

# APPENDIX “A”

### *Glossary of Defined Terms for Receiver's Thirteenth Report*

<u><b>Term</b></u>	<u><b>Definition</b></u>
<b>A&amp;M</b>	Alvarez & Marsal Canada ULC
<b>Amended August 18 Order</b>	The Order of Madam Justice Pepall dated August 18, 2009, as amended August 20, 2009
<b>Appointment Order</b>	Amended and Restated Appointment Order issued June 2, 2009, as amended by Orders dated December 21, 2009 and April 15, 2010
<b>April 21 Order</b>	Order dated April 21, 2010, amending the scope of the RRCI/RRDI Reference to add this issue to the matters to be determined by Master Short
<b>Assets</b>	All the property, assets and undertakings of The Rosseau Resort Developments Inc.
<b>BIA</b>	<i>Bankruptcy and Insolvency Act</i> (Canada)
<b>Blakes</b>	Blake, Cassels & Graydon LLP
<b>CJA</b>	<i>Courts of Justice Act</i> (Ontario)
<b>CLA</b>	<i>Construction Lien Act</i> (Ontario)
<b>Company</b>	The Rosseau Resort Developments Inc.
<b>Construction Lien Claims</b>	Lien claims registered against title to the real property owned by RRDI pursuant to the CLA
<b>Construction Lien Claims Process</b>	The construction lien claims process set out in the Construction Lien Claims Process Order
<b>Construction Lien Claims Process Order</b>	Order of the Court dated July 24, 2009
<b>Construction Lien Trustee</b>	Alvarez & Marsal Canada ULC
<b>Contract Documents</b>	Formal construction contracts, letters of intent, or purchase orders issued to or entered into between RRDI and/or RRCI and the Lien Claimant
<b>Contractual Relationships</b>	The 59 different contractual relationships identified by the Receiver for the Lien Claimants
<b>Court</b>	Ontario Superior Court of Justice
<b>Determined Lien Claims</b>	Construction Lien Claims determined pursuant to the Notices of Determination and approved by the Court
<b>Eleventh Report</b>	The Receiver's Eleventh Report dated May 12, 2010
<b>Fortress</b>	Fortress Credit Corp.

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Fortress Charge</b>	A third mortgage registered in favour of Fortress Credit Corp. in the amount of \$40,000,000, as Instrument Number MT33625, on June 6, 2007 (Subsequently discharged)
<b>Hotel</b>	221 unit condominium hotel complex located on the property owned by RRDI situated along the north-west end of Lake Rosseau in Muskoka, Ontario
<b>Institutional Sales Process</b>	The sales and marketing process for all of the Assets of RRDI on an en bloc basis, as conducted by Colliers
<b>Interim Receiver</b>	Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz Inc.)
<b>Lien Claimants</b>	Those parties which filed Construction Lien Claims under the Construction Lien Claims Process Order dated July 24, 2009
<b>Marriott Hotels</b>	Marriott Hotels of Canada, Ltd.
<b>Notices of Determination</b>	Notices issued by the Construction Lien Trustee determining the amounts under the CLA for certain Construction Lien Claims filed by construction lien claimants under the Construction Lien Claims Process Order
<b>Project</b>	The development and construction of the Hotel and surrounding property, all of which is on the property owned by RRDI
<b>Receiver</b>	Collectively, the Interim Receiver and the Receiver and Manager
<b>Receiver and Manager</b>	Alvarez & Marsal Canada ULC in its capacity as receiver and manager
<b>Receiver's Borrowings</b>	Collectively, those receiver's borrowings authorized by the Appointment Order, including the First Tranche Receiver's Borrowings, Second Tranche Receiver's Borrowings and Third Tranche Receiver's Borrowings
<b>Reference Order</b>	Order dated October 14, 2009 referring the issue of whether each Lien Claimant was a contractor to a Master of the Court for determination as a preliminary issue under the Construction Lien Claims Process
<b>Ross Windows</b>	Parry Sound Glass Limited o/a Ross Windows
<b>RRCI</b>	Rock Ridge Contractors Inc.
<b>RRCI/RRDI Reference</b>	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

