

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-026779-054

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

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Montreal, November 3, 2005

Present: The Honourable Jean-François Buffoni, J.S.C.

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

**MINCO-DIVISION CONSTRUCTION INC.**  
("Minco");

– and –

**SLEB 1 INC.**  
("Sleb");

Petitioners

– and –

**LITWIN BOYADJIAN INC.;**

Monitor

– and –

**RSM RICHTER INC.;**

Interim Receiver

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**INITIAL ORDER**

SEEING the Petition to Take-up and Continue Under the *Companies' Creditors Arrangement Act* (R.S.C. 1985, c. C-36) as amended (the "CCAA") Proceedings Commenced under Part III of the *Bankruptcy and Insolvency Act* (R.S.C. 1985, c. B-3) as amended (the "BIA") and for the Issuance of an Initial Order pursuant to Sections 4, 5, 11 and 11.6 of the CCAA, as well as the Supplementary Petition in respect thereof filed by Minco-Division Construction Inc. and Sleb 1 Inc. (collectively, the "Petitioners") and the exhibits and the affidavits of Mr. Luciano Minicucci filed in support thereof (collectively, the "Petition"), the consent of Litwin Boyadjian Inc. to act as monitor (the "Monitor") and the submissions of counsel for Canadian Imperial Bank of Commerce and TCC (Sleb 1) Limited Partnership;

GIVEN the provisions of the CCAA;

**WHEREFORE, THE COURT:**

- [1] GRANTS the Petition;
- [2] DECLARES 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
  - (l) General

***SERVICE***

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

***APPLICATION OF THE CCAA***

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

***EFFECTIVE TIME***

- [6] DECLARES 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] ORDERS 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] ORDERS that, until and including Midnight on December 2, 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] ORDERS 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] ORDERS 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] ORDERS 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] DECLARES 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] ORDERS 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] ORDERS 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 PROPERTY  
AND CARRYING ON BUSINESS***

- [15] ORDERS that, subject to the terms of this Order as well as the order rendered on this date (the **“I.R. Order”**) appointing RSM Richter Inc. (the **“Interim Receiver”**) as interim receiver of the assets, undertakings and properties of the Petitioners, the Petitioners shall remain in possession of the Property until further order in these proceedings;
- [16] ORDERS that subject to this Order and the I.R. Order, the Petitioners shall continue to carry on their business and financial affairs in a manner consistent with the commercially reasonable preservation thereof;

***RESTRUCTURING***

- [17] DECLARES 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 and the Interim Receiver 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 the Property, in whole or part;

- (c) 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;
  - (d) subject to paragraphs [19] and [20] 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
  - (e) 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] DECLARES that, in order to facilitate the Restructuring, the Petitioners may, subject to approval of the Monitor and the Interim Receiver:
- (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;
- [19] DECLARES that, if leased premises are vacated or abandoned by the Petitioners pursuant to subparagraph [17](d) 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;
- [20] ORDERS 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;
- [21] DECLARES 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***

- [22] DECLARES that the Petitioners are hereby authorized and empowered to borrow from the Canadian Imperial Bank of Commerce, as lender (the “**DIP Lender**”), under and subject to the terms and conditions of the Term Sheet dated November 2, 2005 (the “**DIP Facility**”), such monies from time to time as the Monitor and the Interim Receiver may consider necessary or desirable up to a maximum amount of \$2.5 million:
- (a) to cover the costs and expenses of the restructuring of 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;
  - (c) to market, advertise and sell the Project; and
  - (d) to allow the operations of the Petitioners to continue;
- [23] DECLARES 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 \$3 million as security for the payment of the DIP Facility, together with interest, fees, charges and other amounts payable in respect thereof;
- [24] DECLARES 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;

- [25] DECLARES 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;
- [26] DECLARES that the DIP Charge and the DIP Security shall rank *pari passu* with the Administration Charge created under paragraph [39] 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;
- [27] DECLARES 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;
- [28] DECLARES 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;
- [29] DECLARES 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;
- [30] DECLARES 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***

[31] ORDERS 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 in respect of facts or circumstances which occurred 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;

[32] DECLARES that, as security for the obligation of the Petitioners to indemnify the Directors pursuant to paragraph [31] 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 [40] and [41] 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***

[33] ORDERS 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) 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;

- (g) 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;
- (h) 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;
- (i) 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;
- (j) may act as a "foreign representative" of the Petitioners in any proceedings outside of Canada;
- (k) may give any consent or approval as are contemplated by the Order; and
- (l) 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;

- [34] ORDERS 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;
- [35] DECLARES 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 [37] 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;
- [36] DECLARES 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;

- [37] DECLARES 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 [33](h) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph;
- [38] ORDERS 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.
- [39] DECLARES 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 [38] 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 [40] and [41] hereof. The Administration Charge shall be reduced by the amount of any payments made pursuant to paragraph [38] hereof, net of any retainers previously received by the Monitor and the Petitioners' legal counsel;

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

- [40] DECLARES 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;
- [41] DECLARES that each of the CCAA Charges shall rank in priority to the Encumbrances affecting any of the Property;
- [42] ORDERS 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;
- [43] DECLARES 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;
- [44] DECLARES 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;
- [45] DECLARES 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;

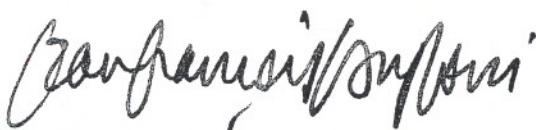
- [46] DECLARES that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners, for all purposes;

***GENERAL***

- [47] DECLARES 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;
- [48] DECLARES 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;
- [49] DECLARES 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;
- [50] DECLARES 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;
- [51] DECLARES 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;
- [52] DECLARES 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;

- [53] DECLARES that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five days notice to the Petitioners, the Monitor, the Interim Receiver 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;
- [54] DECLARES that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [55] DECLARES 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;
- [56] 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;
- [57] ORDERS the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security;

MONTRÉAL, November 3, 2005



Honourable Jean-François Buffoni, J.S.C.

COPIE CONFORME



Greffier adjoint