

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No. : 500-11-046281-149
Estate No: 41-1843847

“Commercial Division”

SUPERIOR COURT

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

LES APPARTEMENTS CLUB SOMMET INC., a corporation duly incorporated having its head office at 105-3475 de la Montagne, Montréal, Québec, H3G 2A4

-and-

CASPERDINY IFB REALTY INC., a corporation duly incorporated having its head office at 105-3475 de la Montagne, Montréal, Québec, H3G 2A4

Petitioners

-and-

RICHTER ADVISORY GROUP INC., a corporation duly incorporated having a place of business at 1981 McGill College, Montréal, Québec, H3A 0G6

Proposed Monitor

-and-

COMPUTERSHARE TRUST COMPANY OF CANADA, a corporation duly incorporated having a place of business at 100 University Avenue, 11th floor, Toronto, Ontario, M5J 2Y1

-and-

TIMBERCREEK SENIOR MORTGAGE INVESTMENT CORPORATION, a corporation duly incorporated having a place of business at 1000 Yonge Street, Suite 500, Toronto, Ontario, M4W 2K2

-and-

CASPERDINY IFB CAPITAL INC., a corporation duly incorporated having a place of business at 555 Richmond Street West, Suite 504, Toronto, Ontario, M5V 3B1

-and-

IFB BETEILIGUNGEN AG i.L., a corporation duly incorporated pursuant to German Law, having its principal place of business at Grunerstrasse 19, 40239, Düsseldorf, Germany

-and-

THE SYNDICATE OF LE PARC CO-OWNERSHIP, a syndicate of ownership having its head office at 3450 Drummond Street, Suite 154, Montréal, Québec, H3G 1Y2

Mises en cause

PETITION

- (i) SEEKING THE ISSUANCE OF AN INITIAL ORDER PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT ACT,**
(ii) FOR THE APPROVAL OF AN INTERIM FINANCING FACILITY AND THE GRANTING OF AN INTERIM LENDER'S CHARGE, and
(iii) FOR THE GRANTING OF AN ADMINISTRATION CHARGE
(Companies' Creditors Arrangement Act, R.S.C. (1985), ch. C-36, Sections 4 and 11, 11.2 and 11.6 (hereinafter "CCA"))
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TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT SITTING IN COMMERCIAL CHAMBER IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONERS RESPECTFULLY SUBMITS:

A. INTRODUCTION

1. On March 3, 2014, the Petitioners *Casperdiny IFB Realty Inc.* (hereinafter "**Casperdiny**") and *Les Appartements Club Sommet Inc.* (hereinafter "**Sommet**" and together with Casperdiny, the "**Petitioners**") filed a notice of their intention to submit a proposal to their creditors in accordance with the *Bankruptcy and Insolvency Act*, R.S.C. (1985) ch. B-3, as appears from a copy of the certificates of filing of the notice of intention, filed herewith as **EXHIBIT R-1** (hereinafter the "**NOI**");
2. Pursuant to the present Motion, the Petitioners will request that this Honourable Court:

- a) Authorize the continuation of the NOI proceedings under the CCAA;
 - b) Issue an initial order pursuant to the CCAA in favour of the Petitioners, in accordance with the Draft Order (as defined hereinafter);
 - c) Grant the Administration Charge (as defined hereinafter);
 - d) Approve the Interim Financing Facility (as defined hereinafter), and authorize the Petitioners to borrow in accordance with same and execute any and all documents necessary or useful with a view to implement the Interim Financing Facility;
 - e) Grant the Interim Lender's Charge (as defined hereinafter);
3. The Petitioners respectfully submit to this Honorable Court that it should issue an order taking the form of the draft order filed herewith as **EXHIBIT R-2** (hereinafter the "***Draft Order***"), which is based on the standard model order put forward by the Commercial Division of the Superior Court of the judicial district of Montreal (hereinafter the "***Model Order***"). A comparative version outlining the differences between the Model Order and the Draft Order is filed herewith as **EXHIBIT R-3**;
 4. The Petitioners are seeking the orders set forth in the Draft Order from this Honourable Court to ensure the continuation of their operations and to prevent and stay any recourses and remedies of their creditors for an initial period of thirty (**30**) days (hereinafter the "***Initial Period***");
 5. The Petitioners are simultaneously filing the present Motion in two (**2**) distinct Court files, one for each of the Petitioners, but will request that the hearing of these Motions be held jointly, for the reasons set forth hereinafter;
- B. THE PARTIES**
6. The Petitioner Casperdiny was incorporated in 2006 and its activities are described as "*real estate management*", as appears from a copy of an excerpt of the public Quebec Corporate Registry (CIDREQ), filed herewith as **EXHIBIT R-4**;
 7. The Petitioner Sommet was incorporated in 2006 and its activities are described as "*holding and management of real estate*", as appears from a copy of an excerpt of the public Quebec Corporate Registry (CIDREQ), filed herewith as **EXHIBIT R-5**;
 8. Sommet is a wholly owned subsidiary of Casperdiny. Sommet's sole purpose is to own and manage the Property (as defined hereinafter), it has no revenues other than the advances made by Casperdiny to cover for its expenses, as more fully detailed hereinafter;
 9. Together, the Petitioners own, operate and manage a sixteen (**16**) storey, **291**-unit apartment building located in downtown Montreal, on De La Montagne, described more fully as follows (hereinafter the "***Property***");

