

SUPERIOR COURT
(Commercial Division)

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. 500-11-046282-147**

DATE: JULY 18, 2014

PRESIDING : THE HONOURABLE MARTIN CASTONGUAY J.S.C.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. (1985) ch. C-36, as amended of:**

LES APPARTEMENTS CLUB SOMMET INC.,

-and-

CASPERDINY IFB REALTY INC.

Debtors

-and-

THE LAND REGISTRAR FOR THE LAND REGISTRY
OFFICE FOR THE REGISTRATION DIVISION OF MONTREAL

-and-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL
RIGHTS

-and-

COMPUTERSHARE TRUST COMPANY OF CANADA,

-and-

TIMBERCREEK SENIOR MORTGAGE INVESTMENT CORPORATION,

-and-

CASPERDINY IFB CAPITAL INC.,

-and-

IFB BETEILIGUNGEN AG i.L.,

-and-

THE SYNDICATE OF LE PARC CO-OWNERSHIP,

Mis-en-Cause

-and-

Monitor

APPROVAL AND VESTING ORDER

- [1] **ON READING** the Debtors' Motion (i) seeking leave to transfer and surrender substantially all of the Debtors' assets outside the normal course of business and for the Issuance of an Approval and Vesting Order and (ii) seeking the extension of the Initial Order (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the Monitor dated July 17, 2014 (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of Debtors' attorneys and the submissions of the attorneys acting for the main secured creditor of the Debtors;
- [4] **SEEING** that it is appropriate to issue an order approving the transaction(s) (the "**Transaction**") contemplated by the agreement entitled *Transfer and Surrender Agreement* (the "**Agreement**") by and between the Debtors, and *Timbercreek Senior Mortgage Investment Corporation*, copy of which was filed as **Exhibit R-4** to the Motion, and vesting in *Timbercreek Senior Mortgage Investment Corporation*, or any subsidiary or other entity not dealing at arm's length to which it may assign its rights in the Agreement (hereinafter collectively referred to as "**Timbercreek**") the assets described in the Agreement (the "**Transferred Assets**").
- [5] **CONSIDERING** the initial order issued by this Honourable Court on March 21, 2014 (the "**Initial Order**")

WHEREFORE THE COURT:

- [6] **GRANTS** the Motion;

SERVICE

- [7] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
- [8] **PERMITS** service of this Order at any time and place and by any means whatsoever.

EXTENSION OF THE INITIAL ORDER

[9] **EXTENDS** the Initial Order in its effects until **August 19, 2014**.

TRANSACTION APPROVAL

[10] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Agreement by the Debtors is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Monitor.

EXECUTION OF DOCUMENTATION

[11] **AUTHORIZES** the Debtors and Timbercreek to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Agreement (**Exhibit R-4**) and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

[12] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Debtors to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF TRANSFERRED ASSETS

[13] **ORDERS** and **DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Transferred Assets shall vest absolutely and exclusively in and with Timbercreek, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Transferred Assets, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable / immovable property, excluding however, the permitted encumbrances and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Transferred Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Transferred Assets, in each case effective as of the applicable time and date of the Certificate.

[14] **ORDERS and DIRECTS** the Monitor to file with the Court a copy of the Certificate, forthwith after issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

[15] **ORDERS** the Land Registrar of the Land Registry Office for the Registry Division of Montreal, upon presentation of the Certificate in the form appended as **Schedule "A"** and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing Timbercreek as the owner of the immovable property identified in **Schedule "C"** hereto (the "**Quebec Real Property**") and (ii) to cancel any and all Encumbrances on Quebec Real Property (other than Permitted Encumbrances), including, without limitation, the following registrations published at the said Land Registry Office:

