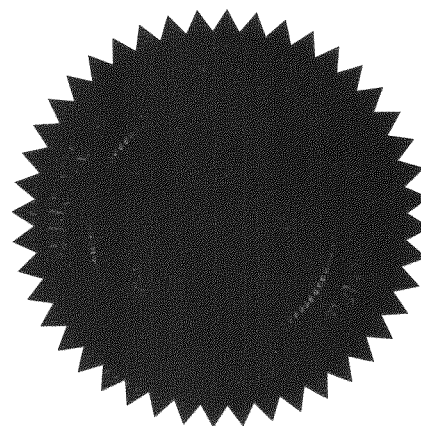


SUPERIOR COURT
(Commercial Division)



CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No. 500-11-045750-136

DATE: January 7, 2015

PRESIDING : ME CHANTAL FLAMAND, REGISTRAR

IN THE MATTER OF THE RECEIVERSHIP OF:

HOMCO REALTY FUND (98) LIMITED PARTNERSHIP

Debtor/Bankrupt

-and-

TITAN EUROPE 2006-5 P.L.C.

-and-

CREDIT SUISSE INTERNATIONAL

Secured Creditors

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Receiver/Petitioner

-and-

HATFIELD PHILIPS INTERNATIONAL LIMITED

Mise-en-cause

**ORDER AUTHORIZING THE SALE OF A REAL PROPERTY
AND VESTING ORDER RENDERED ON DECEMBER 18, 2014, AS RECTIFIED
(Section 243 of the *Bankruptcy and Insolvency Act*)**

- [1] **ON READING** the Receiver's Motion for the Issuance of an Order Authorizing the Sale of a Real Property and for the Issuance of a Vesting Order (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the report of Samson Bélair/Deloitte & Touche Inc. ("**Deloitte**" or "**Receiver**");
- [2] **CONSIDERING** the support of the Motion by the Mise-en-Cause Hatfield Philips International Ltd., acting as special servicer on behalf of the Secured Creditors;
- [3] **CONSIDERING** the order of this Court appointing the Receiver as receiver to the assets of Homco Realty Fund (98) Limited Partnership (the "**Debtor**");
- [4] **CONSIDERING** that the contemplated sale to Erste Fahrenkamp & Gärtner Grundbesitz GmbH & Co. KG (the "**Purchaser**") is fair, reasonable and represents the best transaction possible in respect of the Carat Park shopping centre located at Tencheler Weg 16, 06886 in the city of Wittenberg, Germany (the "**Property**") in the present circumstances;
- [5] **CONSIDERING** the provisions of the *Bankruptcy and Insolvency Act* (the "**BIA**");
- [6] **CONSIDERING** that it is appropriate to issue an order approving the sale to the Purchaser contemplated in the draft Sale and Purchase Agreement between the Purchaser and the Receiver (the "**SPA**") (filed under seal as **EXHIBIT R-3** in support of the Motion) and vesting the Property in and with the Purchaser;
- [6.1] **CONSIDERING** that the Order Authorizing the Sale of a Real Property and Vesting Order rendered on December 18, 2014 contained a clerical error;

WHEREFORE THE COURT:

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

SERVICE

- [8] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof and **DECLARES** that this Motion has been validly served and filed with the Court record herein;
- [9] **PERMITS** service of this Order at any time and place and by any means whatsoever;

SALES APPROVAL

- [10] **ORDERS AND DECLARES** that the contemplated sale of the Property to the Purchaser is hereby approved, and **AUTHORIZES** the Receiver, in its capacity as receiver to the Property, to accept, enter into, complete and implement the SPA with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Receiver;
- [11] **ORDERS** that in completing the contemplated sale of the Property subject to the terms and conditions of the SPA, the Receiver be authorized:
 - (a) to execute and deliver any documents and assurances governing or giving effect to the SPA as the Receiver, in its discretion, may deem to be reasonably necessary or

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advisable to conclude the sale to the Purchaser, including the execution of such deeds, contracts or documents, as may be contemplated in the SPA; and

- (b) to take such steps that are, in the opinion of the Receiver, necessary or incidental to the performance of its obligations pursuant to the SPA;

AUTHORIZATION

- [12] **ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Receiver to proceed with the sale to the Purchaser and that no regulatory approval shall be required in connection with the sale under the SPA;

VESTING OF THE PROPERTY

- [13] **ORDERS AND DECLARES** that upon the filing by the Receiver with this Court's registry of a Receiver's certificate substantially in the form appended as **Schedule "A"** hereto and which is to be filed promptly upon the occurrence of the events described therein (hereinafter the "**Receiver's Certificate**"), any and all right, title and interest in and to the Property shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other preemptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, hereinafter the "**Encumbrances**"), including without limiting the generality of the foregoing (i) any charges created by the Order of this Court issued on January 16, 2014 by the Registrar Chantal Flamand, provided however that "Encumbrances" shall not include encumbrances specifically assumed by the Purchaser under SPA, and **ORDERS** that all of the Encumbrances affecting or relating to the Property be expunged and discharged as against the Property, in each case effective as of the applicable time and date of the Receiver's Certificate;
- [14] **DECLARES** that upon the issuance of the Receiver's Certificate, the contemplated sale shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*;