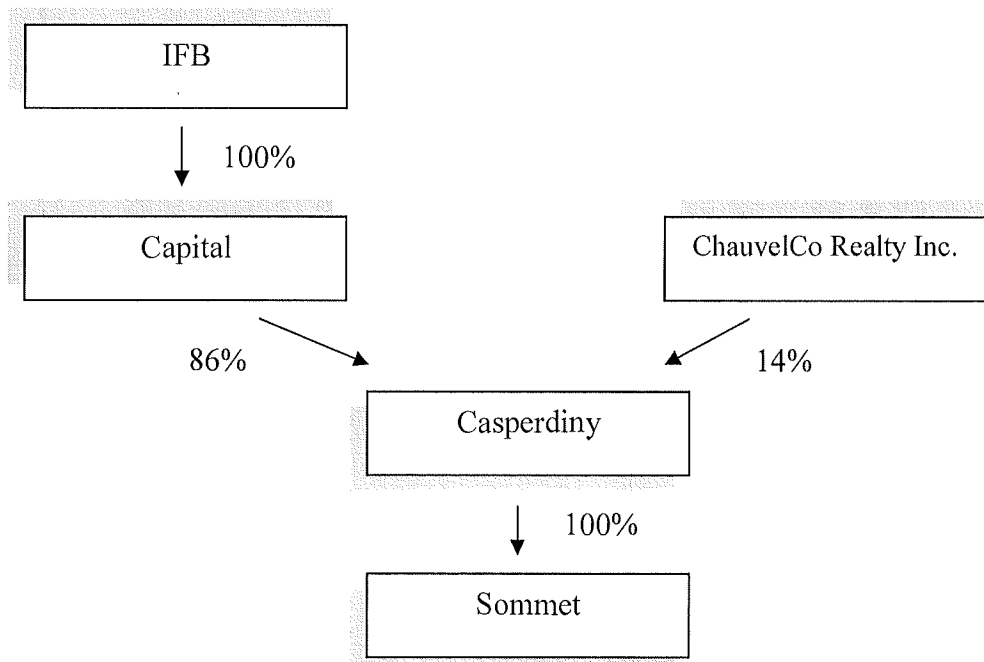
“the immovable property described as lot THREE MILLION FOUR HUNDRED SEVENTY-TWO THOUSAND EIGHT HUNDRED NINETY-FOUR (3 472 894) of the Cadastre du Québec, Registration division of Montreal, with a building thereon erected defined as Tower C, bearing civic number 3475, Mountain Street, Montreal, Province of Quebec, H3G 2A4, with all that is attached or joined to it and is considered immovable by virtue of the law and including 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 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, the whole subject to the Declaration of Co-Ownership”

10. The Mises en cause *Computershare Trust Company of Canada* (hereinafter “**Computershare**”), *Syndicate of le Parc Co-Ownership* (hereinafter the “**Syndicate**”) and *Casperdiny IFB Capital Inc.* (hereinafter “**Capital**”) are the only creditors having registered security interest against the assets of the Petitioners, as more fully detailed hereinafter (hereinafter collectively the “**Secured Creditors**”);
11. The Mise en cause *Computershare* acts as fondé de pouvoir of the Mise en cause *Timbercreek Senior Mortgage Investment Corporation* (hereinafter “**Timbercreek**”) in the context of the *Timbercreek Hypothec*, as this term is defined hereinafter, in accordance with section 2692 of the *Civil Code of Quebec*;
12. The Mise en cause *IFB Beteiligungen AG i.L.* (hereinafter “**IFB**”) has offered to fund the DIP Advances (as defined hereinafter), through the Interim Financing Facility (as defined hereinafter), so to allow for the continuation of the Petitioners’ operations in the context of the restructuring process under the CCAA, as more fully detailed hereinafter;
13. *Asta Corporation* (hereinafter “**Asta**”) has been retained by the Petitioners to manage the Property on a daily basis;
14. The Proposed Monitor *Richter Advisory Group Inc.* (hereinafter “**Richter**”) was appointed Trustee to the Petitioners’ NOI and is the Monitor proposed by the Petitioners to monitor their restructuring process under the CCAA, as more fully detailed hereinafter;
15. The total claims against each of the Petitioners exceed five million dollars (**\$5,000,000**), as more fully detailed hereinafter;

16. Each Petitioner is a “*debtor company*” within the prescribed meaning of the CCAA;

C. THE BUSINESS

17. On June 20, 2007, the Petitioner Sommet acquired the Property from Casperdiny, who had acquired it from Capital and *ChauvelCo Realty Inc.*, for a purchase price of **\$36,667,998**;
18. Sommet owns the Property, but has issued a proprietary lease for each and all of the apartment units, interior parking space units, locker units and balcony units to Petitioner Casperdiny, providing Casperdiny with a right to enjoy all of the units and collect the rents from the tenants as well as any other revenue payable under or generated by the Property;
19. The corporate structure of the Petitioners may be summarized as follows:



20. At the time of its purchase by Sommet, the Property was a regular rental apartment building;
21. The Property is currently operated as a luxury-rental apartment building offering all-inclusive services to its tenants, including a concierge, doorman, cable/internet services, electricity, fitness facility and indoor and outdoor pool areas;
22. As of March 1, 2014, the occupational rate of the Property was at approximately sixty percent (**60%**);

D. THE INDEBTEDNESS

23. The financing of the Petitioners was made through the Capital Financing (as defined hereinafter) and the Timbercreek Financing (as defined hereinafter);

I. THE CAPITAL FINANCING

24. On or about April 1, 2009, Casperdiny issued a grid promissory note in favour of Capital, pursuant to which essentially:

- a) Capital agreed to advance funds from time to time to Casperdiny;
- b) Casperdiny agreed to repay the funds advanced through the promissory note on demand;

as appears from a copy of the "*Grid Promissory Note*" filed herewith as **EXHIBIT R-6** (hereinafter the "*Capital Promissory Note*");

25. As of March 4, 2014, funds advanced by Capital through the Capital Promissory Note amounted to **\$26,664,959.71**;

26. To secure the obligations of Casperdiny under the Capital Promissory Note:

- a) Sommet agreed to issue a guarantee in favour of Capital (hereinafter the "*Capital Guarantee*");
- b) Sommet, to secure its obligation arising from the Capital Guarantee, granted hypothecs for a total amount of **\$25,000,000** in favour of Capital on the Property and the universality of movable property related thereto;
- c) Casperdiny granted hypothecs in a total amount of **\$25,000,000** in favour of Capital on (i) the rents, leases and claims related to the Property, (ii) the universality of the movable property related to the Property and (iii) all of the issued and outstanding shares held by Casperdiny in its wholly-owned subsidiary Sommet;

as appears from a copy of (i) a "*Deed of Collateral Hypothecs and Contract for a Suretyship Secured by Hypothecs in connection with a Grid Promissory Note*", (ii) a "*Deed of Movable Hypothecs of Shares and Proprietary Leases and Other Movable Property*", (iii) a "*Deed of Collateral Third Hypothecs and Contract for a Suretyship Secured by Hypothecs in connection with a Grid Promissory Note*", and (iv) a "*Deed of Third Movable Hypothecs of Shares and Proprietary Leases and Other Movable Property*", filed herewith respectively as **EXHIBIT R-7**, **EXHIBIT R-8**, **EXHIBIT R-9**, and **EXHIBIT R-10** (hereinafter collectively the "*Capital Hypothecs*");

