

SUPERIOR COURT
(In bankruptcy and insolvency)

Canada
PROVINCE OF QUEBEC
DISTRICT OF LONGUEUIL

No: 505-11-007944-064

DATE: February 20, 2007

BY: THE HONOURABLE CLÉMENT GASSON, J.S.C.

IN THE MATTER OF THE PROPOSAL OF:

AVESTOR LIMITED PARTNERSHIP

Debtor/Petitioner

And

RSM RICHTER INC., in its capacity as trustee to the proposal of Avestor Limited Partnership

Trustee

JUDGMENT

(On a Motion for the appointment of an interim receiver, approval of the sale of all assets, and a vesting order)

- [1] The ^{COURT}~~Tribunal~~, having taken cognizance of a *Motion for the appointment of an interim receiver approval of the sale of all assets, and a vesting order (Section 47.1(1) of the Bankruptcy and Insolvency Act)* dated February 19, 2007, and after studying the affidavit and the exhibits filed in support of said Motion, hereby renders the present judgment;

- [2] **GRANTS** the Motion;

AND
HAVING HEARD COUNSEL REPRESENTATIONS AND
THE MR GINGUES' TESTIMONY ON THE ^{PROTECTION AND}~~EXTENT~~ PAYMENT
OF THE SECURED CLAIMS TO BE EXPUNGED, DISCHARGED
AND RADIATED BY THE TERMS OF THE VESTING ORDER;

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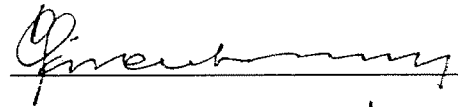
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- [3] **DISPENSES** Avestor Limited Partnership ("**Avestor**") from having to serve the present motion;
- [4] **ABRIDGES** all delays for the presentation of the present motion;
- [5] **DECLARES** that Exhibits **R-4** to ~~R-9~~ ^{R-7} ~~END~~ to the present motion are filed in the court record confidentially and under seal, until further order of this court;
- [6] **APPOINTS** RSM Richter Inc. (Mr. Benoit Gingues, CA, CIRP, trustee) ("**Richter**" or the "**Interim Receiver**") as interim receiver of all assets of Avestor;
- [7] **APPROVES** the sale of all of the Assets (the "**Purchased Assets**") described in the Asset Purchase Agreement produced as Exhibit **R-7** (the "**Asset Purchase Agreement**") to the therein defined "Purchaser" (the "**Purchaser**") as well as all of the other transactions therein described (such sale and the other transactions collectively the "**Transactions**"), substantially in accordance with the terms and conditions of the Offer and the Asset Purchase Agreement, with such alterations, amendments, deletions and additions of an immaterial nature as the parties may agree to;
- [8] **AUTHORIZES** both Avestor and Richter to execute the Asset Purchase Agreement and to perform the obligations contained in the Asset Purchase Agreement, and to implement and complete the Transactions in accordance with its terms and conditions, with such alterations, amendments, deletions and additions of an immaterial nature as the parties may agree to;
- [9] **AUTHORIZES** Richter to receive the "Purchase Price" as defined in the Asset Purchase Agreement, subject to all adjustments thereto set forth in the Asset Purchase Agreement and the Offer (the "**Price**") and to distribute the Price in accordance with the terms and conditions of Avestor's proposal dated December 6, 2006 produced as Exhibit R-2 (the "**Proposal**") and all applicable laws;
- [10] **AUTHORIZES** Avestor and Richter, in order to complete the Transactions subject to the terms and conditions of the Asset Purchase Agreement:
- (a) to execute and deliver such additional, related and ancillary documents and assurances governing or giving effect to the Transactions as Avestor and Richter in their discretion, may deem to be reasonably necessary or advisable for the purpose of concluding the Transactions, including the execution of such deeds, releases and such other documents in the name and on behalf of Avestor, as may be contemplated by the Asset Purchase Agreement; and
 - (b) to take such steps, actions and proceedings as are, in the opinion of Avestor and Richter, necessary or incidental to the performance of Avestor's obligations pursuant to the Asset Purchase Agreement;

