## *Cumulative Glossary of Defined Terms for Receiver's Reports*

| Term | Definition |
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| **2006 Disclosure** | Disclosure statement dated August 1, 2006, provided to Unit Owners upon the purchase of their respective Units |
| **2010 Budget** | A budget prepared by the Receiver for the six-month period ending May 31, 2010 being the period during which the Institutional Sales Process is contemplated to be conducted |
| **A&M** | Alvarez & Marsal Canada ULC |
| **A&M Report** | Collectively, the report of the proposed receiver dated May 19, 2009 and a supplementary report to that report dated May 20, 2009 |
| **Act** | *Red Leaves Resort Association Act, 2006* |
| **Ad Hoc Committee** | The Ad Hoc Committee of Unit Owners, consisting of certain Unit Owners and Existing Unit Purchasers |
| **Altus Tax Group** | Altus Group Tax Consulting Paralegal Professional Corporation |
| **Amended August 18 Order** | The Order of Madam Justice Pepall dated August 18, 2009, as amended August 20, 2009 |
| **Appointment Order** | Amended and Restated Appointment Order issued June 2, 2009 |
| **April 1 Letter Agreement** | By an April 1, 2009 letter agreement among RRDI, the Syndicate and Marriott Hotels, the Syndicate funded $1.95 million to pay what was expected to cover Net Operating Losses and working capital requirements owing under the Current HMA by RRDI to Marriott Hotels through May 31, 2009 |
| **APS** | Agreement(s) of purchase and sale |
| **Assets** | All the property, assets and undertakings of The Rosseau Resort Developments Inc. |
| **Association** | The Red Leaves Resort Association |
| **Backup New Purchasers** | 13 New Purchasers who agreed to enter into "Backup" APSs in respect of certain Units, in the event that primary APSs were rescinded |
| **Baker Price List** | The price list developed by Baker Real Estate to be utilized in connection with the sale of the Unsold Units and as approved by the Court |
| **Baker Real Estate** | Baker Real Estate Incorporated |
| **BIA** | *Bankruptcy and Insolvency Act* (Canada) |
| **Blakes** | Blake, Cassels & Graydon LLP |
| **Board** | Board of Directors of the Red Leaves Resort Association |

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| **Bulletin 19 Reporting Requirements** | Certain reporting requirements pursuant to the Tarion New Home Warranty Program |
| **Building Consultants** | Designers, building architects, mechanical, structural, and electrical engineers |
| **By-laws** | The Red Leaves Resort Association By-laws dated April 2008 |
| **Cabana** | Building structure that forms part of the pool area for Paignton House |
| **CBRE** | CB Richard Ellis Ltd. |
| **CCA** | Canadian Construction Association Form 5 |
| **CDR** | Colliers data room |
| **CJA** | *Courts of Justice Act* (Ontario) |
| **CLA** | *Construction Lien Act* (Ontario) |
| **Claims Process Order** | The Order of the Court dated July 24, 2009 establishing a claims process for construction lien claims |
| **COA** | The sewage treatment plant operates pursuant to Certificate of Approval No. 2176-74DPM9, issued by the Ministry of the Environment on July 20, 2007 |
| **Colliers** | Colliers Macaulay Nicolls (Ontario) Inc. |
| **Colliers Deal Team** | Those individuals at Colliers who were directly responsible for carrying out the mandate described in the Exclusive Authority to Sell Agreement between the Receiver and Colliers |
| **Commission Claims** | As defined in the Commission Claims Process Order |
| **Commission Claims Bar Date** | Creditors were required to submit their Proof of Commission Claim Form to the Receiver on or before March 1, 2010 |
| **Commission Claim Materials** | The Commission Claims Process Order, Notice and Instruction Letter to Commission Creditors and a Proof of Commission Claim Form |
| **Commission Claims Process** | A claims process for the determination of entitlements of real estate agents and brokers to amounts set aside by McCarthys and held in trust for real estate commissions |
| **Commission Claims Process Order** | Order dated December 21, 2009, authorizing the Receiver to conduct a commission claims process |
| **Commission Funds** | The funds available to pay real estate commissions owed to them, which were set aside on closing of Unit sale transactions by McCarthy Tetrault LLP |
| **Committee** | Same as the Ad Hoc Committee |
| **Company** | The Rosseau Resort Developments Inc. |
| **Condominium Corporation** | The Muskoka Standard Condominium Corporation No. 62 |

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| **Confidential Financial Exhibit** | A confidential exhibit to the Information Memorandum containing certain financial information with respect to the Assets |
| **Confidentiality Agreement** | A form of confidentiality agreement for execution by prospective purchasers pursuant to the Institutional Sales Process |
| **Construction Lien Claims Process** | The construction lien claims process set out in the Claims Process Order |
| **Construction Office** | An office maintained by RRDI and RRCI during construction of the Hotel, situated in a converted residence located on the property of Wallace Marine Ltd. |
| **Cooling Off Period** | The statutory 10 day rescission period under the *Condominium Act* (Ontario) in which New Purchasers have the ability to cancel their APS |
| **Court** | Ontario Superior Court of Justice |
| **Court Approved Sale** | The One-Day Sale in respect of the Retail Sales Program at the Hotel |
| **CR Laurence** | CR Laurence Co. Inc. |
| **CRA** | Conestoga-Rovers & Associates |
| **CT** | Commercial tax class |
| **Current HMA** | Amended and Restated Hotel Management Agreement among RRDI, RRMSI and Marriott Hotels dated October 6, 2006 |
| **Current RPMA(s)** | The form of rental pool management agreement Unit Owners have entered into with RRMSI, as Rental Pool Manager |
| **DAF** | A&M's Dispute Analysis and Forensics group |
| **Davroc** | Davroc & Associates Ltd. |
| **December 21 Order** | The Order issued by the Court on December 21, 2009 |
| **Declaration** | The Rosseau Resort Condominium Declaration, made pursuant to the *Condominium Act*, 1998 |
| **Defendants** | WestLB, AG, Toronto Branch, CIT Financial Ltd., and Raiffeisen Zentral Bank Osterreich AG with respect to legal proceedings in the Supreme Court of the State of New York |
| **Development Lands** | The undeveloped lands located adjacent to the Hotel on RRDI's property, principally along the waterfront and neighbouring The Rock Golf Course |
| **Disclosure Documentation** | Form of disclosure statement and related documentation |
| **Disputing Unit Owners** | 63 Unit Owners who delivered notices of dispute to the Receiver in respect of the RPMA Dispute |
| **District** | The District Municipality of Muskoka Corporate and Emergency Services Department |
| **Dyck Affidavit** | The Affidavit of Robert Dyck sworn May 19, 2009, filed in support of the application for the appointment of the Receiver |
| **Effective Date** | The proposed date of repudiation of the Current HMA to be effective at 11:59 pm on Friday, September 18, 2009, to correspond with a 30 day notice of termination to be delivered by Marriott Hotels to RRDI and RRMSI, jointly as Owners |

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| | pursuant to the Current HMA, as may be extended by agreement from time to time |
| **Eighth Report** | The Receiver's Eighth Report dated December 14, 2009 |
| **Eleventh Report** | The Receiver's Eleventh Report dated May 12, 2010 |
| **EOI** | Expression of Interest |
| **Exemption Ruling** | A ruling made on April 13, 2004 by the OSC which authorized RRMSI to enter into the Current RPMA with Unit Owners and to permit RRDI to market for sale the Hotel Units |
| **Existing Unit Purchasers** | Existing purchasers who have not yet closed outstanding APSs with RRDI |
| **Expression of Interest** | The form of expression of interest for potential purchasers to use pursuant to the Institutional Sales Process |
| **FF&E** | Furniture, fixtures & equipment |
| **First Report** | Collectively, the report of the interim receiver dated May 27, 2009 and a supplementary report to that report dated May 29, 2009 |
| **Fifth Report** | The Receiver's Fifth Report dated August 19, 2009 |
| **FMC** | Fraser Milner Casgrain LLP |
| **Fogler Rubinoff** | Fogler Rubinoff LLP |
| **Fourth Report** | Collectively, the Receiver's Fourth Report dated August 12, 2009, a supplementary report dated August 14, 2009, and a second supplementary report dated August 19, 2009 |
| **Fowler Related Releasees** | RRMSI, Ken Fowler Enterprises Ltd., Red Leaves Partnership, Kenneth A. Fowler, and Peter Fowler as releasees |
| **GFA** | Gross Floor Area |
| **Guarantee** | The Guarantee(s) of Ken Fowler Enterprises Limited to the Syndicate made in connection with the Loan Agreement between RRDI and the Syndicate |
| **Hotel** | 221 unit condominium hotel complex located on the property owned by RRDI situated along the north-west end of Lake Rosseau in Muskoka, Ontario |
| **Hotel Management Unit** | The condominium unit designated for the operations of the Hotel |
| **IHLC** | International Hotel Licensing Company S.a.r.l, an affiliate of Marriott Hotels |
| **Independent Directors** | The independent directors of the Muskoka Standard Condominium Corporation No. 62 |
| **Indulgence Cards** | A certain form of Purchaser Incentive whereby certain Unit Purchasers received cards which could be used as a "currency" for use to pay for items and/or services at the Hotel |
| **Independent Engineers** | Collectively, Morrison Hershfield and Trow |
| **Information Memorandum** | A non-confidential document providing a detailed description of the Assets and operations of RRDI for use in the Institutional Sales Process |
| **Initial Contracts** | Initial CCA trade contracts executed between and among RRCI and certain of the trade contractors |

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| **Initial Pre-Receivership Budget** | The general budget created prior to the commencement of the Receivership and set out in the A&M Report, which provided the basis for the Receiver's Borrowings |
| **Initial Water Taking Permit** | The water taking permit issued on September 21, 2001 |
| **Institutional Sales Process** | The sales and marketing process for all of the Assets of RRDI on an en bloc basis, as conducted by Colliers |
| **Interim Receiver** | Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz Inc.) |
| **Investment Overview** | A brief investment overview letter that describes the opportunity and sets out key aspects of the Protocol for use in the Institutional Sales Process |
| **July 23rd Letter** | A letter dated July 23, 2009 whereby the Receiver provided Lien Claimants with certain information that the Receiver concluded that the Lien Claimants were entitled to receive and which was requested by Lien Claimants pursuant to Section 39 of the CLA |
| **KFE** | Ken Fowler Enterprises Limited |
| **Known Commission Creditors** | As defined in the Commissions Claims Process Order |
| **Livia** | Livia Capital Management Inc. |
| **Marriott Hotels** | Marriott Hotels of Canada, Ltd. |
| **McCarthys** | McCarthy Tetrault LLP |
| **MH Option** | The balcony handrail remediation option put forth by Morrison Hershfield, which option called for the complete replacement of all balcony handrails at the Hotel |
| **Miller Thomson** | Miller Thomson LLP |
| **MOE** | Ministry of the Environment |
| **Morrison Hershfield** | Morrison Hershfield Limited |
| **Moving Parties** | The Receiver and Representative Counsel who jointly sought the appointment of A&M as receiver over certain assets of RRMSI |
| **MPAC** | Municipal Property Assessment Corporation |
| **New HMA** | A New Hotel Management Agreement that is based on the template of the Current HMA and modified by the Side Letter, the financial terms and conditions of which are set out in the Summary of Terms approved by the Court |
| **New Marriott Agreements** | Other New Marriott Agreements together with the New HMA |
| **New RPMA** | New forms of Rental Pool Management Agreements agreed upon by the Committee and RRDI, and approved by the Court |
| **New Unit Purchasers** | New purchasers of unsold Units |
| **Ninth Report** | The Receiver's Ninth Report dated April 9, 2010 |
| **Noticed Parties** | The parties, who on January 21, 2010, were notified by the Receiver's legal counsel of the Receiver's intention to make a claim against them in connection with the design, fabrication and installation of the Hotel's balcony handrails |

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| **Notices of Dispute** | The notices delivered to the Receiver by the Disputing Unit Owners in connection with the RPMA Dispute |
| **OBC** | Ontario Building Code |
| **Offers** | Non-binding indicative offers to be submitted by Pre-Qualified Bidders for the purchase of the Assets of RRDI |
| **One-Day Sale** | The sales event which took place at the Hotel on August 22, 2009 and which was continued to August 23, 2009 for the sale of the Unsold Units |
| **Operating Profit** | As is defined in the Current HMA - "with respect to any given period of time, the excess Gross Revenues over Deductions (each calculated in accordance with this Agreement and the Uniform System of Accounts)" |
| **OSC** | Ontario Securities Commission |
| **OSC Exemption Ruling** | See Exemption Ruling |
| **Other Current Marriott Agreements** | Royalty and Licensing Agreement between RRDI, RRMSI and IHLC dated October 6, 2006, and any other current agreements between RRDI, RRMSI, and Marriott Hotels or its affiliates |
| **Performance Audit** | A common element performance audit undertaken by Trow Associates Inc. on behalf of the Board |
| **Plaintiffs** | Ken Fowler Enterprises Limited, Ken Fowler (N.Y.), Inc., Ken Fowler Columbus, Inc., Ken Fowler Texas, Inc., and Peter Fowler Enterprises Ltd. With respect to legal proceedings in the Supreme Court of the State of New York |
| **Post Opening Period** | The period of time after the opening of Paignton House on July 31, 2009 |
| **Pre-Qualified Bidders** | The participants in the Institutional Sales Process that were invited to participate in the second due diligence phase and submit Offers pursuant to the Protocol |
| **Priority Lien Claims** | The portion of construction lien claims which are determined to have priority over all mortgages registered on title to the real property of RRDI |
| **Proceeds** | Proceeds from (a) the One Day Sale Units, (b) funds held by McCarthys, and (c) a GST refund which is owing to RRDI, but which is first subject to the completion of a review by the Canada Revenue Agency |
| **Project** | The development and construction of the Hotel and surrounding property, all of which is on the property owned by RRDI |
| **Prospect List** | A proprietary and confidential list of prospective purchasers assembled by Colliers, with the assistance of the Receiver |
| **Protocol** | The Institutional Sales Process Protocol prepared by the Receiver, in conjunction with its legal counsel and Colliers |
| **Purchaser Incentive Proposal** | A draft proposal, made on a without prejudice basis, from the Receiver to address the Purchaser Incentives |
| **Purchaser Incentives** | Several types of incentives provided to Unit Owners and Existing Unit Purchasers |

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| **R&D** | The Receiver's statement of receipts and disbursements |
| **RCPC** | Resort condominium property tax class |
| **Receiver** | Collectively, the Interim Receiver and the Receiver and Manager |
| **Receiver's Borrowings** | The monies borrowed by the Receiver from the Syndicate, on a priority basis, to fund the costs and expenses of the receivership in the principal amount of $15,000,000 |
| **Receiver's Responding Letter** | A letter delivered to each Disputing Unit Owner on April 6, 2010 advising the Disputing Unit Owners of its position with respect to the RPMA Dispute |
| **Receiver and Manager** | Alvarez & Marsal Canada ULC in its capacity as receiver and manager |
| **Red Leaves Master Plan** | The initial development concept envisaged by Ken Fowler in respect of the Red Leaves Resort area |
| **Release** | The full and final release proposed to be provided by each Unit Owner and Existing Unit Purchaser in favour of RRDI, the Syndicate, the Receiver and certain other parties which does not include the Fowler Related Releasees |
| **Rental Pool** | The rental pool in which all Unit Owners are required to participate |
| **Rental Pool Covenant** | A Rental Pool covenant registered on title to all Units which covenant, among other things, requires that all Unit Owners place their Units in the Rental Pool |
| **Rental Pool Management Fee** | Rental Pool Manager receives a fee from Unit Owners out of the Adjusted Gross Revenue available for distribution. |
| **Rental Pool Manager** | Rental pool manager |
| **Representative Counsel** | Miller Thomson LLP who has been appointed by the Court to represent those persons (the Represented Unit Owners) who have entered into Current RPMAs with RRMSI and are either existing Unit Owners or Existing Unit Purchasers |
| **Representative Counsel Order** | An Order of the Court dated August 20, 2009 appointing Miller Thomson as Representative Counsel |
| **Represented Unit Owners** | Those persons who have entered into Current RPMAs with RRMSI and are either existing Unit Owners or Existing Unit Purchasers, unless a Represented Unit Owner provides written notice to Representative Counsel that they do not wish to be included as a Represented Unit Owner. |
| **Reserve Fund Study** | A comprehensive reserve fund study commissioned by the Board and undertaken by Trow in connection with the common areas of the resort Units |
| **Reserve New Unit Purchasers** | The Receiver entered into APSs with an additional 13 Unit Purchasers who agreed to enter into a reserve APS in respect of certain Units |
| **Resort** | Red Leaves Resort complex |
| **Retail Marketing Program** | Proposed marketing and promotional program being undertaken in connection with the Retail Sales Program by |