- 15.1. Hypothec of the *Syndicate of Le Parc Co-Ownership* (the "**Syndicate**") registered under number 17 666 518 (the "**Syndicate Hypothec**");
- 15.2. Hypothecs of *Casperdiny IFB Capital Inc.* ("**Capital**") registered under number 17 790 297;
- 15.3. Hypothec of Capital registered under number 18 668 239;
- 15.4. Hypothecs of *Computershare Trust Company of Canada* ("**Computershare**") under number 19 608 487;
- 15.5. Assignment of rank between Capital and Computershare under number 19 608 487;
- 15.6. Prior notice to exercise the hypothecary recourse of sale under judicial authority by the Syndicate under number 20 489 024;

[16] **ORDERS** Timbercreek, at the latest by the Closing Date (as defined in the Agreement) to tender and deposit an amount of **\$400,000** with *Gowling Lafleur Henderson LLP* ("**Gowling**") to cover for any claim the Syndicate purports to have against the Debtors which would be subject to the Syndicate Hypothec (the "**Syndicate Claim**"), it being understood that such an amount shall be held *in trust* by Gowling until the earlier of (i) a full and final settlement in respect to the Syndicate Claim being entered into, or (ii) the issuance of a further order from this Honourable Court;

[17] **ORDERS** the *Quebec Personal and Movable Real Rights Registrar*, upon presentation of the required form with a true copy of this Order and the Certificate, to:

- 17.1. Reduce the scope of the registrations of Capital under number: 11-0920171-0002, 11-0920171-0003, 11-0920171-0005, 11-0920171-0004, 11-0920171-0001, 10-0878005-0006, 10-0878005-0005, 10-0878005-0002, 10-0878005-0004, 10-0878005-0003 (collectively the "**Capital Hypothecs**") in connection with the Transferred Assets so that the Capital Hypothecs remain only on (the "**Sundry Assets**):

- 17.1.1. the rights and interest of the Debtor *Les Appartements Club Sommet Inc.* ("**Sommet**") in and to the claim of Sommet against The Syndicate et al in the Court file bearing docket number 500-17-064300-117;
- 17.1.2. the rights and interest of the Debtor *Casperdiny IFB Realty Inc.* ("**Casperdiny**") in and to:
 - 17.1.2.1. the claim against Robert Katz and *T.T. Katz Counsel Group Inc.* in the Court file bearing docket number 500-17-040876-081;
 - 17.1.2.2. the claim against *Immoparc Holdings Two Canadian Properties* resulting from section 2.2 of the *Purchase and Sale Agreement* made as of the eleventh (11th) day of April, Two Thousand and Five (2005) between this entity and Capital for itself and for a corporation to be created and al and defined therein as the Purchase Price Adjustment and Casperdiny interest in same pursuant to section 2.2 of a Purchase and sale Agreement bearing formal date of the sixth (6th) day of June, Two Thousand and Five (2005) between Capital, Casperdiny and *ChauvelCo Realty Inc.*;
 - 17.1.2.3. the claims and transfer of rights under a *Settlement Agreement* between Casperdiny and *Immoparc Holdings Two Canadian Properties* and *Asta Corporation* dated April 30, 2007;
- 17.2. Strike and cancel the registrations of Computershare under number: 12-1001272-0002, 12-1001168-0002, 12-1001145-0003, 12-1001145-0002, 12-1001163-0003, 12 1001163-0002 in connection with the Transferred Asset,

the whole with a view to allow the transfer to Timbercreek of the Transferred Assets free and clear of such registrations while preserving the Capital Hypothecs on the Sundry Assets.

PROTECTION OF PERSONAL INFORMATION

[18] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Debtors are authorized and permitted to disclose and transfer to Timbercreek all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. Timbercreek shall maintain and protect the privacy of such information and shall be entitled to use the personal information

provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors;

VALIDITY OF THE TRANSACTION

[19] **ORDERS** that notwithstanding:

- (i) the pendency of these proceedings;
- (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
- (iii) the provisions of any federal or provincial legislation;

the vesting of the Transferred Assets contemplated in this Order, as well as the execution of the Transfer and Surrender Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Debtors, Timbercreek or the Monitor.

LIMITATION OF LIABILITY

[20] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the Transferred Assets. The Monitor shall not, as a result of this Order, be deemed to be in possession of any of the Transferred Assets within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA;

[21] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph;

GENERAL


[22] **ORDERS** that the Debtors and the Monitor shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.

