make provision for the consequences thereof in the Plan;
 - (b) pursue all avenues to market and sell, subject to subparagraph(c) below, the Property, in whole or part;
 - (c) convey, transfer, sell, assign, lease, or in any other manner dispose of the Property [other than the condominium units and parking spaces of the building located at 10 Ontario Street West, in the City of Montréal, now known and designated as Lots 3400 839 to 3400 978 of the Cadastre of the Province of Québec, Land Registration Division of Montréal, ("**Phase 1**")], in whole or in part, provided that the price in each case does not exceed \$100,000 or \$500,000 in the aggregate;
 - (d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision for any consequences thereof in the Plan, as the Petitioners may determine;
 - (e) subject to paragraphs [22] and [23] hereof, vacate or abandon any leased real property or repudiate any lease and ancillary agreements related to any leased premises as they deem appropriate, provided that the Petitioners give the relevant landlord at least seven days prior written notice, on such terms as may be agreed between the Petitioners and such landlord, or failing such agreement, to make provision for any consequences thereof in the Plan; and
 - (f) repudiate such of their agreements, contracts or arrangements of any nature whatsoever, whether oral or written, as they deem appropriate, on such terms as may be agreed between the Petitioners and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan and to negotiate any amended or new agreements or arrangements;
- [18] DECLARE that, to facilitate the Restructuring, the Monitor shall have the right, subject to further order of the Court, to:

- (a) convey, transfer, sell, assign, lease, or in any other manner dispose of any of the condominium units and parking spaces of Phase 1, provided that the net proceeds of such sales:
 - (i) be applied firstly in repayment of the outstanding indebtedness from time to time under the DIP Facility (as hereinafter defined); and
 - (ii) secondly, held in trust by the Monitor until distributed in accordance with instructions of this Court or the provisions of a plan of compromise or arrangement duly sanctioned by this Court or upon final adjudication of the Court on the entitlement to such funds; and
 - (b) recognize the full amount of any deposit made with the Petitioners before the date of this Order for the purposes of completing sales of condominium units and parking spaces of Phase 1 made from time to time by the Monitor under the Authority of this Order;
- [19] DECLARE that sales of condominium units and parking spaces of Phase 1 made from time to time by the Monitor under the authority of this Order, including in particular under subparagraph [18](a) hereof, will have the same effect as a forced sale within the meaning of Article 3069 of the *Civil Code of Québec* and will:
- (a) purge all real rights to the extent provided by the *Civil Code of Québec*; and
 - (b) transfer title to such condominium units and parking spaces of Phase 1 free and clear of any and all real rights of third parties;
- [20] DECLARE that the real rights of the creditors of the Petitioners against the condominium units and parking spaces of Phase 1 sold from time to time by the Monitor under the Authority of this Order, including in particular under subparagraph [18](a) hereof, will, subject to the charges and priorities created herein, charge the net proceeds of such sales held in trust by the Monitor to the same extent as such real rights attached and charged to the Property sold by the Monitor ;
- [21] DECLARE that, in order to facilitate the Restructuring, the Petitioners may, subject to approval of the Monitor:
- (a) settle claims of customers and suppliers that are in dispute; and
 - (b) establish a plan for the retention of key employees and the making of retention payments or bonuses in connection therewith;
- [22] DECLARE that, if leased premises are vacated or abandoned by the Petitioners pursuant to subparagraph [17](e) hereof, the landlord may take possession of any such leased premises without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioners, provided the landlord mitigates its damages, if any, and re-leases any such leased premises to third parties on such terms as any such landlord may determine;
- [23] ORDER that the Petitioners shall provide to any relevant landlord notice of the Petitioners' intention to remove any fixtures or leasehold improvements at least seven days in advance. If the Petitioners have already vacated the leased premises, they shall not be considered to be in occupation of such location pending the resolution of any dispute;
- [24] DECLARE that, pursuant to subparagraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.-5, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided

that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation and implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners;

INTERIM FINANCING

- [25] DECLARE that the Petitioners are hereby authorized and empowered to borrow from the Olymbec Finance Corporation Inc., as lender (the “**DIP Lender**”), under and pursuant to the Term Sheet dated October 28, 2005 (the “**DIP Facility**”), such monies from time to time as the Monitor may consider necessary or desirable up to a maximum amount of \$5 million:
- (a) to cover the costs and expenses of the Restructuring incurred from time to time by the Petitioners;
 - (b) to permit the Petitioners to complete the conversion of the existing 10-storey building located at 10 Ontario Street West into residential condominiums and to proceed to the sale of such condominium units and related parking units; and
 - (c) to market, advertise and sell the Project; and
 - (d) to allow the operations of the Petitioners to continue;
- [26] DECLARE that all of the present and future property, movable and immovable, tangible and intangible, of the Petitioners are hereby hypothecated and charged in favour of the DIP Lender (the “**DIP Charge**”) for a maximum amount of \$6 million as security for the payment of the DIP Facility, together with interest, fees, charges and other amounts payable in respect thereof;
- [27] DECLARE that the Petitioners are hereby authorized and directed to execute and deliver in favour of the DIP Lender, all such security as may be contemplated or required by the DIP Lender, hypothecating and charging all of the present and future property, movable and immovable, tangible and intangible, of the Petitioners (such security documents collectively referred to herein as the “**DIP Security**”) and the DIP Lender is hereby authorized, but not obliged, to take such steps as it deems necessary or appropriate to register, record or perfect the DIP Security;
- [28] DECLARE that the DIP Charge immediately takes effect and does not have to be registered to be valid or to be set up against third parties;
- [29] DECLARE that the DIP Charge and the DIP Security shall rank *pari passu* with the Administration Charge created under paragraph [42] hereof and shall have first priority over all of the present and future property, movable and immovable, tangible and intangible, of the Petitioners ranking in priority to any and all other conventional hypothecs, legal hypothecs, mortgages, liens, security interests, priorities, conditional sale agreements, financial leases, charges, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting any of the Property;
- [30] DECLARE that notwithstanding the pendency of these proceedings and the declaration of insolvency made herein, the pendency of any petitions for receiving order hereafter issued pursuant to the BIA in respect of the Petitioners and any receiving orders pursuant to any petitions, in the provision of any federal or provincial statute:

- (a) the obligations of the Petitioners pursuant to the DIP Facility, the DIP Charge and the DIP Security and all documents delivered pursuant thereto constitute legal, valid and binding obligations of the Petitioners, enforceable against them in accordance with the terms thereof; and
- (b) the payment made from time to time by the Petitioners pursuant to such documents, whether made before, on or after the date of this Order and the granting or assignment of the security constituted by the DIP Security do not constitute fraudulent preferences, reviewable transactions and can not be challenged or attacked under any other applicable law;

[31] DECLARE that the DIP Facility, DIP Charge and DIP Security shall be deemed to be valid and effective notwithstanding any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens or security contained in any existing agreement between the Petitioners and any lender, and that, notwithstanding any provision to the contrary in such agreements;

[32] DECLARE that neither the DIP Lender, the Petitioners nor the Monitor shall have any liability to any person whatsoever as a result of any breach of any covenant restricting the incurring of indebtedness contained in any agreement to which the Petitioners are a party, caused by or resulting from the Petitioners entering into the DIP Facility, the creation of the DIP Charge or the execution, assignment and delivery of the DIP Security;

[33] DECLARE that the DIP Lender shall be treated as an unaffected creditor in these proceedings, including the Plan, with regard to the DIP Facility, DIP Charge and DIP Security;

DIRECTORS INDEMNIFICATION AND CHARGE

[34] ORDER that, in addition to any existing indemnities, the Petitioners shall indemnify each of the Directors from and against the following (collectively, the “**D&O Claims**”):

- (a) all costs (including, without limitation, full defence costs), charges, expenses, claims, liabilities and obligations, of any nature whatsoever, which may arise on or after the date of the Order (including, without limitation, an amount paid to settle an action or a judgment in a civil, criminal, administrative or investigative action or proceeding to which a Director may be made a party), provided that any such liability relates to such Director in that capacity, and, provided that such Director (i) acted honestly and in good faith in the best interests of the Petitioners and (ii) in the case of a criminal or administrative action or proceeding in which such Director would be liable to a monetary penalty, such Director had reasonable grounds for believing his or her conduct was lawful, except if such Director has actively breached any fiduciary duties or has been grossly negligent or guilty of willful misconduct; and
- (b) all costs, charges, expenses, claims, liabilities and obligations relating to the failure of the Petitioners to make any payments or to pay amounts in respect of employee or former employee entitlements to wages, vacation pay, termination pay, severance pay, pension or other benefits, or any other amount for services performed on or after the date of the Order and that such Directors sustain, by reason of their association with the Petitioners as a Director, except to the extent that they have actively breached any fiduciary duties or have been grossly negligent or guilty of willful misconduct;

The foregoing shall not constitute a contract of insurance or other valid and collectible insurance, as such term may be used in any existing policy of insurance issued in favour of the Petitioners or any of the Directors;

[35] DECLARE that, as security for the obligation of the Petitioners to indemnify the Directors pursuant to paragraph [34] hereof, the Directors are hereby granted a hypothec on, mortgage of, lien on and security interest in the Property to the extent of the aggregate amount of \$250,000 (the “**D&O Charge**”), having the priority established by paragraphs [43] and [44] hereof. Such D&O Charge shall not constitute or form a trust. Such D&O Charge, notwithstanding any language in any applicable policy of insurance to the contrary, shall only apply to the extent that the Directors do not have coverage under any directors’ and officers’ insurance, which shall not be excess insurance to the D&O Charge. In respect of any D&O Claim against any of the Directors (collectively, the “**Respondent Directors**”), if such Respondent Directors do not receive confirmation from the applicable insurer within 21 days of delivery of notice of the D&O Claim to the applicable insurer, confirming that the applicable insurer will provide coverage for and indemnify the Respondent Directors, then, without prejudice to the subrogation rights hereinafter referred to, the Petitioners shall pay the amount of the D&O Claim upon expiry. Failing such payment, the Respondent Directors may enforce the D&O Charge provided that the Respondent Directors shall reimburse the Petitioners to the extent that they subsequently receive insurance benefits for the D&O Claim paid by the Petitioners, and provided further that the Petitioners shall, upon payment, be subrogated to the rights of the Respondent Directors to recover payment from the applicable insurer as if no such payment had been made;

POWERS OF THE MONITOR

[36] ORDER that Litwin Boyadjian Inc. is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the “**Monitor**”) and that the Monitor shall, in addition to the duties and functions referred to in Section 11.7 of the CCAA:

- (a) send notice of the Order, within 10 days, to every known creditor of the Petitioners having a claim of more than \$250 against it, advising that such creditor may obtain a copy of the Order on the Internet at the website of the Monitor (the “**Website**”) or, failing that, from the Monitor and the Monitor shall so provide it. Such notice shall be sufficient in accordance with Subsection 11(5) of the CCAA;
- (b) assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;
- (c) assist the Petitioners, to the extent required by the Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (d) advise and assist the Petitioners, to the extent required by the Petitioners, to review the Petitioners’ business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (e) assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (f) proceed to the sale of condominium units and parking spaces of Phase 1 as contemplated by subparagraph [18](a) hereof;
- (g) report to the Court on the state of the business and financial affairs of the Petitioners or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;