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| | Baker Real Estate |
| **Retail Sales Program** | The retail marketing program for the sale of the Unsold Units as well as potentially the development lands surrounding the Hotel, on an individual unit or lot basis, as conducted by Baker Real Estate |
| **Revised Contracts** | Certain trade contracts that RRDI revised in or about January or February 2009, to change the contracting party from RRCI to RRDI, with RRCI identified as Construction Manager |
| **Ross Windows** | Parry Sound Glass Limited o/a Ross Windows |
| **RPMA(s)** | Rental Pool Management Agreement(s) |
| **RPMA Dispute** | A dispute commenced by the Disputing Unit Owners regarding the Receiver's interpretation of the New RPMA |
| **RRCI** | Rock Ridge Contractors Inc. |
| **RRCI/RRDI Reference** | The reference to a Master of the Ontario Superior Court to determine the preliminary issue of whether RRCI is a general contractor or a construction manager for RRDI, and whether certain certificates of substantial performance are valid |
| **RRDI** | The Rosseau Resort Developments Inc. |
| **RRDI/RRCI Contract** | The contract between RRDI and RRCI |
| **RRDI Infrastructure** | The water treatment plant and certain water taking infrastructure, including pumps, pumping equipment and piping |
| **RRMSI** | The Rosseau Resort Management Services Inc. |
| **RRMSI Letter** | A letter delivered by RRMSI to the Receiver and legal counsel to the Receiver, dated August 13, 2009 |
| **RRMSI Motion to Vary** | A notice of motion brought by RRMSI to appear before the Court and seek an order to amend paragraph 6 of the Amended August 18th Order |
| **RRMSI Receiver** | A&M as receiver over certain assets of RRMSI, namely RRMSI's rights in any contracts with Marriott Hotels and/or affiliates which relate to the Hotel (including the Current HMA) and in any Current RPMAs |
| **RRMSI Receivership Motion** | On August 20, 2009, the Court set a timetable for hearing the RRSMI Motion to Vary and for the joint motion by the Receiver and Representative Counsel to seek the appointment of a receiver in respect of RRMSI |
| **Sale Leaseback Program** | The arrangements entered into between RRDI and certain Unit Owners and Existing Unit Purchasers in connection with a form of Purchaser Incentive whereby a Unit would be purchased by a Unit Owner or Existing Unit Purchaser and leased back to RRDI for continued use in the Rental Pool in exchange for a certain financial return over a period of time |
| **Sales and Marketing Order** | The Order issued by the Court on July 8, 2009 |
| **Sales and Marketing Process** | Generally, the process the Receiver intends to run in respect of selling the Assets of the Company approved by the Sales and Marketing Order |

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| **Second Tranche Receiver's Borrowings** | A second tranche of Receiver's Borrowings in the principal amount of $7.5 million to be provided by WestLB |
| **Second Report** | Collectively, the Receiver's Second Report dated July 3, 2009 and a supplementary report to that report dated July 7, 2009. |
| **Section 39 Memorandum** | Independent legal counsel to the Receiver provided all lien claimants who had made Section 39 Requests with an information memorandum. |
| **Section 39 Requests** | Requests for information made under S. 39 of the CLA |
| **September 1 Order** | The Order of Madam Justice Pepall dated September 1, 2009, appointing the RRMSI Receiver |
| **Service List** | List of all interested parties who are entitled to receive copies of all documents filed with the Court and have either served a Notice of Appearance or requested to be added to the Service List |
| **Settlement Agreements** | A package of settlement documents delivered to all Unit Owners and Existing Unit Purchasers containing either a Unit Owner Settlement Agreement or a Unit Purchaser Settlement Agreement, among other things |
| **Seventh Report** | The Receiver's Seventh Report dated October 7, 2009. |
| **STP** | Sewage treatment plant |
| **STP Lease** | A lease agreement dated February 13, 2009, between RRDI, as tenant and Wallace Marine, as landlord, for a term of 21 years less a day in respect of the lands on which the sewage treatment plant is situated |
| **Side Letter** | A certain letter agreement between RRDI, by its Receiver and Marriott Hotels, which modifies the terms of the New HMA, specifically in respect of these receivership proceedings |
| **Sixth Report** | Collectively, the Receiver's Sixth Report dated August 21, 2009 and a supplementary report dated August 25, 2009 |
| **Standstill Agreements** | Those agreement pursuant to which prior to the Receivership two additional Existing Unit Purchasers had each independently agreed to enter into agreements whereby RRDI agreed to attempt to sell each of the respective Units at minimum prices agreed upon between RRDI and the respective Existing Unit Purchaser |
| **Stikemans** | Stikeman Elliott LLP |
| **Summary of Terms** | A summary document setting out the principal financial terms and conditions in respect of the New HMA |
| **Syndicate** | Lender Syndicate |
| **Tarion** | Tarion Warranty Corporation |
| **Tenth Report** | The Receiver's Tenth Report dated April 19, 2010 |
| **The Rock** | 1515511 Ontario Inc. o/a The Rock Golf Club |
| **Third Report** | The Receiver's Third Report dated July 21, 2009 |
| **Township** | The Township of Muskoka Lakes |
| **TPL** | Total phosphorus level(s) |

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| **Travelers** | Travelers Guarantee Company of Canada |
| **Trow** | Trow Associates Inc. |
| **Trow Option** | The balcony handrail remediation option put forth by Trow, which option called for a comprehensive repair program of all balcony handrails at the Hotel |
| **U.S. Complaint** | Legal proceedings commenced September 10, 2009 by the Plaintiffs against the Defendants |
| **Unit Owner Proposal** | The proposal of the Independent Directors and the Ad Hoc Committee to acquire certain assets of RRDI, specifically the commercial property and operations of the Hotel and RRDI's interest in the Marriott Hotel Agreements and New RPMAs, and simplify the rental pool structure. |
| **Unit Owner Settlement Agreement** | Settlement agreements with Unit Owners substantially on the terms as set out in the forms of Unit Owner Settlement Agreement, approved by the Court |
| **Unit Owners** | Current owners of Units at the Hotel |
| **Unit Owners' Charge** | Charge granted on the Assets of RRDI in favour of the Unit Owners in connection with the Unit Owner Settlement Agreements |
| **Unit Purchaser Settlement Agreement** | Settlement agreements with Existing Unit Purchasers substantially on the terms as set out in the forms of Unit Purchaser Settlement Agreement, approved by the Court |
| **Units** | The 221 condominium units of the Hotel |
| **Unsold Units** | 132 unsold condominium units of the Hotel (note that in prior reports, "Unsold Units" was defined as 84 unsold condominium units of the Hotel, this past definition excluded those units that were subject to an APS but not sold) |
| **Valentin** | Valentin Engineering Ltd. |
| **Wallace Marine** | Wallace Marine Limited |
| **Water and Sewage Infrastructure** | Water and sewage infrastructure on or adjacent to RRDI's property including the sewage treatment plant and the water treatment plant |
| **Water Supply Agreement** | A proposed, mutually acceptable water supply agreement, whereby RRDI would continue to supply The Rock with water for irrigation purposes |
| **Water Taking Permit** | Permit No. 0465-5ZTL4C, which provides RRDI with the authority to take water primarily from Lake Rosseau, governed by the Ontario *Water Resources Act* |
| **WestLB** | WestLB AG, Toronto Branch or WestLB AG, New York Branch |
| **Window and Door Systems** | The windows and exterior balcony doors of the Units |
| **WTP** | Water treatment plant that is situated on RRDI's property |

Court File No.: CV-09-8201-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

IN THE MATTER OF SECTION 47(1) OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C.B-3, AS AMENDED, SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C. 43, AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990 C. C. 30, AS AMENDED

# EIGHTH REPORT OF ALVAREZ & MARSAL CANADA ULC, AS RECEIVER AND MANAGER AND CONSTRUCTION LIEN ACT TRUSTEE AND ALVAREZ & MARSAL CANADA INC. (FORMERLY MCINTOSH & MORAWETZ INC.), AS INTERIM RECEIVER OF THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.

# FIRST REPORT OF ALVAREZ & MARSAL CANADA ULC AS RECEIVER OF CERTAIN ASSETS OF THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

DECEMBER 14, 2009

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## *1.0 Introduction and Summary of Proceedings to Date*

1.1 On May 22, 2009, the Ontario Superior Court of Justice (the "Court") issued an order appointing Alvarez & Marsal Canada ULC ("A&M") and McIntosh & Morawetz Inc. (now Alvarez & Marsal Canada Inc.) as trustee and interim receiver, respectively (collectively the "Interim Receiver"), pursuant to Section 68 of the *Construction Lien Act* (Ontario) ("CLA") and Section 47(1) of the *Bankruptcy and Insolvency Act* (Canada) ("BIA") of all the property, assets and undertakings (the "Assets") of The Rosseau Resort Developments Inc. ("RRDI" or the "Company"). On June 2, 2009, the Court issued an Amended and Restated Appointment Order (the "Appointment Order") continuing the appointment of the Interim Receiver and appointing A&M as receiver and manager (the "Receiver and Manager") pursuant to Section 101 of the *Courts of Justice Act* (Ontario) ("CJA") and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager collectively defined as the "Receiver").[1] McIntosh & Morawetz Inc. has, by Articles of Amendment dated September 17, 2009, changed its name to Alvarez & Marsal Canada Inc.

1.2 A&M, as proposed receiver, filed a report dated May 19, 2009 and a supplementary report dated May 20, 2009 (collectively the "A&M Report") in these proceedings in support of the application brought before this Honourable Court by WestLB AG, Toronto Branch ("WestLB"), as agent for the Lender Syndicate (the "Syndicate"), for the appointment of the Receiver.

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[1] Capitalized terms in this Eighth Report shall have the meanings ascribed to them in the Glossary of Defined Terms attached as Appendix "A", unless otherwise defined herein.

1.3 The Interim Receiver filed its first report dated May 27, 2009 with this Honourable Court and filed a supplementary report dated May 29, 2009 to its first report (the first report and the supplementary report being collectively defined as the "First Report"). The First Report provided this Honourable Court with, among other things, an update on the Interim Receiver's activities from the date of its appointment as Interim Receiver to the date of the First Report.

1.4 The Receiver filed its second report dated July 3, 2009 with this Honourable Court (the "Second Report) in connection with a motion seeking approval of a Sales and Marketing Process as defined therein. Among other things, the Second Report: (a) provided background information regarding the various agreements that RRDI is a party to in connection with both the management of the Hotel and the Rental Pool; (b) provided a summary of certain issues identified by the Receiver in respect of these agreements which would need to be addressed; and (c) described the proposed Sales and Marketing Process.

1.5 On July 8, 2009, this Honourable Court issued an order (the "Sales and Marketing Order"), which among other things, authorized the Receiver to undertake the Sales and Marketing Process, including the sale and marketing of the 84 unsold condominium units at the Hotel (the "Unsold Units") not currently subject to agreements of purchase and sale ("APS"), together with the residual interest of RRDI in the Hotel and all other Assets.

1.6 The Sales and Marketing Order authorized the Receiver to commence the Sales and Marketing Process consisting of: (a) the Retail Sales Program; and (b) the Institutional Sales Process (each of which are defined in the Sales and Marketing Order and described in the Second Report) and to retain Baker Real Estate Incorporated ("Baker Real Estate")

and Colliers MacCaulay Nicolls (Ontario) Inc. ("Colliers") as the brokers to conduct the Retail Sales Program and Institutional Sales Process, respectively.

1.7 The Receiver filed its third report dated July 21, 2009 (the "Third Report") with this Honourable Court in connection with a motion for approval of the proposed marketing and promotional program (the "Retail Marketing Program") planned by Baker Real Estate in respect of the Retail Sales Program as well as the proposed price list (the "Baker Price List") that Baker Real Estate developed for the Unsold Units. On July 24, 2009, the Receiver sought and obtained this Honourable Court's authorization to proceed with the Retail Marketing Program and the Court approved the Baker Price List.

1.8 The Receiver filed its fourth report dated August 12, 2009 (the "Fourth Report") in support of the Receiver's motion, on notice to RRMSI, to repudiate the existing Hotel management and Rental Pool management arrangements and to seek this Court's approval of new arrangements, which were necessary for the effective management of the Hotel and the sale of the Unsold Units and residual interest in the Hotel. The Court's approval of these new arrangements was also required to be in place in advance of the Retail Sales Program, and the one day sale event for the sale of individual Unsold Units, held on August 22, 2009 (the "One Day Sale").

1.9 On August 18, 2009, the Court issued an order authorizing the steps recommended by the Receiver (as subsequently amended on August 20, 2009, the "Amended August 18 Order"), which would have the effect of repudiating RRMSI as Rental Pool manager and putting in place bilateral agreements as between RRDI and Marriott Hotels and RRDI and Unit Owners to the exclusion of RRMSI. The Court authorized the distribution to the Unit Owners and Existing Unit Purchasers of Settlement Agreements, whereby the

Receiver offered arrangements for payment of 50% of sale leaseback transactions and other incentives agreed to by RRDI, conditional on such Unit Owner and Existing Unit Purchaser executing a new Rental Pool management agreement ("New RPMA"), among other things.

1.10 Further, the Amended August 18 Order approved the form of New RPMA and authorized the Receiver to enter into New RPMAs with Unit Owners, Existing Unit Purchasers and New Unit Purchasers (as such terms are defined in both the Amended August 18 Order and the Glossary, which is attached as Appendix "A" hereto.) Paragraph 6 of the Amended August 18 Order deemed the execution of a New RPMA by a Unit Owner or Existing Unit Purchaser to be a termination by such Unit Owner or Existing Unit Purchaser of its current Rental Pool management agreement executed with RRMSI (the "Current RPMAs") and stayed any action by RRMSI against such Unit Owner or Existing Unit Purchaser.

1.11 RRMSI did not oppose the Amended August 18 Order. Paragraph 6 of the Amended August 18 Order, which granted relief in respect of RRMSI and the Current RPMAs, was to be effective unless a motion to vary or amend was brought by August 20, 2009, to be heard at the same time as the intended motion for the appointment of a receiver of RRMSI and the appointment of representative counsel for Unit Owners and Existing Unit Purchasers. A Notice of Motion to vary and amend paragraph 6 of the Amended August 18 Order was served by RRMSI on August 19, 2009 (the "RRMSI Motion to Vary").

1.12 The Receiver filed its fifth report dated August 19, 2009 (the "Fifth Report") in support of the Receiver's motion that this Honourable Court make an order appointing Miller

Thomson LLP ("Miller Thomson") as representative counsel ("Representative Counsel") to those persons who had entered into Current RPMAs with RRMSI and who are either existing Unit Owners or Existing Unit Purchasers, unless such persons advised Representative Counsel that they did not wish to be represented by Representative Counsel (the "Represented Unit Owners"). On August 20, 2009, the Court made an order appointing Representative Counsel (the "Representative Counsel Order") and granting Representative Counsel the express authority to apply to the Court for the appointment of a receiver of RRMSI.

