

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)

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No. 500-11-038703-100

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

**9178-2292 QUÉBEC INC.**

Debtor

-and-

**ROYAL BANK OF CANADA**

Petitioner

-and-

**RSM RICHTER INC.**

Receiver

-and-

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

-and-

**THE REGISTRAR OF THE LAND REGISTRY,  
DIVISION OF LAVAL**

Mis en cause

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**MOTION SEEKING THE AUTHORIZATION TO SELL PROPERTY OF THE  
DEBTOR AND THE ISSUANCE OF A VESTING ORDER  
(Section 243 of the *Bankruptcy and Insolvency Act* (“BIA”))**

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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 MONTRÉAL, ROYAL BANK OF CANADA (THE “PETITIONER”)  
RESPECTFULLY SUBMITS THE FOLLOWING:**

**I. INTRODUCTION**

1. By the present *Motion Seeking the Authorization to Sell Property of the Debtor and the Issuance of a Vesting Order* (the “**Motion**”), the Petitioner, Royal Bank of Canada (the

“**Petitioner**” or “**RBC**”) is respectfully asking this Court, *inter alia*, to (i) approve the sale of the assets of 9178-2292 Québec Inc. (the “**Debtor**”) more fully detailed below and (ii) issue the Vesting Order sought herein.

## **II. FACTUAL BACKGROUND**

2. 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 corporate member of the Melior Group, one of Québec’s largest group devoted to, *inter alia*, ownership and management of senior housing facilities.
4. The Debtor is the owner of a property, known and designated as lot number 1 097 771 of the Cadastre of Québec, Registration Division of Laval, with the building erected thereon and bearing civic address 263 Ste-Rose Blvd., Laval sometimes referred to as Phase III of the *Domaine des Forges* (the “**Property**”). Said Property is the principal asset of the Debtor.
5. The Property was operated by Melior Group before the appointment of RSM Richter Inc. (“**Richter**”) as receiver to the assets of the Debtor, the whole as will be more fully explained below.
6. There are two other buildings which are adjacent to the Property and which are owned by 9145-8794 Québec Inc. (“**9145**”) and 9157-7437 Québec Inc. (“**9157**”), entities which were under the control of the Melior Group. The three buildings represent 475 residential units divided as follows:
  - a) 9145: 221 units;
  - b) 9157: 171 units; and
  - c) the Debtor: 83 units.
7. In the normal course of business, Petitioner had business dealings with Debtor. The Petitioner is the principal banker of Debtor.
8. Petitioner is a secured creditor of Debtor pursuant to a Loan Agreement executed on March 31, 2008 for an amount of \$8,803,725 (the “**Loan Agreement**”), the whole as more fully appears from a copy of said Loan Agreement communicated herewith as **Exhibit R- 1**.
9. The immovable and movable properties of the Debtor related to the Property were hypothecated in favour of RBC by way of an immovable hypothec executed on June 11, 2008 (the “**Immovable Hypothec**”) to secure the payment and performance of the obligations under the Loan Agreement, as appears from the Immoveable Hypothec as well as the statement issued by the Land Registry Office of Laval and the printout of the Register of Personal and Movable Real Rights communicated in support hereof *en liasse* as **Exhibit R- 2**.

### III. PROCEDURAL BACKGROUND

10. On October 29, 2009, The Manufacturers Life Insurance Company (“**Manulife**”), the first ranking secured creditor on 9145’s Property, filed with this Court a *Motion for the Appointment of an Interim Receiver* to the assets of 9145 following various defaults under its loan agreement, the whole as appears from this Court’s record in file no. 500-11-037810-096.
11. On November 16, 2009, the Registrar for the Superior Court, Commercial Division, rendered an Order appointing PricewaterhouseCoopers Inc. (“**PwC**”) as interim receiver to the assets of 9145, the whole as appears from the Court’s record in file no. 500-11-037810-096.
12. On February 9, 2010, Manulife filed with the Superior Court a *Motion for the Appointment of a Receiver to the Property of the Debtor* (the “**Second Motion**”) pursuant to Section 243 *BIA*, as appears from the Court’s record in file no. 500-11-037810-096.
13. On February 11, 2010, the Registrar for the Superior Court, Commercial Division, rendered an Order appointing PwC as receiver to the assets of 9145, the whole as appears from the Court’s record in file number 500-011-037810-096. Said Order provided that PwC was authorized to solicit offers for the sale of the assets of 9145.
14. On April 1, 2010, each of the Debtor, 9145 and 9157 filed a notice of intention to make a proposal to their creditors pursuant to the *BIA* (the “**Notices**”), appointing Ernst & Young Inc. (“**E&Y**”) as trustee, as appears from the printouts of the Office of the Superintendent of Bankruptcy Canada communicated in support hereof *en liasse* as **Exhibit R- 3**.
15. On April 29, 2010, the powers of PwC as receiver to the assets of 9145 were extended, the whole as appears from a copy of an Order dated April 29, 2010 (the “**PwC Order**”) communicated in support hereof as **Exhibit R- 4**.
16. On June 8, 2010, RBC, the first ranking secured creditor on the Debtor’s Property, filed with this Court a *Motion for the Appointment of a Receiver* to the assets of the Debtor, the whole as more fully appears from a copy of said motion communicated herewith as **Exhibit R- 5**.
17. On the same day, Canadian Imperial Bank of Commerce (“**CIBC**”), the first ranking secured creditor on 9157’s Property, filed with this Court a *Motion for the Appointment of a Receiver* to the assets of 9157, the whole as appears from this Court’s record in file no. 500-11-038702-102.
18. On June 9, 2010, RBC and CIBC’s Motions were granted according to their respective conclusions (respectively, the “**Richter Order**” and the “**RCI Order**” and collectively with the PwC Order, the “**Receivers Orders**”), the whole as appears from copies of the Receivers Orders rendered communicated in support hereof, *en liasse*, as **Exhibit R- 6**.
19. Richter was appointed as receiver to the assets of the Debtor and Raymond Chabot Inc. (“**RCI**”) was appointed as receiver to the assets of 9157 (Richter, RCI and PwC together are hereinbelow collectively referred to as the “**Receivers**”).

20. The Receivers Orders, provide, *inter alia*, that PwC, Richter and RCI are authorized to solicit offers for the sale of the assets of 9145, Debtor and 9167.
21. Since the filing of the Notices, the delay to file a proposal has been extended on three (3) occasions and ultimately expired on July 12, 2010, the Debtor, 9145 and 9157 failed to file by such deadline a proposal and are thus deemed bankrupt since then. E&Y was also *de facto* appointed as trustee in bankruptcy to the assets of the Debtor, 9145 and 9157.
22. On July 13, 2010, E&Y filed a *Motion for Direction* in each of the Debtor, 9145 and 9157's files (collectively, the "**Motions for Direction**"). Said Motions for Direction sought the renunciation of E&Y, in its capacity of trustee, in any rights or interests in the assets of each of the Debtor, 9145 and 9157 given (i) the appointment of the Receivers and (ii) the powers of the Receivers to sell the assets.
23. On July 14, 2010, the Motions for Direction were granted according to their respective conclusions.
24. On July, 20, E&Y informed the Receivers that it was relieved of its duty to take possession of each of the Debtor, 9145 and 9157's assets in accordance with Subsection 16(3) *BIA* and, as a result, confirmed that it would not be taking possession of any assets subject to Manulife, RBC and CIBC's security, the whole as appears from copies of E&Y's letters communicated in support hereof *en liasse* as **Exhibit R- 7**.