- (h) report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- (i) retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (j) engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- (k) may act as a "foreign representative" of the Petitioners in any proceedings outside of Canada;
- (l) may give any consent or approval as are contemplated by the Order; and
- (m) perform such other duties as are required by the Order, the CCAA or this Court from time to time;

The Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioners, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioners;

- [37] ORDER that the Petitioners and their directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder;
- [38] DECLARE that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioners' counsel. The Monitor shall not have any duties or liabilities in respect of such information disseminated by it pursuant to the provisions of the Order or the CCAA, other than as provided in paragraph [40] hereof. In the case of information that the Monitor has been advised by the Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court;
- [39] DECLARE that the Monitor shall not be, nor be deemed to be, an employer or a successor employer of the employees of the Petitioners or a related employer in respect of the Petitioners within the meaning of any federal, provincial or municipal legislation governing employment, labour relations, pay equity, employment equity, human rights, health and safety or pensions or any other statute, regulation or rule of law or equity for any similar purpose and, further, that the Monitor shall not be, nor be deemed to be, in occupation, possession, charge, management or control of the Property or business and financial affairs of the Petitioners pursuant to any federal, provincial or municipal legislation, statute, regulation or rule of law or equity which imposes liability on the basis of such status, including, without limitation, the *Environment Quality Act* (Québec), the *Canadian Environmental Protection Act, 1999* or the *Act Respecting Occupational Health and Safety* (Québec) or similar other federal or provincial legislation;
- [40] DECLARE that, in addition to the rights and protections afforded to the Monitor by the CCAA, the Order or its status as an officer of the Court, the Monitor shall not incur any liability or obligation as a result of its appointment and the fulfillment of its duties or the provisions of the Order, save and except any liability or obligation arising from the gross negligence or willful misconduct, and no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as the Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at

least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph [36](i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph;

[41] ORDER that the Petitioners shall pay the fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, incurred in connection with or with respect to the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

[42] DECLARE that the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order in respect of these proceedings, the Plan and the Restructuring, in addition to the retainers referred to paragraph [41] hereof, be entitled to the benefit of and are hereby granted a hypothec on, mortgage of, lien on, and security interest in the Property to the extent of the aggregate amount of \$250,000 (the "**Administration Charge**"), having the priority established by paragraphs [43] and [44] hereof;

***PRIORITIES AND GENERAL PROVISIONS
RELATING TO CCAA CHARGES***

[43] DECLARE that the priorities of the DIP Charge, the Administration Charge and the D&O Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:

- (a) first, the DIP Charge and the Administration Charge ranking, *pari passu*; and
- (b) second, the D&O Charge;

[44] DECLARE that each of the CCAA Charges shall rank in priority to the Encumbrances affecting any of the Property;

[45] ORDER that, except as otherwise expressly provided for herein, the Petitioners shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioners obtain the prior written consent of the Monitor, the DIP Lender and the prior approval of the Court;

[46] DECLARE that each of the CCAA Charges shall attach, as of the Effective Time of the Order, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent;

[47] DECLARE that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioners or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioners; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Petitioners (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement;

- (a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Petitioners of any Third Party Agreement to which it is a party; and

(b) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges;

[48] DECLARE that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioners and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioners, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioners pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law;

[49] DECLARE that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners, for all purposes;

GENERAL

[50] DECLARE that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement;

[51] DECLARE that, except as otherwise specified herein, the Petitioners are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioners and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail;

[52] DECLARE that the Petitioners may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioners shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;

[53] DECLARE that any party in these proceedings, other than the Petitioners, may serve any court materials electronically, by emailing a PDF or other electronic copy of all materials to counsels' email addresses, provided that such party shall deliver both PDF or other electronic copies and "hard copies" of all materials to counsel to the Petitioners and the Monitor and to any other party requesting same;

[54] DECLARE that, unless otherwise provided herein or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Petitioners and the Monitor and has filed such notice with this Court;

[55] DECLARE that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other;

[56] DECLARE that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon seven days notice to the Petitioners, the Monitor 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;

- [57] DECLARE that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [58] DECLARE that the Monitor, with the prior consent of the Petitioners, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Section 304 of the *U.S. Bankruptcy Code*, for which the Monitor shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose;
- [59] REQUEST the aid and recognition of any court or administrative body in any province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [60] ORDER the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security;

MONTREAL, October 29, 2005

GOLDSTEIN, FLANZ & FISHMAN SENCRL/LLP

GOLDSTEIN, FLANZ & FISHMAN LLP
Attorneys for the Petitioners

COPIE CONFORME - TRUE COPY
GOLDSTEIN, FLANZ & FISHMAN SENCRL/LLP
P.P. *EFF*

AFFIDAVIT

I, Luciano Miniccuci, residing and domiciled at 334 des Prairies Boulevard, Laval-des-Rapides, in the District of Laval, Province of Quebec H4N 2V7, being duly sworn, attest and depose that:

1. I am the President of both Minco and Sleb (collectively, '**Petitioners**') and, as such, have personal knowledge of the matters herein deposed;
2. As appears from Exhibit P-1, Petitioners commenced proceedings, on October 27, 2005, under Part III of the *Bankruptcy and Insolvency Act* (R.S.C. 1985, c. B-3) (the '**BIA**') and filed a Notice of Intention. These proceedings were commenced because of threatened proceedings from various creditors;

