

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

No. 500-11-039687-104

IN THE MATTER OF THE RECEIVERSHIP OF:

4425537 CANADA INC.

Debtor

-and-

ROYAL BANK OF CANADA

Petitioner

-and-

RSM RICHTER INC.

Receiver

-and-

THE REGISTRAR OF THE LAND REGISTRY,
DIVISION OF CHAMBLY

Mis-en-cause

**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* (the "BLA"))**

**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 is seeking an order, *inter alia* (i) approving the sale of the assets of 4425537 Canada Inc. (the "Debtor"), more fully detailed hereinbelow and (ii) issuing the vesting order sought herein.

- 2 -

II. FACTUAL BACKGROUND

2. The Petitioner is a Canadian chartered bank duly constituted and having a place of business at 1 Place Ville-Marie, 9th Floor, West, in the City and District of Montréal, Province of Québec.
3. The Debtor was 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 the immovable property known and designated as lot number THREE MILLION NINE HUNDRED AND FORTY-THREE THOUSAND FIVE HUNDRED AND FORTY-SEVEN (3 943 547) of the Cadastre of Québec, Registration Division of Chambly, together with the buildings erected thereon bearing civic addresses 1465 rue St-Jacques, 1575 rue St-Jacques, 1540 de Montarville and 50 de la Rabastalière, St-Bruno, Québec (collectively "**Manoir St-Bruno**").
5. Manoir St-Bruno is the principal asset of the Debtor.
6. More particularly, Manoir St-Bruno comprises 232 residential units of which 215 are for autonomous living and 17 are part of the health care unit. As of the date of the Motion, 230 residential units are occupied and, therefore, the occupancy rate is 99%.
7. Manoir St-Bruno was operated by the Melior Group. However, given that several entities of the Melior Group had financial difficulties, a management agreement was entered into by the Debtor with Cogir Management Corporation/Société de Gestion Cogir, s.e.n.c. ("**Cogir**"). Cogir began managing Manoir St-Bruno on or about March 31, 2010.
8. In the normal course of business, the Petitioner had business dealings with the Debtor. In fact, the Petitioner is the principal banker and the first ranking secured creditor of the Debtor.
9. The Petitioner is a secured creditor of the Debtor pursuant to a Loan Agreement dated November 21st, 2007 and executed by the Debtor on November 22, 2007 (the "**Loan Agreement**") and pursuant to an Immoveable Hypothec executed on November 30, 2007 (the "**Immoveable Hypothec**"), the whole as more fully appears from copies of the Loan Agreement and of the Immoveable Hypothec communicated herewith *en liasse* as **Exhibit R-1**.
10. The movable properties of the 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 copy of the Movable Hypothec dated November 30, 2007 communicated herewith as **Exhibit R-2**.
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, the whole as more fully appears from a copy of said documents communicated herewith *en liasse* as **Exhibit R-3**.

- 3 -

12. Several legal hypothecs of construction have been registered against Manoir St-Bruno arising from claims under a contract with Aecon, all of which have since been radiated or are subject to a deed of mainlevée not yet published at the applicable Land Registry. Furthermore, full and complete releases have been executed by Aecon and all subcontractors having registered such legal hypothecs. Therefore, while there is no need to serve this Motion upon them, as a matter of courtesy Aecon is being served.
13. A legal hypothec has also been registered by the Ministre du Revenu du Québec (for alleged unpaid QST), which hypothec ranks after the hypothecs granted in favour of the Petitioner and HSBC, the whole as more fully appears from a copy of the "index au immeuble" communicated herewith as **Exhibit R-4**.
14. On October 6, 2010, the Petitioner filed a *Motion for the Appointment of a Receiver* by which it sought, *inter alia*, the appointment of RSM Richter Inc., through its representative Yves Vincent, FCA, CIRP, to act as receiver of the Debtor's assets (the "**Receiver**"), the whole as more fully appears from a copy of said motion communicated herewith as **Exhibit R-5**.
15. On October 7, 2010, this honourable Court issued an order (the "**Receivership Order**") and granted the Petitioner's *Motion for the Appointment of a Receiver*, appointed the Receiver as receiver of the Debtor's assets and granted several powers to the Receiver.
16. On February 11, 2011, the Debtor made an assignment for the general benefit of its creditors under Section 49 *BIA*, the whole as more fully appears from this Court's record.

