

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

S U P E R I O R C O U R T  
(Commercial Division)

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No.

**IN THE MATTER OF THE RECEIVERSHIP OF:**

**4425537 CANADA INC.**, a legal person having its principal place of business at 5300 Chemin de la Cote St-Luc, Suite 503, in the city and district of Montreal, province of Quebec, H3X 0A3

Debtor/Respondent

-and-

**ROYAL BANK OF CANADA**, a legal person duly constituted having a business place at 1 Place Ville-Marie, 9<sup>th</sup> Floor, West, in the city and district of Montréal, province of Quebec H3C 3A9

Petitioner

-and-

**RSM RICHTER INC.**, legal person duly constituted having a place of business at 2 Place Alexis-Nihon, Suite 1800, in the City and District of Montréal, Province of Québec, H3Z 3C2

Mise-en-cause/Receiver

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**MOTION FOR THE APPOINTMENT OF A RECEIVER  
(Section 243 of the *Bankruptcy and Insolvency Act* ("BIA")  
and Rule 6(4) of the *Bankruptcy and Insolvency General Rules*)**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR TO THE REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, ROYAL BANK OF CANADA (THE "PETITIONER") RESPECTFULLY SUBMITS THE FOLLOWING:**

**I - INTRODUCTION**

1. By the present *Motion for the Appointment of a Receiver* (the "**Motion**"), the Petitioner seeks, *inter alia*, the appointment of RSM Richter Inc., through its representative, Mr. Yves Vincent, trustee and FCA, to act as receiver of the assets of Debtor/Respondent 4425537 Canada Inc. (the "**Debtor**").

2. The Petitioner is a Canadian Chartered Bank duly constituted and having a place of business at 1 Place Ville-Marie, 9<sup>th</sup> Floor, West, in the city and district of Montréal, province of Québec H3C 3A9.
3. The Debtor is a member of the Melior Group, one of Québec's largest groups devoted to the ownership and management of senior housing facilities.
4. The Debtor is the owner of a complex known or referred to as Manoir St-Bruno (the "**Complex**" or "**Manoir St-Bruno**"). Manoir St-Bruno is the only asset of Debtor.
5. Manoir St-Bruno was operated by Melior Group.
6. However, given that several entities of the Melior Group are bankrupt or insolvent, a management agreement was entered into with Cogir Management Corporation/Société de Gestion Cogir, s.e.n.c., which began managing the Complex on or around April 1, 2010.
7. More particularly, Manoir St-Bruno comprises 232 residential units of which 215 are for autonomous living and 17 are for part of the health care unit. As of the date of the Motion, 227 residential units are occupied and, therefore, the occupancy rate is 98%.

## **II - THE RELATIONSHIP BETWEEN DEBTOR AND ITS SECURED CREDITORS**

8. In the normal course of business, the Petitioner had business dealings with the Debtor. The Petitioner is the first ranking secured creditor of Debtor.
9. The Petitioner is a secured creditor of the Debtor pursuant to a Loan Agreement dated November 21<sup>st</sup>, 2007 and executed by the Debtor on November 22, 2010 (the "**Loan Agreement**") and an Immovable Hypothec executed on November 30, 2007 for an amount of at least \$32,750,000 (the "**Immovable Hypothec**"), the whole as more fully appears from a copy of said Loan Agreement communicated herewith as **Exhibit R-1** and a copy of the Immovable Hypothec communicated herewith as **Exhibit R-2**.
10. The movable properties of Debtor related to Manoir St-Bruno are hypothecated in favour of the Petitioner to secure the payment and performance of the obligations under the Loan Agreement, the whole as more fully appears from a movable hypothec dated November 30, 2007 communicated herewith as **Exhibit R-3**.
11. HSBC Capital (Canada) Inc. ("**HSBC**") is also a secured creditor of the Debtor pursuant to a Loan Agreement dated July 26, 2007, an immovable hypothec dated July 26, 2007 and a movable hypothec dated July 26, 2007.
12. As of October 1st, 2010, the Debtor's indebtedness towards the Petitioner amounts to at least \$26,976,244.04, the whole as more fully appears from a copy of a statement of account communicated herewith as **Exhibit R-4**.
13. There is also legal hypothecs of constructions which are still registered by (i) Revêtement R.H.R. inc., (ii) Les Entreprises Pro-Math inc., (iii) 9161-2366 Québec inc., (iv) Vitrierie J.L. inc. and (v) Protection Incendie de la Montérégie inc.