CORPORATE STRUCTURE

3. Petitioners are private companies incorporated under Part 1A of the *Companies Act* (R.S.Q., c. C-38);
4. As will be described more fully hereafter, each of Petitioners is a debtor company within the meaning of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the '**CCAA**');
5. Minco was incorporated on February 3, 1999 under the name 9073-6323 Québec Inc. and changed its name to Minco-Division Construction Inc. by Articles of Amendment dated January 7, 2000;
6. Sleb was incorporated on December 20, 2002 and is a wholly-owned subsidiary of Minco;
7. Petitioners' head offices are located in Montréal, Québec, where operational and financial management, as well as business records, are located;
8. From an operational point of view, the business and affairs of Minco and Sleb have, at all times, been consolidated in that the sole purpose of such companies is to develop, build and sell the condominium project more fully described hereafter;

PROJECT

9. Sleb is a sole purpose company set up to own and develop a real estate project on a 40 635 sq. ft. parcel of land located in the heart of Montréal, at the north-east corner of Saint-Laurent Boulevard and de Maisonneuve Boulevard, formerly known and designated as Lots 2 913 000 and 2 913 001 of the Cadastre of the Province of Québec, Land Registration Division of Montréal (the '**Immovable Property**');
10. Minco is a construction company duly licensed with the *Office de la construction du Québec* to act as a general contractor. All of its resources are currently dedicated to the construction project on the Immovable Property;
11. Petitioners acquired the Immovable Property to redevelop it into residential condominiums in three phases to be built over a period of approximately four years (the '**Project**');
12. Phase 1 of the Project is the retrofit of an existing 10-storey building located at 10 Ontario Street West, for conversion into residential condominiums with a pool and elevated deck on top of the building ('**Phase 1**');

13. Phase 2 of the Project would first involve the excavation and construction of four levels of underground parking. Phase 2 would follow with the construction of:
 - (a) a 15-storey aboveground condominium building on Clark Street, together with a pool on top of the building; and
 - (b) three-storey buildings on Saint-Laurent Boulevard behind former office facades; (“Phase 2”);
14. Phase 3 of the Project would see the construction of a 17-storey aboveground condominium building on de Maisonneuve Boulevard;
15. The commercial usage would be preserved on the ground floor, throughout Phases 1, 2 and 3, and on some mezzanines;
16. The plan filed in support of the Present Petition as Exhibit P-2 illustrates the location of Phases 1, 2 and 3 of the Project on the Immovable Property;
17. Phase 1 rests in its entirety on former Lot 2913 000 of the Cadastre of the Province of Québec, Land Registration Division of Montréal, and Phases 2 and 3 rest in their entirety on Lot 2 913 001 of the Cadastre of the Province of Québec, Land Registration Division of Montréal;
18. Phases 1, 2 and 3 can be summarized as follows:

	PHASE 1	PHASE 2	PHASE 3	TOTAL
CONDOMINIUM UNITS	106	110	125	341
FLOORS ABOVEGROUND	10	15	17	N/A
UNDERGROUND LEVELS	1	4	4	N/A
PARKING UNITS	32	86*	99*	217
PRIVATE AREAS				
RESIDENTIAL	116 110 sq. ft.	79 550 sq. ft.	91 708 sq. ft.	287 368 sq. ft.
COMMERCIAL	12 792 sq. ft.	10 301 sq. ft.*	11 707 sq. ft.*	34 800 sq. ft.
COMMON AREAS	<u>19 550 sq. ft.</u>	<u>15 180 sq. ft.</u>	<u>26 186 sq. ft.</u>	<u>60 916 sq. ft.</u>
TOTAL AREA	148 452 sq. ft.	105 031 sq. ft.	129 601 sq. ft.	383 084 sq. ft.
PROJECTED CONSTRUCTION COSTS	\$29.3 million	\$47.0 million	\$36.6 million	\$111.0 million

* Apportioned between Phases 2 & 3 on a pro rata of the number of condominium units.

19. Phase 1 is tied to the completion of Phases 2 and 3 in that a number of parking areas sold as part of Phase 1 will be physically located in the underground levels of Phases 2 and 3;
20. On October 19, 2005, former Lot 2 913 000 of the Cadastre of the Province of Québec, Land Registration Division of Montréal was replaced by Lots 3400 839 to 3400 978 inclusively of the Cadastre of the Province of Québec, Land Registration Division of Montréal, in preparation of the sale of condominium units;

HUMAN RES OURCES

21. I am the governing mind, President and Chief Executive Officer of Petitioners. I have in excess of 25 years experience in the construction and real estate development fields and have been the driving force behind the Project;
22. I am indirectly a shareholder of Minco;
23. Petitioners currently employ 13 full-time employees, in addition to seven part-time employees and consultants;

HISTORY OF THE IMMOV ABLE PROPERTY

24. 9088-5872 Québec Inc. acquired the Immovable Property from Les Halles de Longueuil Inc. by Deed of Sale executed before M^{trc.} Sheldon Merling, Notary, on November 23, 2000 and published at the Montréal Land Registry Office under number 5 216 977;
25. 9088-5872 Québec Inc. acquired the Immovable Property for \$5,975,000 and paid:
 - (a) \$2,063,734.22 by way of assumption of the hypothecary claim of Compagnie Montréal Trust, under and pursuant to the Deeds published at the Montréal Land Registry Office under numbers 4450 735, 4450 736, 5 205 067 and 5 206 832; and
 - (b) \$3,911,265.78 by way of balance of sale in favour of the vendors, secured by an hypothec against the Immovable Property;
26. Minco acquired the Immovable Property from 9088-5872 Québec Inc. by Deed of Sale executed before M^{trc.} Sheldon Merling, Notary, on November 23, 2000 and published at the Montréal Land Registry Office under number 5 216 978;
27. Minco acquired the Immovable Property for \$11,200,000 of which \$5,975,000 was paid by way of assumption of the hypothecary claims of Compagnie Montréal Trust and Les Halles de Longueuil Inc. referred to in paragraph 24 hereof;
28. Sleb acquired the Immovable Property from Minco by Deed of Sale executed before M^{trc.} Sheldon Merling, Notary, on July 1, 2003 and published at the Montréal Land Registry Office under number 10 562 993;
29. Sleb acquired the Immovable Property for \$14,577,118.54 and paid:
 - (a) \$1,571,140.54 by way of assumption of the hypothecary claim of Compagnie Montréal Trust;
 - (b) \$2,511,266 by way of assumption of the hypothecary claim of Les Halles de Longueuil Inc.; and
 - (c) \$10,494,712 by the issuance of class A shares in the capital stock of Sleb;
30. At the time of the acquisition of the Immovable Property by Minco, smaller commercial buildings occupied by commercial tenants stood on the Immovable Property;
31. From 2000 to 2004, Minco continued to operate the Immovable Property and gradually negotiated the termination of the leases in order to proceed to redevelop the Immovable Property;