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- [11] **ORDERS** that, effective immediately upon the filing with this court of a certificate by Richter (the "**Interim Receiver's Certificate**") substantially in the form of the draft Interim Receiver's Certificate attached as Schedule "A" hereto, ownership (to the extent of Avestor's ownership) of all of the Purchased Assets as well as all of Avestor's right, title and interest, if any, in and to all of the Purchased Assets shall vest in the Purchaser, without further instrument of transfer or assignment, absolutely and forever, free and clear of and from any and all right, title, interest, claims, hypothecs, mortgages, charges, liens, judgments, writs of execution, writs of seizure and sale, contractual claims, pledges, options, deemed trusts, claims or any other rights or claims of any kind whatsoever, whether statutory, by operation of law or court order or otherwise (collectively referred to hereafter as the "**Encumbrances**") in favour of any and all parties and all persons, including individuals, corporations or partnerships (collectively referred to hereafter as "**Persons**") and further order that all of the Encumbrances, asserted by any of the Persons, or in any way effecting the Purchased Assets, be expunged, discharged and radiated;
- [12] **DISPENSES** the Interim Receiver from having to furnish any security with respect to its appointment as interim receiver;
- [13] **DECLARES** that the Interim Receiver shall have access to Avestor's premises at all times;
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- [14] **AUTHORIZES** the Interim Receiver, if it considers it appropriate but without obligation, to take possession of the whole or any part of all of Avestor's assets excluding the Purchased Assets (the "**Remaining Assets**"), of any nature, wherever and in whosever's hands they should be, and to exercise with respect to said assets all the powers of a trustee in bankruptcy save and except for the power to carry on the business of Avestor;
- [15] **AUTHORIZES** the Interim Receiver, if it considers it appropriate but without obligation, to make copies of all the books and records, accounts, letters, invoices, and files of Avestor as well as any other document relating to any claim or demand of Avestor, whether this information is in paper, computer or other form;
- [16] **AUTHORIZES** the Interim Receiver, if it considers it appropriate but without obligation, to take any act necessary to maintain, preserve, protect and conserve the Remaining Assets, including the right of the Interim Receiver to take any steps customary in such situations and, without limiting the generality of the foregoing, authorize the Interim Receiver to conclude, in Avestor's name, an agreement for the management of the Remaining Assets or any other agreement necessary to exercise the powers granted to it by the present order;
- [17] **AUTHORIZES** the Interim Receiver to control the receipts and disbursements of Avestor, and to open a separate bank account for this purpose;

- [18] **AUTHORIZES** the Interim Receiver to receive and collect all sums presently or to become due to Avestor;
- [19] **AUTHORIZES** the Interim Receiver to conclude any settlement concerning any sum currently or to become due to Avestor, on terms it considers appropriate;
- [20] **AUTHORIZES** the Interim Receiver, if it considers it appropriate but without obligation, to sign all corporate documents in Avestor's name;
- [21] **AUTHORIZES** the Interim Receiver to assist Avestor in connection with the recall of any of Avestor's batteries;
- [22] **AUTHORIZES** the Interim Receiver to retain the services of agents, consultants, experts, lawyers or accountants in order to assist in the exercise of the powers to be granted by the present order;
- [23] **DECLARES** that the Interim Receiver is not to be considered in any manner as the employer of the successor in title of Avestor and accordingly shall not be liable towards third parties, including the employees of the Avestor; the Interim Receiver shall act only for and in the name of the Avestor, and not personally;
- [24] **DECLARES** that the Interim Receiver is not operating or continuing the business of Avestor;
- [25] **DECLARES** that the Interim Receiver shall not be liable towards third parties for any acts undertaken pursuant to the present order, save and except any liability or obligation arising from its gross negligence or wilful misconduct, and that not action or other proceedings may be commenced against the Interim Receiver or its directors, officers, employees and mandataries relating to its appointment, its conduct as Interim Receiver or carrying out the provisions of any order of this Court, except with prior leave of this Court after due notice to the Interim Receiver;
- [26] **DECLARES** that the Interim Receiver benefits from the protection set forth in section ~~16-04~~ BIA;
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- [27] **ORDERS** Avestor, as well as any other person having received a copy of the present order, to cooperate and assist the Interim Receiver in the exercise of the powers to be granted by the present order;
- [28] **AUTHORIZES** the Interim Receiver to present to this honourable court any motion for directions with respect to the powers to be granted by the present order;
- [29] **AUTHORIZES** the Interim Receiver to collect from the Price and the Remaining Assets, on a weekly basis, its fees and disbursements subject to the eventual taxation of its statement of account in conformity with the *Bankruptcy and Insolvency Act*;