[23] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;

[24] **DECLARES** that the Monitor 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, without

limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Monitor shall be the foreign representative of the Debtors. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose;

- [25] **REQUESTS** 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;
- [26] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [27] **THE WHOLE WITHOUT COSTS.**


Martin Castonguay, J.S.C.

SCHEDULE "A"

DRAFT CERTIFICATE OF THE [RECEIVER/ TRUSTEE/MONITOR]

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL**

File: No: 500-11-046281-149

**SUPERIOR COURT
Commercial Division**

LES APPARTEMENTS CLUB SOMMET INC.,

-and-

CASPERDINY IFB REALTY INC.

Debtors

-and-

**THE LAND REGISTRAR FOR THE LAND
REGISTRY
OFFICE FOR THE REGISTRATION DIVISION
OF MONTREAL**

-and-

**THE REGISTRAR OF THE REGISTER OF
PERSONAL AND MOVABLE REAL RIGHTS**

-and-

**COMPUTERSHARE TRUST COMPANY OF
CANADA,**

-and-

**TIMBERCREEK SENIOR MORTGAGE
INVESTMENT CORPORATION,**

-and-

CASPERDINY IFB CAPITAL INC.,

-and-

IFB BETEILIGUNGEN AG i.L.,

-and-

**THE SYNDICATE OF LE PARC CO-
OWNERSHIP,**

Mis-en-Cause

-and-

RICHTER ADVISORY GROUP INC

Monitor

CERTIFICATE OF THE MONITOR

RECITALS:

WHEREAS on March 21, 2014, the Superior Court of Quebec (the "**Court**") issued an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. (1985) ch. C-36 (the "**Act**") in respect of *Les Appartements Club Sommet Inc.* and *Casperdiny IFB Realty Inc.* (the "**Debtors**");

WHEREAS pursuant to the terms of the Initial Order, *Richter Advisory Group Inc.* (the "**Monitor**") was named Monitor of the Debtors; and

WHEREAS on July <@>, 2014, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Debtors of an agreement entitled *Transfer and Surrender Agreement* (the "**Transfer and Surrender Agreement**") by and between the Debtors and *Timbercreek Senior Mortgage Investment Corporation* ("**Timbercreek**"), copy of which was filed in the Court record, and into all the transactions contemplated therein (the "**Transaction**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Vesting Order contemplates the issuance of this Certificate of the Monitor once the (a) the Transfer and Surrender Agreement has been executed and delivered; and (b) the Consideration (as defined in the Transfer and Surrender Agreement) has been paid by Timbercreek; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY TIMBERCREEK AND THE DEBTORS AS TO THE FOLLOWING:

- (a) The Transfer and Surrender Agreement has been executed and delivered;
- (b) the Consideration (as defined in the Transfer and Surrender Agreement) has been paid by Timbercreek; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Monitor at _____ **[TIME]** on _____
[DATE].

Richter Advisory Group Inc. in its capacity as court appointed Monitor, and not in its personal capacity.

Name: _____

Title: _____

SCHEDULE "B"
PERMITTED ENCUMBRANCES

1. Servitudes, encroachments, easements, rights-of-way, restrictive covenants or other similar rights in land granted to or reserved by other persons, rights-of-way for sewers, electric lines, telegraphs and telephone lines and other similar purposes or zoning or other restrictions as to the use of the rights-of-way and other similar rights and restrictions, which do not in the aggregate materially detract from the value of the said Property or materially impair the existing uses of the Property. Any servitudes established prior to January 1, 1917, which required no registration, and any servitudes by destination of proprietor established prior to January 1, 1994, which required no registration, and that could affect the Property.

2. The reservations, limitations, provisos and conditions, if any, expressed in any original grant from the Crown.

3. Title defects or irregularities which are of a minor nature and which individually or in the aggregate will not materially impair the existing uses of the Property.