II. THE TIMBERCREEK FINANCING

27. On or about November 12, 2012, a loan agreement was entered into between Timbercreek, Casperdiny and Sommet whereby, essentially:
- a) Timbercreek undertook to make advances of up to an amount of **\$65,000,000** to Casperdiny so to allow for the full repayment of its first-ranking secured creditor at that time, *First National Financial LP*;
 - b) Casperdiny undertook to repay the capital of the loan within thirty-six (36) months, while paying on a monthly basis the interest accruing on the loan. The monthly interest payment payable by Casperdiny to Timbercreek is **\$362,917** (hereinafter the "**Monthly Interest Payment**");
 - c) Sommet agreed to issue a guarantee limited to the Property in favour of Timbercreek (hereinafter the "**Timbercreek Guarantee**");
- as appears from a copy of the loan agreement filed herewith as **EXHIBIT R-11** (hereinafter the "**Timbercreek Loan**");
28. To secure the obligations of Casperdiny under the Timbercreek Loan (hereinafter collectively the "**Timbercreek Security Documents**"):
- a) Casperdiny granted a hypothec in an amount of **\$81,250,000** in favour of Timbercreek (through its *fondé de pouvoir* Computershare) on (i) the Property, (ii) all of the shares held by Casperdiny in its wholly-owned subsidiary Sommet, (iii) the rights of Casperdiny in the proprietary leases with respect to the Property, (iv) the rights of Casperdiny as sub-lessor of the units of the Property, and (v) the leasehold improvements related to the Property, as appears from a copy of the "*Deed of Hypothecs to Secure Payment of Titles of Indebtedness (with suretyship and cession of rank by intervenant)*" and a "*Deed of Hypothecs to Secure Payment of Titles of Indebtedness*" filed herewith as **EXHIBIT R-12** (hereinafter collectively the "**Timbercreek Hypothec**");
 - b) Sommet, to secure its obligation arising from the Timbercreek Guarantee, granted a hypothec in an amount of **\$81,250,000** in favour of Timbercreek (through its *fondé de pouvoir* Computershare) on the Property, as appears from the Timbercreek Hypothec;
29. On August 14, 2013, Timbercreek agreed to amend the Timbercreek Loan so to increase the maximum amount of the Loan to **\$67,000,000** (hereinafter the "**Amended Timbercreek Loan**"). The additional **\$2,000,000** resulting from that amended Timbercreek Loan was fully disbursed to Casperdiny during the month of August 2013 by Timbercreek, the whole as appears more fully from a copy of the Amended Timbercreek Loan filed herewith as **EXHIBIT R-13**;
30. As of March 4, 2014, amounts payable by Casperdiny to Timbercreek pursuant to the Timbercreek Loan and the Timbercreek Amended Loan amounted to **\$67,725,834**;

III. THE SYNDICATE INDEBTEDNESS

31. On October 28, 2010, the Syndicate registered legal hypothecs as against the Property for a total amount of **\$1,132,200.05**, as appears from a copy of the immovable index pertaining to the Property filed herewith as **EXHIBIT R-14** (hereinafter the “*Index*”);
32. On December 24, 2013, the Syndicate served Sommet with a sixty (60)-day prior notice to exercise its hypothecary rights against the Property, as appears from the Index (hereinafter the “*Syndicate Prior Notice*”);
33. On March 3, 2014, the Syndicate served Sommet with a Motion for forced surrender of the Property, as appears from a copy of such a Motion filed herewith as **EXHIBIT R-15** (hereinafter the “*Syndicate Motion*”);

IV. THE FINANCIAL STATEMENTS

34. As appears from Casperdiny’s audited non-consolidated financial statements for the year ended December 31, 2012, a copy of which is filed herewith as **EXHIBIT R-16** (hereinafter the “*FS 2012*”) and from Casperdiny’s unaudited draft balance sheet for the year ended on December 31, 2013, a copy of which is filed herewith as **EXHIBIT R-17** (hereinafter the “*FS 2013*”), the accumulated deficit for Casperdiny amounts to **\$12,121,526**;
35. Given that Sommet’s sole purpose is to own and manage the Property, it has no revenue other than the advances of Casperdiny to cover for its expenses. The insolvency of Sommet and Casperdiny must therefore be analysed on a consolidated basis as Sommet’s revenues are exclusively related to Casperdiny. A copy of Sommet’s audited non-consolidated financial statements for the year ended December 31, 2012 is filed herewith as **EXHIBIT R-18** and a copy of Sommet’s draft unaudited balance sheet for the year ended on December 31, 2013 is filed herewith as **EXHIBIT R-19**;

V. SUMMARY OF THE SECURED INDEBTEDNESS

36. As at March 4, 2014, the secured indebtedness of the Petitioners amounted to **\$94,674,048.78**, summarized as follows:
- a) As against the assets of Casperdiny:

<u>Creditors</u>	<u>Approximate Amount of Indebtedness</u>	<u>Amount of the Security Interest</u>	<u>Secured Assets</u>
Timbercreek (acting through its fondé de pouvoir Computershare)	\$67,725,834	\$81,250,000	Universality of movable property (including a certain 25% first collateral mortgage bond bearing certificate number 01 dated December 3, 2012, in the amount of \$81,250,000 and 18,564,722 Class B shares

<u>Creditors</u>	<u>Approximate Amount of Indebtedness</u>	<u>Amount of the Security Interest</u>	<u>Secured Assets</u>
			of the capital stock of Sommet) Rents generated by the Property
Capital	\$26,664,959	\$25,000,000	18,564,722 Class B shares of the capital stock of Sommet Rents generated by the Property

b) As against the assets of Sommet:

<u>Creditors</u>	<u>Approximate Amount of Indebtedness</u>	<u>Amount of the Security Interest</u>	<u>Secured Assets</u>
Timbercreek (acting through its fondé de pouvoir Computershare)	\$67,725,834	\$81,250,000	Universality of movable property The Property
Capital	\$26,664,959	\$25,000,000	Universality of movable property The Property
Syndicate	\$283,255.78	\$1,132,200.05	The Property (legal hypothec)

the whole as appears more fully from the FS 2012, the FS 2013, a report listing the different registrations against the movable assets of the Petitioners appearing at the *Register of Personal and Movable Real Rights (Quebec)* as of February 26, 2014, filed herewith as **EXHIBIT R-20** and from the Index (hereinafter the “**Secured Indebtedness**”);

37. As at December 31, 2013, Casperdiny’s total unsecured non related accounts payable and accrued liabilities amounted to \$977,449.92, as appears from the FS 2013;

E. THE FINANCIAL DIFFICULTIES

38. In the spring of 2012, the Petitioners engaged *BMO Capital Markets* (hereinafter “**BMO**”) to implement and conduct a formal sale process for the Property (hereinafter the

- “BMO Process”*), as appears from a copy of the confidential information memorandum submitted to potential buyers filed herewith as **EXHIBIT R-21**(hereinafter the *“CIM”*);
39. In the context of this BMO Process, BMO estimated that the Property’s market value was between **\$84,000,000** and **\$93,000,000**, as appears from a letter dated February 9, 2012 filed herewith as **EXHIBIT R-22** (hereinafter the *“BMO Value Assessment”*);
 40. As appears from the CIM, potential buyers and investors were invited to submit a bid on the Property on an *“as is-where is”* basis at the latest by June 2012 (hereinafter the *“Bid Deadline”*);
 41. By the Bid Deadline, the Petitioners had received eight (8) bids in respect to the Property;
 42. After analysis of the bids and with the assistance of BMO, Petitioners accepted the bid of *Timbercreek Asset Management Inc.* (hereinafter the *“Timbercreek Purchaser”*), an entity part of the same group as Timbercreek (hereinafter the *“Timbercreek Initial Bid”*);
 43. Essentially, pursuant to the Timbercreek Initial Bid, the Timbercreek Purchaser offered to acquire the Property for a purchase price of approximately **\$75,000,000**, as appears from a copy of the Timbercreek Initial Bid filed herewith as **EXHIBIT R-23**;
 44. The investors supporting the Timbercreek Initial Bid backed out in the fall of 2012, apparently due to uncertainty following the Parti Québécois election win;
 45. On November 12, 2012, Timbercreek then offered to refinance the Property which led to the Timbercreek Financing;
 46. The Timbercreek Loan was made on a loan to value (LTV) basis, which means that the advances pursuant thereto cannot exceed the lower of between **\$65,000,000** and **85%** of the appraised value of the Property, as appears from the Timbercreek Loan;
 47. Given that the Timbercreek Loan was fully disbursed by Timbercreek in favour of Casperdiny, it is apparent that the value of the Property at the time of the disbursement of the Timbercreek Loan was equal or superior to **\$76,470,587** ($\$65,000,000 = 85\%$ of $\$76,470,587$);
 48. On November 30, 2012, in the context of the Timbercreek Financing, Casperdiny granted the Timbercreek Purchaser with an option to purchase (with a right of first refusal) all of the issued and outstanding shares it holds in its wholly owned subsidiary Sommet for **\$78,000,000** until April 30, 2013, as appears from a copy of the option agreement filed herewith as **EXHIBIT R-24** (hereinafter the *“Option Agreement”*);
 49. The Timbercreek Loan and the Option Agreement were aimed at giving time to the Timbercreek Purchaser so to allow it to find new investors to support the acquisition of the Property;
 50. During the fall of 2012, the Petitioners instructed *CBRE Limited* (hereinafter *“CBRE”*) to conduct an appraisal of the Property;

51. On December 1, 2012, CBRE issued its appraisal report which essentially estimated the market value of the Property at **\$83,600,000** with a marketing time between six (6) to nine (9) months, as appears from a copy of the appraisal report filed herewith as **EXHIBIT R-25** (hereinafter the "**CBRE Report**");
52. On or about July 17, 2013, the Timbercreek Purchaser and the Petitioners entered into an *Agreement of Purchase and Sale* pursuant to which the Timbercreek agreed to purchase the Property for **\$77,250,000**, as appears from a copy of the *Agreement of Purchase and Sale* filed herewith as **EXHIBIT R-26** (hereinafter the "**Timbercreek Revised Bid**");
53. On August 14, 2013, Timbercreek and Casperdiny entered into the Amended Timbercreek Loan pursuant to which, Timbercreek advanced a further **\$2,000,000** to the **\$65,000,000** it had already advanced to Casperdiny. Given that this further advance remained on a loan to value (LTV) basis, as per the Timbercreek Loan, it is apparent that the value of the Property at the time of the disbursement of the Amended Timbercreek Loan was equal or superior to **\$78,823,529** ($\$67,000,000 = 85\%$ of $\$78,823,529$);
54. The Timbercreek Revised Bid was made subject to due diligence and the due diligence deadline was extended at the request of the Timbercreek Purchaser until September 19, 2013 as appears from a copy of a document entitled "*Extension of the Due Diligence Date*" filed herewith as **EXHIBIT R-27** (hereinafter the "**Due Diligence Deadline**");
55. The Timbercreek Purchaser always indicated to the Petitioners that the purchase price offered pursuant to the Timbercreek Revised Bid was taking into account the lease up costs that the Timbercreek Purchaser estimated would be necessary to maximize the occupational rate of the Property;
56. Negotiations between the Timbercreek Purchaser and the Petitioners on the transaction contemplated pursuant to the Timbercreek Revised Bid extended well beyond the Due Diligence Deadline;
57. In fact, due diligence was never considered as an issue, given that Timbercreek had conducted a due diligence in respect to the business of the Petitioners and the Property in the context of the Timbercreek Loan (November 2012) and the Amended Timbercreek Loan (August 2013);
58. On November 25, 2013, the Timbercreek Purchaser requested that the deposit made in support of the Timbercreek Revised Bid be returned;
59. In December of 2013, the Timbercreek Purchaser informed Casperdiny that it could not contemplate purchasing the Property for an amount in excess of **\$68,000,000**, covering only the outstanding amounts of the Timbercreek Loan (hereinafter the "**Timbercreek Final Bid**");
60. Given the following indications as to the Property's value (hereinafter collectively the "**Property's Valuation Indications**");