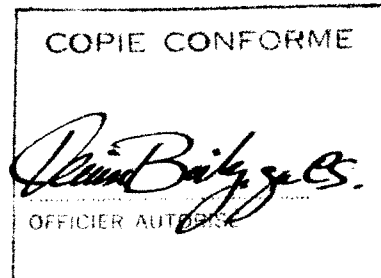
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- [30] **ORDERS** that the Interim Receiver be granted a first charge on and over the Price and the universality of the Remaining Assets in the amount of \$500,000 as security for the payment of its professional fees and disbursements, including legal fees and disbursements, incurred both before or after the judgment to be rendered herein, said charge having priority over any conventional or legal hypothec, priority or other charge including any deemed trust created by law on and over the Price and the universality of the Remaining Assets, without the requirement to publish same (hereinafter referred to as the "**Interim Receiver Charge**");
- [31] **ORDERS** the provisional execution of the present order, notwithstanding appeal;
- [32] **THE WHOLE** with costs against the estate.


J.C.S.

Me Marc Duchesne
BORDEN LADNER GERVAIS
Attorneys for Avestor Limited Partnership

Date of hearing: February 20, 2007



SCHEDULE "A"

SUPERIOR COURT ("In Bankruptcy and Insolvency")

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF LONGUEUIL**

N°: 505-11-007944-064

IN THE MATTER OF THE PROPOSAL OF:

AVESTOR LIMITED PARTNERSHIP, limited partnership having its head office at 1560 De Coulomb Street, in Boucherville, Province of Quebec, J4B 7Z7

Debtor/ Petitioner

and

RSM RICHTER INC., legal person having a place of business at 2 Place Alexis-Nihon, 20th floor, in Montreal, Province of Quebec, H3Z 3C2

Interim Receiver

INTERIM RECEIVER'S CERTIFICATE

WHEREAS the court herein issued an order on February 20, 2007 (the "Order"), all of the defined words and terms in which Order, whenever used herein, shall have the same meanings as therein set forth;

WHEREAS the Order contemplates the sale of all of the Purchased Assets to the Purchaser in accordance with the terms and conditions of the Asset Purchase Agreement and the Order;

WHEREAS the Order contemplates the Interim Receiver's filing into the Court record herein of the Interim Receiver's Certificate, whereupon ownership (to the extent of such ownership) of all of the Purchased Assets as well as all of Avestor's right, title and interest in and to the Purchased Assets shall vest in the Purchaser free and clear of all Encumbrances and that all such Encumbrances be expunged, discharged and radiated, all in accordance with the provisions of the Order;

AND WHEREAS the present Certificate shall constitute, for all purposes, the Interim Receiver's Certificate contemplated by the Order.

NOW THEREFORE, THE INTERIM RECEIVER HEREBY CERTIFIES THAT:

1. All of the "Conditions" as defined in and contemplated by the Offer have either been waived by Purchaser or fulfilled within the delays contemplated in the Offer;
2. Each of the Interim Receiver, Avestor and Purchaser has executed the Asset Purchase Agreement within the delays contemplated by the Offer and accordingly all of the Purchased Assets have been sold to Purchaser for the Price and in accordance with the terms and conditions of the Asset Purchase Agreement; and,
3. The full Price has been paid by Purchaser to the Interim Receiver.

Montreal, Province of Quebec, this • day of March, 2007.

RSM RICHTER INC., Trustee to the proposal of
Avestor Limited Partnership and Interim Receiver
to the assets of Avestor Limited Partnership

By:

Name:

Title: