

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-11-045763-139

DATE: FEBRUARY 3, 2015

PRESIDING : THE HONOURABLE JEAN-YVES LALONDE J.S.C.

IN THE MATTER OF THE NOTICE OF INTENTION AND RECEIVERSHIP OF:

IHG HARILELA HOTELS LTD.,

Debtor

-and-

THE LAND REGISTRAR FOR THE LAND REGISTRY
OFFICE FOR THE REGISTRATION DIVISION OF MONTREAL

-and-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL
RIGHTS

-and-

COMPUTERSHARE TRUST COMPANY OF CANADA,

-and-

9303-7026 QUÉBEC INC.,

-and-

HSBC BANK CANADA,

-and-

COINAMATIC CANADA INC.

-and-

THI HOLDINGS 5 CORPORATION INC.,

Mis-en-Cause

-and-

SAMSON BÉLAIR DELOITTE & TOUCHE INC.

Trustee/Receiver

1L3280

APPROVAL AND VESTING ORDER

- [1] **ON READING** the Debtors' *Motion (i) seeking leave to sell substantially all of the assets and (ii) for the Issuance of a Vesting Order* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the Receiver (the "**Report**");

- [2] **SEEING** the service of the Motion;

- [3] **SEEING** the submissions of the Debtor's attorneys and the submissions of the Receiver's attorneys;

- [4] **SEEING** that it is appropriate to issue an order approving the transaction(s) (the "**Transaction**") contemplated by the agreement entitled "*Purchase and Sale Agreement*", a copy of which was filed under confidential seal as **EXHIBIT R-17** in support of the Motion, as amended from time to time pursuant to amending letters, copies of which were filed under confidential seal as **EXHIBIT R-18** in support of the Motion (collectively the "**Agreement**") by and between the Receiver and *THI Holdings 5 Corporation Inc.* (the "**Purchaser**"), and vesting in the Purchaser, or any subsidiary the assets described in the Agreement as "*Property*" (the "**Transferred Assets**");

- [5] **CONSIDERING** receivership order issued by this Honourable Court on June 17, 2014;

WHEREFORE THE COURT:

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

SERVICE

- [7] **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.

- [8] **PERMITS** service of this Order at any time and place and by any means whatsoever.

TRANSACTION APPROVAL

- [9] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Agreement by the Receiver is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Receiver.

EXECUTION OF DOCUMENTATION

- [10] **AUTHORIZES** the Receiver and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

- [11] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Receiver to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF TRANSFERRED ASSETS

- [12] **ORDERS** and **DECLARES** that upon the issuance of a Receiver's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Transferred Assets 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, prior claims, right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Transferred Assets, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable / immovable property, excluding however, the permitted encumbrances and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Transferred Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Transferred Assets, in each case effective as of the applicable time and date of the Certificate.

- [13] **ORDERS** and **DIRECTS** the Receiver to file with the Court a copy of the Certificate, forthwith after issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

- [14] **ORDERS** the Land Registrar of the Land Registry Office for the Registry Division of Montreal, upon presentation of the Certificate in the form appended as **Schedule "A"** and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing the Purchaser as the owner of the immovable property identified in **Schedule "C"** hereto (the "**Real Property**") and (ii) to cancel any and all Encumbrances on the Real Property (other than Permitted

Encumbrances), including, without limitation, the following registrations published at the said Land Registry Office:

14.1. Hypothec of *Computershare Trust Company of Canada* (“**Computershare**”) registered under number 12 703 769;

14.2. Notice of lease registered by *Coinamatic Canada Inc.* under number 15 275 197;

[15] **ORDERS** the *Quebec Personal and Movable Real Rights Registrar*, upon presentation of the required form with a true copy of this Order and the Certificate, to strike and cancel the hypothec registered by *Computershare* under number 14-0531076-0001 in connection with the Transferred Asset;

NET PROCEEDS

[16] **ORDERS** that the net proceeds from the sale of the Transferred Assets (the “**Net Proceeds**”) shall be remitted to the Receiver and shall be distributed in accordance with applicable legislation.