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>RRDI</b>	The Rosseau Resort Developments Inc.
<b>Service List</b>	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
<b>Sub-Projects</b>	The individual construction projects in respect of the Hotel, including (a) the Longview building and amenities; (b) the Paignton House building; (c) the Cabana and related amenities; (d) the water treatment plant; (e) the sewage treatment plant; (f) civil site servicing; and (g) other miscellaneous work
<b>Travelers</b>	Travelers Guarantee Company of Canada
<b>Travelers Charge</b>	A second mortgage registered on title in favour of Travelers, in the amount of \$22,500,000, as Instrument Number MT9970 on March 6, 2007
<b>Twelfth Report</b>	The Receiver's Twelfth Report dated November 5, 2010
<b>Unit Owners</b>	Current owners of Units at the Hotel
<b>WestLB Charge</b>	The first priority mortgage registered on title in favour of WestLB, in the amount of \$125,000,000, as both Instrument Number MT29969 on March 6, 2007 and as Instrument Number MT63504 on March 9, 2009

# **APPENDIX “B”**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE

)

FRIDAY, THE 24<sup>TH</sup> DAY

)

MR. JUSTICE CAMPBELL

)

OF JULY, 2009

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, AS AMENDED, AND SECTION 68 OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, C. C. 30, AS AMENDED



WESTLB AG, TORONTO BRANCH

Applicant

- and -

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**CONSTRUCTION LIEN CLAIMS PROCESS ORDER**

THIS MOTION, made by Alvarez & Marsal Canada ULC ("A&M"), in its capacity as Court-appointed receiver and manager pursuant to section 101 of the *Courts of Justice Act* (the "CJA") and trustee and receiver and manager under the *Construction Lien Act* (Ontario) (the "CLA"), and McIntosh & Morawetz Inc., in its capacity as interim receiver (the "Interim Receiver") pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, (jointly and collectively, the "Receiver") of the undertaking, property and assets, including the Property (as

defined below) of The Rosseau Resort Developments Inc. ("RRDI"), for, *inter alia*, approval of a construction lien claims process, was heard this day at 330 University Avenue, Toronto, Ontario.

WHEREAS pursuant to the Order of the Honourable Madam Justice Pepall dated May 22, 2009, A&M was appointed as trustee pursuant to section 68(1) of the CLA and McIntosh & Morawetz Inc. was appointed Interim Receiver;

AND WHEREAS pursuant to the Amended and Restated Appointment Order of the Honourable Madam Justice Pepall dated June 2, 2009, A&M was appointed receiver and manager pursuant to section 101 of the CJA and the CLA;

AND WHEREAS the Receiver has not adopted or affirmed any contracts or agreements of RRDI, including any contracts with any party (each, a "Lien Claimant") who is entitled to assert a claim for lien under the CLA in respect of the lands and premises legally described in **Schedule "A"** hereto and the condominium project under construction thereon (the "Property") for services and materials provided prior to May 22, 2009 (each, a "Claim");

AND WHEREAS the Receiver has entered into new contracts for the provision of services and materials with respect to the Property after May 22, 2009;

AND WHEREAS the Receiver seeks the approval of the process described in the Second Report of the Receiver dated July 3, 2009 (the "Second Report") and described herein for the administration of any such Claims (the "Construction Lien Claims Process");

ON READING the Second Report; filed; and on hearing the submissions of counsel for WestLB AG, Toronto Branch ("WestLB") and the Receiver, Fortress Investment Group ("Fortress"); counsel for the Debtor; independent counsel for the Receiver; counsel for Marriott Hotels of Canada Ltd. no one else appearing.

### SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

### CLAIMS PROCESS

2. THIS COURT ORDERS AND DECLARES that the Construction Lien Claims Process is hereby approved and is the exclusive process by which all Claims shall be determined, and all Claims shall attorn to the Construction Lien Claims Process.
3. THIS COURT ORDERS that the Receiver is hereby authorized and directed to implement and administer the Construction Lien Claims Process, including the acceptance, revision, disallowance and/or settlement of any Claims by any Lien Claimant, and the Receiver may take any steps which it believes are incidental or necessary for the implementation of the Construction Lien Claims Process.
4. THIS COURT ORDERS AND DIRECTS that all Claims shall be determined and administered by the Receiver under the supervision of this Court pursuant to the Construction Lien Claims Process and any such determination or disposition of any Claim shall have the same force and effect as if made by a court of competent jurisdiction pursuant to the CLA. The Receiver may retain any consultant or assistant as it may require to assist in the review and determination of any Claim.
5. THIS COURT ORDERS AND DECLARES that, for the purposes of the CLA, all contracts and subcontracts for the provision of services and materials with respect to the Property prior to May 22, 2009 are deemed to have been substantially performed, completed or abandoned (as the case may be) on the earlier of date(s) so determined pursuant to the provisions of the CLA and May 22, 2009.
6. THIS COURT ORDERS AND DIRECTS that in order to be properly filed with the Receiver for purposes of the Construction Lien Claims Process, a Claim, including any sheltered claim for lien, must have been preserved and perfected in accordance with the provisions of the CLA (a "Lien Action") and shall have been served upon the Receiver and all named defendants to such Lien Action.
7. THIS COURT ORDERS AND DIRECTS that in filing a Claim with the Receiver, all Lien Claimants shall include:

- (a) a copy of the contract or subcontract including any change orders, amendments, purchase orders, or other related documents on which such Claim is asserted;
- (b) the names of the parties to the contract or subcontract;
- (c) the contract price and a statement of account, including the dates and amounts of payments received;
- (d) a copy of any labour and material payment bond posted by a subcontractor with a contractor or by a subcontractor with a subcontractor; and
- (e) any other documents or information as the Receiver may reasonably request for the purpose of assessing and determining any Claims in accordance with paragraph 3 of this Order.

#### **NO DEFAULT PROCEEDINGS OR DEFENCES**

8. THIS COURT ORDERS that no default or enforcement proceedings shall be commenced against any defendant in any Lien Action unless authorized by further Order of this Court.

9. THIS COURT ORDERS that the requirement for the Receiver, RRDI, WestLB, Fortress, or any defendant in any Lien Action to file a statement of defence is hereby dispensed with subject to any further Order of this Court.

#### **DETERMINATION OF CLAIMS**

10. THIS COURT ORDERS that the Receiver shall accept, revise and/or disallow a Claim as set out in a Lien Claimant's Statement of Claim by delivering a notice of determination including the reasons for such determination (a "Notice of Determination"), and all documentation, if any, referred to in the notice of determination to such Lien Claimant on or before October 15, 2009, and the Receiver shall post each Notice of Determination only, without any supporting documentation, on its website immediately after delivery to such Lien Claimant and in any event on or before October 15, 2009. Any Lien Claimant who files a Notice of Dispute with respect to

a Notice of Determination of the Claim of another Lien Claimant may request, and the Receiver shall provide, any documentation referred to in such Notice of Determination.

#### **DISPUTE NOTICE AND APPEALS**

11. THIS COURT ORDERS that a Lien Claimant may appeal the acceptance, revision and/or disallowance (as the case may be) of any Claim as set out in a Notice of Determination by delivering a Dispute Notice to the Receiver substantially in the form attached to this Order as **Schedule "B"** ("Dispute Notice"), within 30 days of the posting of such Notice of Determination by the Receiver on its website. Any Lien Claimant who does not deliver a Dispute Notice within 30 days of such posting shall be deemed to have accepted the Receiver's determination as set out in the Notice of Determination, which shall be final and binding, and that portion, or the whole, of the Claim so disallowed (as the case may be), shall be forever barred and extinguished pursuant to this Order.

12. THIS COURT ORDERS AND DIRECTS that any appeal of a Notice of Determination as set out in a Dispute Notice shall be referred to a claims officer (with construction lien expertise), as appointed by further order of this Court or by reference by order of this Court to a Construction Lien Master or Case Management Master. Any appeal of a Notice of Determination shall be conducted as a hearing *de novo* and any appeal (or motion to oppose confirmation of a report), of a claims officer, Construction Lien Master or Case Management Master, shall be heard by this Court on a timetable agreed to by the parties to that proceeding and approved by this Court and shall be final and binding on all parties with no further appeal thereof.

#### **CLAIMS BAR PROVISIONS**

13. THIS COURT ORDERS that any Claim:

- (i) which is not preserved and perfected pursuant to the provisions of the CLA and served in accordance with paragraph 6 of this Order with all accompanying documentation as required by paragraph 7 hereof; or

- (ii) for which a Dispute Notice is not delivered by a Lien Claimant disputing a Notice of Determination with respect to its Claim to the Receiver within 30 days of the posting of a Notice of Determination by the Receiver;

shall be forever barred and extinguished and such Lien Claimant shall be forever estopped and enjoined from asserting or enforcing any further Claims against the Property, RRDI, WestLB, Fortress or the Receiver, and such Lien Claimant shall not be entitled to receive further notice of these proceedings, and in any event, all claims of any nature against the Receiver, WestLB and Fortress are hereby forever barred and extinguished.

14. THIS COURT ORDERS that nothing in this Order shall bar or extinguish:

- (i) trust claims under the CLA, against any party other than the Receiver, WestLB and Fortress, or against the Property or proceeds of sale of the Property subsequent in priority to the Receiver, WestLB and Fortress, and RRDI, as permitted by further Order of this Court;
- (ii) any claims in contract against any party, other than the Receiver, WestLB and Fortress, and subject to further Order of this Court, RRDI; and
- (iii) any Claim in its entirety or part thereof which has been accepted by the Receiver.

#### NOTICES AND COMMUNICATION

15. THIS COURT ORDERS that, except as otherwise provided herein, the Receiver may deliver any notice or other communication to be given under this Order to Lien Claimants or other interested parties by forwarding true copies thereof by ordinary mail, courier, personal delivery, facsimile or e-mail to such Lien Claimants or parties at the address last shown on the books and records of the Debtor, and that any such service or notice by ordinary mail, courier, personal delivery, facsimile or e-mail shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail on the third business day after mailing within Ontario, the fifth business day after mailing within Canada, and the tenth business day after mailing internationally.

16. THIS COURT ORDERS that any notice or other communication to be given under this Order by a Lien Claimant to the Receiver shall be in writing in substantially the form, if any, provided for in this Order and will be effective only if delivered by registered mail, courier, personal delivery, e-mail or facsimile transmission addressed to:

**Alvarez & Marsal Canada ULC** as  
Court-Appointed Receiver of the  
Rosseau Resort Developments Inc.  
**Attention: Greg Karpel**  
Royal Bank Plaza, Suite 2000  
Toronto, ON M5J 2J1  
Tel: 416 -847-5170

Fax: 416-847- 5201  
Email: [gkarpel@alvarezandmarsal.com](mailto:gkarpel@alvarezandmarsal.com)

- with a copy to:

**Blake, Cassels & Graydon LLP**  
Barristers & Solicitors  
**Attention: Michael McGraw**  
199 Bay Street  
Suite 2800, Commerce Court West  
Toronto ON M5L 1A9  
Fax: (416) 863-2653  
Email: [michael.mcgraw@blakes.com](mailto:michael.mcgraw@blakes.com)

-and a copy to:

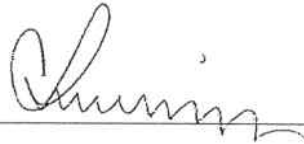
**Fraser Milner Casgrain LLP**  
**Attention: Jane Dietrich**  
1 First Canadian Place  
100 King Street West  
Toronto, ON M5X 1B2  
Fax: 416-863-4592  
Email: [jane.dietrich@fmc-law.com](mailto:jane.dietrich@fmc-law.com)

#### **AID AND ASSISTANCE OF OTHER COURTS**

17. THIS COURT HEREBY REQUESTS the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the

Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

18. THIS COURT ORDERS that, notwithstanding the terms of this Order, any party may apply to this Court from time to time for direction with respect to the Construction Lien Claims Process and/or such further order or orders as this Court may consider necessary or desirable to amend, supplement or replace this Order, including, but not limited to, any order for the delivery of information pursuant to section 39 of the CLA and the process for determination of holdback and priorities in distribution of any proceeds of sale.



Christina Irwin  
Registrar, Superior Court of Justice

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 24 2009

PER / PAR:



## SCHEDULE "A"

## LEGAL DESCRIPTION OF THE LANDS AND PREMISES

## SCHEDULE "B"

## Dispute Notice of The Rosseau Resort Developments, Inc. ("RRDI")

Defined terms not defined within this Dispute Notice form have the meaning ascribed thereto in the Construction Lien Claims Process Order dated July [●], 2009. Pursuant to paragraph 12 of the Construction Lien Claims Process Order, we hereby give you notice of our intention to dispute the Notice of Determination bearing Reference Number \_\_\_\_\_ and dated \_\_\_\_\_ issued by Alvarez & Marsal Canada ULC as Receiver of RRDI in respect of our Claim.

Name of Creditor: \_\_\_\_\_

Reasons for Dispute (attach additional sheet and copies of all supporting documentation, if necessary):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Signature of Individual/Authorized Signing Officer: \_\_\_\_\_

Date: \_\_\_\_\_

(Please print name) \_\_\_\_\_

Telephone Number: (    ) \_\_\_\_\_ Facsimile Number: (    ) \_\_\_\_\_

Full Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY REGISTERED MAIL, PERSONAL SERVICE, E-MAIL, FACSIMILE OR COURIER TO THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED NO LATER THAN 30 DAYS AFTER RECEIPT OF THE NOTICE OF DETERMINATION TO:**

Alvarez & Marsal Canada ULC as  
Court-Appointed Receiver of the  
Rosseau Resort Developments Inc.

**Attention: Greg Karpel**

Royal Bank Plaza, Suite 2000

Toronto, ON M5J 2J1

Tel: 416-847-5170

Fax: 416-847- 5201

Email: [gkarpel@alvarezandmarsal.com](mailto:gkarpel@alvarezandmarsal.com)

- with a copy to:

**Blake, Cassels & Graydon LLP**

Barristers & Solicitors

**Attention: Michael McGraw**

199 Bay Street

Suite 2800, Commerce Court West

Toronto ON M5L 1A9

Fax: (416) 863-2653

Email: [michael.mcgraw@blakes.com](mailto:michael.mcgraw@blakes.com)

-and a copy to:

**Fraser Milner Casgrain LLP**

**Attention: Jane Dietrich**

1 First Canadian Place

100 King Street West

Toronto, ON M5X 1B2

Tel: : 416-863-4467

Fax: 416-863-4592

Email: [jane.dietrich@fmc-law.com](mailto:jane.dietrich@fmc-law.com)

WESTLB AG, TORONTO BRANCH

V.

THE ROSSEAU RESORT DEVELOPMENTS INC.

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

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**CONSTRUCTION LIEN CLAIMS  
PROCESS ORDER**

**BLAKE, CASSELS & GRAYDON LLP**  
Box 25, Commerce Court West  
Toronto, Ontario M5L 1A9

**Pamela Huff** LSUC#: 27344V  
Tel: (416) 863-2958

**Katherine McEachern** LSUC#: 38345M  
Tel: (416) 863-2566  
Fax: (416) 863-2653

Lawyers for WestLB, AG, Toronto Branch  
and McIntosh & Morawetz LLP and Alvarez  
& Marsal ULC Canada, in their respective  
capacities as Court-appointed interim  
receiver, trustee, receiver and manager

# APPENDIX “C”

**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**

**SEVENTH REPORT OF  
ALVAREZ & MARSAL CANADA ULC,  
AS RECEIVER AND MANAGER AND CONSTRUCTION LIEN ACT TRUSTEE AND  
ALVAREZ & MARSAL CANADA INC., AS INTERIM RECEIVER  
OF THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.**

**OCTOBER 7, 2009**

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## ***1.0 Introduction***

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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 Alvarez & Marsal Canada Inc.<sup>1</sup> 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* (“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* (“CJA”) and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager are hereinafter collectively defined as the “Receiver”).

1.2. On July 24, 2009, an order was made by the Honourable Mr. Justice Campbell which established a claims process for construction lien claims (the “Claims Process Order”). Capitalized terms in this report (the “Seventh Report”) shall have meanings ascribed to them in the Claims Process Order, a copy of which is attached as Appendix A, unless otherwise defined herein.

1.3. The purpose of the Seventh Report is to provide information with respect to the Receiver’s request for an Order:

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<sup>1</sup> On September 17, 2009, articles of amendment were issued by Industry Canada changing the name of McIntosh & Morawetz Inc. to Alvarez & Marsal Canada Inc.