FINANCING

32. In order to start the Project, Minco sought an initial bridge financing of \$6 million;

33. On July 4, 2003, Sleb obtained a \$6.1 million mezzanine financing from Financière Équidim (Québec) Inc. (“**FEQ**”) to bridge the demolition and initial construction costs of the Project;
34. The financing with FEQ was used, *inter alia*:
 - (a) to pay in full the outstanding indebtedness to Compagnie Montréal Trust referred to in subparagraph 28(a) hereof; and
 - (b) to pay \$575,000 against the balance of sale of Les Halles de Longueuil Inc. referred to in subparagraph 28(b) hereof;
35. This financing was conditional upon a minimum number of pre-sales of Phase 1 being attained before November 30, 2003. The deadline was not met and this mezzanine financing was terminated;
36. Demolition of the interior of the building started in the early fall of 2003 and construction of Phase 1 started in the late spring 2004;
37. On March 8, 2004, Sleb contracted a loan for the maximum principal amount of \$17.5 million with the Canadian Imperial Bank of Commerce (the “**CIBC**”), at the Prime Rate plus 1.35% per annum, the whole as appears from a copy of the Credit Agreement filed in support of the present Petition as Exhibit P-3;
38. In April 2004, Sleb attained sufficient pre-sales required to start the Project;
39. In April 2004, Sleb entered into a Loan Agreement with TCC (Sleb 1) Limited Partnership (“**TCC**”) for a loan in the maximum aggregate principal amount of \$10 million, at an interest rate of 22.5% per annum calculated and compounded monthly in arrears, the whole as appears from a copy of the Credit Agreement filed in support of the present Petition as Exhibit P-4;
40. Out of the proceeds from the loan from TCC:
 - (a) \$3,169,500 was used to repay FEQ in full; and
 - (b) \$2,466,270.20 was used to pay down the balance of sale owing to Les Halles de Longueuil Inc.;
41. As at June 30, 2004, Sleb had a shareholders’ equity of \$10,729,712, the whole as appears from the Audited Financial Statements of Sleb as at June 30, 2004 filed in support of the present Petition as Exhibit P-5;
42. As at December 31, 2004, Minco had a shareholders’ equity of \$10,393,576, the whole as appears from the Audited Financial Statements of Minco as at December 31, 2004 filed in support of the present Petition as Exhibit P-6;
43. In order to give CIBC and TCC first ranking hypothecs, the outstanding balance of sale of \$400,000 owing to Les Halles de Longueuil Inc. following the payments referred to in subparagraphs 33(b) and 39(b) hereof was converted into a third ranking hypothecary loan from Mercury Realities Inc., a related company of Les Halles de Longueuil Inc.;
44. On April 19, 2004, Sleb accordingly entered into a Loan Agreement with Mercury Realities Inc. for a loan in the aggregate principal amount of \$400,000, at an interest rate of 5% per month or 60% per annum, the whole as appears from a copy of the Credit Agreement filed in support of the present Petition as Exhibit P-7;
45. CIBC, TCC and Mercury Realities Inc. have each registered hypothecs against Phase 1, namely:

- (a) CIBC has a first ranking hypothec in the principal amount of \$20,000,000, with interest thereon at the rate of 25% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 131 322;
- (b) TCC has a second ranking hypothec in the principal amount of \$13,000,000, with interest thereon at the rate of 35% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 216 622; and
- (c) Mercury Realities Inc. has a third ranking hypothec in the principal amount of \$700,000 with interest thereon at the rate of 60% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 237 638;

the whole as appears from copies of the said deeds of hypothecs and a copy of the index of immovables for Lot 2 913 000 of the Cadastre of the Province of Québec, Land Registration Division of Montréal, filed, en liasse, in support of the present Petition as Exhibit P-8;

46. CIBC, TCC and Mercury Realities Inc. have each registered hypothecs against Phases 2 and 3, namely:
- (a) CIBC has a first ranking hypothec in the principal amount of \$2.5 million, with interest thereon at the rate of 25% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 131 323;
 - (b) TCC has a second ranking hypothec in the principal amount of \$10 million, with interest thereon at the rate of 35% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 216 623; and
 - (c) Mercury Realities Inc. has a third ranking hypothec in the principal amount of \$700,000, with interest thereon at the rate of 60% per annum, registered at the Office for the Land Registration Division of Montréal under number 11 237 638;

the whole as appears from copies of the said deeds of hypothecs and a copy of the index of immovables for Lot 2 913 001 of the Cadastre of the Province of Québec, Land Registration Division of Montréal, filed, en liasse, in support of the present Petition as Exhibit P-9;