1.13 The Receiver filed its sixth report dated August 21, 2009 (the "Sixth Report") to (a) respond to the RRMSI Motion to Vary; (b) provide the Court with pertinent background and certain supplemental information in respect of RRMSI itself and regarding its relationship with RRDI; and (c) support a motion brought jointly by the Receiver and Representative Counsel to appoint A&M as Receiver of RRMSI (the "RRMSI Receivership Motion"). Madam Justice Pepall set a timetable for the exchange of materials, cross-examinations, mediation, and the hearing of the RRMSI Motion to Vary and the RRMSI Receivership Motion on August 28, 2009. The motion was argued as scheduled on August 28, 2009, and Madam Justice Pepall released her decision on September 1, 2009.

1.14 By the Order of Madam Justice Pepall dated September 1, 2009, the Court appointed A&M as receiver (the "RRMSI Receiver") without security, of certain rights, titles and interests relating to the contracts to which RRMSI was a party, including the Current HMA and the Current RPMAs (the "September 1 Order"). In the September 1 Order, the Court granted the RRMSI Receiver the express authority to repudiate the Current HMA

and Current RPMAs to which RRMSI was a party, and which would be replaced by the new bilateral agreements with RRDI as approved by the Amended August 18 Order. Based on a notice dated October 8, 2009, received from the Ministry of Government Services seeking to dissolve RRMSI for failing to maintain directors, it appears that the directors of RRMSI resigned subsequent to the September 1 Order.

1.15 The Receiver filed its seventh report dated October 7, 2009 (the "Seventh Report") in connection with a motion to update this Honourable Court with respect to matters associated with the Construction Lien Claims Process and request an extension of the time limits provided therein.

1.16 The purpose of this report (the "Eighth Report") is described in Section 3, the Executive Summary.

## *2.0 Terms of Reference*

2.1 In preparing this Eighth Report, the Receiver has relied on unaudited financial information prepared by the Company and the Company's consultants and advisors, the Company's books and records and discussions with certain remaining employees of the Company. The Receiver has not performed an audit or other verification of such information. An examination of the Company's financial forecasts as outlined in the Canadian Institute of Chartered Accountants Handbook has not been performed. Future oriented financial information relied on in this Eighth Report is based on assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Eighth Report, or relied upon by the Receiver in preparing the Eighth Report. All references to dollar figures contained in the Eighth Report are in Canadian currency unless otherwise specified.

## *3.0 Executive Summary*

3.1 This Eighth Report provides an update to the Court on (a) the status of a number of specific matters that have been before the Court on prior motions; (b) the progress of the receivership generally, including the results of the One Day Sale; (c) the status of the Institutional Sales Process, which is the Receiver's next significant initiative; and (d) the additional funding that is required to see the Institutional Sales Process through to conclusion.

3.2 Substantial progress has been made in the receivership to date, despite numerous challenges and complexities. The progress made to date includes the following:

(a) the construction of the Hotel has been substantially completed within the Receiver's budget;

(b) complex contractual arrangements for the continued operations of the Hotel and the condominium Rental Pool have been renegotiated with Marriott Hotels and the Unit Owners, and these arrangements are ready to be implemented;

(c) arrangements with numerous suppliers of goods and services to the Hotel have been regularized;

(d) the Retail Sales Program and the One Day Sale have been completed, resulting in the sale of 18 Units, which transactions are set to close in January 2010;

(e) a claims process for resolving the amount and priority of lien claims under the CLA has been negotiated with the lien claimants and is currently being administered;

(f) the budget for the Hotel operations for the remainder of 2009 and 2010 has been finalized with Marriott Hotels;

(g) the marketing materials and data room for the Institutional Sales Process have been prepared and assembled in co-operation with Colliers; and

(h) the Receiver has conducted an extensive review of zoning, permitting and other issues in respect of the undeveloped lands located adjacent to the Hotel on RRDI's property, principally along the waterfront and neighbouring The Rock Golf Course (the "Development Lands"), which are included in the Institutional Sales Process.

3.3 The Receiver has consulted extensively with the stakeholders, including WestLB and the other members of the Syndicate, Fortress, the lien claimants, Marriott Hotels and the Unit Owners, in order to be ready, as it now is, to (a) execute the New HMA with Marriott Hotels; (b) implement the New RPMAs and Settlement Agreements executed by Unit Owners (which are conditional on execution of the New HMA); (c) close the 18 sales from the One Day Sale (which closings are conditional on execution of the New HMA); and (d) commence the Institutional Sales Process. Although such steps were authorized by the Amended August 18 Order and the September 1 Order, the Receiver delayed implementation of these steps until the 2009 and 2010 budgets for the Hotel were finalized, so that the Receiver could be satisfied that appropriate funding would be in place to meet the commitments authorized by the Court.

3.4 As outlined further in this Eighth Report, the Receiver is proposing a timetable for the Institutional Sales Process which targets a transaction closing date in May 2010. In

addition to the completion of a sale transaction, certain matters relating to the winding up of the estate of RRDI and the distribution of the proceeds of realization will still need to be addressed, including the resolution of the priority and amount of lien claims. Accordingly, it is expected that the receivership proceedings will continue until at least the end of 2010.

3.5 Since the commencement of the receivership, there have been a number of unexpected issues and complications which have arisen, including:

(a) the arrangements with RRMSI, as Rental Pool manager, and the need to restructure the contracts related to the Hotel and, ultimately, to seek the appointment of a Receiver of RRMSI;

(b) incomplete and inadequate books and records in respect of the construction of the Hotel which has added considerably to the effort required to verify the amounts and address the priority of lien claims;

(c) incomplete architectural and engineering drawings for the remaining construction which added to the professional costs of completing the construction;

(d) incomplete and inadequate information relating to the Development Lands, requiring extensive review of zoning and permitting issues in order to attempt to maximize value in the Institutional Sales Process;

(e) higher than expected Hotel operating costs, and the need for pro-active intervention in order to maintain condominium fees and Marriott Hotels' operational funding requirements at a reasonable level;

(f) deficiencies in the construction which should have been rectified by the trades prior to the receivership and for which pre-receivership actions taken by RRDI have resulted in limited warranty claims being available; and

(g) property taxes for Hotel Units have been assessed on a cost rather than pro-forma income valuation basis. This has resulted in considerable property tax expense for both Unit Owners and RRDI. The Receiver is currently contemplating a joint appeal with Unit Owners to pursue a reduction of the property tax assessment.

3.6 As a result of these issues and complexities, as well as other issues which the Receiver was required to address as described in this Eighth Report, the professional costs of the receivership have far exceeded those initially estimated by the Receiver prior to the commencement of these proceedings. Further, both the delayed opening of the Hotel and weaker than forecast operating results have resulted in larger than expected funding requirements for Hotel operations. The Receiver has determined that in order to maintain the operations of the Hotel during the Institutional Sales Process and fund the continuing costs of the receivership, the Receiver will require additional Receiver's Borrowings.

3.7 Paragraph 20 of the Appointment Order contemplates an increase in the amount of Receiver's Borrowings. Accordingly, the Receiver has sought from WestLB, a second tranche of Receiver's Borrowings in the amount of $7.5 million (the "Second Tranche Receiver's Borrowings"). The Second Tranche Receiver's Borrowings will be secured by the Receiver's Borrowings Charge provided for under the Appointment Order, with the priority provided for therein, subject to the provision that all Receiver's Certificates issued in respect of the Second Tranche Receiver's Borrowings will be subordinate to the existing Receiver's Borrowings. The Receiver expects to receive proceeds from the One

Day Sale Units, from funds held by McCarthy Tétrault LLP ("McCarthys") and from a GST refund which is owing to RRDI but is first subject to the completion of a review by the Canada Revenue Agency (the "Proceeds"). All of the Proceeds received will be used to permanently reduce the existing Receiver's Borrowings. The Receiver seeks the approval of the Court to amend the Appointment Order and provide for the Second Tranche Receiver's Borrowings.

3.8 In order for the Receiver to commence the Institutional Sales Process, the Receiver has prepared, in conjunction with its legal counsel and Colliers, an Institutional Sales Process Protocol (the "Protocol"), a copy of which is attached as Appendix "B". The Protocol outlines the proposed steps, timeline and methodology with respect to the Institutional Sales Process. The Receiver seeks the approval of the Protocol by the Court.

3.9 In addition, in this Eighth Report, the Receiver will:

(a) provide the Court with an update on the Retail Sales Program and the results of the One Day Sale conducted on August 22, 2009;

(b) provide the Court with an update regarding the steps authorized by the Amended August 18 Order and the September 1 Order, including:

(i) an update on the status of the New HMA and the other New Marriott Agreements, and the anticipated date for implementation of these agreements;

(ii) an update on the status of Settlement Agreements with Unit Owners and Existing Unit Purchasers; and

(iii) the Receiver's recommendations regarding the Existing Unit Purchasers' outstanding transactions so that these Units can be included for sale, if appropriate, in the Institutional Sale Process;

(c) recommend distributions in accordance with the respective entitlements of RRDI and Unit Owners to the funds held by McCarthys in accordance with the trust account analysis prepared by Fraser Milner Casgrain LLP ("FMC"), the Receiver's independent legal counsel;

(d) recommend a claims process for the determination of the entitlements of real estate agents and brokers to amounts set aside by McCarthys and held in trust for real estate commissions (the "Commission Claims Process");

(e) recommend the payment by the Receiver of the outstanding accounts of Miller Thomson and recommend that additional funding of $75,000 be authorized to pay the additional legal fees of Miller Thomson in its capacity as legal counsel for the Ad Hoc Committee of Unit Owners and Representative Counsel;

(f) recommend an amendment to the Appointment Order to specifically include the legal description of two additional parcels of land owned by RRDI;

(g) report to the Court generally in respect of the status of both the RRDI and RRMSI receiverships; and

(i) seek the Court's approval of the Receiver's activities to date in respect of the RRDI and RRMSI receiverships, as described in this Report.

## *4.0 Increased Costs of Receivership and Need for Additional Borrowings*

4.1 Since its appointment, the Receiver has identified and learned of many issues which were not known prior to its appointment. In addition, the receivership has been impacted by unexpected changes in circumstances that could not have been anticipated prior to the Receiver's appointment. These factors have created significant complexity and corresponding costs to the receivership. The following is a summary of certain of these matters.

### *A. Delay in Construction Completion and Lost Revenue*

4.2 As described in the A&M Report, at the commencement of the receivership, construction at the Hotel had not been completed. The Receiver was hopeful, based on information it had received from the Company's management, that construction could be completed on a much shorter timeline than ultimately was the case. The Affidavit of Robert Dyck sworn May 19, 2009 (the "Dyck Affidavit"), filed in support of the application for the appointment of the Receiver, indicated that construction was expected to be completed in June 2009, if work continued uninterrupted. However as a result of delays, as more fully described in Paragraph 4.3, below, it was not until the end of July that construction was substantially complete, and Paignton House (which added an additional 43 rooms to the Hotel, out of a total of 221) was open for use by the Hotel. Though Paignton House was ready for occupancy on July 3rd and "turned over" to Marriott Hotels at that time, Marriott Hotels did not open it to guests until the end of July as (a) Marriott Hotels required time to complete certain pre-opening steps; and (b) significant construction activity remained ongoing in the area of Paignton House that impeded its availability to guests. As a result, the delays in completing construction in and around the Hotel and

opening Paignton House, resulted in lost revenue to the Hotel and increased operating losses required to be funded by the Receiver.

4.3 Completion of construction of the Hotel was delayed for the following reasons:

(a) The full amount of the Receiver's Borrowings was not approved until June 2, 2009. Between the date of its initial interim appointment on May 22, 2009 and the date of the Appointment Order on June 2, 2009, the Receiver was not able to commit to pay any third party trade contractors for work going-forward or enter into any agreements to advance construction of the Hotel;

(b) Negotiations with numerous trade contractors, nearly all of whom were owed significant amounts in arrears, were protracted, delaying their return to the site;

(c) Negotiations of agreements with designers, building architects, mechanical, structural, and electrical engineers (collectively the "Building Consultants"), were also drawn out as these Building Consultants were reticent to provide services to the project after having not been paid for a significant amount of time and because they were owed substantial amounts of money;

(d) Architectural and engineering drawings for the work that needed to be completed were incomplete, principally because RRDI had been unable to pay those firms which needed to provide their services, and this required additional assistance from the Building Consultants, a fact that the Receiver only became aware of after its appointment;

(e) Several new trade contractors needed to be sourced, which involved creating tender packages and the issuance of contracts of certain portions of the construction (such as the significant contract for the completion of landscaping);

(f) Significant issues arose with respect to the completion and opening of the pool area for Paignton House and the construction of the cabana (the "Cabana") which forms part of the pool area, as well as the need to address complicated issues relating to the requirements for municipal approvals to open the pool area; and

(g) Substantial complications as a result of a lack of provisioning by RRDI prior to the receivership for outdoor bathroom facilities in and around the Longview building of the Hotel which, until constructed, prevented Marriott Hotels from obtaining a liquor license to serve alcoholic beverages in and around the Hotel's outdoor spaces, having a significant impact on the Hotel's food and beverage revenues.

4.4 After the opening of Paignton House on July 31, 2009 (the "Post Opening Period"), the Receiver continued (and is, in fact, continuing) to address certain deficiencies and outstanding items not directly related to the construction of Paignton House, the Cabana and the pool area. Over the course of the Post Opening Period, the Receiver became aware of several significant building and construction deficiencies that the Receiver was not aware of prior to the receivership. In general, the majority of these matters relate to construction of the Longview building, which was substantially complete prior to the

receivership. These items primarily relate to issues with the exterior of the building, and are currently being addressed by the Receiver. The status and resolution of these issues will be discussed with potential purchasers in the Institutional Sales Process. In many instances, in order to address these deficiencies, the Receiver has had to engage third party experts, consultants, and engineers to assist it to understand, evaluate, and develop appropriate remediation programs. The Receiver is also continuing to investigate the extent to which it may be able to seek reimbursement for work performed by third parties that has been determined to be deficient, pursuant to warranties or otherwise.

4.5 Although the construction work itself has been completed within the cost budget estimated at the time of the Receiver's appointment, the professional fees and costs of the Receiver managing the unknown complexities of the construction completion, the identification and remediation of deficiencies relating to work completed prior to the receivership, and the loss of revenues resulting from the delays in opening Paignton House, the Cabana, and the pool area have added to the financial burden of the receivership. In addition, the issues in respect of the deficiencies have also added to the complexity of the Receiver's negotiations with Marriott Hotels in respect of the New HMA, as described in this Eighth Report.

*B. Complexities and Costs of Construction Lien Claims Process*

4.6 There has been more complexity to the construction lien claims process than originally anticipated, primarily as a result of the poor record keeping of RRDI and its affiliate RRCI, which acted either as construction manager or general contractor.

4.7 The Dyck Affidavit disclosed that at the time of the receivership application, outstanding construction trade payables totaled approximately $4.3 million. To date, as a result of the

claims process that has been undertaken by the Receiver, 32 lien claims have been filed against RRDI, three of which appear to be duplicative, resulting in a total of 29 unique claims with a total value of $5.6 million. Some of these lien claims may include costs, interest and/or taxes. Each claim has been difficult to reconcile with the records of RRDI, and this reconciliation and review process is still ongoing.

4.8 There are a number of complex issues to be resolved to determine the quantum and priority of the lien claims. A reference to a Master of the Ontario Superior Court has been recently ordered to determine a preliminary issue relating to statutory holdback amounts. A significant issue affecting the priority of lien claims will depend on the characterization of RRCI, an affiliate of RRDI, as either a general contractor or construction manager for RRDI. It is anticipated that this process will take several months to finalize, and the ultimate expense of this process is expected to be significant to all parties.

4.9 The Receiver believes that it would be in the interests of all stakeholders to reduce the expense of the potential construction lien litigation process and facilitate settlement discussions, if possible, in respect of the lien claims. In that regard, in order to determine the appropriate parties to participate in such discussions, the Receiver and its independent legal counsel have reviewed the issue of priority between the construction lien claimants and Fortress.

4.10 The Receiver's independent legal counsel has communicated to Fortress that it is the Receiver's view that Fortress' mortgage, which was registered on or about June 6, 2007, is a subsequent mortgage for the purposes of the CLA and that lien claimants who

successfully prove their liens would have priority over the Fortress mortgage (as they would over the Syndicate's mortgage) to the extent of any deficiency in the holdback required to be retained by RRDI. As well, as previously noted, Fortress has entered into a subordination agreement in favour of the Syndicate, such that even if Fortress did have priority over the lien claimants' claims, any recoveries received by Fortress in that regard would by payable by Fortress to the Syndicate (prior to the Syndicate being paid in full).

4.11 As such, the Receiver intends to facilitate settlement discussions, if possible, among the Syndicate, Fortress, and the various lien claimants in parallel with the reference to the Master referred to above. In this regard, a preliminary hearing was scheduled before Master Short on December 11, 2009 to determine a process by which the reference will proceed and the timing of the hearing of the reference. Attached as Appendix "C" is an outline of the Construction Lien Reference Timetable proposed by Master Short.

### C. *RRMSI Receivership*

4.12 As detailed in both the Second Report and the Fourth Report, upon its appointment, the Receiver was confronted with the issue of the operation of the Rental Pool, the mechanics of which it had not had an opportunity to investigate before its appointment. The Dyck Affidavit originally contemplated completion of existing APSs with Existing Unit Purchasers as soon as possible subsequent to the Receiver's appointment. However, as outlined in more detail in this Eighth Report as well as in prior reports, the Receiver determined that it could not proceed with closings of existing APSs or the Retail Sales Program so long as RRMSI was the Rental Pool manager, and so long as the Rental Pool

structure set out in the Current HMA and Current RPMAs, to which RRMSI was a party, remained in place.

4.13 The requirement for the Receiver to deal with the complexity of the RRMSI issues has resulted in substantial additional costs to these proceedings. These complexities required the Receiver to (a) provide a detailed analysis of the contractual arrangements to the Court, primarily in the Second and Fourth Reports; (b) seek approval of the repudiation of all arrangements with RRMSI, and ultimately move for the receivership of RRMSI, a step which was opposed by RRMSI and resulted in costly litigation; (c) obtain approval for the Receiver to pay the legal fees of Representative Counsel so that Unit Owners and Existing Unit Purchasers who are parties to the Current RPMAs could have representation on the motions dealing with agreements to which they are parties; and (d) negotiate replacements to the Current HMA and Current RPMA with Marriott Hotels and the Ad Hoc Committee of Unit Owners.

*D. Complexities Relating to Unit Owners and Existing Unit Purchasers*

4.14 In the context of regularizing the contracts related to the Rental Pool, the Receiver had to address the claims of Unit Owners and Existing Unit Purchasers, who had been promised numerous Purchaser Incentives from RRDI to entice them to purchase their Units. In an effort to resolve the issue of these entitlements, the Receiver entered into extensive meetings and negotiations with the Ad Hoc Committee of Unit Owners and its legal counsel, Miller Thomson, to develop the terms of a New RPMA and comprehensive Settlement Agreements made to all Unit Owners and Existing Unit Purchasers, as approved by the Amended August 18 Order. The status of the Settlement Agreements is discussed further in this Eighth Report. The Receiver and its legal counsel engaged in a

detailed review of individual entitlements of Unit Owners and Existing Unit Purchasers, drafting and negotiating the terms of the Settlement Agreements, the logistics of delivering settlement packages to Unit Owners and Existing Unit Purchasers, and communicating with both the Ad Hoc Committee and individuals regarding the proposal. These steps required substantial resources and have added to the costs of the receivership.

*E. Complexities Relating to Zoning and Permitting Issues with Respect to RRDI's Property*

4.15 The Receiver and its legal counsel have undertaken a detailed review of the various zoning, permitting and development approval matters in respect of RRDI's property, including the Development Lands. This review was critical to, among other things, obtain a proper understanding of the attributes of the Assets to be sold pursuant to the Institutional Sales Process. In undertaking this review, the Receiver has learned of certain ambiguities with respect to certain zoning, servicing and permitting entitlements which RRDI management had not disclosed to the Receiver prior to the receivership. In order to obtain an understanding of these various issues, and in certain cases, seek to address existing deficiencies so as to permit maximum flexibility to, and potential for, a third party purchaser of the Assets, the Receiver has had to engage various professionals and development experts to assist it, as well as engage in discussions and meetings with representatives from municipal and provincial government. The Receiver is continuing to work through these various issues and will provide this Honourable Court with a further update as and when appropriate to do so.

*F. Investigation of Amounts held by McCarthys*

4.16 As described in the Second Report, subsequent to the commencement of these proceedings, the Receiver learned that substantial funds had been retained by McCarthys from the proceeds of sale of Units, after remitting net proceeds to WestLB. While the Receiver had been aware that McCarthys had retained certain amounts for commissions and closing costs, the Receiver had not appreciated that further amounts had been retained by McCarthys in its trust account to fulfill certain other obligations of RRDI.

4.17 In its Second Report, the Receiver advised that it would be undertaking a detailed review and analysis of the nature of the funds held by McCarthys, and the basis on which these funds had been retained to determine entitlement to those funds. The Receiver has obtained an analysis from FMC in respect of the entitlement to such funds, as discussed further below. The recommendation of the Receiver with respect to entitlement to such funds is a matter for relief on this motion. The Receiver has reviewed that analysis with McCarthys , legal counsel for WestLB, and Representative Counsel. In its settlement proposal to Unit Owners, the Receiver offered to provide funding to Representative Counsel of up to $25,000 in order to review and respond, if necessary, to this analysis.

*G. Commission Claims Process*

4.18 By Order dated July 8, 2009, the Court authorized the Receiver to distribute amounts held in trust by McCarthys in respect of commissions payable, upon the Receiver making a determination of the individual amounts owing to various real estate brokers and agents. McCarthys is also holding amounts in trust in the same account for its own fees and disbursements in connection with its representation of RRDI in respect of the Unit sales and closing process. The Receiver has conducted an investigation into the amounts

owing by RRDI to real estate brokers and agents for commissions on the sale of Units to Unit Owners. Despite a substantial effort to review the books and records of RRDI and determine the entitlements, the Receiver has concluded that the records are inadequate to make a final determination and proceed with a distribution. The Receiver has decided that it is prudent to conduct a claims process, requiring real estate brokers and agents to submit the amounts of their claims to the Receiver, together with the related documents in support of such claims. The inability of the Receiver to make distributions is an unanticipated complication and unfortunate delay for those entitled to these funds.

*H. Ontario Securities Commission*

4.19 In order to be able to conduct the One Day Sale, it was necessary for the Receiver to engage in discussions with the Ontario Securities Commission (the "OSC") to ensure that the Receiver was entitled to conduct the One Day Sale under an exemption ruling provided to RRDI by the OSC in April 2004 (the "OSC Exemption Ruling"). While permission was ultimately granted, this was a further complexity that added to the costs of the pursuit of the Retail Sales Program.

*I. Resort Association*

4.20 The Receiver has incurred a significant amount of time dealing with issues in respect of the Red Leaves Resort Association (the "Resort Association"). The Resort Association was created in 2006 by an act of the Ontario Provincial Parliament (the "Red Leaves Act") and was established as such to provide various recreational activities to both residents of, and visitors to the Red Leaves Resort area. The Resort Association required a significant level of funding to maintain its operations and employees. The Receiver negotiated with the Resort Association, as well as the other RRDI related entities that are

not in receivership, to first reduce the required costs of the Resort Association, and second, to enter into appropriate cost-sharing arrangements with the other non-receivership entities. At the outset of its appointment, the Receiver did not anticipate it would be required to fund any costs of the Resort Association. Recently, the President of the Resort Association resigned; however, by virtue of the Red Leaves Act, the Resort Association continues to have the ability to register a statutory lien against any of its members for whom fees have accrued and are outstanding (this would include, among others, RRDI, the Unit Owners and the New Unit Purchasers). The Receiver continues to examine the ongoing role of the Resort Association and its participation in it and has already engaged in preliminary discussion with relevant parties to formally suspend the operations of the Resort Association.

*J. Property Tax Assessments*

4.21 In November 2009, the Municipal Property Assessments Corporation ("MPAC") provided RRDI and Unit Owners with revised property tax assessment notices for all Units. These assessments are based on a "cost" rather than an "income valuation" approach. As a result, property tax payments will average approximately $4,500 per Unit which, according to the Receiver's tax advisors, is high for this property. The total tax liability for 2009 for the RRDI-owned Units is approximately $485,000, and the liability will increase each year as the new assessment is phased in through 2012. The Receiver is currently considering a joint appeal with Unit Owners, which it has discussed with the Ad Hoc Committee of Unit Owners and Representative Counsel, to have the property taxes re-assessed on a pro forma income-based approach in an effort to reduce the overall tax liability for all stakeholders. In addition to the re-assessment in respect of the Units, the

Receiver is also expecting to receive a re-assessment in respect of the commercial aspects of the Hotel, which is also expected to be based on a cost, as opposed to a pro forma income basis. The Receiver is intending to consider appealing this assessment as well, once it is received.

*K. Variations from Initial Budget to Fund Amounts Owing to Marriott Hotels*

4.22 The Dyck Affidavit and the A&M Report estimated that approximately $15 million would be required by the Receiver to finance the receivership through 2010. The Receiver obtained approval for Receiver's Borrowings in that amount. This estimated funding requirement was based on a general budget (the "Initial Pre-Receivership Budget") as follows:

| Summary of Estimated Receivership Funding Requirements<br>For the period ending December 31, 2010<br>Unaudited | |
|---|---|
| | CAD$000s |
| Estimated receivership funding requirements: | |
| Forecast costs to complete construction (excluding interest) | 4,263 |
| Altus construction contingency | 3,750 |
| Red Leaves general overhead costs and estimated operating and marketing costs | 2,750 |
| Estimated professional fees | 4,500 |
| Total estimated receivership funding requirements | 15,263 |

Note: Within the 'Altus construction contingency' budget line, $1.25 million in contingency was allocated for marketing costs.

4.23 The Receiver disclosed in paragraph 4.4 of the A&M Report that it had limited access to information regarding the Hotel's operations and Marriott Hotel's personnel prior to its appointment. Accordingly, prior to the receivership, A&M and the Syndicate had essentially no direct insight into the financial status of the Hotel's operations. Subsequent to its appointment, the Receiver was able to engage in discussions directly

with Marriott Hotels and was provided access to confidential information maintained by Marriott Hotels regarding the budgeted financial needs and operations of the Hotel. The Receiver also gained full access to the records of RRDI, which was not made available to A&M prior to its appointment.

4.24 Recently, as part of the Receiver's detailed review of Marriott Hotels' 2010 budget and as part of its negotiations with Marriott Hotels of the New HMA (as discussed further below), the Receiver learned that there had been significant amounts outstanding and owing to Marriott Hotels by RRDI in connection with Pre-Opening Costs and initial working capital funding under the Current Marriott Agreements. As disclosed in the Dyck Affidavit, by an April 1, 2009 letter agreement among RRDI, the Syndicate and Marriott Hotels (the "April 1 Letter Agreement"), the Syndicate funded $1.95 million to pay what was expected to cover Net Operating Losses and working capital requirements owing under the Current HMA by RRDI to Marriott Hotels through May 31, 2009. However, this turned out to be incorrect. Marriott Hotels applied a substantial portion of this payment towards a reimbursement of unfunded Pre-Opening Costs pursuant to the Current Marriott Agreements. It has now been clarified to the Receiver by Marriott Hotels that, even after the application of the $1.95 million advanced by the Syndicate on April 1, 2009, as well as a further $350,000 advanced by RRDI (or entities related to it) (a total of $2.3 million), the Hotel still had a total "funding gap" of $1.35 million comprised of: (a) approximately $835,000 relating to Pre-Opening Costs and initial working capital funding pursuant to the Current HMA; and (b) approximately $500,000 of unfunded Net Operating Losses. This funding gap to Marriott Hotels, as discussed in more detail below, represents an unexpected cost that must be funded so that the Hotel

that Marriott Hotels has sufficient funding to continue the Hotel's operations at its expected service standards.

4.25 The estimate in the Initial Pre-Receivership Budget of $2,750,000 for overhead, operating and marketing costs (as depicted in the table above) was provided by RRDI management to the Receiver and assumed an estimated funding requirement for Marriott Hotels of $1.5 million for the balance of 2010. As now determined, this estimate was grossly understated. Subsequent to the appointment of the Receiver and following numerous meetings and discussions with Marriott Hotels, the Receiver learned the following details with respect to the funding requirements of Marriott Hotels relating to Pre-Opening Costs and initial working capital funding, and the funding of ongoing Net Operating Losses.

*(a) Pre-Opening Costs and Initial Working Capital Funding*

4.26 Pre-Opening Costs are those costs incurred by Marriott Hotels prior to the Hotel opening such as payroll amounts, sales and marketing costs, relocation costs for key employees, and training costs. Initial working capital funding is required by Marriott Hotels to ensure that the Hotel has sufficient cash reserves to appropriately operate and manage its business. Pursuant to the various Current Marriott Agreements, Pre-Opening Costs are required to be reimbursed to Marriott Hotels. Marriott Hotels provided an original Pre-Opening Costs budget to RRDI for a total of approximately $2.2 million (inclusive of $400,000 of working capital funding) assuming an opening date on or around June 1, 2008. However, as a result of significant delays, by the time the Hotel ultimately opened to the public in late December 2008, total Pre-Opening Costs had ballooned to $5.835 million (inclusive of $800,000 of working capital funding)[2]. The Receiver has learned that, at the direction of RRDI, Marriott Hotels had hired employees and maintained its readiness to open from June 2008 until the Hotel's actual opening in December 2008, at significant cost, and with no revenue generation during that period. Approximately $5.0 million of the total Pre-Opening Costs and initial working capital funding were provided by RRDI (or entities related to RRDI) and/or the Syndicate pursuant to the April 1 Letter Agreement, leaving the shortfall in funding of Pre-Opening Costs and initial working capital identified at paragraph 4.24 above of $835,000.

[2] The Receiver has been advised by Marriott Hotels that the working capital funding requirement increased from the time of the original Pre-Opening Cost budget being provided by Marriott Hotels ($400,000) to the time the Hotel actually opened ($800,000) primarily as a result of delays in opening the Hotel.

*(b) Hotel Operating Losses*

4.27 As noted in the Receiver's prior reports, RRDI was obliged under the Current HMA to fund the Net Operating Losses of the Hotel incurred by Marriott Hotels once operations commenced. From the commencement of operations in December 2008 until the date of the receivership on May 22, 2009, the Hotel incurred actual Net Operating Losses of $3.2 million. Prior to the receivership, RRDI and the Syndicate had funded only $2.7 million, specifically in respect of pre-receivership Net Operating Losses, resulting in the approximate funding shortfall to Marriott Hotels of $500,000 described in paragraph 4.24 above.

*L. Assistance from Marriott Hotels Going Forward*

4.28 The forecast budget for the Hotel prepared by Marriott Hotels and reviewed by the Receiver projects that as at November 30, 2009, approximately $250,000 will be required to fund the working capital requirements and Net Operating Losses of the Hotel for the remainder of 2009.

4.29 The Receiver has held a number of meetings and discussions with Marriott Hotels to pursue possible strategies whereby Marriott Hotels could reduce the Hotel's Net Operating Losses, and also provide the Receiver with certain assistance to reduce the overall Hotel funding requirement by the Receiver. The assistance that Marriott Hotels has agreed to provide will result in cash savings to the Receiver of approximately $1.1 million through to the earlier of a closing of the sale of the Hotel or September 30, 2010. Confidential Appendix "1" to this Eighth Report summarizes the assistance that Marriott Hotels has agreed to provide to the Receiver.

*M Current Financial Position and 2010 Budget*

4.30 Attached as Appendix "D" is the Receiver's statement of Receipts and Disbursements for the period ended November 30, 2009 (the "R&D"). As at November 30, 2009, the Receiver had cash on hand of $2.36 million.

4.31 With the access to the books and records of RRDI as well as the additional information the Receiver has gained from Marriott Hotels and otherwise, the Receiver has prepared a budget for the remainder of 2009 and for the five-month period ending May 31, 2010, being the period during which the Institutional Sale Process is contemplated to be conducted (the "2010 Budget"). The 2010 Budget is attached as Appendix "E" to this Eighth Report, and takes into account, among other things, the projected costs of the Hotel's operations, the costs associated with completing the outstanding construction deficiencies, property tax payments and estimated professional fees of the receivership during the Institutional Sale Process. The 2010 Budget forecasts total disbursements (excluding cash on hand of approximately $2.36 million) of approximately $7.2 million. It is proposed that the Receiver fund these disbursements by way of the establishment of the Second Tranche Receiver's Borrowings of $7.5 million, which advances will be subordinate to those advances made pursuant to the existing Receiver's Borrowings. Accordingly, all Proceeds, when and if received by the Receiver, will be used to permanently reduce the existing Receiver's Borrowings. Based on the forecast expenditures through to the end of 2009, the Receiver could require the utilization of the Second Tranche Receiver's Borrowings as early as January 2010 to maintain operations. The closings of the transactions from the One Day Sale, representing the largest component of the Proceeds, are currently scheduled for around January 28, 2010.

4.32 A summary of key cost and budgeting variances between forecast receipts and disbursements through to May 31, 2010 (based on the 2010 Budget) and the Initial Pre-Receivership Budget includes the following:

(a) Prior to the receivership, Altus and A&M were provided by RRDI with information pertaining to the cost to complete construction of the Hotel. The Receiver budgeted close to $6.8 million in construction costs and anticipates that the total cost to complete construction-related matters will be approximately $4.8, resulting in a positive variance of $2.0 million.

(b) It is projected that the RRDI operating costs will be approximately $4.7 million higher than forecast in the Initial Pre-Receivership Budget. There are three significant areas that have caused this increase: i) the funding of the Hotel's Net Operating Losses and working capital requirements which are expected to be more than $3.0 million higher (including certain contingency amounts) than originally forecast due in part to the funding gap described in Paragraph 4.24 above, and the weaker than forecast operating results realized by Marriott Hotels during the first year of the Hotel's operations caused by a combination of market conditions, the construction that was ongoing during the summer, and the delayed completion of the Hotel; ii) significant property taxes that have recently been assessed since the receivership, which are the responsibility of RRDI in respect of Unsold Units and the commercial spaces of the Hotel; and iii) despite RRDI management confirming to the Receiver that all furniture, fixtures & equipment ("FF&E") had been purchased and paid for prior to

the receivership, the Receiver was required to spend over $300,000 to acquire certain FF&E that had neither been paid for by RRDI, nor delivered prior to the receivership.

(c) Professional fees and costs to date have been well in excess of what was originally contemplated at the outset of the receivership due to the numerous legal, financial and operational complexities of the receivership, outlined herein, and other daily operational matters, all of which have necessitated additional significant time and expenses being incurred in the process.

(d) The Receiver has been opposed by Ken Fowler Enterprises Ltd. ("KFE"), RRDI and/or RRMSI at various Court motions and hearings with respect to numerous issues. Although those challenges have, to date, been unsuccessful, there were significant additional professional fees and costs incurred in responding to such opposition. On the July 24, 2009 motion, the Court made an endorsement providing that costs may be payable on future motions by RRDI if its opposition to future motions has no foundation.

4.33 Due to the forecast cash requirements from now to May 31, 2010, the Receiver seeks the Court's authorization to borrow additional funds pursuant to the Second Tranche Receiver's Borrowings.

4.34 The Receiver has discussed the additional funding needs with WestLB, and has obtained WestLB's general agreement to provide the Second Tranche Receiver's Borrowings, subject to internal approvals being obtained, and the Receiver negotiating a term sheet

with WestLB providing for the terms of such funding. It is anticipated that the form of term sheet will be similar to that executed by the Receiver in respect of its existing Receiver's Borrowings.

## *5.0 Regularizing the Rental Pool and the Management and Operations of the Hotel - Status of Steps Authorized by the Court*

5.1 The Amended August 18 Order authorized a number of steps by the Receiver in order to permit it to regularize the operations of the Hotel, make the Rental Pool viable, and establish contractual arrangements that would enable the Receiver to sell the Hotel as a going concern.

5.2 In summary, the Court authorized and approved the following:

(a) the substantial terms of a New HMA with Marriott Hotels, containing provisions permitting its termination or assignment by the Receiver, which will facilitate the Receiver's ability to sell the Hotel as a going concern;

(b) the repudiation by the Receiver of the Current HMA, and the corresponding termination of that agreement by Marriott Hotels, in order to facilitate the transition to the New HMA;

(c) the form of New RPMA, which appoints RRDI as Rental Pool manager and modifies the existing terms of operation of the Rental Pool in such a way so as to make the Rental Pool manager's obligations to Unit Owners, as set out in the New RPMA, consistent with the obligations of Marriott Hotels to make distributions of Operating Profits to RRDI pursuant to the New HMA. These modifications, as described in detail in the Fourth Report, will make the Rental Pool financially viable for any purchaser of the residual interest in the Hotel pursuant to the Institutional Sales Process; and

(d) the repudiation of the oral arrangements between RRDI and RRMSI delegating to RRMSI the role of Rental Pool manager.

5.3 In addition, by its September 1 Order, the Court appointed A&M as the RRMSI Receiver, and authorized and directed the RRMSI Receiver to repudiate the Current HMA with Marriott Hotels on behalf of RRMSI, and to repudiate the Current RPMAs executed with Unit Owners and Existing Unit Purchasers with RRMSI. This facilitates the ability of the Receiver to transition to the New HMA and the New RPMAs.

5.4 Since the issuance of the Amended August 18 Order and the September 1 Order, the Receiver has been working towards the implementation of the steps authorized and directed by the Court. The repudiation of the Current HMA and the execution of the New HMA must be coordinated with the repudiation of the Current RPMAs and the transition to the New RPMAs, in order to ensure, so far as possible that: (a) there is a seamless transition between Rental Pool regimes; (b) no gap is exposed between the time that the current agreements are repudiated and the new agreements are operative to ensure that some form of Hotel Management Agreement is always in place to govern the Hotel's operations; and (c) no Units are "stranded" outside the Rental Pool as a result of not being a party to the New RPMAs and consequently unavailable for the operations of the Hotel.

5.5 As well, in order to ensure the transition of all Unit Owners to the New RPMA, the Receiver has pursued the completion of the Unit Owner Settlement Agreements with Unit Owners. These Settlement Agreements include, as a key component, the execution of a New RPMA by all Unit Owners. As described below, Existing Unit Purchasers generally have not supported the Settlement Agreements.

5.6 The completion of these steps is a necessary precursor to the completion of the 18 transactions with New Unit Purchasers arising from the One Day Sale, which are

predicated on the execution of the New HMA, and the transition of all Unit Owners to the New RPMA.

5.7 It is therefore appropriate for the Receiver to review for the Court the status of the agreements with Marriott Hotels, and the status of the Unit Owner Settlement Agreements and the Unit Purchaser Settlement Agreements, and to provide the recommendations of the Receiver with respect thereto.

## *6.0 The New Hotel Management Agreement and other New Marriott Agreements*

6.1 The Receiver has held numerous meetings and discussions with Marriott Hotels since the granting of the September 1 Order. The Receiver intended to proceed with the execution of the New HMA following the granting of the September 1 Order; however, the Receiver was provided with updated financial data from Marriott Hotels that showed that the forecast funding needs of the Hotel were much higher than originally presented to the Receiver. Before executing the New HMA, the obligations pursuant to which would be secured by the Marriott Charge, the Receiver concluded it prudent to conduct a detailed review of the operational costs of the Hotel to date and the 2010 budget for the Hotel. Satisfactory resolution of the 2010 Hotel budget and general agreement on the controllable costs with respect to the operations of the Hotel had to be reached between the Receiver and Marriott Hotels before the Receiver could finalize and execute the New HMA with Marriott Hotels, on the basis of the terms previously approved by the Court.

6.2 In light of the increased forecast funding needs, the Receiver considered whether there might be any other reasonable alternative to continuing to retain Marriott Hotels as the operator of the Hotel in favour of a lower cost operator. The Receiver ultimately concluded that it is appropriate and reasonable to continue the Hotel's relationship with Marriott Hotels as opposed to replacing Marriott Hotels in favour of a lower cost, unbranded or alternative branded operator. Marriott Hotels is a highly-skilled and experienced operator and has worked co-operatively with the Receiver. The Hotel is not able to currently sustain itself solely as a summer resort destination. The success of the Hotel is in large part dependent on generating corporate and conference business

throughout the year. Marriott Hotels has a reputation as one of the world's leaders in generating conference and corporate room and food and beverage revenue. The Receiver has concluded, as a result of discussions with Marriott Hotels and Colliers, and in consultation with members of A&M's own hospitality and leisure practice, that the benefits of the reputation and experience of Marriott Hotels, and its ability to generate corporate and conference bookings, is a significant element that can contribute towards the future success and viability of the Hotel. Marriott Hotels has a successful brand and reputation, and awareness of the Hotel as a conference destination is growing through its efforts, despite being in a start-up year, and experiencing difficult market conditions.

6.3 The alternative of not retaining Marriott Hotels in favour of a lower cost operator would not only serve to sacrifice the current high standards of the Hotel, but may also not necessarily result in significant cost savings. The Receiver anticipates that replacing Marriott Hotels involves both significant risks and the incurring of significant costs, including the risks and costs of identifying and retaining a replacement Hotel operator, and the loss of the sales of Units that were sold at the One Day Sale, as those transactions are all predicated on the execution of the New HMA with Marriott Hotels.

6.4 In addition to the assistance that Marriott Hotels has agreed to provide to the Receiver as detailed herein, the Receiver and Marriott Hotels have worked to significantly reduce the Hotel's operating costs during the fall 2009 and winter 2010 seasons, including a protocol for closing off those areas of the Hotel that can be closed in periods of low occupancy, reducing the availability of food and beverage outlets during slower periods, undertaking staff layoffs, or in some cases, terminations, and undertaking efforts to streamline staffing and related costs, while maintaining a high standard for the scaled back operations.

6.5 The Receiver believes that the approach taken by Marriott Hotels in the development of its 2010 budget is reasonable. Marriott Hotels has confirmed to the Receiver that there are no further cost savings that can be implemented in the budget without adversely impacting the service levels and quality aspects of the Hotel. The Hotel is not forecast to generate profits in 2010 which is to be expected. The Receiver understands that, despite best efforts, it is difficult to accurately forecast the Hotel's operating results for 2010 due to a lack of past operating history and the challenging economic conditions, particularly in respect of the corporate and/or conference business. The Receiver understands it is typical in the first few years of operations of a new luxury hotel facility, particularly in a recessionary market, to incur operating losses.

6.6 Although execution has been delayed in order to finalize the 2010 budget and cost discussions, the New HMA and the other New Marriott Agreements have been substantially settled by Marriott Hotels and the Receiver. The Receiver anticipates that the agreements will be executed by late December 2009 or early January 2010, incorporating the principal terms approved by this Court, upon undertaking the coordinated steps required to repudiate the Current HMA and Other Marriott Hotels Agreements, and implement the New RPMAs, all to be effective at the same time.

## *7.0 Status of Settlement Agreements and Execution of New RPMAs*

7.1 The Second Report and the Fourth Report outline the background and the details of the Receiver's proposal to Unit Owners and Existing Unit Purchasers. The forms of Settlement Agreements delivered to Unit Owners and Existing Unit Purchasers were approved by the Court by the Amended August 18 Order, and required a response by August 21, 2009. The following is an outline of the status of these Settlement Agreements.

### *A. Status of Unit Owner Settlement Agreements*

7.2 As reported in the Supplementary Report to the Sixth Report of the Receiver, by August 21, 2009, 61 of 73 Unit Owners had executed the Unit Owner Settlement Agreement.

7.3 The Unit Owner Settlement Agreement contemplates that if accepted, Unit Owners are obliged, as conditions of receiving the settlement, among others, to (a) execute the New RPMA approved by the Court by the Amended August 18 Order; (b) accept a new lease under the Sale Leaseback Program, if applicable; and (c) execute the form of Release approved by the Court by the Amended August 18 Order.

7.4 The Receiver considered the number of Unit Owners that had executed the Unit Owner Settlement Agreement, and while it was not the 100% threshold of participation required to proceed, the Receiver determined that it was appropriate to take the next step toward completing the Unit Owner Settlement Agreements by delivering final documents for execution by Unit Owners. Commencing on September 4, 2009, the Receiver prepared and delivered to all Unit Owners, including those that had not executed a Unit Owner Settlement Agreement by the deadline, individual packages of documents for execution

by each Unit Owner. The Receiver's obligation to proceed with the Unit Owner Settlement Agreements remains conditional on attaining 100% participation by Unit Owners, unless the Receiver agrees to accept a lesser participation, and on the successful negotiation and completion of the New HMA with Marriott Hotels.

7.5 A deadline for the return of executed documents was set for September 14, 2009. All Unit Owners were advised that the settlement documents would be held in escrow pending the waiver or satisfaction of all of the Receiver's conditions under the Unit Owner Settlement Agreement.

7.6 The deadline for the return of documents was extended by the Receiver for a small number of Unit Owners as a result of a variety of extenuating circumstances. As of the date of this Eighth Report, all but two Unit Owners have returned fully executed Settlement Agreement packages, including executed copies of the New RPMA. The Receiver intends to continue discussions with the two outstanding Unit Owners to obtain their acceptance of the Unit Owner Settlement Agreement. Notwithstanding the two outstanding Unit Owners, given the substantial support of all other Unit Owners, the Receiver intends to proceed with the completion of the Unit Owner Settlement Agreements by waiving the condition of 100% participation, satisfying the condition by execution of the Current HMA and by confirming or waiving the satisfaction of all other conditions. It remains open for these two outstanding Unit Owners to execute the New RPMA; in the meantime, these two Units will not be available for rental to guests as part of the Rental Pool.

*Status of Unit Purchaser Settlement Agreements*

7.7 As disclosed in the Fourth Report, each Existing Unit Purchaser was delivered a proposed Unit Purchaser Settlement Agreement by email or courier commencing on August 11, 2009. As with the Unit Owner Settlement Agreements, the key conditions to the Unit Purchaser Settlement Agreement included the execution of a New RPMA, the execution of a new lease, if applicable, and the execution of the form of Release approved by the Court.

7.8 Of the 64 Existing Unit Purchasers, only 2 have returned the Unit Purchaser Settlement Agreement to the Receiver or have otherwise communicated to the Receiver indicating acceptance of the Receiver's settlement proposal and therefore indicating an intention to close their purchase transactions.

7.9 The remaining 62 Existing Unit Purchasers have been either non-responsive or have indicated that their intention is to not complete the purchase of their respective Units. A number of Existing Unit Purchasers have retained legal counsel to represent their interests in this regard. Approximately forty of the Existing Unit Purchasers have retained common legal counsel, Fogler Rubinoff LLP ("Fogler Rubinoff"). The Receiver has engaged in discussions and correspondence with several Existing Unit Purchasers and/or their legal counsel, and conducted without prejudice meetings with Fogler Rubinoff. Notwithstanding these discussions, the Receiver has been unable to obtain the agreement of any Existing Unit Purchasers to close their transactions on the terms put forward in the Unit Purchaser Settlement Agreements or otherwise.

7.10 Fogler Rubinoff requested that the Receiver repudiate the APSs of the Existing Unit Purchasers so as to permit them to claim the return of their deposits from Baker Schneider Ruggiero LLP, the deposit escrow agent, or to the extent released into the project, from Tarion and, if applicable, Travelers Guarantee Company of Canada ("Travelers"). Fogler Rubinoff has asserted that the Existing Unit Purchasers are not obligated to close the APSs as a result of, among other things, the change to the New RPMA when a condition of their APS was the execution of the Current RPMA, material adverse change, and delay. The Receiver expects significant litigation cost and risk if it attempted to pursue closings with the Existing Unit Purchasers. A key element of the Settlement Agreements[3], and the future viability of the Hotel, is the execution by Unit Owners and Existing Unit Purchasers of a New RPMA rather than a Current RPMA. The Existing Unit Purchasers agreed to, or have already executed, a Current RPMA, and those represented by legal counsel assert that they do not have to close and execute a New RPMA

7.11 The Receiver considered a strategy of amending the Current RPMA through a vote of Unit Owners and Existing Unit Purchasers to conform it to the terms of the New RPMA, and assigning the Current RPMA to RRDI as Rental Pool manager, thereby effectively converting a Current RPMA to a New RPMA. The Receiver would then tender an amended Current RPMA on Existing Unit Purchasers.

[3] Madam Justice Pepall noted in her reasons of September 1, 2009 in appointing A&M as RRMSI Receiver, "The receivership will permit the implementation of the settlement agreements with unit owners and unit purchasers, a key element of which is their agreement to enter into a new RPMA...".

7.12 However, the Receiver determined that it would be inappropriate to attempt to pursue this strategy, as it is subject to excessive risk, cost, uncertainty, and ultimate delay, and would interfere with the Institutional Sales Process.

7.13 In any event, RRDI had already identified risks in closing certain of these transactions prior to the commencement of the receivership.[4]

7.14 By letter dated December 4, 2009, a copy of which is attached as Appendix "F", Receiver's legal counsel advised Fogler Rubinoff that the Receiver has carefully considered what advice and direction it should seek with respect to the APSs with Existing Unit Purchasers. The Receiver was cognizant of the fact that Fogler Rubinoff does not represent all the Existing Unit Purchasers and that the Receiver has had little contact with those Existing Unit Purchasers that are not represented by Fogler Rubinoff. It appears from discussions with Fogler Rubinoff that one of the major reasons for the Existing Unit Purchasers' reluctance to consider closing on existing or negotiated terms, is the uncertainty of the future of the Hotel. The Receiver expects that such uncertainty will be resolved once it commences the Institutional Sales Process and identifies a purchaser. It may be that the Existing Unit Purchasers would have a different view if they were to know, for example, that a reputable industry player was interested in acquiring the Hotel. Similarly, it may be that a prospective purchaser of the Hotel will be interested in negotiating directly with the Existing Unit Purchasers to close their

[4] Prior to the receivership, RRDI had identified a number of sale transactions with Existing Unit Purchasers that were at risk of not closing for various reasons. Of the 64 unclosed transactions, 26 of these were considered by RRDI to be at risk of not closing (including the 3 subject to Standstill Agreements referred to in footnote 5). 13 of these had already advised RRDI that they did not intend to close their transactions as a result of alleged defaults by RRDI. The aggregate of the gross purchase prices (net of deposits paid) of the 26 Units at risk prior to the receivership was approximately $11 million, with $1.21 million in deposits. In addition to the 26 Units identified by RRDI prior to the receivership, 19 of the Existing Unit Purchasers are non-residents of Canada and difficult to pursue.

transactions or would rather the Receiver repudiate the APSs so it can acquire those Units.

7.15 As a result, while the Receiver is not proposing to tender on the Existing Unit Purchasers or pursue litigation with them, the Receiver recommends that any further consideration of the APSs be deferred until March, once the Receiver understands the nature and identity of those parties that are interested in the acquisition of the Hotel and has an opportunity to assess whether such purchaser would be interested in completing the APSs, or would prefer that the Receiver seek authority from the Court to repudiate them. The Existing Unit Purchasers will then be able to make a decision with better information as to the future of the Hotel.

7.16 If and when notice of repudiation of an APS is provided from the Receiver, the Existing Unit Purchasers will be entitled to seek the recovery of their deposits. The first $20,000 of deposits are insured by Tarion Warranty Corporation ("Tarion"), and each Existing Unit Purchaser will be able to apply to Tarion to recover this amount, to the extent not held in trust by legal counsel to Travelers, as escrow agent. The balance of the Existing Unit Purchasers' deposits are insured by Travelers, to the extent such funds are not held in trust by legal counsel to Travelers as Escrow Agent.

## *8.0 Results of the One Day Sale and Vesting Order*

8.1 By Order dated July 8, 2009, the Court authorized the retainer of Baker Real Estate as real estate broker to conduct the Retail Sales Program. The Receiver recommended, in consultation with Baker Real Estate, that the Retail Sales Program be conducted by way of the proposed One Day Sale to take place on August 22, 2009. By Order dated July 24, 2009, the Court approved a list of minimum prices for the 84 Unsold Units, and approved the Retail Marketing Program proposed by the Receiver to promote the One Day Sale.[5]

8.2 On August 22, 2009, Baker Real Estate conducted the One Day Sale. As a result of the level of interest, the sale was carried over to August 23, 2009.

*Marketing Campaign*

8.3 In the weeks leading up to the One Day Sale, Baker Real Estate undertook the Retail Marketing Program which included a number of initiatives, including: radio advertising, full page colour newspaper advertisements in the Globe and Mail and Toronto Star, a web-page, emails to interested parties, presentations and tours to real estate brokers, and

[5] As described in the Receiver's Supplementary Report to the Sixth Report, subsequent to the filing of the Third Report and prior to the One Day Sale, the Receiver became aware that two Existing Unit Purchasers (which, collectively had agreements to purchase three Units) had each objected to the closing of their transactions on account of breach by RRDI. They each independently agreed to enter into standstill agreements with RRDI prior to the commencement of the receivership proceedings (the "Standstill Agreements"), as a means of resolving the issues. Pursuant to the Standstill Agreements, RRDI agreed to take steps to sell each of the respective Units at minimum prices agreed upon between RRDI and the respective Existing Unit Purchaser. The Standstill Agreements stipulated that if sale transactions were completed at a value less than the initial purchase price of the Unit under consideration, the respective Existing Unit Purchaser would forfeit a portion of their deposit in respect of that particular Unit. Given the nature and terms of these existing Standstill Agreements, the Receiver believed it would be in the best interests of all stakeholders to honour the Standstill Agreements and accordingly, the total number of Units made available for sale at the One Day Sale was 87.

other forms of advertising. The Retail Marketing Program generated significant interest in the Unsold Units and produced the following results:

| | Total |
|---|---|
| # of registrations | 4,511 |
| # of appointments booked | 435 |
| # of attendees at the sale day | 182 |
| # of walk-in attendees | 37 |

*Court Approved Sale Initial Results*

8.4 Of the 87 Units available for sale, the Receiver entered into APSs with 76 New Unit Purchasers. In addition, on August 23, 2009, the Receiver entered into APSs with an additional 13 New Unit Purchasers (the "Reserve New Unit Purchasers") who agreed to enter into a reserve APS in respect of certain Units (the "Backup New Purchaser APS"). The Backup New Purchaser APSs contained a condition which provided that if the existing APS for the applicable Unit was rescinded within the statutory 10 day rescission period required by the *Condominium Act* (Ontario), the Receiver would then proceed with the Backup New Purchaser APS for such Unit.

8.5 In preparation for the One Day Sale, the Receiver decided, in consultation with Baker Real Estate, to raise prices on 11 of the 87 units that were available for sale. These 11 units were all sold during the One Day Sale, at an average increase in price of $11,273 per Unit.

8.6 Two of the three Units subject to the Standstill Agreements (as defined in footnote 5 to this Report) were sold during the One Day Sale for proceeds in excess of the minimum price agreed to between the respective Existing Unit Purchaser and the Receiver. The other Unit was sold at the minimum price agreed upon between the respective Existing Unit Purchaser and the Receiver.

*Rescissions and Final Numbers*

8.7 Pursuant to the *Condominium Act*, all purchasers are entitled to a 10 day rescission period within which they may rescind their purchases. By the expiry of the 10 day period, 67 New Unit Purchasers had rescinded their agreements (including one subject to a Standstill Agreement), resulting in 18 firm agreements with New Unit Purchasers. The total gross proceeds of the sale to the 18 New Unit Purchasers is $5,764,000. Confidential Appendix "2" contains a detailed summary of the final results of the One Day Sale.

8.8 The Receiver has advised all 18 New Unit Purchasers that it intends to close their transactions by January 28, 2010, subject to further extension to a reasonable date, after the New HMA is finalized with Marriott Hotels, and once the New RPMA is in effect with Unit Owners. These are both conditions for the completion of the APSs with New Unit Purchasers.

8.9 In anticipation of the closing of the APSs with New Unit Purchasers, the Receiver has prepared a draft form of order, vesting all of RRDI's right, title and interest in and to each applicable individual Unit and the related personal property described in the applicable APS in the New Unit Purchaser on closing of the APS. The Receiver requests that the Court issue a vesting order in the form filed herewith.

## *9.0 Institutional Sale Process*

9.1 Since the granting of the Sales and Marketing Order, the Receiver has been working with Colliers to prepare for the Institutional Sales Process. Prior to commencing the marketing activities, it was first necessary for the Receiver to complete the One Day Sale pursuant to the Retail Sales Program to determine the quantum of Units that would be available for sale in the Institutional Sales Process, as the latter includes not only the Units, but the residual interest in the Hotel and the Development Lands.

9.2 During the intervening period, Colliers has worked closely with the Receiver in conducting its own due diligence with respect to the Company and the Assets in order to: (a) obtain a complete understanding of the offering; (b) accumulate all documents and other materials relevant to prospective purchasers for organization and inclusion in an electronic data room which will ultimately be made available to prospective purchasers; and (c) develop a list of prospective purchasers based on Colliers' industry expertise, knowledge and other sources. In addition, Colliers, together with the Receiver sometimes, has held several preliminary discussions and/or meetings with prospective purchasers that have identified themselves to either Colliers or the Receiver. In general, Colliers has advised such prospective purchasers that further information with respect to the Institutional Sales Process will be provided in due course.

9.3 With the Retail Sales Program now essentially complete, the Receiver and Colliers are planning to proceed with the Institutional Sales Process. Accordingly, the Receiver, with the assistance of its legal counsel and Colliers, has prepared the Institutional Sales Process Protocol (attached hereto as Appendix "B").

9.4 As set out in the Protocol, the Receiver, with the assistance of Colliers, has prepared and/or established (a) a brief investment overview letter (the "Investment Overview") that describes the opportunity and sets out key aspects of the Protocol; (b) a form of expression of interest for potential purchasers to use ("Expression of Interest"); (c) a form of confidentiality agreement (the "Confidentiality Agreement") for execution by prospective purchasers; (d) a non-confidential information memorandum providing a detailed description of the Assets and the operations of RRDI (the "Information Memorandum"); (e) the form of a confidential exhibit to the Information Memorandum containing certain financial information with respect to the Assets (the "Confidential Financial Exhibit"), which will be finalized prior to the date of its distribution to prospective purchasers, pursuant to the Protocol; (f) an electronic data room for due diligence purposes; and (g) other relevant marketing materials. Copies of the Investment Overview, the Expression of Interest, the Information Memorandum (exclusive of the Confidential Financial Exhibit), and the Confidentiality Agreement will be substantially in the forms attached hereto as Appendices "G", "H", "I" and "J" respectively.

9.5 It is proposed that the Institutional Sales Process will be conducted in three phases, with the consecutive steps of: (i) obtaining expressions of interest from potential purchasers and pre-qualifying bidders for the next phase; (ii) inviting pre-qualified bidders to conduct due diligence and submit non-binding indicative offers; and (iii) identifying a short list of bidders with which to negotiate a final agreement or agreements. The Protocol has been designed to establish a fair and effective process for all prospective purchasers while seeking to maximize value for the Company's stakeholders.

9.6 The Receiver has established a timeline for the Protocol that will require expressions of interest to be submitted to the Receiver on or before 5:00 p.m. on January 22, 2010, from which the Receiver will identify the Pre-Qualifying Bidders by January 29, 2010. The Protocol will require non-binding indicative offers to be submitted to the Receiver by Pre-Qualifying Bidders on or before 5:00 p.m. on March 31, 2010. The Receiver has targeted May 2010, for the completion of a sale transaction.

9.7 The Receiver reserves the right to extend the timelines set out in the Protocol should it be determined necessary and appropriate to do so and to achieve the objectives set out in the Protocol.

9.8 The Receiver shall not be required to accept the highest and best offer, or any offer in respect of the Assets, and shall be entitled to recommend that the Court approve a transaction that maximizes value for all stakeholders and minimizes closing risk.

9.9 The Receiver believes that the Protocol is reasonable and consistent with other sales processes previously approved by this Court. The Receiver has consulted with Colliers regarding the timeline proposed under the Protocol, and considers the length of time allocated to undertake and complete the Institutional Sales Process appropriate given the unique nature of the Assets, the extent of marketing required, and the state of the current market for luxury hotel properties. The Receiver therefore recommends and seeks approval of the Protocol.

9.10 By letter dated October 29, 2009, Resort Muskokas Ltd., whose principal is Walter Prychidny, delivered an offer to purchase the Assets of RRDI to the Receiver, proposing that the offer constitute a stalking horse bid for the purposes of the Institutional Sales Process and that the Court approve it as such. By letter dated November 2, 2009, the

Receiver advised Resort Muskokas Ltd. that it did not intend to undertake a stalking horse bidding process. Neither the Receiver nor Colliers views such a process as being appropriate for purposes of marketing and selling the Hotel. It is considered preferable to not establish any base price for the Hotel that would influence the bids that might be received from potential bidders. The Receiver advised Resort Muskokas Ltd. that it could participate in the Institutional Sales Process pursuant to the Protocol.

9.11 Attached as Confidential Exhibit "I" to the A&M Report was an assessment of the Syndicate's estimated security position outside of a receivership process. The Confidential Exhibit "I" was sealed by the Court pursuant to the Appointment Order. The A&M Report indicated that it was highly unlikely that any creditors subordinate to the senior secured security interest of the Syndicate would obtain any proceeds from realization.

9.12 It is now apparent that the Syndicate will incur a loss, given the higher than expected costs of operations of the Hotel, the results of the One Day Sale, the current zoning and permitting issues with respect to the Development Lands, and the information available to the Receiver since its appointment. As a result, the Protocol contemplates the ability of WestLB in its own capacity or as Agent to make a credit bid in the Institutional Sales Process, if it should so choose.

## *10.0 Funds Held in McCarthy Tetrault LLP Trust Account*

10.1 The Receiver's Second Report outlined the amounts currently held by McCarthys out of the proceeds of sale of individual Units that were closed prior to the receivership. The Receiver advised the Court that a detailed analysis would be undertaken to determine whether those amounts held by McCarthys were held for and on behalf of Unit Owners or others, or whether these funds were held for RRDI, and therefore subject to the security of the Syndicate.

10.2 FMC has conducted a detailed review of the Joint Undertaking executed by RRDI, the Syndicate, and McCarthys in respect of these funds, as well as the background facts relating to these amounts. FMC has prepared a detailed memorandum setting out its analysis, a copy of which is attached as Appendix "K".

10.3 As a result of FMC's analysis, the sum of approximately $468,000 was found by FMC to be held in trust for the benefit of certain Unit Owners who received a common expense subsidy from RRDI under the Unit Owners' respective APSs, on the basis that the funds are deemed to be held in trust pursuant to the *Condominium Act*, or, in two instances, for the benefit of Unit Owners who received a common expense subsidy pursuant to a form of sale leaseback transaction that explicitly provides for such funds to be set aside in trust for the benefit of those Unit Owners. In addition, the sum of approximately $212,000 was determined, as reported in the Second Report, to be held in trust for the benefit of Unit Owners. The balance of the funds, totaling approximately $977,000, was determined by FMC to be held for RRDI.

10.4 Upon receiving this analysis, the Receiver met with Miller Thomson in its capacity as Representative Counsel and as legal counsel for the Ad Hoc Committee of Unit Owners

on October 23, 2009, and provided Representative Counsel with a preliminary report on the conclusions of FMC. On November 5, 2009, a copy of the FMC memorandum detailing its analysis was provided to Miller Thomson. Subsequent meetings and discussions have been held with Miller Thomson, and as a result of those discussions, and discussions with McCarthys, who is a party to the Joint Undertaking, the Receiver has proposed to settle the claims to the funds on the basis that the following amounts are held in trust for Unit Owners to be remitted for the intended purpose, as described below:

(a) $430,471.58 with respect to common area expenses for 23 units, to be remitted to Muskoka Standard Condominium Corporation No. 62 for payment of common area expenses on behalf of certain Unit Owners, to be applied against the accounts of the relevant Unit Owners;

(b) $210,000.00 to be remitted to the Receiver to honour those Indulgence Cards for certain Unit Owners for which those funds had been set aside by McCarthys from proceeds of sale;

(c) $211,880.32 to be remitted to Miller Thomson LLP in trust, for payment of realty taxes on behalf of Unit Owners in accordance with their entitlements;

(d) in respect of two Units that are subject to certain modified sale leaseback transactions, as described in the memo of FMC attached at Appendix "K" to the Eighth Report:

  (i) $37,751.32 on account of common area expenses;

  (ii) $20,813.62 on account of realty taxes;

  (iii) $5,670.00 on account of telecommunications services; and

  (iv) $2,812.95 on account of entry fees to the Red Leaves Resort Association;

to be remitted to the Receiver and to be applied in accordance with the provisions of the sale leaseback transactions in respect of those two Units (other than entry fees to the Red Leaves Resort Association, which shall be held by the Receiver pending further direction of the Court);

(e) $3,263.58 for payment of entry fees to the Red Leaves Resort Association on behalf of certain Unit Owners, to be held by the Receiver pending further direction of the Court; and

(f) $4,704.00 to be remitted to Marriott for payment of Marriott Gold membership fees on behalf of certain Unit Owners.

10.5 The monies are to be transferred by McCarthys to the Receiver, and paid by the Receiver towards their intended purposes (such as applied against a Unit Owners condominium fees owing to the condominium corporation). The balance of the funds, being $730,380.32, comprised of (a) $703,935.77 deducted from the proceeds of sale of certain Units payable to RRDI on closing to fund common area expenses payable under certain sale/leaseback transactions; and (b) $26,444.55 to reimburse RRDI for Resort to Resort fees paid by RRDI on behalf of Unit Owners, are to be distributed to the Receiver available for re-payment of the Receiver's Borrowings.

10.6 The Receiver has been advised by Representative Counsel that all Unit Owners concur with the proposed settlement with Unit Owners. All Unit Owners who are affected by the settlement (that is, those whose proceeds of sale are to be paid over to the Receiver as an Asset of RRDI) have been provided with notice of this motion for the approval of this proposed settlement by letter and by email and mail or courier, the form of which is attached as Appendix "L".

10.7 The Receiver requests an Order authorizing and directing the distribution of the funds held by McCarthys in accordance with the settlement proposed by the Receiver, as set out in the draft Order filed.

## *11.0 Claims Process for Outstanding Commission Payments*

11.1 Paragraph 9.5 of the Receiver's Second Report described the amount of $1,411,626 that has been held in trust by McCarthys on account of closing costs. This amount consists of funds to be used to pay brokerage commissions, as well as legal fees and disbursements, and the levy payable to the Law Society of Upper Canada (which has since been remitted to the Law Society by McCarthys as authorized by the Court on July 8, 2009).

11.2 At paragraph 9.11 of the Second Report, the Receiver advised the Court that it had determined that these amounts were considered to be held in trust for the parties to whom the closing costs were owing. The Second Report advised the Court that a portion of the funds would be transferred to the Receiver by McCarthys for payment of these obligations. This transfer was authorized by the Court by its Order dated July 8, 2009. The Receiver advised that it would review the claims of real estate agents and brokers to the payment of commissions, and review the amounts owing to McCarthys for their legal fees. On determination of these entitlements, the Receiver advised that it would remit the amounts owing to them from the funds transferred to the Receiver, and/or direct McCarthys to pay these amounts from the funds continued to be held by them. In the event that the funds were insufficient to pay all of the obligations determined to be owing on account of real estate commissions and fees to McCarthys, the amounts would be distributed on a *pro rata* basis.

11.3 Since the date of the Second Report, the Receiver has undertaken a review of the records of RRDI in an attempt to locate the documents that would establish the entitlements of agents and brokers to real estate commissions, such as brokerage agreements, invoices, and the like. Unfortunately, the records of RRDI are not complete in this regard, and the

Receiver has had difficulty in establishing the amounts owing for commissions. As a result, the Receiver has concluded that it is necessary to establish a claims process by way of Court order that will call for claims from agents and brokers, with appropriate supporting documentation, in order that the claims can be determined. A claims bar date of February 28, 2010 will be established for such claims. A draft order setting out the form of proposed Commission Claims Process is filed as a Schedule to the Notice of Motion filed herein. The Receiver seeks approval of the proposed form of Order. Since RRDI has no interest in this trust fund, it is proposed that the costs of determining individual entitlements and arranging distribution shall be costs payable from the funds.

## *12.0 Fees of Miller Thomson LLP*

12.1 The Amended August 18 Order authorized the Receiver to pay the reasonable fees and disbursements of Miller Thomson in its capacity as legal counsel for the Ad Hoc Committee of Unit Owners, in two amounts: (a) in an amount of $75,000 in respect of matters relating to the Unit Owner Settlement Agreements and the Unit Purchaser Settlement Agreements, and other matters arising in respect of the Amended August 18 Order; and (c) $25,000 in respect of pursuing trust claims that may be raised by Unit Owners to the funds held by McCarthys. Furthermore, by the Representative Counsel Order, the Court authorized the payment of fees to Miller Thomson of up to $50,000, in its capacity as Representative Counsel.

12.2 Miller Thomson, in its capacity as legal counsel for the Ad Hoc Committee of Unit Owners, has incurred, to date, the amount of $116,211.47 in respect of the matters referenced in 12.1(a), and the amount of $89,889.31 in its capacity as Representative Counsel, as disclosed in copies of accounts provided to the Receiver dated September 9, 2009. These accounts exceed the amount that the Receiver has been authorized to pay, as the contested RRMSI receivership application added significantly to the costs. The Receiver has reviewed the accounts and engaged in discussions with Miller Thomson and the Ad Hoc Committee of Unit-Owners, and has determined that the additional amounts charged are reasonable in the circumstances. The Receiver therefore seeks authorization from the Court to pay the additional fees and disbursements incurred by Miller Thomson as set out in its accounts provided to the Receiver, to be paid out of the additional Receiver's Borrowings requested herein, and provide authority for an additional $75,000 of fees for their ongoing involvement in the receivership.

## *13.0 Status of Other Matters*

*U.S. Litigation*

13.1 By Complaint dated September 10, 2009, Ken Fowler Enterprises Limited, Ken Fowler (N.Y.), Inc., Ken Fowler Columbus, Inc., Ken Fowler Texas, Inc., and Peter Fowler Enterprises Ltd. (the "Plaintiffs") commenced legal proceedings (the "U.S. Complaint") in the Supreme Court of the State of New York against WestLB AG, Toronto Branch, CIT Financial Ltd., and Raiffeisen Zentral Bank Osterreich AG (the "Defendants"). The Plaintiffs seek that the U.S. Court relieve them from any liability under certain guarantees of RRDI's indebtedness which were made at the time of the original loan, vacate their new guarantees and related agreements, and award them damages, as a result of the alleged conduct of the Defendants prior to the receivership application. The Plaintiffs assert claims for, among other things, (a) a purported violation of an alleged duty to negotiate in good faith based on an alleged "binding preliminary loan commitment"; and (b) promissory estoppel based on an alleged oral representation made by the Defendants not to commence receivership proceedings with respect to RRDI.

13.2 While the Receiver would not normally involve itself in litigation over guarantees of the liabilities of RRDI, the Receiver was concerned that allegations were being made in the U.S. Complaint that had not been raised in the hearings for the appointment of the Receiver by this Court and that damages were being sought, apparently on the basis that losses were suffered by RRDI as a result of the appointment of the Receiver by this Court.

13.3 The Receiver has communicated with legal counsel for the Plaintiffs in the U.S. Complaint and has received confirmation that the Plaintiffs are not seeking to pursue any alleged damage claims of RRDI, which would be subject to these receivership proceedings. However, the Plaintiffs have asked the Receiver to participate in claims or consent to derivative claims being advanced against the Defendants arising from the exercise of this Court's authority to appoint the Receiver. The Receiver has declined. Attached as Appendix "M" are copies of the correspondence to and from legal counsel for the Receiver and legal counsel for the Plaintiffs. The Receiver does not propose to communicate further with Plaintiffs' legal counsel. The Receiver understands that legal counsel for the Defendants has brought a motion to dismiss the U.S. Complaint as having no basis under New York law. The Plaintiffs have filed response to the motion to dismiss. The Defendants reply is due on December 18, 2009. A hearing of the matter is to be scheduled.

*Trademarks*

13.4 RRDI is the owner of the "Red Leaves" trademarks, which brand is used in connection with the Assets, as well as the other adjoining properties that remain the property of affiliates of RRDI.

13.5 The Receiver intends to include these trademarks with the other Assets of RRDI in the Institutional Sales Process. By letter dated October 23, 2009, legal counsel to the Receiver wrote to KFE's legal counsel and requested information regarding the basis on which these trademarks were being used by KFE or any RRDI affiliates, and if there were written licence agreements, to provide copies thereof. Alternatively, the Receiver's legal counsel asked for confirmation of whether an oral licence arrangement existed. The letter

also advised that the Receiver would be prepared to consider formal arrangements for the continued use of the trademarks. Attached hereto as Appendix "S" is a copy of the letter of October 23, 2009.

13.6 In response, legal counsel for KFE advised that the trademarks were subject to an oral license arrangement, and suggested that the Receiver grant the relevant entities with a royalty-free licence on reasonable terms that could be terminated at anytime on 180 days' prior written notice, in order to facilitate a sale of the trademarks. The Receiver therefore proposes that it be authorized, in order to facilitate the sale of the trademarks, to repudiate all agreements or arrangements, whether oral or otherwise, for the use of the trademarks, and formalize arrangements with KFE and identified RRDI affiliates for a limited license use of the trademarks as described above.

*The Receiver's Use of the RRDI/RRCI Construction Office*

13.7 In connection with the development and construction of the Hotel, RRDI and RRCI maintained an office (the "Construction Office") situated in a converted residence located on the property of Wallace Marine Ltd. ("Wallace Marine"), an RRDI related entity, which is adjacent to RRDI's property. Substantially all of the books and records of RRDI, RRCI and RRMSI were maintained in the Construction Office. In addition, the Receiver understands that certain of the books and records of those RRDI related entities that are not in receivership are also maintained at the Construction Office. Since the commencement of the receivership, the Receiver has utilized certain areas of the Construction Office, as have, from time to time, representatives of certain RRDI related entities that are not in receivership. The Receiver was never made aware of any

arrangements between RRDI and Wallace Marine on account of occupation rent for the Construction Office and does not believe that any such arrangements exist. Notwithstanding that no such rental arrangements were in place, on October 14, 2009, representatives of KFE provided the Receiver with an invoice for occupation rent at the Construction Office from the date of the Receiver's appointment. In response to the Receiver's rejection of this invoice, KFE withdrew the invoice and advised that it would provide the Receiver with a "proposal" in respect of occupation rent. Such a proposal was received by the Receiver on November 13, 2009 via email. The Receiver's response is described in Paragraph 13.9, below.

13.8 In consideration of the above, and on the basis that construction work at the Hotel is now substantially complete, the Receiver determined that it would commence arrangements such that it would no longer require the use of any space at the Construction Office. Accordingly, the Receiver orally advised representatives of KFE of its intention on or about November 1, 2009 to vacate the Construction Office, and commenced organizing, indexing and boxing up those records which belong to RRDI, RRCI and RRMSI in prudent preparation to relocate them. In response to the Receiver's actions, KFE undertook to engage a private security force to guard and patrol the Construction Office on a "24/7" basis, so as to ensure that the Receiver did not remove any books, records or assets which are not the property of RRDI. KFE's position on this matter was confirmed to the Receiver in an email received on November 5, 2009. On November 6, 2009, the Receiver responded to this email and, among other things, indicated that in the Receiver's view, such actions were completely unnecessary. A copy of the email from KFE and the response from the Receiver is attached as Appendix "N" to this Eighth Report.

13.9 In response to the proposal received on November 13, 2009, the Receiver engaged in direct discussions with representatives of KFE and demonstrated, by way of analysis, that the rental/usage costs claimed were offset by amounts paid by the Receiver during the receivership in respect of utilities and other costs associated with the Construction Office. KFE has not formally responded to the analysis provided by the Receiver and accordingly, by its silence on this matter, the Receiver assumed that KFE has accepted its analysis. Furthermore, in discussions with a representative of KFE, this representative did acknowledge to the Receiver the offsetting charges.

13.10 The Receiver has made arrangements to relocate its "office" and those books and records which belong to the Receiver from the Construction Office to a unit in the Hotel. The relocation was substantially completed on or around December 1, 2009.

*Additional RRDI Lands*

13.11 The Receiver has determined through its review of the records of RRDI that two additional parcels of land are owned by RRDI. The legal description of these properties was not included in the legal description attached as Schedule "A" to the Appointment Order. These two parcels are not contiguous to the main Hotel property. One is near the golf course lands and is used for Hotel signage. The other is located on the east side of Paignton House Road, leading into the Hotel property.