NET PROCEEDS

- [15] **ORDERS** that the Purchase Price (as defined in the SPA) shall be paid in accordance with the SPA, and **ORDERS** that such portion of the Purchase Price paid to the Receiver be used for the purposes described in the Receiver's Report (Exhibit R-4), subject to any adjustments with the consent of the Secured Creditors or the Mise-en-cause Hatfield Philips International Ltd., with any balance to be remitted to the Secured Creditors;
- [16] **ORDERS** that notwithstanding any provision of this Order and subject to the terms of the SPA, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, and that upon payment of the Purchase Price (as defined in the SPA) by the Purchaser, all Encumbrances shall attach to said net proceeds with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had

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not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale;

VALIDITY OF THE TRANSACTION

[17] **ORDERS** that notwithstanding:

- (i) the pendency of the receivership proceedings and of the bankruptcy proceedings involving the Debtor; or
- (ii) the provisions of any federal or provincial legislation;

the vesting of the Property contemplated in this Order, as well as the execution of the SPA pursuant to this Order, are to be binding on any trustee in bankruptcy, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Purchaser or the Receiver.

LIMITATION OF LIABILITY

[18] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of this Order, be deemed to be in possession of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the BIA;

[19] **DECLARES** that no action lies against the Receiver by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;

GENERAL

[20] **ORDERS** that Exhibits R-1, R-2, R-3 and R-4 be kept confidential and under seal until further order of this Court.

[21] **DECLARES** that the Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, Germany or elsewhere, for orders which aid and complement this Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose;

[22] **REQUESTS** the aid and recognition of:

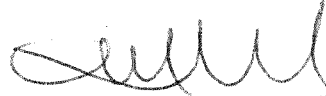
- (a) any court, tribunal, regulatory or administrative body having jurisdiction in Canada and Germany; and
- (b) any court or administrative body elsewhere;

to give effect to the Order to be rendered on the Motion and to assist the Receiver and its agents in carrying out the terms thereof. All courts, tribunals, regulatory and 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 to be rendered on the Motion or to assist the Receiver and its agents in carrying out the terms thereof;

[23] **ORDERS** the provisional execution of this Order notwithstanding appeal and without the requirement to provide any security or provision for costs.

THE WHOLE WITHOUT COSTS.



ME CHANTAL FLAMAND, REGISTRAR

COPIE CONFORME



Greffier adjoint

SCHEDULE "A"

DRAFT CERTIFICATE OF THE RECEIVER

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

**SUPERIOR COURT
(Commercial Division)**

**NO.: 500-11-045750-136
Estate No.: 41-1821345**

IN THE MATTER OF THE RECEIVERSHIP OF:

**HOMCO REALTY FUND (98) LIMITED
PARTNERSHIP**

Debtor

- and -

TITAN EUROPE 2006-5 P.L.C.

- and -

CREDIT SUISSE INTERNATIONAL

Secured Creditors

- and -

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Receiver/Petitioner

- and -

**HATFIELD PHILIPS INTERNATIONAL
LIMITED**

Mise-en-cause

CERTIFICATE OF THE RECEIVER

RECITALS:

WHEREAS on January 16, 2014, the Superior Court of Quebec (the "**Court**") issued an order (the "**Order**") pursuant to section 243 of the *Bankruptcy and Insolvency Act* in respect of the Debtor/Bankrupt;

WHEREAS pursuant to the terms of the Order, Samson Bélair/Deloitte & Touche Inc. was appointed as receiver of the Debtor/Bankrupt (the "**Receiver**"); and

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WHEREAS on December 18, 2014, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Petitioner of an agreement entitled *Sale and Purchase Agreement* (the "**SPA**") by and between the Receiver, as vendor (the "**Vendor**") and Erste Fahrenkamp & Gärtner Grundbesitz GmbH & Co. KG (the "**Purchaser**"), copy of which was filed in the Court record, and into all the transactions contemplated therein with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Receiver.

WHEREAS the Vesting Order contemplates the issuance of this Certificate of the Receiver once (a) the SPA has been executed and delivered; and (b) the Purchase Price (as defined in the SPA) has been paid by the Purchaser in conformity with the SPA; and (c) all the conditions to the Transfer of Possession (as such terms are defined in the SPA) have been satisfied or waived and that the Transfer of Possession has become effective.

THE RECEIVER CERTIFIES AS FOLLOWS:

- (a) the SPA has been executed and delivered;
- (b) the Purchase Price (as defined in the SPA) have been paid in conformity with the SPA; and
- (c) all conditions to the Transfer of Possession (as such terms are defined in the SPA) have been satisfied or waived and the Transfer of Possession has become effective.

This Certificate was issued by the Receiver on **[March 31, 2015]**.

SAMSON BÉLAIR/DELOITTE & TOUCHE INC. in its capacity as Receiver, and not in its personal capacity.

Name: _____

Title: _____

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