CURRENT FINANCIAL SITUATION

47. A number of fundamental factors have adversely impacted the original construction budget, namely:
- (a) refinancing of the mezzanine loan, as mentioned in paragraph 34 hereof, was not included in the original budget;
 - (b) the conversion costs of an existing building, as was envisaged under Phase 1, are very difficult to estimate and the construction costs of Phase 1 were underestimated by approximately \$4 million;
 - (c) construction in Montréal has been booming for the last two years with the immediate consequence that subcontractors have been overbooked and could not meet the original construction schedule;
 - (d) the construction of the entire Project is running about two years behind the original schedule which has entailed considerable additional soft costs; and
 - (e) demand for condominiums has softened and sales have not yet materialized as previously expected and budgeted;
48. As at August 31, 2005, Petitioners owed approximately \$31.1 million to their creditors, broken down as follows:

Trade creditors/legal hypothecs	\$ 4,750,000
Canadian Imperial Bank of Commerce	\$12,022,948
TCC (Sleb 1) Limited Partnership	\$13,669,000
Mercury Realties Inc.	\$ <u>700,000</u>
	<u>\$31,141,948</u>

49. Mr. Daniel Bergeron prepared a report, addressed to Petitioners and CIBC, confirming that, as at August 31, 2005, the construction of Phase 1 was approximately 79% completed, the whole as appears from a copy of the report prepared by Mr. Bergeron filed in support of the present Petition as Exhibit P-10;
50. As at the present date, it appears that trade creditors with claims in the approximate aggregate amount of \$5.3 million can assert legal hypothecs against the Immovable Property which would rank in priority to the conventional hypothecs referred to above;
51. Petitioners estimate that approximately \$4.6 million of construction costs will have to be incurred in order to complete construction of Phase 1, the whole as appears from a copy of the Costs to Complete Budget filed in support of the present Petition as Exhibit P-11;
52. The aggregate credit available to Petitioners under the CIBC Credit Facility (Exhibit P-3) is limited, as a function of pre-sales, to \$14.5 million. Of that \$14.5 million, \$1.3 million is reserved for work on Phase 2 of the Project;
53. \$1,200,000 remains available to Petitioners under the CIBC Credit Facility towards the completion of Phase 1, but Petitioners are effectively unable to draw on this credit because they are unable to obtain the releases of all persons entitled to hypothecs for work already performed on the Project;
54. The CIBC Credit Facility expires on October 31, 2005 at which time all sums advanced by CIBC shall be due and payable;
55. 74 units of Phase 1 have been pre-sold with 52 parking spaces, and the closing of such sales will yield to Petitioners, net of commissions and monies already received and excluding the parking spaces, the sum of \$16,379,850.79;
56. Of the 52 parking spaces which have been pre-sold, 20 are located in the basement of Phase 1, and 32 would actually be located in the underground levels of Phase 2 for which construction has not started;
57. The sale of the 20 pre-sold units located in the basement of Phase 1 will yield to Petitioners, net of commissions and monies already received, an additional sum of \$588,000;
58. With respect to the remaining pre-sold units of Phase 1 for which 32 parking spaces will not be immediately available, 13 purchasers have agreed to proceed to the purchase of their condominium units, notwithstanding the fact that their parking space will not be immediately available;
59. Construction of Phase 2 has not started but is being aggressively marketed and 23 units have already been pre-sold;
60. As of September 30, 2005, Petitioners' consolidated assets and liabilities were approximately as follows:

Assets

Cash	\$ 393,614
Cash in Trust	\$ 820,669
Sales Tax Receivables	\$ 524,760
Prepaid Expenses and Deposits	\$ 199,389
Investment in Capital Project	\$46,707,522

Capital Assets	\$ 111,695
Future Income Taxes	\$ <u>3,520</u>
	<u>\$48,761,169</u>
Liabilities	
Bank Construction Loan	\$12,022,948
Accounts Payable	\$ 6,141,943
Deposits from Condo Owners	\$ 4,091,337
Loans Payable	\$14,251,135
Loan from Shareholders	\$ <u>1,860,229</u>
	<u>\$38,367,592</u>
Shareholders' Equity	
Capital Stock	\$10,430,353
Deficit	(\$ 36,771)
	<u>\$10,393,576</u>
	<u>\$48,761,169</u>

as appears from Petitioners' unaudited consolidated balance sheet as at September 30, 2005 filed in support of the present Petition as Exhibit P-12;

61. Petitioners are currently insolvent in that they are not able to meet their obligations generally as they become due;

URGENCY

62. As a result of Petitioners' dire financial position, there are currently no workers on the job site of the Project and work on Phase 1 has completely stalled;
63. It is essential that Petitioners immediately make arrangements to heat the Project in order to ensure that the building and interior finishing not deteriorate as temperatures decline to near or below freezing;
64. There are numerous purchasers who are extremely anxious to take possession of their pre-sold units and unless work recommences immediately on the site, such pre-sales will be lost to Petitioners;
65. Petitioners must complete the construction of Phase 1 in order to be in a position to not only conclude the current pre-sales but also to sell the remaining 32 units of Phase 1;
66. Petitioners estimate that :
- (a) the sale of the 74 pre-sold units will generate net proceeds of \$16.4 million, as set forth in paragraph 54 hereof;
 - (b) the sale of the first 20 parking spaces will generate additional net proceeds of \$588,000, as set forth in paragraph 56 hereof;
 - (c) the eventual sale of the remaining 32 residential units of Phase 1 should yield between \$9 and \$11 million in the aggregate; and
 - (d) the eventual sale of the commercial units of Phase 1 should yield approximately \$2.5 million;
67. It is only by diligently proceeding to complete construction of Phase 1 and selling the units as soon as possible that the best value can be realized for all stakeholders;
68. Petitioners do not have the financial resources or available funding to effect the essential work on Phase 1 required to allow for the delivery of condominium units to purchasers;
69. In order to permit the closing of sales and the delivery of units, Petitioners must first obtain from the municipality an occupancy permit for the building;