- a) The BMO Value Assessment, pursuant to which the estimated market value of the Property was set between at **\$84,000,000** and **\$93,000,000** - (February 2012);
- b) The Timbercreek Initial Bid for the Property, pursuant to which the Timbercreek Purchaser offered to purchase the Property for a purchase price of **\$75,000,000** - (June 2012);
- c) The Timbercreek Loan, pursuant to which Timbercreek advanced **\$65,000,000** on a loan to value (LTV) basis, which means that, at the time of the disbursement of the Timbercreek Loan, Timbercreek believed that the Property had a minimum value of **\$76,470,587** ($\$65,000,000 = 85\%$ of $\$76,470,587$) - (November 2012);
- d) The Option Agreement, pursuant to which the Timbercreek Purchaser was granted with an option to purchase all of the issued and outstanding shares Casperdiny holds in its wholly owned subsidiary Sommet for an amount of **\$78,000,000** (November 2012);
- e) The CBRE Report, pursuant to which the estimated market value of the Property was set at **\$83,600,000** - (December 2012);
- f) The Timbercreek Revised Bid, pursuant to which the Timbercreek Purchaser agreed to purchase the Property for a purchase price of **\$77,250,000** (net of the commission) - (July 2013);
- g) The Timbercreek Amended Loan, pursuant to which Timbercreek advanced a further **\$2,000,000** to the **\$65,000,000** it had already advanced to Casperdiny, on a loan to value (LTV) basis, which means that, at the time of the disbursement of the Timbercreek Amended Loan, Timbercreek believed that the Property had a minimum value of **\$78,823,529** ($\$67,000,000 = 85\%$ of $\$78,823,529$) - (August 2013);
- h) The fact that in the context of the BMO Process, other bids had been submitted in respect to the Property;

the Petitioners dismissed the Timbercreek Final Bid and decided to implement the Lease Up Program (as defined hereinafter) and to implement the Solicitation Process (as defined hereinafter);

- 61. Essentially, pursuant to the Timbercreek Final Bid, Timbercreek, through the Timbercreek Purchaser, was credit bidding to the extent of its secured claim to take in payment the Property, ultimately depriving other creditors and stakeholders of the Petitioners from the potential equity in the Property's value, which equity cannot be disregarded in light of the Property's Valuation Indications;
- 62. The implementation of the Lease Up Program (as defined hereinafter) was delayed during the negotiations pertaining to the sale of the Property as the Timbercreek Purchaser had indicated to the Petitioners that:

- a) It would prefer implementing its own lease up measures, in accordance with the BMO CIM; and
 - b) The purchase price offered pursuant to both the Timbercreek Initial Bid and the Timbercreek Revised Bid was taking into account the costs of the lease up measures the Timbercreek Purchaser was to implement following the acquisition of the Property;
63. The delays in the implementation of the Lease Up Program deprived the Petitioners from significant revenues as the occupational rate of the Property stagnated during that period between sixty percent (60%) and sixty seven percent (67%) and little efforts were made by the Petitioners to increase this occupational rate, to accommodate the anticipated expectation of the Timbercreek Purchaser;
64. Also, given the Option Agreement (and the right of first refusal therein) and given the ongoing negotiations with the Timbercreek Purchaser, the Petitioners were not in a position to entertain discussions in respect to the Property with other potential purchasers between June 2012 and now;
65. This resulted in the Petitioners having liquidity issues and to delay certain payments to its creditors, including the Monthly Interest Payment payable to Timbercreek;
66. Timbercreek has threatened the Petitioners to exercise its secured rights over the rents generated by the Property given Casperdiny's delays in paying the Monthly Interest Payment for the months of December 2013 and January 2014;
67. Capital, Casperdiny's parent company, made advances to allow Casperdiny to pay the outstanding Monthly Interest Payments for the month of December 2013;
68. For the reasons set forth hereinafter, Capital cannot make further advances to Casperdiny;
69. Casperdiny is in default of making the Monthly Interest Payment for the months of January and February 2014;
70. On February 24, 2014, the delay set forth in the Syndicate Prior Notice expired;
71. On March 3, 2014, the Petitioners were served with the Syndicate Motion;
72. On March 6, 2014, Timbercreek served the Petitioners with a prior notice pursuant to section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. (1985) ch. B-3, as appears from a copy of such prior notices, filed herewith as **EXHIBIT R-28**;
73. For these reasons, the Petitioners had no other alternative but to resort to filing the NOI and appoint Richter as Trustee, so to preserve the integrity of their business and the value of the Property, for the benefit of all of its stakeholders;

F. THE RESTRUCTURING EFFORTS AND THE PRELIMINARY RESTRUCTURING PLAN

74. With the assistance of the proposed Monitor, the Petitioners are currently completing an analysis of their financial and operational situations with a view to ultimately submit a plan of arrangement to their respective creditors that will preserve the value of their assets and allow for the continuation of the business in the long term;
75. The preliminary restructuring plan of the Petitioners is centered around two (2) components:
- a) The implementation of the Lease Up Program (as defined hereinafter) so to maximize the occupational rate of the Property and, ultimately, increase the value of the Property; and
 - b) The implementation of the Solicitation Process (as defined hereinafter) so to attract offers on the Property (either for the sale of the Property or its refinancing);

I. THE LEASE UP PROGRAM

76. The current occupational rate of the Property is at approximately sixty percent (60%);
77. The Petitioners have established a conservative plan aimed at increasing the occupational rate to seventy five (75%) by August 2014. This plan may be summarized as follows (hereinafter the "*Lease Up Program*"):
- a) ***Engage broader rental audience for high value units:*** the Petitioners intend to put in place a marketing strategy targeting single parents and empty nesters while establishing corporate contacts with large corporations, embassies, consulates, universities and hospitals;
 - b) ***Increase the inventory of the furnished suite operators:*** the Petitioners' objective is to convince furnished-suite operators to increase their inventory by twenty (20) units;
 - c) ***Branding Repositioning:*** the Petitioners intend to implement a broad multimedia marketing campaign to reposition the Property as a long-term rental building located in a highly desirable location providing full service and five (5) stars amenities;
 - d) ***Leasing Team:*** the Petitioners have hired a leasing manager and retained the services of two (2) full time in-house agents dedicated to service the leasing office of the Property and to help the three (3) off-site agents,
78. The Petitioners anticipate that significant progress towards the implementation of the Lease Up Program will be made within the Initial Period;