#### **IV – SALE PROCESS**

25. Since the issuance of the Receivers Orders, the Petitioner has mandated PwC to conduct the sale process of Debtor's assets since it was already conducting the sale process of 9145's assets. PwC has, *inter alia*:
  - (a) prepared and sent draft call for tenders documents for the sale of the Property to potential buyers;
  - (b) contacted potential buyers with respect to the sale of the Property; and
  - (c) arranged visits of the Property with potential buyers;
26. The sale process of the Property has been long and difficult and is only summarized herein. The Petitioner kept informed the Debtor and its guarantors of the various step of the sale process.
27. Since the issuance of the Receivers Orders and as of the date hereof, over 450 potential buyers have been contacted, the whole as appears from the report dated March 15, 2011 prepared by PwC (the "**Report**"), a copy of which is communicated herewith under seal as **Exhibit R- 8**.
28. PwC then established a data room and a number of parties (approximately 57) signed confidentiality agreements with a view to obtaining access to the information therein.
29. Ultimately, five (5) potential buyers have visited and inspected the Property.

30. The timeline established was to receive letters of interest by September 16, 2010.
31. By September 16, 2010, PwC received a few letters of interest for the Property.
32. Upon reviewing the offers received and upon consultations, the Petitioner concluded that none of the offers were acceptable and a second invitation to offer process was implemented for the acquisition of the Property.
33. Since then, PwC tried to improve the offers by sending a correspondence to all potential acquirers having duly submitted an offer inviting them to submit a new offer pursuant to certain new parameters.
34. The deadline to file a revised offer was November 12, 2010.
35. On December 1st, 2010, all the offers received for the Property were rejected, save for the offer (the "**Offer**") received by 9230-6729 Quebec Inc. (the "**Purchaser**").
36. The Petitioner and Richter accepted the Offer on March 3, 2011.
37. The parties do not wish to have the content of the transaction contemplated in the Offer (the "**Transaction**") publicized before closing and, accordingly, a copy of the Offer will be communicated at the hearing herein under seal as **Exhibit R- 9** subject to the Court's permission and appropriate order.
38. In the Offer, the Purchaser seeks to acquire, *inter alia*, the following assets:
  - (a) the Property;
  - (b) all the movable properties of Debtors located in or with the Property (the "**Movable Properties**");
  - (c) without any obligations from the Purchaser, and if assignable, certain leases, lease offers and lease agreements in relation with the Property (the "**Leases**");
  - (d) without any obligations from the Purchaser, and if assignable, certain security existing in favour of Debtor in relation to the construction of the Property or the Movable Properties and certain other agreements in relation to the management of the Property and to the Movable Properties leased by Debtor (the "**Agreements**");  
and
  - (e) all accounting records in relation to the Property;the whole as more fully described in the Offer. All of the assets that the Purchaser purchase through the Offer will be define hereinafter as the "**Purchased Assets**".
39. The Transaction is conditional upon, *inter alia*:
  - (a) the issuance of an order by this Court vesting all of the Debtor's right, title and interest in and to the Purchased Assets free and clear of any security, charge or other restriction; and

- (b) the approval by this Court of the Transaction.
40. Time is of the essence to complete the Transaction so as to maximize the value of the Purchased Assets.
41. Given the foregoing, the Petitioner seeks the provisional execution notwithstanding appeal of the order sought herein.
42. Considering the urgency of the situation, the Petitioner respectfully submits that the notices given for this Motion are proper and sufficient.
43. The Transaction is the best transaction that could possibly be obtained for the Purchased Assets in the present circumstances at this time. Indeed, there is a greater value in the Transaction than through a liquidation or auction process.
44. The exercise by the Petitioner of its hypothecary rights over the Purchased Assets pursuant to the *Civil Code of Québec* would not provide for a better result.
45. The Transaction is the best way to maximize the value of the Purchased Assets.
46. There remains a balance of indebtedness due by the Debtor to the Petitioner exceeding the sale price of the Purchased Assets.
47. It is now clear that the Transaction represents the highest purchase price that could possibly be obtained for the Purchased Assets and hence the Transaction is in the best interest of the Debtor's stakeholders.
48. Given the foregoing, it is appropriate and indicated that Richter be authorized to, amongst other:
- (a) accept and consent to, as receiver to the assets of the Debtor, a deed of sale by and between Richter and the Purchaser in accordance with the terms and conditions of the Offer (the "**Deed of Sale**").
  - (b) perform all acts, sign all documents, including the Deed of Sale and any other related or ancillary documents (including but not limited to a receipt and acquittance for the purchase price when paid), and take any necessary actions to execute any disposition, transaction or engagement stipulated in the Deed of Sale, the Offer or any related document, and further execute any agreement, contract, deed or any other document ancillary or related to the Deed of Sale or the Offer, which could be required or useful to give full and complete effect thereto;
  - (c) complete the Transaction and to deliver the Purchased Assets free and clear of any security, charge or other restriction; and
  - (d) collect the proceeds of the Transaction and distribute the net proceeds of the sale of the Purchased Assets to the Petitioner in accordance with its securities.
49. The present motion is well-founded both in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