70. As a condition to the issuance of an occupancy permit, Petitioners must, at a minimum, install and complete the permanent electrical entry into the building, complete and calibrate the control systems for the ventilation systems and air make-up on the roof, complete the work for the heating in the corridors and effect other work to close and seal the building;
71. Such immediate and urgent work necessary to begin delivering units will cost approximately \$750,000;
72. It is essential that Petitioners be authorized to borrow under the DIP Facility (hereafter defined) in order to immediately commence such work as well as to effect all other work necessary to finish Phase 1 in its entirety;
73. Petitioners currently have less than \$50,000 of liquidity;
74. Subcontractors have started to register legal hypothecs against the Immovable Property, the whole as appears from copies of such legal hypothecs filed, en liasse, in support of the present Petition as Exhibit P-13 and such legal hypothecs amount, in the aggregate, to approximately \$635,000;
75. Petitioners need time to reorganize their affairs and desperately require interim financing as referred to hereafter;
76. Because subcontractors and suppliers have not been paid, without court protection and adequate interim financing, it is virtually impossible for Petitioners to convince any of such parties to continue working on and/or supplying materials to the Project;
77. Petitioners wish to continue working with the existing subcontractors and suppliers of the Project and believe that under court protection arrangements can be made with such parties to permit the continuation of the work and a fair treatment of such parties;
78. If Petitioners are unable to restructure their affairs as herein envisaged, the result to creditors and other stakeholders would be disastrous in that:
 - (a) the construction of Phase 1 would cease and the unfinished building would quickly deteriorate;
 - (b) the construction of Phase 1 would not be completed in the time necessary to close the sales of the pre-sold units;
 - (c) the purchasers of the 74 pre-sold units would likely attempt to cancel or annul their accepted offers of purchase;
 - (d) a bankruptcy petition or foreclosure proceedings would likely be instituted against Petitioners, thus making it virtually impossible to complete Phase 1 in an orderly fashion and destroying the efforts of Petitioners to develop Phases 2 and 3; and
 - (e) the recovery to all stakeholders would be significantly less than if the restructuring is successful.
79. The cash flow projection for the period from the date hereof to January 31, 2006, filed in support of the present Petition as Exhibit P-14, illustrates the expected cash requirements of Petitioners to complete the construction of Phase 1;

INTERIM FINANCING

80. It is estimated that three to four months will be required in order to complete construction of Phase 1 at a total cost, from the date of the Initial Order, of approximately \$5.7 million, including \$4.6 million to be paid to subtrades and \$1.1 million of general administrative costs, the whole as appears from a copy of the Costs to Complete Budget (Exhibit P-11);

81. In order to complete the construction of Phase 1, close the sales on the 74 pre-sold units thereof and commence selling the remaining units, Petitioners require interim financing in an amount of up to \$5 million;
82. Although asked to commit additional funding, none of the existing lenders to the Project has made any commitment to Petitioners to make available interim financing;
83. Petitioners have consequently agreed to enter into a \$5 million credit facility (the "**DIP Facility**") to be provided by Olymbec Finance Corporation Inc. (the "**DIP Lender**"), the whole as described in the Term Sheet filed in support of the present Petition as Exhibit P-15;
84. The DIP Lender is a highly sophisticated owner and developer of real estate in the Montréal market place and has the expertise and financial strength to ensure that Phase 1 will be completed in a timely and cost effective manner, for the benefit and in the interests of all of the relevant stakeholders;
85. I am advised that the DIP Lender is part of the Olymbec Group of Companies which owns in excess of 140 commercial, industrial and residential properties throughout the Province of Québec with an aggregate leasable area in excess of 12,000,000 square feet;
86. I am advised that the Olymbec Group of Companies is also very active in the development of residential property and is currently the promoter of a 250 condominium unit project along the AMT Station in Sainte-Thérèse;
87. The DIP Lender requires that the DIP Facility be secured by a first charge against the universality of all present and future property, movable and immovable, tangible and intangible, of Petitioners ranking *pari passu* with the Administration Charge to be granted hereunder and in priority to all other charges, encumbrances or security on the property (including the Immovable Property) of Petitioners;
88. The DIP Facility should not have to be registered or published to be valid and set up against third persons and should be deemed to be valid and effective notwithstanding any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens or security in any existing agreements of Petitioners or security documents executed by the latter;
89. It is essential that the DIP Facility be approved by this Court in order to preserve the value of Phase 1 and to maximize realization from the sale of the units thereof for the benefit of all stakeholders of Petitioners;
90. The DIP Facility will provide Petitioners with sufficient interim financing at a reasonable cost to enable Phase 1 to be preserved and completed and sales to close in a timely manner, the whole to the obvious benefit of all stakeholders of Petitioners;
91. Petitioners believe that they are in the best position to convince existing subcontractors and suppliers to continue to provide services and materials after the date of the Initial Order being sought hereunder and the DIP Facility will best ensure that such existing subcontractors and suppliers will be given the opportunity to continue working on and to complete the Project;
92. Petitioners have reviewed with their auditors the terms and conditions of the DIP Financing and consider them to be commercially reasonable under the circumstances;
93. Petitioners consider that the cost of inaction would be considerably greater than the incremental cost of the DIP Financing, if any;
94. Petitioners believe that all, or the vast majority, of the 74 pre-sales of Phase 1 can be completed by December 17, 2005, if the DIP Facility is approved by this Court;