4. Subdivision, site-plan, development or other municipal agreements provided such are complied with and do not materially detract from the value of the said Property or materially impair the existing uses of the Property.

5. Servitudes and other rights resulting from:

5.1 a Deed of Servitude between Dr. Walther Schellhase and Louis Rudberg on one part and Roger Jeanty, Dame Anita Sent, Maurice C. Kaplan and said Louis Rudberg on the other part, executed before Lazarus Bavitch, Notary, on May 15, 1970 and registered under number 2 208 780; real and perpetual servitudes permitting the right of parking automobiles and prohibiting the building above ground of any structures (but not restricting the right to build below ground but without openings) were created against a part of the Property.

5.2 a Deed of Servitude between Walther Schellhase and Louis Rudberg on one part and Heinrich Bodmer, Maurice C. Kaplan and said Louis Rudberg on the other part, executed before André Boileau, Notary, on June 26, 1973 and registered under number 2 441 158; the real and perpetual servitude prohibiting the building above ground of any structures (but not restricting the right to build below ground, but without openings) created pursuant to the Deed of Servitude herein above described under 5.1, was amended in order to permit the building bearing civic number 3475 Mountain Street, and in particular its North-West wall, to remain in its position and location as then constructed.

NOTE: By Deed of Permission between THE CITY OF MONTRÉAL (the "City") on one part and Walther Schellhase and Louis Rudberg on the other part, executed before Normand Latreille, Notary, on March 10, 1971 and registered under number 2 260 751, City accepted the installation of a six (6) inch water pipe on the public domain and its connection to the City's water supply network, for and only for the supplying of the water needed for the operation of the automatic sprinklers system of the building bearing civic number 3450 Drummond Street. The whole in accordance with the municipal by-law 270 and the article 26 of the municipal by-law 2034. Furthermore, City could not be held responsible for any damage of whatever nature that could happen and especially, but without any limitation, of

any damage that could result, directly or indirectly, of any failure in the supplying of water and/or in too high or too low pressure of such water.

By Deed of Permission between THE CITY OF MONTRÉAL (the "City") on one part and Louis Rudberg and Walther Schellhase on the other part, executed before Normand Latreille, Notary, on May 16, 1973 and registered under number 2 430 061, City accepted the installation of a six (6) inch water pipe on the public domain and its connection to the City's water supply network, for and only for the supplying of the water needed for the operation of the automatic sprinklers system of the building bearing civic number 3475 Mountain Street. The whole in accordance with the municipal by-laws 270 and 2034. Furthermore, City could not be held responsible for any damage of whatever nature that could happen and especially, but without any limitation, of any damage that could result, directly or indirectly, of any failure in the supplying of water and/or in too high or too low pressure of such water.

Those two (2) deeds did not create any servitude. They are permits granted by the CITY OF MONTRÉAL.

5.3 the Declaration of Co-Ownership, namely:

NOTE: All capitalized terms under sections 5.3.1 to 5.3.13 inclusive have the same meaning as those used in the Declaration of Co-Ownership.

5.3.1 A servitude of right of passage on foot and vehicle in favour of private portion 3 472 893 and of all tenants, occupants and representatives of the co-owner of private portion 3 472 893 created on the Outdoor Driveway -Tower A Part and on the common passage for vehicles on the top level of the parking garage all of which forms part of private portion 3 472 892, the whole only for the purposes of moving, deliveries, garbage removal and the right to store garbage bins for pick-up, all without blocking the access and egress to the parking spaces and for access and egress to and from the work shop area, the changing area, and the storage area which form part of lot 3 472 898. This servitude further provides that the responsibility for the cost of snow removal, maintenance, repair and replacement of the Outdoor Driveway - Tower A Part and the cost of maintenance, repair and replacement of the said common passage for vehicles on the top level of the said parking garage shall be the responsibility of the co-owner of private portion 3 472 892.