### **III - EVENTS LEADING TO THE PRESENT MOTION**

14. Between July 2009 and December 2009, the Petitioner sent several dissatisfaction letter to the Debtor regarding its operation and financial situation.
15. On December 31, 2009, the loan granted pursuant to the Loan Agreement (the “**Loan**”) came to maturity. The Petitioner did not seek immediate repayment of said Loan given ongoing discussion between the Debtor and a potential purchaser of the Manoir St-Bruno.
16. On March 1st, 2010, the Debtor advised the Petitioner that the sale of the Manoir St-Bruno it was contemplating would not materialize.
17. On March 3, 2010, the Petitioner wrote to the Debtor so as to demand the payment of the Loan (at the time \$26,981,093.32) by no later than April 5, 2010 given the failure to complete the above-mentioned transaction and the following defaults:
  - (i) the expiration of the insurance offered by CMHC and the failure to renew same;
  - (ii) the registration of ten (10) legal hypothecs that the Debtor failed to remove;
  - (iii) the service of eight (8) prior notice of the exercise of a hypothecary right;
  - (iv) the registration of a legal hypothec from the Ministere du Revenu for an amount of at least \$141,000; and
  - (v) the maturity of the Loan;the whole as appears from a copy of the letter dated March 3, 2010 communicated herewith as **Exhibit R-5**.
18. On April 5, 2010, the Debtor failed to pay back the Loan.
19. On or around April 12, 2010, the Petitioner served upon the Debtor a Notice of intention to enforce security pursuant to section 244 *BIA*, the whole as appears from a copy of said notice communicated herewith as **Exhibit R-6**.
20. On or around April 15, 2010, the Petitioner served upon the Debtor a Prior notice to exercise the hypothecary right of sale under judicial authority, the whole as appears from a copy of the Petitioner’s 60 days Notice communicated herewith as **Exhibit R-7**.
21. On or around April 16, 2010, HSBC served upon the Debtor a Notice of intention to enforce security pursuant to section 244 *BIA* and a Prior notice to exercise the hypothecary right of sale under judicial authority, the whole as appears from a copy of HSBC’s 244 Notice communicated herewith as **Exhibit R-8** and a copy of HSBC’s 60 days Notice communicated herewith as **Exhibit R-9**.
22. Since April 2010, the Petitioner has refrained to exercise its legal recourses given that the Debtor was entertaining various scenarios regarding the sale of the Manoir St-Bruno. However, none of the scenarios materialized.

23. It is now necessary and urgent that a receiver takes control of the assets of the Debtor and that a sale process be launched.