- (a) directing a reference to a Construction Lien Master in Toronto for a determination of, among other things, the relationship between RRDI and those Lien Claimants who have valid Lien Actions in this matter;
- (b) amending the date in the Claims Process Order by which a Notice of Determination shall be delivered by the Receiver and posted on the Receiver's website to a date to be determined by this Honourable Court; and
- (c) validating service of a Claim (i) upon any party to a Lien Action in accordance with section 87 of the CLA; and (ii) if a copy is served on the Receiver in the case of a Claim against the Muskoka Standard Condominium Corporation No. 62, pursuant to paragraph 6 of the Claims Process Order.

1.4. The Receiver intends to provide this Honourable Court with a more complete update in respect of these proceedings on an upcoming motion.

## ***2.0 Terms of Reference***

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2.1. In preparing this Seventh Report, the Receiver has relied on unaudited financial information prepared by the Company's management and the Company's consultants and advisors, the Company's books and records and discussions with its management. 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 Seventh Report is based on management's 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 Seventh Report, or relied upon by the Receiver in preparing the Seventh Report. All references to dollar figures contained in the Seventh Report are in Canadian currency unless otherwise specified.

### ***3.0 Relationship Between RRDI and the Lien Claimants***

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3.1. Certain Lien Claimants have requested information with respect to the relationship between RRDI, Rock Ridge Contractors Inc. ("RRCI") and the Lien Claimants. The Receiver understands that the primary purpose for which certain Lien Claimants have requested this information is so that they may attempt to determine whether the Lien Claimants had a direct contractor relationship with RRDI or whether RRCI had a contractor relationship with RRDI (and therefore the Lien Claimants were subcontractors of RRDI) (the "RRCI/RRDI Reference"). The determination of RRCI's role in this context has an impact on, among other things, the calculation of amounts owing in respect of construction holdback priorities to the Lien Claimants and it is therefore important to have this issue determined prior to certain steps occurring in the construction lien claims process. In particular, this determination may influence a Lien Claimant's decision to dispute other Lien Claimants' claims, pursuant to the Claims Process Order.

3.2. On or about June 3, 2009, the Receiver provided various Lien Claimants with a copy of the contract between RRDI and RRCI (the "RRDI/RRCI Contract") which it obtained from the books and records of RRDI. A copy of the RRDI/RRCI Contract is attached as Appendix B. In addition, by letter dated July 23, 2009 (the "July 23<sup>rd</sup> Letter"), the Receiver provided the 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. A copy of the July 23<sup>rd</sup> Letter is attached as Appendix C.

3.3. Subsequent to the Receiver providing the Lien Claimants with the RRDI/RRCI Contract and the July 23<sup>rd</sup> Letter, certain Lien Claimants requested further information regarding the role of RRCI in connection with construction of The Rosseau, a J.W. Marriott Resort & Spa (the

"Hotel"). The following is a summary of the Receiver's understanding of the role of RRCI in the development and construction of the Hotel. The development and construction of the Hotel and surrounding property, all of which is on the property owned by RRDI, is hereinafter referred to as the "Project".

3.4. The Receiver has been advised by its legal counsel that the criteria which the Court may consider in order to determine whether (i) a trade contractor contracted directly with an owner (RRDI) and the role of the intermediary (RRCI) was one of agent or construction manager; or (ii) a trade contractor contracted with a general contractor (RRCI) as a subcontractor to the owner (RRDI), includes the following:

- a) the language and provisions of any contract between RRDI and RRCI;
- b) the language and provisions of any contract between RRCI and the trades that performed work and services in connection with the Project;
- c) RRCI's involvement in the Project;
- d) the role of RRCI as perceived by the trade contractors;
- e) the interest, if any, which RRCI might have in the Project;
- f) the nature of the finances in respect of the improvement; and
- g) what expectation there was, if any, that RRCI would finance, in whole or in part, the construction of the Project.

***The language and provisions of any contract between RRDI and RRCI***

3.5. The RRDI/RRCI Contract is in the form of an executed Canadian Construction Association Form 5 ("CCA") Canadian Standard Construction Management Contract and dated as of April 1, 2005. The RRDI/RRCI Contract was executed on behalf of both RRDI and RRCI by Ken Fowler, as President of each company.