II. THE SOLICITATION PROCESS

79. In parallel to the implementation of the Lease Up Program, the Petitioners, with the assistance of the Proposed Monitor, intend to implement a solicitation process to attract potential investors and purchasers in respect of the Property, either to sell the Property or refinance it (hereinafter the "*Solicitation Process*");
80. Richter has significant experience in implementing and conducting an extensive solicitation process and the Petitioners believe that this Solicitation Process is the optimal method to generate interest in the Property and to maximize the realization value of the Property;
81. The Petitioners anticipate that significant progress towards the implementation of the Solicitation Process will be made within the Initial Period;

G. THE INTERIM FINANCING FACILITY & THE INTERIM LENDER'S CHARGE

82. Cash flow projections for the Petitioners for the period comprised between March 1, 2014 and August 31, 2014 are filed herewith as **EXHIBIT R-29** (hereinafter the "*Cash Flow Projections*");
83. The Property currently generates approximately **\$300,000** per month in rental revenues and has generated an average of **\$120,000** of monthly net income in the past year;
84. As appears from the Cash Flow Projections, operating profits are insufficient to fund the Monthly Interest Payment (**\$362,917**) payable pursuant to the Timbercreek Loan;
85. Capital agreed to fund the operational deficit of Casperdiny for the month of December 2013, while a deal to sell the Property to the Timbercreek Purchaser was being worked on;
86. Given the Timbercreek Final Bid, the purchase price offered pursuant thereto being limited to the repayment of Timbercreek's secured debt pursuant to the Timbercreek Loan and Amended Timbercreek Loan, IFB has advised Casperdiny that it cannot fund outstanding Monthly Interest Payments as German law precludes a company from injecting funds in a situation where it is doubtful that it will recover these funds;
87. Capital, wholly owned subsidiary of IFB, has clearly indicated to the Petitioners that it cannot contemplate providing any further funding unless satisfactory additional securities or guarantees of repayment are provided;
88. On or about March 10, 2014, IFB and the Petitioners entered into an Interim Financing Facility Agreement pursuant to which, essentially:
 - a) IFB agreed to advance funds to Casperdiny for up to **\$2,177,502** (hereinafter the "*DIP Advances*");

- b) Casperdiny agreed to repay the DIP Advances upon the earlier of (i) thirty (30) days after the issuance of an order by this Honourable Court authorizing the Petitioners to sell substantially all of their assets outside the normal course of business, (ii) the appointment of a receiver pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. against any of the Petitioners, (iii) the bankruptcy of any of the Petitioners, (iv) such earlier date upon which repayment is required due to the occurrence of an event of default, and (v) the effective date of the plan of arrangement that may be submitted by the Petitioners to their creditors;
- c) The DIP Advances are conditional and subject to the issuance of an order from this Honourable Court granting a first-ranking charge in favour of IFB for an amount of **\$2,721,878** (amount of the DIP Advances + **25%**) over the universality of each of the Petitioners' property, movable and immovable, corporeal and incorporeal, present and future wherever situated, and ahead of and senior to all other secured and unsecured creditors, interest holders, lien holders, and claimants of any kind whatsoever, in accordance with the Draft Order (hereinafter the "*Interim Lender's Charge*");

as appears from a copy of a document entitled "*Summary of Terms and Conditions*" attached herewith as **EXHIBIT R-30** (hereinafter the "*Interim Financing Facility*");

- 89. The objective of the Interim Financing Facility is essentially to allow for Casperdiny to make the Monthly Interest Payments to Timbercreek, as per the Timbercreek Loan, so that Timbercreek's position does not deteriorate while the Petitioners are implementing the Lease Up Program and the Solicitation Process;
- 90. The amount of the DIP Advances corresponds to six (6) months' worth of Monthly Interest Payment;
- 91. The amount of the DIP Advances has already been wired to Richter's trust account pending the issuance of the orders sought pursuant hereto;
- 92. On March 10, 2014, Timbercreek sent a letter to the undersigned attorneys, essentially (hereinafter the "*Timbercreek March 10th Letter*"):
 - a) Confirming that, despite the Property's Valuation Indications suggesting the contrary, Timbercreek was of the opinion that the Property's value did not exceed **\$68,000,000**;
 - b) Reiterating its preference towards enforcing its secured rights as against the Property;
 - c) Suggesting that Timbercreek would not oppose to the granting of the Interim Financing Facility, provided that the Interim Lender's Charge is subordinated to the Timbercreek Security Documents,

as appears from a copy of said letter filed herewith as **EXHIBIT R-31**

93. As explained previously, IFB the parent company of Capital, cannot fund further advances to Casperdiny given the Timbercreek Final Bid, which is reiterated in the Timbercreek March 10th Letter, as German law precludes a company from injecting funds in a situation where it is doubtful that it will recover these funds;
94. The Interim Financing Facility is the Petitioners' solution to allow for IFB to make the advances required to pay the Monthly Interest Payments and to ultimately safeguard Timbercreek's position while the Lease Up Program and the Solicitation Process is implemented;
95. The Interim Financing Facility will allow for the Petitioners to implement the Lease Up Program and the Solicitation Process, both of which are aimed at maximizing the realization value for the Property or refinance same, for the benefit of all of their stakeholders, including Timbercreek;
96. Without the Interim Financing Facility, the Petitioners will likely be forced to surrender the Property to Timbercreek, which would deprive their other creditors and stakeholders of any equity in the Property, over and above Timbercreek's secured claim;
97. Given the Property's Valuation Indications, the equity in the Property's value (over and above Timbercreek' secured claim) cannot be disregarded, and the Petitioners respectfully submit that the implementation of the Lease Up Program combined with the implementation of the Solicitation Process is the optimal solution to maximize the realization value of the Property, to the benefit of all stakeholders;
98. The Proposed Monitor supports the conclusions sought pursuant to the present Motion and agrees with the Petitioners' assessment that the implementation of the Lease Up Program combined with the implementation of the Solicitation Process is the optimal solution to maximize the realization value of the Property to the benefit of all stakeholders, as appears from a copy of the Proposed Monitor's Report filed herewith as **EXHIBIT R-32** (hereinafter the "*Proposed Monitor's Report*");
99. As appears from the Proposed Monitor's Report, the Proposed Monitor is of the opinion that the Petitioners' management currently in place is best equipped to implement the Lease Up Program and assist the Proposed Monitor with the implementation and conduct the Solicitation Process;
100. In light of the foregoing, the Petitioners respectfully submit to this Honourable Court that:
 - a) The Interim Financing Facility is necessary in order to maximize the realization value of the Property for the benefit of all of the Petitioners' creditors and stakeholders;
 - b) Nothing suggests that the Petitioners' management may have lost the confidence of its major creditors;