III SALE PROCESS

Phase 1

17. The Melior Group previously attempted to sell Manoir St-Bruno through RBC Capital Market Real Estate Group Inc. ("**RBCCM**").
18. On or about May 15, 2009, a mandate was given by the Melior Group to RBCCM to find a purchaser for 14 properties belonging to the Melior Group, including the Manoir St-Bruno.
19. A thorough process was followed to identify purchasers. Over 58 investors were contacted and received a complete confidential information memorandum, the whole as more fully appears from a copy of said confidential information memorandum communicated herewith under seal as **Exhibit R-6**.
20. Ultimately, 12 investors signed a confidentiality agreement so as to obtain more information on the properties being sold.
21. On July 2009, following said sale process, RBCCM received four letters of intent, of which one was for Manoir St-Bruno. Buyers preferred in this first phase to focus on specific properties or complexes and on transactions where they had a chance to meet the vendor's expectations.

- 4 -

22. In October 2009, pursuant to that process, a potential purchaser submitted an offer to purchase Manoir St-Bruno at a price of \$39,000,000.
23. Pursuant to this proposal, an offer was executed by both parties at a slightly higher price.
24. The potential purchaser then conducted its detailed due diligence process which ended in February 2010, at which point the purchaser confirmed that it would not buy Manoir St-Bruno at the agreed upon price.

Phase 2

25. On or around April 2010, once the Debtor experienced financial difficulties and stopped managing Manoir St-Bruno, HSBC then gave a second mandate to RBCCM to find a purchaser for Manoir St-Bruno.
26. Again an extensive process was put in place to find such a purchaser with HSBC being willing, in order to maximize pricing, to stay in as a partner or as preferred shareholder.
27. RBCCM duly:
 - (a) prepared and sent a revised offering summary for the sale of Manoir St-Bruno to several potential buyers (approximately 15), the whole as more fully appears from a copy of said offering summary communicated herewith under seal as **Exhibit R-7**; and
 - (b) arranged visits of Manoir St-Bruno with potential buyers.
28. Given HSBC's suggested capital structure for the purchase of Manoir St-Bruno, this second sale process was more successful and led to 3 offers.
29. However, none of the offers were ultimately considered satisfactory.
30. On or around December 7, 2010, the Receiver received an offer for Manoir St-Bruno, namely the Offer to Purchase (the "**Offer**") from Jean-Jacques Laurans and Jean-Luc Binette, each acting for and on behalf of a company to be formed (the "**Purchaser**"). Prior to the Offer, the Purchaser had previously submitted several other offers since the beginning of the Phase 2 sale process. The Purchaser had during that time conducted most of its financial, legal and physical due diligence for the acquisition of the Property.
31. RBCCM is of the view that the Offer is the best offer that can be obtained for the Manoir St-Bruno in the current market conditions and is superior to all the offers obtained during the 2 sale processes it managed.
32. On December 14, 2010, the Receiver, with the consent of the Petitioner, informed the Purchaser that, subject to court approval, it would be prepared to accept the Offer.
33. 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

- 5 -

be communicated at the hearing of this motion under seal as **Exhibit R-8** subject to this honourable Court's permission.

34. By the Offer, the Purchaser seeks to acquire, *inter alia*, the following assets:
- (a) Manoir St-Bruno;
 - (b) most of the movable properties of the Debtor located in or on Manoir St-Bruno (the "**Movable Properties**");
 - (c) to the extent that they are assignable, any and all leases, offers to lease and rental or occupancy agreements in relation with Manoir St-Bruno;
 - (d) to the extent that they are assignable, any and all: (i) existing warranties in favour of the Debtor in connection with the construction or operation of Manoir St-Bruno or in connection with the Movable Properties, (ii) contracts or agreements to which the Debtor is party or by which the Debtor is bound in respect of the ownership, development, maintenance, operation, leasing, cleaning, security or fire protection of Manoir St-Bruno, and (iii) contracts and agreements relating to any Movable Properties leased by the Debtor and located on or in Manoir St-Bruno;
 - (e) to the extent that they are assignable, any and all permits, licenses, certificates of compliance, consents and approvals and authorizations of or registrations with, any governmental authority, held by the Debtor and relating to the Purchased Assets (as hereinafter defined)
 - (f) to the extent that they are assignable, any and all trademarks, trade names, business names, service marks, brand names, patent applications pending and other intellectual property, such as logos, telephone and telecopier numbers, email addresses, Internet domain names and websites of the Debtor;
 - (g) any and all books, records, charts, plans, reports and other documentation (or appropriate extracts) in the possession or control of the Receiver in whatever medium relating to the Purchased Assets;

the whole as more fully appears from the Offer. All of the assets that Purchaser acquires through the Offer will be referred to hereinafter as the "**Purchased Assets**".