3.6. The RRDI/RRCI Contract was for nominal consideration (\$1.00) for services performed during the construction phase of the Hotel. The RRDI/RRCI Contract called for RRDI to reimburse RRCI for: *"All costs directly and indirectly attributable to the Work to maximum amounts as follows: For Longview, including Off Site Servicing, Onsite Servicing, Landscaping and Building Construction Costs of the Work shall not exceed \$64,389,736 in Canadian Funds. For Paignton House, Including Off Site Servicing, Onsite Servicing, Landscaping and Building Construction Costs of the Work shall not exceed \$13,326,272 in Canadian Funds."*<sup>2</sup>

3.7. Section GC 2 of the RRDI/RRCI Contract outlines RRCI's responsibilities in respect of the Project. Relevant excerpts include:

*Section 2.2.5.4: Assemble all bid documents for the solicitation of competitive bids for Work to be performed by Trade Contractors.*

*Section 2.2.5.5: Analyze the bids received and recommend awards to the Owner (RRDI). Once awards are approved by the Owner, prepare the trade contracts for execution.*

*Section 2.3.1: Coordinate the Work with the activities and responsibilities of the Owner, consultants, trade contractors and itself.*

3.8. The above provisions indicate that ultimate responsibility for selecting the trade contractors rested with RRDI as the Owner.

3.9. In addition, Section 4.9 provides that the Owner shall provide for the payment of all trade contractors in accordance with the terms and conditions of *his* (emphasis added)

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<sup>2</sup> RRDI/RRCI Contract Page 7, Paragraph (y)

agreements with the trade contractors and Section 4.10 further identifies the Construction Manager (RRCI) as the sole entity responsible for communication between the Owner and the trade contractors.

*The language and provisions of any contract between RRCI and the trades that work and services in connection with the Project*

3.10. The Receiver believes that, based on its review of the relevant documentation, relationships between RRDI, RRCI and the respective trade contractors can be classified into four general categories:

- a) trade contractors with formal CCA contracts with RRDI;
- b) trade contractors with formal CCA contracts with RRCI;
- c) trade contractors having a letter of intent with RRCI; and
- d) trade contractors performing work or supplying goods pursuant to purchase orders from RRCI and/or RRDI.

3.11. Based on the Receiver's review of RRDI's records, initial CCA trade contracts were executed between and among RRCI and certain of the trade contractors. However, the Receiver has only been able to locate eight (8) such contracts. Only three (3) of the eight (8) contracts located relate to current lien claimants (Schindler Elevator Corporation, Vipond Fire Protection and Bonavista Pools) (collectively the "Initial Contracts").

3.12. Based on the Receiver's discussions with RRDI staff which were held subsequent to the commencement of the receivership, the Receiver understands that in or about January and February 2009, RRDI began to revise its various trade contracts to change the executing party,

where applicable, from RRCI to RRDI, with RRCI still referred to as the Construction Manager (the "Revised Contracts").

3.13. The Receiver was able to locate thirteen (13) of these Revised Contracts. However, from the Receiver's review, only nine (9) were fully executed. Included in these nine were the following seven (7) Lien Claimants; Wallwin Electric Services, Interart Décor Ltd, Can-Barr Mechanical, Rock Solid Granite Tops, Quanbury Contract Interiors, Barzelle Designs Ltd, and GM Exteriors. All of the Revised Contracts reflect the fact that the Owner (RRDI) is to make payments on account of such Revised Contracts.

***RRCI's involvement in the Project***

3.14. Based on the Receiver's review, it appears that the functions of RRDI and RRCI are not clearly distinguishable. While RRDI and RRCI employed separate staff and each had their own payrolls, certain employees of both entities performed project management duties, which blurred the roles of "owner" and "construction manager." Further, the accounting records of RRDI and RRCI were consolidated together and for review and evaluation purposes, management considered the two entities as one.

3.15. For most of the Project, the senior construction supervisor was Howard Scott ("Mr. Scott"). Mr. Scott's official title was Director of Construction; however, Mr. Scott was employed by, and on the payroll of, RRDI. Immediately subordinate to Mr. Scott, was John MacDonald ("Mr. MacDonald"). Mr. MacDonald was an employee of RRCI. While there were numerous staff members working on the Project, it appears that from a payroll perspective that the individual employment arrangements were arbitrarily divided between RRDI and RRCI. However, it appears as though most of the site supervision staff were employees of RRCI.