- c) The Interim Financing Facility will enhance the prospect of a viable compromise or arrangement being submitted to the Petitioners' creditors;
 - d) Without the Interim Financing Facility, the Petitioners will likely be forced to surrender the Property to Timbercreek, depriving its other creditors and stakeholders from the equity in the Property's value;
 - e) No creditor will be materially prejudiced as a result of the Interim Lender's Charge, especially when considering the Property's Valuation Indications; and
 - f) The Proposed Monitor has reviewed the terms of the proposed Interim Financing Facility and has determined, in the circumstances, that the terms of the proposed Interim Financing Facility are reasonable and should be approved by this Court;
101. In addition, the benefits of authorizing the Interim Financing Facility and granting the Interim Lender's Charge outweigh the inconveniences, if any, suffered by the Petitioners' creditors, as the value of the Property and related assets would significantly be lower in a bankruptcy context;
102. For the reasons set forth above, Petitioners respectfully submit to this Honourable Court that it is both appropriate and necessary that they be authorized to borrow from the Interim Financing Facility and that the Interim Lender's Charge be granted over their assets, in accordance with the Draft Order;

H. THE PROPOSED MONITOR & THE ADMINISTRATION CHARGE

103. The Petitioners request that this Honourable Court appoints Richter, acting through its administrator, Mr. Benoît Gingues, CA, CIRP, as Monitor, in accordance with the provisions of the CCAA and the Draft Order;
104. Richter has agreed to act as Court appointed Monitor to the Petitioners;
105. The Petitioners believe that it is in the best interest of all stakeholders that this Court appoints Richter as Monitor pursuant to the CCAA and acknowledge that Richter has valuable insights into the Petitioners' business and will be in a position to perform its monitoring duties without further delay;
106. Richter's acceptance is conditional upon the granting by this Honourable Court of a charge in the amount of **\$250,000**, on the Petitioners' property in order to guarantee the payment of the Proposed Monitor's fees, the Proposed Monitor's legal fees, the Petitioners' legal fees and the fees of certain other advisers, including the professional fees and disbursements incurred both before and after the issuance of the Initial Order being sought herein (hereinafter the "**Administration Charge**");
107. As appears from the Cash Flow Projections, professional fees forecasted between March and August 2014 are estimated at **\$525,000**. In this context, the Petitioners respectfully submit that the Administration Charge is reasonable;

108. The Petitioners respectfully submit to this Honourable Court that it is both appropriate and necessary that the Administration Charge be granted in accordance with the Draft Order;

I. CONCLUSIONS SOUGHT

109. The Petitioners believe that it is wholly appropriate for the orders requested herein to be made forthwith seeing as they find themselves in dire financial circumstances, are insolvent, are not able to meet their obligations and require a stay of proceedings for the benefit of their creditors and other stakeholders;

110. The Petitioners are deeply concerned that unless the requested orders are rendered, certain creditors and other stakeholders may take steps that will deplete its estate to the detriment of all stakeholders and jeopardize the ongoing restructuring efforts;

111. In this regard, it should be noted that the filing of the NOI was rendered necessary because of the threats of Timbercreek that it was going to exercise its secured rights as against the rents generated by the Property and because of the Syndicate Motion;

112. Given that there was no proposal filed by the Petitioners pursuant to the NOI, Petitioners respectfully submit to this Honourable Court that their restructuring process commenced under the NOI should be continued under the CCAA;

113. The Petitioners respectfully submit to this Honourable Court that, without the issuance of an order taking the form of the Draft Order:

- a) They will not be in a position to continue their operations;
- b) They will likely be left with no other option but to surrender the Property in favour of Timbercreek, which would deprive any other creditors and stakeholders from any equity in the value of the Property;

114. The Petitioners respectfully submit to this Honourable Court that given the Property's Valuation Indications, it would be utterly unfair to allow for Timbercreek to take in payment the Property while depriving other creditors and stakeholders of the Petitioners from any equity in the Property's value, especially when considering that given the Interim Financing Facility, Timbercreek's position is unlikely to deteriorate while the Petitioners are implementing the Lease Up Program and the Solicitation Process;

115. The Petitioners respectfully submit to this Honourable Court that the issuance of an Order in the form of the Draft Order will not materially prejudice any of their creditors. To the contrary, it will allow the Petitioners to enhance and maximize the realization value for the Property, for the benefit of the Petitioners' creditors and stakeholders;

116. The Secured Creditors were duly served with the present Motion;


117. The Petitioners respectfully submit that the present Motion should be granted in accordance with the Draft Order;

118. The present Motion is well founded both in fact and in law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [1] **GRANT** the present “*Petition (i) seeking the Issuance of an Initial Order Pursuant to the Companies’ Creditors Arrangement Act, (ii) for the approval of an Interim Financing Facility and the granting of an Interim Lender’s Charge and (iii) for the granting of an Administration Charge*” (hereinafter the “**Motion**”);
- [2] **ISSUE** an order substantially in the form of the draft order filed in support of the present Motion as **EXHIBIT R-2**;
- [3] **THE WHOLE** without costs, save and except if contested and then, with costs against any contesting parties solidarily.

Montréal, March 12, 2014



FASKEN MARTINEAU DuMOULIN LLP
Attorneys for Petitioners

AFFIDAVIT

I, the undersigned, Diana Mason-Stefanovic, duly authorized director, having my professional address at 555 Richmond Street, West Suite 504, Toronto, province of Ontario, MV5 3B1, do solemnly declare the following:

1. I am a duly authorized representative of the Petitioners *Casperdiny IFB Realty Inc.* and *Les Appartements Club Sommet Inc.* in the present case;
2. All the facts alleged in the present Motion are true.

AND I HAVE SIGNED:

D. Mason-Stefanovic

DIANA MASON-STEFANOVIC

Solemnly affirmed before me, in Toronto,
on March 12, 2014

D/L C/L
Notary Public



NOTICE OF PRESENTATION

**TO: RICHTER ADVISORY GROUP
INC.**

1981 McGill College
Montréal, Québec, H3A 0G6

Proposed Monitor

**TO: COMPUTERSHARE TRUST
COMPANY OF CANADA**

c/o Stikeman Elliott S.E.N.C.R.L., S.R.L.
40 - 1155 René-Lévesque Blvd. West
Montreal, Quebec H3B 3V2

**TO: Me Alexander Bayus
Gowling Lafleur Henderson**

S.E.N.C.R.L.
1, Place Ville-Marie
37th floor
Montréal QC H3B 3P4

TO: CASPERDINY IFB CAPITAL INC.