#### **IV - REASONS TO APPOINT A RECEIVER**

24. As of the date of the Motion, the Debtor remains in default with respect to its obligations pursuant to the terms of the Loan Agreement in that, amongst other, it failed to pay when due the Loan pursuant to the Loan Agreement.
25. Since the occurrence of the abovementioned default, the Debtor continues to experience serious financial difficulties.
26. Indeed, the Debtor is insolvent and is not able to meet its liabilities, as such obligations become due.
27. Based on the foregoing, it is necessary for the protection of the Debtor's estate, the protection of the Petitioner and HSBC's interest and for the protection of Manoir St-Bruno's residents, that a licensed trustee be appointed as receiver and that such receiver be granted the powers requested in the conclusions of the Motion.
28. Without having a receiver take the appropriate protective measures to control the receipts and disbursements and the assets, the security and financial position of the Petitioner will be in jeopardy.
29. The Petitioner is highly concerned with the management of the facility and the services provided to the residents.
30. The receiver to be appointed by the Court should be, *inter alia*, granted the power to:
- a. take possession of Debtor's books and records, whether in paper form, electronic form or in any form whatsoever;
  - b. take control of the receipts and disbursements of Debtor;
  - c. take all necessary, useful and conservatory measures at its discretion, to secure, protect and preserve the property of Debtor; and
  - d. operate Debtor's business on its behalf.
31. The receiver to be appointed by the Court should also be granted the power to:
- a. initiate a solicitation process for a sale transaction of Manoir St-Bruno;
  - b. enter into discussions and/or negotiate with any third parties owing any amount to Debtor;
  - c. take all necessary measures and institute legal proceedings, for and on behalf of Debtor, to collect any amount due by third parties; and

- d. file, if deemed appropriate, a notice of intention to make a proposal and/or a proposal for and on behalf of Debtor or to file an assignment in bankruptcy, and to execute all documents accessory thereto.
32. The present situation is unacceptable and seriously jeopardizes the Petitioner's position and the Petitioner cannot accept nor tolerate such situation.

### **V - CONCLUSIONS**

33. For the reasons provided herein and given the nature of the appointment of a receiver, it is necessary that this honourable Court grant provisional execution of the judgment to be rendered herein.
34. Given the urgency of the situation and the conduct of Debtor, the Petitioner is well-founded to request this honourable Court to be dispensed of any service other than to the known attorneys of Debtor, of HSBC and of Aecon, the general contractor who registered a legal hypothec and of any notice of presentation, and any delay of service or presentation should be shortened, if need be.
35. The *Mise-en-Cause*, RSM Richter Inc., is a duly authorized and licensed trustee, has the required qualities to act as a receiver to the property of Debtor and consents to act as such.
36. The present Motion is well-founded in fact and in law.

### **WHEREFORE, PETITIONER PRAYS THIS HONOURABLE COURT TO:**

- [A] **GRANT** the present *Motion for the Appointment of a Receiver* (the "**Motion**");
- [B] **SHORTEN** and **WAIVE** the delays for service, filing and presentation of the Motion;
- [C] **APPOINT** RSM Richter Inc., through its representative, Mr. Yves Vincent, trustee and FCA, to act as receiver (the "**Receiver**") to the property of Debtor/Respondent, 4425537 Canada Inc. (the "**Debtor**"), pursuant to Section 243 of the *Bankruptcy and Insolvency Act* ;
- [D] **GRANT** to the Receiver the following powers which, at the Receiver's discretion, may be utilized :
- (a) all the necessary powers to collect all the accounts receivables of Debtor;
  - (b) all the powers necessary to the control of the receipts and disbursements of Debtor;
  - (c) all the powers necessary to operate, on behalf of Debtor, its business, including without limitation, the powers to hire employees, to purchase goods and services and to lease rooms and more generally, to do anything required or useful to continue the operations of Debtor.

- (d) all the powers necessary to hire, on behalf of Debtor, any qualified nurse or other professional required, in its sole opinion, to operate Debtor's business;
  - (e) all the powers to sign and issue cheques on behalf of Debtor;
  - (f) all the powers necessary to protect the interests of the Petitioner, the Royal Bank of Canada (the "**Petitioner**");
  - (g) all the powers necessary to take safeguard measures in order to prevent that Debtor squanders its assets and/or erodes the value of the security of the Petitioner;
  - (h) any other power necessary to the taking of safeguard measures regarding all of Debtor's assets and operations;
  - (i) open any required bank account on behalf of the Debtor, according to terms and conditions that it will, in its sole discretion, consider appropriate, with any Canadian chartered bank, including the Petitioner or any other acceptable financial institution, in order to cash in any sum payable to Debtor, or to its benefit, and make any payment that, in its opinion, is necessary, to the Petitioner or to the fulfilling of the Receiver's duties; and
  - (j) contract any loan or other form of credit on behalf of the Debtor up to a capital amount of \$400,000 in order to allow the continuation of Debtor's operations, and the charge or hypothec on any such debt or loan (plus the additional hypothec of 20%) will be ranked in preference and priority to any other existing guarantee or security, of any nature whatsoever, and will be paid in preference and priority by the Receiver;
- [E] **AUTHORIZE** the Receiver to conduct and supervise a sale process of Debtor's assets and business;
- [F] **AUTHORIZE** the Receiver to solicit, through private or public call for tenders or through any other means, bids regarding Debtor's assets and business;
- [G] **DECLARE** that the Receiver has all the powers necessary, required or appropriate in order to:
- (a) solicit bids for Debtor and, more generally, to manage the call for tenders process or any other sale process;
  - (b) determine the means to contact potential buyers, through private mailings, publication in newspapers or otherwise, and proceed accordingly;
  - (c) determine the means of commercializing Debtor, and/or, amongst others, the groups of assets or the grouping of assets of Debtor;

- (d) allow any potential buyer or any person having demonstrated or demonstrating an interest in Debtor to proceed to a due diligence or to any other analysis of Debtor; and
- (e) conclude any agreement, of any nature whatsoever, on behalf of Debtor, with any person, in order to receive bids regarding Debtor;

[H] **DECLARE** that:

- (a) the Receiver shall be entitled to institute appropriate proceedings, as the case may be and retain the services of legal advisors for the purposes of these proceedings or for any other need. Moreover, such Receiver shall be entitled to file any motion for directions within the meaning of section 34 of the *Bankruptcy and Insolvency Act* as if it were a trustee and if necessary, to execute any necessary document to place Debtor into bankruptcy (file an assignment in bankruptcy) or to file a Notice of intention to make a proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*;
- (b) in addition to the foregoing, the Receiver shall not be liable for any debt that came into existence prior to the service of the judgment to be rendered herein;

[I] **DECLARE** that:

- (a) the Receiver shall not be considered the employer, for all intents and purposes, and shall not incur any liability whatsoever regarding third parties, the Receiver acting for and on behalf of Debtor, among others, as if it were a taking of possession for purposes of administration within the meaning of articles 2773 of the *Civil Code of Quebec* and seq., or a sale by the creditor within the meaning of article 2786 *Civil Code of Quebec*;
- (b) the Receiver will not be considered as operating or continuing the enterprise of Debtor, for any purposes whatsoever;
- (c) the Receiver shall not incur any liability whatsoever regarding third parties or the Debtor for any act done under the judgment to be rendered herein;
- (d) all the powers, obligations and duties of the Receiver shall be exercised in his sole discretion and according to the judgment to be rendered herein;
- (e) the Receiver shall benefit from the protection of sections 14.06 of the *Bankruptcy and Insolvency Act* and more particularly the Receiver shall not, as a result of the judgment to be rendered herein or anything done in pursuance of the Receiver's duties and powers under the judgment to be rendered herein, be deemed to be in possession of any of the property of Debtor within the meaning of any federal, provincial or other legislation, statute, regulation or rule of law or equity respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination and regulations thereunder;

- [J] **ORDER** Debtor and its representatives and employees to surrender all of those assets, the Receiver requires to implement the judgment to be rendered herein, upon service of said judgment;
- [K] **ORDER** Debtor and its representatives and employees to fully collaborate and cooperate with the Receiver and help and assist the Receiver in the fulfilling of its duties;
- [L] **ORDER** Debtor and its representatives and employees to grant access to and to surrender to the Receiver all of its accounting records, books and other accounting or financial documents of any nature whatsoever, notwithstanding their medium, and fully assist and help the Receiver in accomplishing its duties and in analyzing such documents;
- [M] **AUTHORIZE** the Receiver, on behalf of the Debtor, to retain or to terminate the services of any person or enterprise, including nurses or doctors, in order to effectively fulfill its duties and to delegate whenever suitable to the Receiver, such powers to any person or enterprise and appoint any agent or other representative;
- [N] **AUTHORIZE** the Receiver to pay out any advance regarding its fees and disbursements, with the agreement of the Petitioner, the whole subject to taxation in conformity with the law;
- [O] **EXEMPT** the Petitioner from serving any prior notice for the presentation of the Motion;
- [P] **ORDER** that these proceedings shall have full force and effect in all of the provinces and territories in Canada;
- [Q] **ORDER** that the judgment to be rendered herein be executory, notwithstanding appeal and without any need to give security;
- [R] **ALLOW**, as the case may be, a shorter time for presentation;
- [S] **RENDER** any other remedy appropriate in the circumstances;
- [T] **THE WHOLE** without costs, save in case of contestation.

MONTREAL, October 6, 2010

*Davies Ward Phillips + Vineberg LLP*

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
Attorneys for the Petitioner, **ROYAL BANK OF**  
**CANADA**



No.

IN THE MATTER OF THE RECEIVERSHIP OF:

4425537 CANADA INC.

Debtor /Respondent

-and-

ROYAL BANK OF CANADA

Petitioner

-and-

RSM RICHTER INC.

Mise-en-cause/Receiver

ATTESTATION OF AUTHENTICITY

I, the undersigned, Christian Lachance, attorney, practising my profession with the law firm of Davies Ward Phillips & Vineberg LLP, having its principal place of business at 1501 McGill College Avenue, 26<sup>th</sup> Floor, in the City of Montréal, Province of Québec, solemnly affirm that:

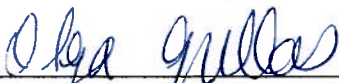
1. On October 6, 2010, at 08:38 a.m., Davies Ward Phillips & Vineberg LLP received by email an Affidavit signed by Brad Flick dated October 6, 2010 a copy of such Affidavit is attached to this Attestation of Authenticity;
2. All the facts alleged herein are true.

AND I HAVE SIGNED:



CHRISTIAN LACHANCE

SOLEMNLY AFFIRMED BEFORE ME,  
at Montréal, on this 6th day of October,  
2010.



Commissioner for Oaths for all  
judicial districts of Québec

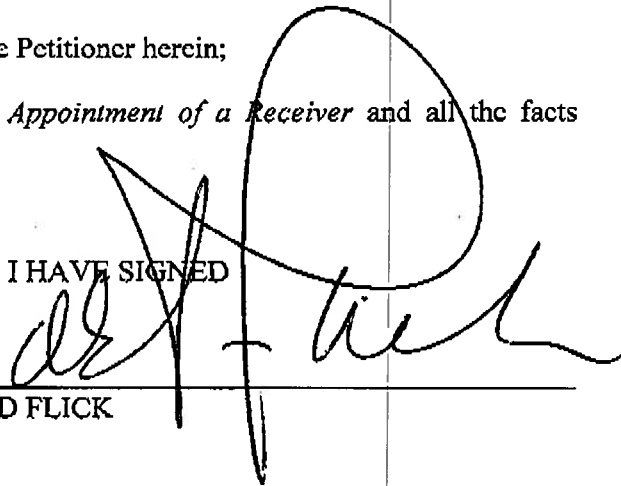


**AFFIDAVIT**

I, the undersigned, Brad Flick, Senior Manager – Group Risk Management at the Royal Bank of Canada, having my place of business at 20 King St. West, in the City of Toronto, Province of Ontario, solemnly declare that:

- 1. I am a duly authorized representative of the Petitioner herein;
- 2. I have read the attached *Motion for the Appointment of a Receiver* and all the facts alleged therein are true.

AND I HAVE SIGNED



A large, stylized handwritten signature in black ink, appearing to read 'Brad Flick', is written over a horizontal line.