35. The Offer provides that the closing of the Transaction shall occur no later than the second business day immediately following the date on which the order approving the Transaction is final.
36. The Transaction is conditional upon, *inter alia*:
- (a) the issuance of an order by this honourable 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

- 6 -

- (b) the approval by this honourable Court of the Transaction.
37. Time is of the essence to complete the Transaction so as to maximize the value of the Purchased Assets.
38. Given the foregoing, the Petitioner seeks the provisional execution notwithstanding appeal of the judgment to be rendered on the Motion.
39. Considering the urgency of the situation, the Petitioner respectfully submits that the notices given for the Motion are proper and sufficient.
40. The Transaction is the best transaction that could possibly be obtained for the Purchased Assets in the present circumstances. Indeed, there is a greater value in the Transaction than through a liquidation or an auction process.
41. 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.
42. The Transaction is the best way to maximize the value of the Purchased Assets.
43. The Transaction represents the highest purchase price that could possibly be obtained for the Purchased Assets. Hence, the Transaction is in the best interest of the Debtor's stakeholders.
44. Given the foregoing, it is appropriate and indicated that the Receiver be authorized to, *inter alia*:
- (a) accept the Offer;
 - (b) accept and consent to, as receiver to the assets of the Debtor, a deed of sale by and between the Receiver and the Purchaser in accordance with the terms and conditions of the Offer (the "**Deed of Sale**");
 - (c) 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;
 - (d) complete the Transaction, as Receiver to the assets of the Debtor, and deliver the Purchased Assets free and clear of any security, charge or other restriction; and
 - (e) collect the proceeds of the Transaction and distribute said proceeds to the secured creditor in accordance with its securities.
45. HSBC, the second ranking secured creditor consents to this Motion.

- 7 -

46. The present motion is well-founded in fact and in law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [A] **GRANT** the present *Motion Seeking the Authorization to Sell Property of the Debtor and the Issuance of a Vesting Order* (the “**Motion**”);
- [B] **DECLARE** sufficient the service and notice of the Motion and extend the delays of service as required;
- [C] **AUTHORIZE** service of the judgment to be rendered on the Motion at any time and place and by any means whatsoever;
- [D] **DECLARE** that all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Motion;
- [E] **GRANT** RSM Richter Inc. (the “**Receiver**”) the following powers to:
 - a) accept the Offer;
 - b) accept and consent to a deed of sale (the “**Deed of Sale**”) by and between the Receiver, as seller, and 7657269 Canada Inc. (the “**Purchaser**”), as Purchaser, in accordance with the terms and conditions of the Offer to Purchase dated December 7, 2010 (the “**Offer**”) communicated in support of the Motion as Exhibit R-8, 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**”);
 - c) 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 measures 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;
 - d) complete the Transaction and to deliver the assets sold pursuant to the Transaction and more fully detailed in the Offer (the “**Purchased Assets**”) to the Purchaser free and clear of any security, charge or other restriction; and
 - e) collect the proceeds of the Transaction and distribute said proceeds to the secured creditors.
- [F] **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;
- [G] **DECLARE** that the Transaction is valid, opposable and enforceable;