555 Richmond Street West, Suite 504,
Toronto, Ontario, M5V 3B1

**Attorneys for Timbercreek Senior
Mortgage Investment
Corporation**

**TO: IFB BETEILIGUNGEN AG
i.L.,**

Grunerstrasse 19
40239, Düsseldorf, Germany

**TO: THE SYNDICATE OF LE PARC CO-
OWNERSHIP**

3450 Drummond Street, Suite 154,
Montréal, Québec, H3G 1Y2

TAKE NOTICE that the present *Petition (i) Seeking the Issuance of an Initial Order Pursuant to the Companies' Creditors Arrangement Act, (ii) for the Approval of an Interim Financing Facility and the Granting of an Interim Lender's Charge, and (iii) for the Granting of an Administration Charge* will be presented for adjudication before one of the honorable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal on **Friday, March 14, 2014 at 9:00 a.m.** or so soon thereafter as counsel may be heard, in **Room 16.12** of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montreal, Québec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, March 12, 2014


FASKEN MARTINEAU DuMOULIN LLP
Attorneys for Petitioners

CANADA

"Commercial Division"

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT

No. : 500-11-046281-149
Estate No: 41-1843847

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.,

Petitioners

-and-

RICHTER ADVISORY GROUP INC.,

Proposed Monitor

-and-

COMPUTERSHARE TRUST COMPANY OF
CANADA,

-and-

TIMBERCREEK SENIOR MORTGAGE
INVESTMENT CORPORATION,

-and-

CASPERDINY IFB CAPITAL INC.,

-and-

IFB BETEILLIGUNGEN AG i.L.,

-and-

THE SYNDICATE OF LE PARC CO-
OWNERSHIP,

Mises en cause

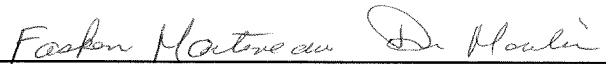
LIST OF EXHIBITS

- EXHIBIT R-1:** Certificates of filing of the notice of intention of *Caperdiny IFB Realty Inc.* and *Les Appartements Club Sommet Inc.*
- EXHIBIT R-2:** Draft Order.
- EXHIBIT R-3:** Comparative version, outlining the differences between the Model Order and the Draft Order.

- EXHIBIT R-4:** Excerpt of the public Quebec Corporate Registry (CIDREQ) of *Casperdiny IFB Realty Inc.*
- EXHIBIT R-5:** Excerpt of the public Quebec Corporate Registry (CIDREQ) of *Les Appartements Club Sommet Inc.*
- EXHIBIT R-6:** “*Grid Promissory Note*”.
- EXHIBIT R-7:** “*Deed of Collateral Hypothecs and Contract for a Suretyship Secured by Hypothecs in connection with a Grid Promissory Note*”.
- EXHIBIT R-8:** “*Deed of Movable Hypothecs of Shares and Proprietary Leases and Other Movable Property*”.
- EXHIBIT R-9:** “*Deed of Collateral Third Hypothecs and Contract for a Suretyship Secured by Hypothecs in connection with a Grid Promissory Note*”.
- EXHIBIT R-10:** “*Deed of Third Movable Hypothecs of Shares and Proprietary Leases and Other Movable Property*”;
- EXHIBIT R-11:** Loan agreement entered into between *Timbercreek Senior Mortgage Investment Corporation, Casperdiny IFB Realty Inc.* and *Les Appartements Club Sommet Inc.* (the “**Timbercreek Loan**”).
- EXHIBIT R-12:** **En liasse** - “*Deed of Hypothecs to Secure Payment of Titles of Indebtedness (with suretyship and cession of rank by intervenant)*” and “*Deed of Hypothecs to Secure Payment of Titles of Indebtedness*”.
- EXHIBIT R-13:** Amended Timbercreek Loan dated August 14, 2013.
- EXHIBIT R-14:** Copy of the immovable index pertaining to the property.
- EXHIBIT R-15:** Motion for forced surrender of the Property.
- EXHIBIT R-16:** *Casperdiny IFB Realty Inc.*’s audited non-consolidated financial statements for the year ended December 31, 2012 (“**FS 2012**”).
- EXHIBIT R-17:** *Casperdiny IFB Realty Inc.*’s unaudited draft balance sheet for the year ended on December 31, 2013 (“**FS 2013**”).
- EXHIBIT R-18:** *Les Appartements Club Sommet Inc.*’s audited non-consolidated financial statements for the year ended December 31, 2012

- EXHIBIT R-19:** *Les Appartements Club Sommet Inc.*'s unaudited balance sheet for the year ended on December 31, 2013.
- EXHIBIT R-20:** Report listing the different registrations against the movable assets of the Petitioners appearing at the *Register of Personal and Movable Real Rights* (Quebec) as of February 26, 2014.
- EXHIBIT R-21:** Confidential information memorandum submitted to potential buyers.
- EXHIBIT R-22:** Letter from BMO dated February 9, 2012 (the "**BMO Value Assessment**").
- EXHIBIT R-23:** *Timbercreek Senior Mortgage Investment Corporation* Initial Bid.
- EXHIBIT R-24:** Option agreement dated November 30, 2012.
- EXHIBIT R-25:** CBRE Limited 's appraisal report.
- EXHIBIT R-26:** *Agreement of Purchase and Sale.*
- EXHIBIT R-27:** Document entitled "*Extension of the Due Diligence Date*".
- EXHIBIT R-28:** Prior notice pursuant to section 244 of the *Bankruptcy and Insolvency Act.*
- EXHIBIT R-29:** Cash flow projections.
- EXHIBIT R-30:** Document entitled "*Summary of Terms and Conditions*".
- EXHIBIT R-31:** Letter from Gowlings dated March 10, 20014.
- EXHIBIT R-32:** Proposed Monitor's Report.

Montréal, March 12, 2014



FASKEN MARTINEAU DuMOULIN LLP
Attorneys for Petitioners