- [1] **GRANT** the present *Motion Seeking the Authorization to Sell Property of the Debtor and the Issuance of a Vesting Order* (the “**Motion**”);
- [2] **DECLARE** sufficient the service and notice of the Motion and extend the delays of service as required;
- [3] **PERMIT** service of the judgment to be rendered on the Motion at any time and place and by any means whatsoever;
- [4] **DECLARE** that all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Motion;
- [5] **GRANT** to RSM Richter Inc. (the “**Receiver**”) the following powers:
  - a) accept and consent to a deed of sale (the “**Deed of Sale**”) by and between the Receiver, as seller, and 9230-6729 Québec Inc. (the “**Purchaser**”), as purchaser, in accordance with the terms and conditions of the purchase offer (the “**Offer**”) communicated in support of the Motion as Exhibit R-9, subject to any modifications agreed to between the parties which do not substantially affect the value of the transaction contemplated by the Offer (the “**Transaction**”);
  - b) perform all acts, sign all documents, including the Deed of Sale, and any other related or ancillary documents (including but not limited to a receipt and acquittance for the purchase price when paid), and take any necessary dispositions to execute any dispositions, transactions or engagements stipulated in the Offer or any related documents, and further execute any agreements, contract, deed or any other document ancillary or related to the Offer or the Deed of Sale, which could be required or useful to give full and complete effect thereto;
  - c) complete the Transaction and to deliver the assets sold pursuant to the Transaction and more fully detailed in the Offer (Exhibit R- 9) (the “**Purchased Assets**”) to the Purchaser free and clear of any security, charge or other restriction; and
  - d) collect the proceeds of the Transaction and distribute the net proceeds of the sale of the Purchased Assets to the Petitioner in accordance with its securities.
- [6] **APPROVE** and **AUTHORIZE** the Offer and the sale by the Receiver to the Purchaser of the Purchased Assets, pursuant to and in accordance with the terms and conditions of the Offer;
- [7] **DECLARE** that the Transaction is valid, opposable and enforceable;
- [8] **AUTHORIZE** and **ORDER** the sale of the Purchased Assets to the Purchaser on the terms and conditions of the Offer, or as the parties may agree to, including the consummation of all transactions contemplated by the Offer and each of its terms and conditions;