5.3.2 servitude of right of passage on foot and vehicle in favour of private portion 3 472 894 including all tenants, occupants, and representatives of the co-owner of private portion 3 472 894 created on the Outdoor Driveway -Tower A Part and on the common passage for vehicles on the top level of the parking garage all of which forms part of private portion 3 472 892 only for the purposes of deliveries, the whole without blocking the access and egress to the parking spaces and for access and egress to and from the work shop area, the changing area, and the storage area which form part of lot 3 472 898. This servitude further provides that the responsibility for the cost of snow removal, maintenance, repair and replacement of the Outdoor Driveway -Tower A Part and the cost of maintenance, repair and replacement of the said common passage for vehicles on the top level of the said parking garage shall be the responsibility of the co-owner of private portion 3 472 892.

5.3.3 A servitude of right of passage on foot created in favour of private portion 3 472 893 and private portion 3 472 894 including all lessees, occupants and representatives of the co-owners of private portion 3 472 893 and private portion 3 472 894 to get to the elevators and stairwells on the upper garage level, and on the first, second and third floors of Tower A which forms part of lot 3 472 892, including the use of said elevators and stairwells to get to

all parts of the Pavilion, and furthermore to go through the hallways on the second and third floors of Tower A to get to the saunas, washrooms and showers, indoor pool, storage room party/conference room, and administration offices.

This servitude further provides that the costs for the maintenance, repair and replacement of all of the servient land therein described, all of which form part of private portion 3 472 892, shall be the responsibility of the co-owner of private portion 3 472 892.

5.3.4 A servitude of right of passage on foot created in favour of private portion 3 472 892 and private portion 3 472 894 on the basement level of private portion 3 472 893 to have access to the supply and inventory room, the staff lunch room, and the superintendent's office.

This servitude further provides that the cost for the maintenance, repair and replacement of the servient land therein described shall be the responsibility of the co-owner of private portion 3 472 893.

5.3.5 A servitude of right of passage on foot created in favour of private portion 3 472 892 on the basement level of private portion 3 472 893 for access to the hydro room which is known and designated as lot 3 472 897.

This servitude further provides that the cost for the maintenance, repair and replacement for the servient land which serves as access to the hydro room, as therein set forth shall be the responsibility of the co-owner of private portion 3 472 893.

5.3.6 A servitude of right of passage on foot in favour of private portion 3 472 893 and private portion 3 472 894 including all lessees, occupants and representatives of the co-owners of private portion 3 472 893 and private portion 3 472 894 created over the hallways, elevators and stairwells on the garage levels of private portion 3 472 892 in order to get to the chiller room.

This servitude further provides that the cost for the maintenance, repair and replacement for the servient land therein referred to shall be the responsibility of the co-owner of private portion 3 472 892.

5.3.7 A servitude of right of passage on foot in favour of private portion 3 472 892 and private portion 3 472 894 including all lessees, occupants and representatives of the co-owners of private portion 3 472 892 and private portion 3 472 894 created over all the hallways, elevators and stairwells of private portion 3 472 893 to have access and egress to the roof of Tower B for the maintenance, repair and replacement of the water tower and the water tower equipment including a right of use of the water tower and the water tower equipment the whole which forms part of private portion 3 472 893.

This servitude further provides that (i) the cost for the maintenance, repair and replacement concerning the hallways, elevators and stairwells in private portion 3 472 893 shall be the responsibility of the co-owner of private portion 3 472 893 and that (ii) the cost for the maintenance, repair and replacement of the said water tower and water tower equipment therein referred to shall be a common expense of the syndicate.

5.3.8 A servitude of right of use in favour of private portion 3 472 893 and private portion 3 472 894 including all lessees, occupants and representatives of the co-owners of private portion 3 472 893 and private portion 3 472 894 created in order to use the winter garden

located in Tower A and outdoor terrace on top of the winter garden located in Tower A both of which form part of private portion 3 472 892.

This servitude further provides that the cost for the maintenance, repair and replacement of the winter garden and the outdoor terrace on top of the winter garden shall be a common expense for the syndicate.