13.12 The Receiver is of the view that it is appropriate to amend Schedule "A" to the Appointment Order in order to add the legal description for these two properties as follows:

*Signage Lands*

PIN 48142-0383(LT)

PART OF LOT 25, CONCESSION 11, MEDORA, BEING PART 7 ON PLAN 35R3373; S/T EASEMENT IN FAVOUR OF MUSKOKA CONDOMIMIUM PLAN NO. 62 AS IN MT63413; MUSKOKA LAKES; THE DISTRICT MUNICIPALITY OF MUSKOKA

*Additional Lands Located on the E/S of Paignton House Road*

PIN 48142-0384(LT)

PART OF LOT 25, CONCESSION 11, MEDORA, BEING PART 8 ON PLAN 35R3373, PART OF THE ROAD ALLOWANCE BETWEEN LOTS 25 AND 26, CONCESSION 11, MEDORA (CLOSED BY BY-LAW 72-34, REGISTERED AS INSTRUMENT NO. DM105704), BEING PARTS 6 AND 7 ON PLAN RD1906; MUSKOKA LAKES, THE DISTRICT MUNICIPALITY OF MUSKOKA

*Stakeholder Communications*

13.13 Since the commencement of the receivership, the Receiver has met extensively with RRDI's various stakeholders including WestLB and the other members of the Syndicate, Fortress, Marriott Hotels, Unit Owners, Representative Counsel to the Ad Hoc Committee of Unit Owners, the construction lien claimants, representatives of KFE and other KFE related entities, and others. In particular, the Receiver has:

- Engaged in continuous communication with the Syndicate and Fortress with respect to matters regarding the receivership and has held, at a minimum, monthly meetings or conference calls with these parties to provide updates on receivership matters as described in this Eighth Report and previous reports. In September 2009, the Receiver conducted a series of meetings with the Syndicate and Fortress, over a two-day period, at the Hotel to discuss the status of the receivership, the Receiver's progress to date and the go-forward strategy in respect of the receivership.

- Engaged in weekly correspondence with Marriott Hotel's property-level executive team with respect to operational and financial matters, as well as construction-related matters, particularly during the period of active construction at the outset of the receivership. In addition, the Receiver has had regular discussions, both in person and via conference calls, with Marriott Hotel's corporate leadership team in respect of the New HMA and numerous other matters, including the 2010 Budget and cost saving initiatives.

- Attended at a number of meetings with members of the Ad Hoc Committee of Unit Owners and Representative Counsel to discuss the Hotel, the New and Current RPMAs, the Settlement Agreements, certain Purchaser Incentives and monies held by McCarthys among a number of other issues. The Receiver has also attended at four "town hall" style meetings with Unit Owners during which the Receiver provided Unit Owners with information regarding the Hotel and the receivership.

- Held more than six conference calls and/or meetings with the Receiver and its legal counsel and the construction lien claimants and their counsel to agree upon a Construction Lien Claims Process that is fair and equitable to all parties and provide those parties with certain information required to be provided pursuant to the CLA.

- Communicated and/or met with representatives of KFE and its legal counsel with respect to matters in connection with the receivership.

## *14.0 Name Change*

14.1 As noted above, McIntosh & Morawetz Inc. changed its name to Alvarez & Marsal Canada Inc., by Articles of Amendment filed on September 17, 2009. As such, the Receiver seeks an order that all references to McIntosh & Morawetz Inc. in all prior Court Orders, Reports, and other material filed with the Court shall be taken to be a reference to Alvarez & Marsal Canada Inc.

## *15.0 Conclusions and Recommendations*

15.1 As has been outlined in detail in this Eighth Report, the Receiver has developed a timetable and a Protocol for undertaking an Institutional Sales Process, which is expected to be completed in May 2010. The Receiver has completed Settlement Agreements with almost all Unit Owners, and has determined, for the reasons discussed, that potential purchasers of the Hotel should have an opportunity to dialogue with Existing Unit Purchasers, if a purchaser should so choose. The Receiver is ready to close the transactions necessary to transition the management of the Hotel to the New HMA, and the operation of the Rental Pool to the New RPMA. However, despite numerous budget discussions with Marriott Hotels and efforts to reduce costs, there have been a number of complexities and costs to the receivership of RRDI, which have led to the need for additional funding to continue the receivership through to the end of 2010, so that the Institutional Sales Process, the Construction Lien Claims Process, and other matters still outstanding in the receivership of RRDI can be completed.

15.2 The Receiver therefore respectfully requests that this Honourable Court grant the relief sought by the Receiver as follows:

(a) authorize the Second Tranche Receiver's Borrowings in the amount of $7.5 million;

(b) authorize and approve the Institutional Sales Process Protocol recommended by the Receiver for the conduct by the Receiver and Colliers of the Institutional Sales Process;

(c) approve the distribution of certain funds held by McCarthys in accordance with the Receiver's recommendation set out herein;

(d) approve the Commission Claims Process recommended by the Receiver;

(e) authorize the Receiver to provide additional funding to pay the additional legal fees of Miller Thomson in its capacity as legal counsel for the Ad Hoc Committee of Unit Owners and as Representative Counsel on the terms set out in the draft Court Order filed;

(f) amend the Appointment Order to specifically include the legal description of two additional parcels of land owned by RRDI;

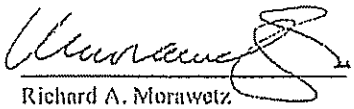
(h) approve the Receiver's activities to date in its capacities as Receiver of RRDI and RRMSI Receiver, as described in this Report; and

(i) as otherwise provided in the draft order attached as Schedule "A" to the Notice of Motion dated December 14, 2009.

* * *

All of which is respectfully submitted, this 14th day of December, 2009

ALVAREZ & MARSAL CANADA ULC &
ALVAREZ & MARSAL CANADA INC. IN THEIR CAPACITIES AS
CONSTRUCTION LIEN ACT TRUSTEE AND RECEIVER AND MANAGER,
AND INTERIM RECEIVER, RESPECTIVELY, OF THE ASSETS OF
THE ROSSEAU RESORT DEVELOPMENTS INC. AND IN ITS CAPACITY AS
RECEIVER OF CERTAIN ASSETS OF THE ROSSEAU RESORT MANAGEMENT
SERVICES INC.

Per: 
Richard A. Morawetz

APPENDIX "C"

To: The Rosseau Resort Developments Inc., by Alvarez & Marsal Canada ULC, solely in its capacity as receiver and manager of the Assets of The Rosseau Resort Developments Inc., and not in its personal capacity (the "Receiver")
200 Bay Street, Suite 2900, P.O. Box 22, Toronto Ontario M5J 2J1

– 156

Dated the 25th day of March, 2010

Re: Rental Pool Management Agreement between the Receiver and the undersigned Owner regarding The Rosseau – a JW Marriott Resort (the "RPMA")

## NOTICE OF DISPUTE

The undersigned Owner here notifies you, pursuant to Section 9.1 of the RPMA, of a dispute, controversy or disagreement under the RPMA and matters related thereto (the "Dispute") and, subject to an election by the Receiver to have the Dispute resolved by Notice of Motion to the Ontario Superior Court of Justice, invokes the arbitration provisions of Section 9.1 of the RPMA. Failing such election by the Receiver, the undersigned Owner hereby notifies you of its election to submit the Dispute to arbitration in accordance with Section 9.2(1) of the RPMA.

The nature of the Dispute is:

1. the interpretation of the calculation of Adjusted Gross Revenue under Section 3.2(2) of the RPMA and in particular the deductions in computing Adjusted Gross Revenue under paragraph (f) and/or (n) or otherwise of Section 3.2(2) of certain expenses that are within the definition of Deductions under the Hotel Management Agreement as defined in the RPMA and that are also within the definition of common expenses under the declaration of the Resort Corporation as defined in the RPMA. Examples of such expenses that appear in both contexts are light, heat, power, routine maintenance and repairs but reference should be had to the complete definitions in the Hotel Management Agreement and the declaration of the Resort Corporation. Such expenses total in excess of $2,000,000.00 in the Pro Forma 2010 Draft Budget for the Resort Corporation prepared by the Receiver for the purposes on the one-day sale in August, 2009, and based on that number, the disputed amount for all unit owners under this Section 1 of this Notice of Dispute is approximately 30% thereof or $600,000.00.annually for all unit owners.

2. as a matter related thereto, and in particular with reference to Section 3.10 of he RPMA regarding the collection by the Receiver of common expenses under the declaration of the Resort Corporation, the determination of the entitlement to such common expense payments paid by the Resort Corporation on behalf of the Owner through the Resort Corporation to the Receiver under the Reciprocal Agreement between the Resort Corporation and the Receiver dated March 9, 2009 and specifically the entitlement thereto when such common expenses have already been paid by Marriott under the Hotel Management Agreement. The disputed amount under this Section 2 of this Notice of Dispute is up to the full amount of the common expenses collected under Section 3.10 of the RPMA by the Receiver and then paid under the Reciprocal Agreement to the Receiver i.e.

an additional disputed amount of up to approximately $2,000,000 annually for all unit owners.

Registered Owner

Suite 1325 GORDON JACOBS

ALVAREZ & MARSAL

Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900, P.O. Box 22
Toronto, ON M5J 2J1
Phone: 416.847.5200 Fax: 416.847.5201
www.alvarezandmarsal.com



April 6, 2010

**VIA REGULAR MAIL & E MAIL**

To Certain Unit Owners listed on Schedule A hereto

**Re: Notice of Dispute regarding Rental Pool Management Agreement and Reciprocal Agreement**

Dear Sir or Madam:

Alvarez & Marsal Canada ULC (the "Receiver") is in receipt of 63 Notices of Dispute (the "Notice(s)") pursuant to section 9.1 of the Rental Pool Management Agreement ("RPMA") issued by certain owners of Units of The Rosseau Resort ("Unit Owners"). One such Notice was issued by you or on your behalf.

The Receiver notes that such Notices were issued notwithstanding a stay of all rights and remedies that has been imposed by paragraph 9 of the Amended and Restated Appointment Order of the Ontario Superior Court of Justice (the "Court") issued June 2, 2009, as amended (the "Appointment Order"). Paragraph 9 of the Appointment Order provides that:

> "THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court..."

It is the Receiver's position that the issuance of the Notices by Unit Owners is subject to the stay. Paragraph 9.1 of the RPMA acknowledges that the dispute remedies thereunder are subject to the Appointment Order. The stay of proceedings does not foreclose the advancement of disputes, but provides a mechanism for Court supervision. It can be lifted by Court Order or consent of the Receiver. In any event, the RPMA permits the Receiver to elect to bring matters before the Court by way of motion rather than proceed by way of the contractual dispute mechanism provided by the RPMA.

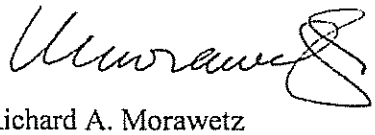
The Receiver is of the view that the issues and arguments raised by the Unit Owners in respect of the RPMA are without merit and are contrary to the plain and obvious meaning of that agreement.

The issues raised by Unit Owners require a resolution as soon as possible given the fact that the Receiver's sale process is currently underway. The Receiver plans to exercise its election under section 9.1 of the RPMA to bring a motion to the Court regarding the disputed interpretation of the RPMA raised by the Notices.

The Receiver and its legal counsel are in the process of preparing the Receiver's motion to the Court for advice and directions, and are planning to schedule an appointment with the Court in order to establish a protocol for service of the Receiver's motion on all Unit Owners, and obtain directions with respect to the conduct and timetable for the hearing of the motion.

Yours truly,

**ALVAREZ & MARSAL CANADA ULC**
**IN ITS CAPACITY AS RECEIVER AND MANAGER OF**
**THE ROSSEAU RESORT DEVELOPMENTS INC.**
**AND NOT IN ITS PERSONAL CAPACITY**



Per: Richard A. Morawetz
*Managing Director*

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APPENDIX "E"

April 30, 2010

**TO THOSE PARTIES THAT HAVE EXPRESSED INTEREST IN ACQUIRING CERTAIN OF THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC. ("RRDI")**

As you are aware, pursuant to an order of the Ontario Superior Court of Justice (the "Court") dated June 2, 2009, as amended, Alvarez & Marsal Canada ULC was appointed Receiver and Manager (the "Receiver") of all of the assets of RRDI.

Pursuant to an order of the Court dated July 8, 2009, the Receiver was authorized to, among other things, commence an institutional sales and marketing process in respect of RRDI's assets (the "Institutional Sales Process") and retain Colliers Macaulay Nicolls (Ontario) Inc. ("Colliers") as its broker in respect of the Institutional Sales Process.

Pursuant to an order of the Court dated December 21, 2009, the Court approved the Institutional Sales Process Protocol (the "Protocol") setting out the key terms, conditions and timelines in connection with the Institutional Sales Process. The Protocol expressly reserved the Receiver's right to extend or abridge any of the timelines described therein. All capitalized terms not defined herein shall have the meanings ascribed to them in the Protocol, a copy of which is attached for ease of reference.

As set out in the Protocol, the deadline for the submission of non-binding indicative offers by Pre-Qualified Bidders was 5:00 p.m. EST on March 31, 2010. On March 26, 2010, at the direction of the Receiver, Colliers advised Pre-Qualified Bidders that the deadline for submission of non-binding indicative offers was extended to May 17, 2010.

The Receiver determined that an extension was appropriate to, among other things, provide Pre-Qualified Bidders with a longer period of time to conduct due diligence and allow the Receiver and Pre-Qualified Bidders an opportunity to assess the dispute raised by certain of the existing owners of condominium units (the "Unit Owners") with respect to the interpretation of the flow of funds pursuant to the Rental Pool Management Agreement ("RPMA").

Information was provided in the electronic data room with respect to notices of dispute (the "Notices of Dispute") delivered to the Receiver by 63 of the Unit Owners in connection with the interpretation of the RPMA. The Receiver has responded to these Unit Owners, advising of its view that the language contained in the RPMA is clear and unambiguous. If the Unit Owners were ultimately successful in establishing their interpretation of the RPMA, there would be a negative impact on the expected cash flows available to the bidder that acquires the assets of RRDI, which in turn, could have an impact on the valuation ascribed to RRDI by Pre-Qualified Bidders when formulating their bids.

The Notices of Dispute and certain other unresolved matters have created some uncertainty in the ability of Pre-Qualified Bidders to formulate a bid, even by the extended deadline of May 17, 2010. As well, the Receiver has commenced discussions with the Ad Hoc Committee of Unit Owners, which may result in a settlement of the Notices of Dispute and the implementation of a modified rental pool management structure, the financial impact of which would need to be assessed by Pre-Qualified Bidders.

In order to be fair to the Pre-Qualified Bidders, maintain the integrity of the Institutional Sales Process and achieve the best result for all stakeholders, the Receiver has concluded, in consultation with its legal counsel and Colliers, that it is appropriate to suspend the Institutional Sales Process until further notice. Accordingly, Pre-Qualified Bidders are not required to submit non-binding indicative offers by May 17, 2010. In the circumstances, the Receiver will be suspending access by Pre-Qualified Bidders to the Electronic Data Room effective immediately.

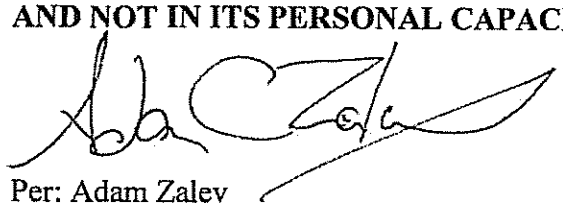
The Receiver intends to attend at Court as soon as possible, to seek advice and directions with respect to the suspension of the Institutional Sales Process, and the resolution of issues that would permit a sales process to continue in the future. A copy of the Receiver's Report to the Court in this regard will be available on the Receiver's website (www.alvarezandmarsal.com/rosseau) on or about May 13, 2010.

We appreciate the continued patience and perseverance of all Pre-Qualified Bidders. The Receiver will continue to respond to queries, as appropriate, and intends to be in contact with each Pre-Qualified Bidder over the course of the next several days.

In the interim, should you have any questions with respect to this matter, please contact the undersigned.

Yours very truly,

**ALVAREZ & MARSAL CANADA ULC**
**IN ITS CAPACITY AS RECEIVER AND MANAGER**
**OF THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.,**
**AND NOT IN ITS PERSONAL CAPACITY**



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