[17] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Transferred Assets shall stand in the place and stead of the Transferred Assets, and that upon payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Transferred Assets immediately prior to the sale, as if the Transferred Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

PROTECTION OF PERSONAL INFORMATION

[18] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor’s records pertaining to the Debtor’s past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor;

VALIDITY OF THE TRANSACTION

[19] **ORDERS** that notwithstanding:

- (i) the pendency of these proceedings;

- (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
- (iii) the provisions of any federal or provincial legislation;

the vesting of the Transferred Assets contemplated in this Order, as well as the execution of the Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, 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 Debtor, the Purchaser and/or the Receiver.

LIMITATION OF LIABILITY

- [20] **DECLARES** that the Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Transferred Assets within the meaning of environmental legislation, the whole pursuant to the terms of the BIA;
- [21] **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

- [22] **ORDERS** that the Receiver shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [23] **ORDERS** that **Exhibits R-13, R-15, R-16, R-17, R-18 and R-19** be kept confidential and under seal until further order of this Court;
- [24] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
- [25] **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, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Receiver shall be the foreign representative of the Debtors. 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;
- [26] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body


M.S.C. 500-11-045763-139

and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

- [27] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [28] **THE WHOLE WITHOUT COSTS.**



Jean-Yves Lalonde, J.S.C.

COPIE COMPTROLLER


Professeur adjoint

SCHEDULE "A"
DRAFT CERTIFICATE OF THE RECEIVER

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
Commercial Division

File: No: 500-11-045763-139

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**SAMSON BÉLAIR DELOITTE & TOUCHE
INC.**

Trustee/Receiver

CERTIFICATE OF THE RECEIVER

RECITALS:

WHEREAS on June 13, 2014 the Superior Court of Quebec (the "**Court**") issued an order (the "**Receivership Order**") appointing *Samson Bélair Deloitte & Touche Inc.* (the "**Receiver**") as Receiver to the property of *IHG Harilela Hotels Ltd.* (the "**Debtor**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. (1985) ch. C-36 (the "**Act**");

WHEREAS on February 3, 2015, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Receiver of an agreement entitled *Purchase and Sale Agreement* as amended from time to time (the "**PSA**") by and between the Receiver and *THI Holdings 5 Corporation Inc.* ("**THI**"), copy of which was filed in the Court record, and into all the transactions contemplated therein (the "**Transaction**") 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 PSA has been executed and delivered, (b) the Purchase Price (as defined in the PSA) has been paid by THI and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE RECEIVER CERTIFIES THE FOLLOWING:

- (a) The PSA has been executed and delivered;
- (b) The Purchase Price (as defined in the PSA) has been paid by THI; and
- (c) All conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Receiver at ____ [TIME] on _____ [DATE].

Samson Bélair Deloitte & Touche Inc. in its capacity as court appointed Receiver, and not in its personal capacity.

Name:# _____

Benoît Clouâtre

Title: Partner

SCHEDULE "B"
PERMITTED ENCUMBRANCES

In respect to the Real Property described in **Schedule "C"** (the **"Real Property"**):

1. all servitudes appurtenant to the Real Property and other servitudes, grants of right, licenses, privileges or other agreements for the benefit of, or belonging to the Real Property, whether or not situated upon the Real Property, including, without limitation, signage rights and parking rights or agreements, including for purpose of clarity the following servitudes registered on the Land Registry - Registration Division of Montreal under the following numbers:
 - a. 17 842 076;
 - b. 19 658 098;
2. all water rights, sewer rights and other utility rights allocated to the Real Property;
3. all right, title and interest, if any, of the owner of the Real Property in and to any and all strips and gores of land located on or adjacent to the Real Property; and
4. all right, title and interest of the owner of the Land in and to any roads, streets and ways, public or private, open or proposed, in front of or adjoining all or any part of the Real Property and serving the Real Property.

SCHEDULE "C"

DESCRIPTION OF REAL PROPERTY

"That certain emplacement situate in the City of Montréal (Borough of Saint-Laurent), Province of Québec, known and designated as being composed as follows:

Lot number ONE MILLION FIFTY-FOUR THOUSAND FIVE HUNDRED AND SEVEN (1 054 507) of the Cadastre of Québec, Registration Division of Montréal.

Together with the building thereon erected bearing civic number 7880-7900 Côte-de-Liesse, Montréal, Québec H4T 1E7.

As the said property now subsists, together with all of its rights, members and appurtenances"