- [9] **ORDER** and **DECLARE** that upon closing of the Transaction, the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all rights, interests, prior claims, hypothecs, security interests, trusts, deemed trusts (whether contractual, statutory or otherwise), pledges, executions, rights of first refusal or other pre-emptive rights in favour of third parties, mortgage, liens, assignments, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, obligations, liabilities (direct, indirect, absolute or contingent), or other claims or encumbrances, whether or not they have been attached or been perfected, registered or filed and whether secured, unsecured or otherwise (all of which are collectively referred to as the “**Encumbrances**”) including without limiting the generality of the foregoing, all rights, charges, security interests or claims evidenced by registrations of any province in Canada and the *Civil Code of Québec*;
- [10] **ORDER** that the Encumbrances be transferred to and conveyed upon, and thus charge, the proceeds from the sale of the Purchased Assets subject to all defects, attributes and considerations affecting and/or relating to the Encumbrances in existence prior to the said transfer;
- [11] **DECLARE** that the sale and assignment of the Purchased Assets shall have the same effect as a sale by judicial authority as per the provisions of the *Civil Code of Quebec*;
- [12] **ORDER** that all of the Encumbrances affecting or relating only to the Purchased Assets be reduced as against the Purchased Assets, subject to the following paragraphs hereof;
- [13] **AUTHORIZE** and **ORDER** the Receiver to file into the court record the certificate in the form of the certificate attached as Schedule "A" hereto;
- [14] **ORDER** the Registrar of the Land Registry, Registration Division of Laval, upon presentation of a certified copy of the judgment to intervene herein accompanied by the required application for the registration and by a certificate of the Receiver in the form of certificate attached as Schedule "A" hereto confirming that the sale of the Purchased Assets has been duly completed and upon payment of the prescribed fees, to publish said judgment and (i) to proceed with an entry on the index of immovables showing the Purchaser as the absolute owner of the Property as defined in the Motion; and (ii) to proceed with the cancellation of any and all of the following Encumbrances which are immovable and against the Property, namely: a hypothec in favour of Royal Bank of Canada registered on June 12, 2008 at the Registry Office under number 15 302 812
- [15] **ORDER** the Personal and Movable Real Rights Registrar, upon presentation of a certified judgment to intervene herein accompanied by the required applications for the registration, by a certificate of the Receiver in the form the certificate attached as Schedule “A” hereto confirming that the sale of the Purchased Assets has been duly completed and upon payment of the prescribed fees, to publish such judgment and to proceed to the cancellation of any and all of the following Encumbrances on the Purchased Assets, which are moveable property and against the Movable Properties only, namely: a conventional hypothec in favour of Royal Bank of Canada inscribed under number 08-0343927-0001;



[16] **ORDER** that notwithstanding:

- (a) any proceedings under the BIA;
- (b) any petitions for a receiving order now or hereafter issued pursuant to the BIA and any received order issued pursuant to any such petitioner; or
- (c) the provisions of any federal or provincial statute;

the vesting of the Purchased Assets in the Purchaser, as well as the execution of all agreements pursuant to the order to be granted pursuant to the Motion, shall be binding on any successor in interest, including any trustee, monitor or receiver that may be appointed under any applicable federal or provincial legislation, and shall not be void or voidable nor deemed to be a settlement, transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation;

- [17] **ORDER** the Receiver shall be authorized to take all such steps as may be necessary to effect the discharge of the Encumbrances as may be necessary;
- [18] **ORDER** that the report and the Offer filed as Exhibit R-8 and R-9 be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court;
- [19] **DECLARE** that the Receiver shall not be considered to operate or continue the business of the Debtor, for any purposes whatsoever;
- [20] **DECLARE** that the Receiver, without limiting the generality of the foregoing, shall benefit from the protection of Section 14.06 BIA;
- [21] **ORDER** that the Receiver shall not, as a result of the order or anything done in pursuance of the receivers' duties and powers under the order, be deemed to be in possession of any of the property of the 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;
- [22] **ORDER** the provisional execution of the judgment to be rendered on the Motion notwithstanding appeal;
- [23] **THE WHOLE** without costs, save in case of contestation.

MONTREAL, March 19, 2011

Davies Ward Phillips & Vineberg LLP

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
Attorneys for the Petitioner Royal Bank of Canada

**NOTICE OF PRESENTATION**

TO: Me Doug Mitchell  
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Attorneys for the Debtor and the Guarantors

TO: Mr. Yves Vincent  
**RSM RICHTER INC.**  
2 Place Alexis-Nihon  
Suite 1800  
Montréal (Qc) H3Z 3C2

Receiver

**TAKE NOTICE** that the present *Motion Seeking the Authorization to Sell Property of the Debtor and the Issuance of a Vesting Order* 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 March 22, 2011 at 9:00 a.m., in room 16.10 or so soon thereafter as counsel can be heard.

**DO GOVERN YOURSELVES ACCORDING.**

MONTRÉAL, March 18, 2011

*Davies Ward Phillips & Vineberg*

**DAVIES WARD PHILLIPS & VINEBERG LLP**

Attorneys for the Petitioner Royal Bank of Canada

No. 500-11-038703-100

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

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**ORIGINAL**

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