5.3.9 A servitude of right of passage on foot in favour of private portion 3 472 894 including all lessees, occupants and representatives of the co-owner of private portion 3 472 894 and in favour of private portion 3 472 892 including all lessees, occupants and representatives of the co-owner of private portion 3 472 892 created over the hallways, elevators and stairwells located on the ground level and second level of Tower B which form part of private portion 3 472 893 in order to get to the Dépanneur and Dry Cleaners forming part of private portion 3 472 893.

This servitude further provides that the cost for the maintenance, repair and replacement of the servient land therein referred to shall be the responsibility of the co-owner of private portion 3 472 893.

5.3.10 A servitude of right of passage on foot in favour of private portion 3 472 894 including all lessees, occupants and representatives of the co-owner of private portion 3 472 894 created over the hallways, elevators and stairwells located on level G1 of private portion 3 472 892 and the basement of private portion 3 472 893 to get to the Dépanneur and the Dry Cleaners forming part of private portion 3 472 893.

This servitude further provides that the cost for the maintenance, repair and replacement of the hallways, elevators, and stairwells located on the said level G1 of private portion 3 472 892 shall be the responsibility of the co-owner of private portion 3 472 892, and the cost of the maintenance, repair and replacement of the basement of private portion 3 472 893 shall be the responsibility of the co-owner of private portion 3 472 893.

5.3.11 A servitude of right of passage on foot in favour of private portion 3 472 892 and private portion 3 472 893 including all lessees, occupants and representatives of the co-owner of private portion 3 472 892 and private portion 3 472 893 created on the stairs, elevators and hallways from level G3 of private portion 3 472 894 and from level G1 of private portion 3 472 894 to have access and egress to and from the filter, heater and pump room (the "Outdoor Pool Service Room") which is located in private portion 3 472 894 together with the right to use the Outdoor Pool Service Room.

This servitude further provides that (i) the cost for the maintenance, repair and replacement of the servient land therein referred to insofar as concerns the location where the servitude of right of passage on foot is exercised shall be the responsibility of the co-owner of private portion 3 472 894 and that (ii) the cost for the maintenance, repair and replacement of the Outdoor Pool Service Room and all equipment therein shall be the responsibility of the syndicate as a common expense.

5.3.12 A reciprocal servitude in favour of and against private portion 3 472 892, private portion 3 472 893, and private portion 3 472 894 created on each of private portions 3 472 892, 3 472 893, and 3 472 894, with respect to any maintenance and repair to Tower A, Tower B, Tower C, and the Pavilion, in order to respect the harmony of the Immoveable and the existing character of same. Pursuant to this servitude, none of the co-owners of Tower A, of Tower B, and of Tower C can substantially alter or change the exterior appearance of his

said tower and/ or the Pavilion from what exists at the time of execution of the Declaration of Co-Ownership, including, without limiting the generality of the foregoing, substantially alter or change the bricks, the windows, and all other aspects of the building, including without limitation, substantially alter or change the colour of same and the quality of materials to be used which should be of at least equal or better quality in order that whatever work will be done on one of the towers will blend in with the other towers. The foregoing shall not apply to any reconstruction to Tower A, Tower B, Tower C, and the Pavilion since any reconstruction must be in conformity with Section 11.6 and Section 11.8 of the ACT CONSTITUTING THE CO-OWNERSHIP of the Declaration of Co-Ownership, the whole insofar as concerns that the reconstruction blends in harmoniously with the residue of the Immoveable.

5.3.13 A legal and perpetual servitude created in favour of each private portion over every other private portion, common portion, and common portion for restricted use in order that any view, overhang, encroachment, and/or underground and surface drainage of a private portion over another private portion, common portion or common portion for restricted use of the Immoveable which is the object of the Declaration of Co-Ownership which exists at the time of execution of the Declaration of Co-Ownership or which will be existing as a result of a reconstruction made in accordance with the terms of the Declaration of Co-Ownership, shall not be considered illegal.

5.4 The following restrictions contained in the Declaration of Co-Ownership:

"3.1. DESTINATION OF THE IMMOVEABLE

The Immoveable is to be used primarily for residential purposes, although parts of the Immoveable can be used for offices and commercial purposes, the whole as hereinafter set forth and the whole provided the use is permitted by municipal bylaws. Sections 3.2, 3.3, and 3.4 shall not be construed to preclude the presence of ancillary services for residential purposes.

3.4 DESTINATION OF PRIVATE PORTION 3 472 894

The private portion 3 472 894 is to be used for residential purposes. Together with residential use, the apartments in private portion 3 472 894 can be used for offices and commercial purposes provided that the co-owners or occupants use the apartments as a residence, no excess noise or odours emanate from the apartments, and provided there is no coming and going into private portion 3 472 894 by clients, customers, and/or delivery people, and/or any other person doing business with the co-owners or occupants, and the whole provided the use is permitted by municipal by-laws.

3.5 DESTINATION OF THE COMMON PORTIONS

The common portions are intended for the common use of all the co-owners the occupants and the representatives of the co-owners, the whole subject to the provisions of this declaration of co-ownership. Each of the common portions shall be used in accordance with its vocation by the co-owners, the occupants and the representatives of the co-owners to the extent that the use is not reserved to one or more other co-owners. Each co-owner as well as each occupant and each representative of the co-owner must comply with the conditions pertaining to the enjoyment, use and maintenance of the common portions as set forth in this declaration of co-ownership including the by-laws.

3.6 DESTINATION OF THE COMMON PORTIONS FOR RESTRICTED USE

The common portions for restricted use, as hereinabove described are intended to be used by individual co-owners, occupants and the representatives of the co-owners of the private portions, the whole as hereinabove set forth.

Each co-owner as well as each occupant as well as the representatives of the co-owners must comply with the conditions pertaining to the enjoyment, use and maintenance of common portions for restricted use as set forth in this declaration of co-ownership including the by-laws."

SCHEDULE "C"
DESCRIPTION OF REAL PROPERTY

A private portion known and designated as lot number THREE MILLION FOUR HUNDRED SEVENTY-TWO THOUSAND EIGHT HUNDRED NINETY-FOUR (3 472 894) of the Cadastre du Québec, Registration division of Montréal:

- with a building thereon erected defined as Tower C under the Declaration of Co-ownership commonly referred to as bearing civic number 3475, Mountain Street, Montréal, Province of Québec, H3G 2A4;
- with all that is attached or joined to it and is considered immovable by virtue of the law;
- the share of the common portions appurtenant to this fraction currently set in the Declaration of Co-ownership at a thirty-five percent (35%) undivided right of ownership in the common portions known and designated as lot number THREE MILLION FOUR HUNDRED SEVENTY-TWO THOUSAND EIGHT HUNDRED NINETY-ONE (3 472 891) of the Cadastre du Québec, Registration division of Montréal, lot number THREE MILLION FOUR HUNDRED SEVENTY-TWO THOUSAND EIGHT HUNDRED NINETY-FIVE (3 472 895) of the Cadastre du Québec, Registration division of Montréal, lot number THREE MILLION FOUR HUNDRED SEVENTY-TWO THOUSAND EIGHT HUNDRED NINETY-SIX (3 472 896) of the Cadastre du Québec, Registration division of Montréal, lot number THREE MILLION FOUR HUNDRED SEVENTY-TWO THOUSAND EIGHT HUNDRED NINETY-SEVEN (3 472 897) of the Cadastre du Québec, Registration division of Montréal, lot number THREE MILLION FOUR HUNDRED SEVENTY-TWO THOUSAND EIGHT HUNDRED NINETY-EIGHT (3 472 898) of the Cadastre du Québec, Registration division of Montréal and lot number THREE MILLION FOUR HUNDRED SEVENTY-TWO THOUSAND EIGHT HUNDRED NINETY-NINE (3 472 899) of the Cadastre du Québec, Registration division of Montréal;
- with all rights from and subject to the provisions of the Declaration of Co-ownership, as same may be amended from time to time; and
- with and subject to all servitudes affecting same or registered to this date;.