- 8 -

- [H] **AUTHORIZE** and **ORDER** the sale of the Purchased Assets to the Purchaser on an “as is where is basis” and subject to the other terms and conditions of the Offer (including without limitation sections 6.1 and 6.2), or as the parties may agree to, including the consummation of all transactions contemplated by the Offer and each of its terms and conditions;
- [I] **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* ;
- [J] **ORDER** that the Encumbrances be transferred to and conveyed upon, and thus charged, 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;
- [K] **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*;
- [L] **ORDER** that all of the Encumbrances affecting or relating only to the Purchased Assets be reduced and, where applicable, discharged, as against the Purchased Assets, subject to the following paragraphs hereof;
- [M] **ORDER** the Land Registrar of the Land Registry for the Registration Division of Chambly, upon presentation by the Receiver (who shall do so promptly after the payment of the purchase price of the Transaction) of a certified copy of the judgment to intervene herein accompanied by the required application for registration and upon payment of the prescribed fees, to publish such judgment and: (i) to proceed with an entry on the index of immovables showing the Purchaser as the absolute owner of Manoir St-Bruno as defined in the Motion, and (ii) to proceed with the cancellation of any and all of the Encumbrances on Manoir St-Bruno, including, without limiting the generality of the foregoing, the inscriptions bearing the following registration numbers 13 085 881, 14 828 829, 14 479 565, 14 938 662, 14 847 884, 14 436 488, 14 436 487, 15 835 336, 15 835 770, 15 859 362, 17 086 431, 17 086 366, 17 082 741 and 17 073 594;
- [N] **ORDER** that the Receiver shall distribute the purchase price of the Transaction in the following order to the secured creditors : 1) Royal Bank of Canada, 2) HSBC Capital (Canada) Inc. and then, should there be enough proceeds remaining following

- 9 -

distribution thereof to Royal Bank of Canada and HSBC Capital (Canada) Inc., in accordance with the priorities and securities of the other creditors;

[O] ORDER that notwithstanding:

- (a) any proceedings under the *Bankruptcy and Insolvency Act*;
- (b) any petitions for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* 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 *Bankruptcy and Insolvency Act* 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;

[P] ORDER that the Purchaser or 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;

[Q] ORDER that the confidential information memorandum (Exhibit R-6), revised offering summary (Exhibit R-7) and the Offer (Exhibit R-8) be kept confidential and under seal until the earlier of: i) the closing of the Transaction, or ii) further order of this Court;

[R] DECLARE that the Receiver shall not be considered to operate or continue the business of the Debtor, for any purposes whatsoever;

[S] DECLARE that the Receiver, without limiting the generality of the foregoing, shall benefit from the protection of Section 14.06 *Bankruptcy and Insolvency Act*;

[T] ORDER that the Receiver shall not, as a result of the order or anything done in pursuance of the Receiver's 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;

[U] DECLARE that the order shall have full force and effect in all of the provinces and territories of Canada and **REQUEST** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to the order and to assist the Receiver and its agents in carrying out the terms of the judgment to be rendered on the Motion. All courts, tribunals, regulatory and

- 10 -

administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to the order or to assist the Receiver and its agents in carrying out the terms of the Order to be rendered on the Motion;

- [V] **ORDER** the provisional execution of the judgment to be rendered on the Motion notwithstanding appeal;
- [W] **THE WHOLE** without costs, save and except in case of contestation.

MONTRÉAL, March 1, 2011



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

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: Ministère du Revenu
Complexe Desjardins
150, rue Sainte-Catherine Ouest
Montréal QC H5B 1A4

TO: Mr. Yves Vincent
RSM Richter Inc.
2 Place Alexis-Nihon, Suite 1800
Montréal QC H3Z 3C2

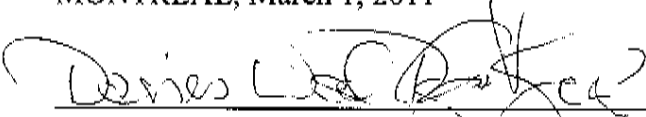
Receiver

TO: Mtre. Pierre-Stephane Poitras
Gilbert Simard Tremblay LLP
1200 McGill College, Suite 1800
Montréal QC H3B 4G7

Aecon

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 7, 2011 at 9:00 a.m., in room 16.10 or so soon thereafter as counsel can be heard.

MONTRÉAL, March 1, 2011



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

No 500-11-039687-104

S U P E R I O R C O U R T
District of Montreal

4425537 CANADA INC.

Debtor/Respondent

- and -

ROYAL BANK OF CANADA

Petitioner

- and -

RSM RICHTER INC.

Mise-en -cause/Receiver

**MOTION SEEKING THE AUTHORIZATION
TO SELL PROPERTY OF THE DEBTOR AND
THE ISSUANCE OF A VESTING ORDER,
AFFIDAVIT, NOTICE OF PRESENTATION**

ORIGINAL

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

O/F 229057



DAVIES WARD PHILLIPS & VINEBERG LLP

1561 McGill College Avenue
26th Floor
Montreal Canada H3A 3N9

Tel 514 841 6408
Fax 514 841 6499
BP-0181