95. In view of the foregoing, it is likely that all advances made under the DIP Facility will be repaid by December 31, 2005;
96. Furthermore, the existence of adequate funding to complete Phase 1 will give confidence to suppliers and subcontractors and it is Petitioners' firm belief that the job site will become active again as soon as the DIP Facility is approved;
97. Finally, with the DIP Facility and the right of Monitor to transfer title to purchasers free and clear of all charges (as sought in the conclusions hereof), the purchasers will then be able to close sales in the knowledge that Phase 1 will be completed in a timely manner;

PLAN OF ARRANGEMENT

98. Petitioners seek Court protection in order to be able to work with their creditors and complete the construction of Phase 1 which would allow Petitioners to deliver the units currently pre-sold, as well as to proceed to sell the remaining units of Phase 1;
99. Petitioners intend to propose a consolidated plan of arrangement to their creditors that will yield to such creditors and to other stakeholders a far superior result than would otherwise be attained in a forced liquidation or bankruptcy scenario;
100. Petitioners seek the application of the CCAA, given the possibility that its restructuring will likely:
 - (a) involve the termination of contracts to which Petitioners are party;
 - (b) require more time to define a plan of arrangement than the time allowed under the BIA;
 - (c) require more flexibility than is granted by the BIA; and
 - (d) ultimately provide a better outcome for Petitioners, their unsecured creditors, their secured creditors and their employees, than a bankruptcy;

APPOINTMENT OF MONITOR

101. Petitioners request this Court to appoint the current Trustee under the Notice of Intention, Litwin Boyadjian Inc., through its administrator, Mr. Noubar Boyadjian, C.A., as Monitor in conformity with the provisions of the CCAA and the Initial Order to be rendered by this Court;
102. In addition to any powers and obligations provided for by the CCAA, Petitioners hereby request that this Court grant Monitor the powers, rights and obligations detailed in the conclusions of the present Petition;

***STAY OF PROCEEDINGS
AND LIMITATION OF CERTAIN RIGHTS***

103. I am advised that by the filing of a Notice of Intention pursuant to the BIA, each of the Petitioners benefits from a stay of all proceedings of creditors for a period of 30 days commencing from the date of filing on October 27, 2005;
104. It is in the interests of Petitioners, their employees and the mass of their creditors to preserve the *status quo* and to order a Stay of Proceedings pursuant to the terms hereof and to limit certain rights of third parties, the whole as more fully detailed in the conclusions of the present Petition;
105. In light of the foregoing, the issuance of an Initial Order pursuant to the CCAA is necessary, and it is in the best interests of Petitioners that this Court order a Stay of Proceedings for an initial period to expire at midnight on November 30, 2005, subject to

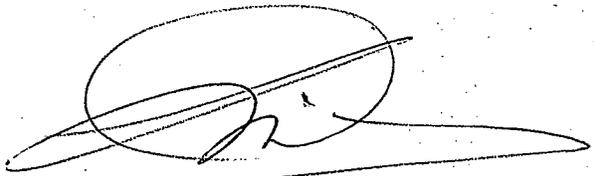
such further extensions as the Court may consider appropriate, the whole as more fully detailed in the conclusions of the present Petition;

106. In addition, it is in the best interests of Petitioners that this Court limit the rights of third parties having business relations with Petitioners, so as to avoid any disruption of Petitioners' efforts to marshal and maximize the value of their assets and to present a plan of arrangement to their creditors, the whole as more fully described in the conclusions of the present Petition;

CONCLUSIONS SOUGHT

107. In light of the above, Petitioners respectfully submit that the present Petition should be granted as per its conclusions;
108. Petitioners require the interim relief requested in the present Petition in order to reorganize and restructure their affairs;
109. Considering the urgency of the situation, including Petitioners' precarious financial situation, Petitioners respectfully submit that the service of a Notice of Presentation of the present Petition is not necessary and would not serve the interests of their creditors and/or of justice in general;
110. All of the facts alleged in support of the Petition to Take up and Continue Under the Companies' Creditors Arrangement Act Proceedings Commenced Under Part III of the Bankruptcy and Insolvency Act and for the Issuance of an Initial Order are true and correct.

AND I HAVE SIGNED, in Montréal, Province of Québec, on October 29, 2005,



LUCIANO MINICUCCI

SOLEMNLY affirmed before me,
in Montreal, Province of Québec,
on October 29, 2005



Commission of Oaths for all Districts
of the Province of Québec



COPIE CONFORME - TRUE COPY
GOLDSTEIN, FLANZ & FISHMAN SENCRL/LLP
PP *G.F.F.*

LIST OF EXHIBITS

Exhibit P-1	Notice of Intention and authorization of Registrar to file joint notice (without Statement of Affairs)
Exhibit P-2	Plan illustrating the location of Phases 1, 2 and 3 of the Project
Exhibit P-3	Credit Agreement with the CIBC
Exhibit P-4	Credit Agreement with TCC
Exhibit P-5	Audited Financial Statements of Sleb
Exhibit P-6	Audited Financial Statements of Minco
Exhibit P-7	Credit Agreement with Mercury Realities Inc.
Exhibit P-8	Copies of deeds of hypothecs and a copy of the index of immovables for Lot 2 913 000 of the Cadastre of the Province of Québec, Land Registration Division of Montréal
Exhibit P-9	Copies of deeds of hypothecs and a copy of the index of immovables for Lot 2 913 001 of the Cadastre of the Province of Québec, Land Registration Division of Montréal
Exhibit P-10	Report prepared by Mr. Daniel Bergeron
Exhibit P-11	Cost to Complete Budget prepared by the Petitioners
Exhibit P-12	Petitioners' unaudited consolidated balance sheet as at September 30, 2005
Exhibit P-13	Copies of legal hypothecs registered by subcontractors against the Immovable Property
Exhibit P-14	Cash flow projection for the period from October 15, 2005 to January 31, 2006
Exhibit P-15	DIP Facility Term Sheet