BRAD FLICK

SOLEMNLY DECLARED before me on this 6<sup>th</sup> day of October, 2010 in the City of Toronto, Province of Ontario



A handwritten signature in black ink, appearing to read 'Diane Manon Martella', is written over a horizontal line.

Commissioner for Oaths

Diane Manon Martella, Notary Public,  
City of Toronto, limited to the attestation  
of instruments and the taking of affidavits,  
for Royal Bank of Canada.  
Expires August 26, 2011.

**NOTICE OF PRESENTATION**

**TO:** Mtre. Alain Tardif  
McCarthy Tétrault LLP  
1000 de la Gauchetière Street West  
Suite 2500  
Montréal QC H3B 0A2

Attorneys for Debtor/Respondent

**TO:** Mtre. Arnold Cohen  
Ogilvy Renault  
1 Place Ville Marie  
Suite 2500  
Montréal QC H3B 1R1

Attorneys for HSBC Capital

**TO:** Mtre. Pierre-Stéphane Poitras  
Gilbert Simard Tremblay  
1200 Mc Gill College avenue  
Suite 1800  
Montréal QC H3B 4G7

Attorneys for Aecon

**TAKE NOTICE** that the present *Motion for the Appointment of a Receiver* will be presented for adjudication before a registrar sitting in the Commercial Division, in and for the judicial district of Montréal, at the Montréal Courthouse located at 1 Notre-Dame Street East, in the City of Montréal, Province of Québec, on October 7, 2010 at 9:00 a.m. or so soon thereafter as counsel can be heard.

**DO GOVERN YOURSELVES ACCORDING.**

MONTRÉAL, October 6, 2010

Daves Ward Phillips + Vineberg LLP  
**DAVIES WARD PHILLIPS & VINEBERG LLP**  
Attorneys for the Petitioner Royal Bank of Canada

No.

IN THE MATTER OF THE RECEIVERSHIP OF:

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**4425537 CANADA INC.**

Debtor/Respondent

-and-

**ROYAL BANK OF CANADA**

Petitioner

-and-

**RSM RICHTER INC.**

Mise-en-cause/Receiver

**LIST OF EXHIBITS OF THE MOTION FOR  
THE APPOINTMENT OF A RECEIVER  
(Section 243 of the *Bankruptcy and Insolvency Act* ("BIA") and Rule  
6(4) of the *Bankruptcy and Insolvency General Rules*)**

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**Exhibit R-1:** Copy of the Loan Agreement;

**Exhibit R-2:** Copy of the Immovable Hypothec;

**Exhibit R-3:** Movable hypothec dated November 30, 2007;

**Exhibit R-4:** Copy of a statement of account;

**Exhibit R-5:** Copy of the letter dated March 3, 2010;

**Exhibit R-6:** Copy of Notice of intention to enforce security pursuant to section 244 *BIA*;

**Exhibit R-7:** Copy of the Petitioner's 60 days Notice;

**Exhibit R-8:** Copy of HSBC's 244 Notice

**Exhibit R-9:** Copy of HSBC's 60 days Notice;

MONTREAL, October 6, 2010

Davies Ward Phillips + Vineberg LLP  
**DAVIES WARD PHILLIPS & VINEBERG LLP**  
Attorneys for the Petitioner, Royal Bank of Canada

No  
**S U P E R I O R C O U R T**  
District of Montreal

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**4425537 CANADA INC.**

Debtor/Respondent

- and -

**ROYAL BANK OF CANADA**

Petitioner

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**RSM RICHTER INC.**

Mise-en –cause/Receiver

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RECEIVER**  
(Section 243 of the *Bankruptcy and Insolvency  
Act (“BIA”)* and Rule 6(4) of the *Bankruptcy and  
Insolvency General Rules*)

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**ORIGINAL**

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Attorneys for Plaintiffs  
Per: Me Christian Lachance  
Dir 514 841 6576

O/F 229057



DAVIES

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