3.16. Although Mr. Scott was an RRDI employee, he represented himself as the Director of Construction for RRCI. This is evidenced by historical e-mails in which his e-mail signature identifies him as "Howard Scott, Director of Construction, Rock Ridge Contractors Inc.".

***The position of RRCI as perceived by the trades***

3.17. The Receiver is not in a position to comment on how RRCI was perceived by the trade contractors.

***The interest, if any, which RRCI might have in the Project***

3.18. The Receiver understands that RRCI does not have any interest, financial or otherwise, in the Hotel or the Project.

***The nature of the finances in respect of the improvement and expectation there was, if any, that RRCI would finance, in whole or in part, the construction of the Project***

3.19. For the purposes of accounting and ongoing review of the Project, costs incurred by RRDI and RRCI were consolidated in one set of books and records. Based on the Receiver's review, it appears that little or no regard was made for the need to maintain and settle intercompany accounts as between RRDI and RRCI. Further, it appears that RRCI had no finance function whatsoever. This was solely the responsibility of RRDI.

3.20. In general terms, all offsite construction, onsite construction, landscaping and general construction costs were allocated to and accounted for in RRCI (the "RRCI Divisions"), whereas commissions, royalties, land, consultants, development charges, FF&E, interest, and marketing costs (the "RRDI Divisions") were recorded in the books and records of RRDI as costs of RRDI. At the time of the receivership, aggregate costs incurred towards the development of the Hotel

totaled \$165.9 million. Of that, \$103.4 million was incurred by RRCI and the balance was incurred through RRDI<sup>3</sup> based on the RRDI and RRCI Divisions noted above.

3.21. During any typical month throughout the construction phase, RRCI would incur costs directly related to the RRCI Divisions and receive invoices for such costs which would be recorded in RRCI's accounts payable system. At the end of each month, RRCI would issue invoices for this work in progress ("WIP") to RRDI; however, no money changed hands specifically for this invoiced WIP.

3.22. Payments to the trade contractors for work performed in the RRCI Divisions were issued by RRCI. However, signing authorities on RRCI's bank accounts and management of both RRDI and RRCI were the same individuals.<sup>4</sup> When RRCI needed funds to pay these trade contractors, as well as employees and other expenses, a "cash call" would be prepared by Rupert McNay, Director of Finance for RRDI, which would result in cash being transferred from RRDI or reportedly from the Red Leaves Resort Partnership, the 100% owner of both RRDI and RRCI (the "Partnership"). RRDI transferred \$74.1 million directly to RRCI.

3.23. RRDI received advances from its senior lending syndicate and Fortress Investment Group in the approximate amounts of \$84 million and \$22 million respectively. The Receiver is not aware of any advances made to RRCI by the senior lending syndicate or Fortress Investment Group.

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<sup>3</sup> This information was obtained by the Receiver from the project accountant who was in charge of the construction finances for both RRDI and RRCI. The Receiver has not performed any type of review of these figures.

<sup>4</sup> For example, the primary cheque signing authorities for both RRCI and RRDI were the Director of Finance and Controller of RRDI

3.24. It is important to note that pursuant to the Appointment Order, the Receiver only has access to the books and records of RRDI and not those of RRCI. Based on the Receiver's review of the books and records of RRDI the documentation reviewed suggests that RRCI was acting as an agent/construction manager pursuant to the RRDI/RRCI Contract. However, due to the potential implications with respect to this determination, the Receiver respectfully requests that this Honourable Court order that the determination of this issue be referred to a Construction Lien Master.

#### ***4.0 Construction Lien Claims Process Order***

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4.1. As noted above, on July 24, 2009, the Court approved the Claims Process Order which provided, among other things, that:

- a) a Claim must have been preserved and perfected in accordance with the provisions of the CLA and shall have been served upon the Receiver and all named defendants to such Lien Action;
- b) in filing a Claim with the Receiver, all Lien Claimants shall include contract copies, change orders, purchase orders, and other related documents to which the Claim is asserted;
- c) the Receiver shall deliver a Notice of Determination to such Lien Claimants on or before October 15, 2009, and the Receiver shall post each Notice of Determination on its website immediately after delivery to such Lien Claimant in any event on or before October 15, 2009.

4.2. The Receiver's legal counsel has identified 32 separate liens filed against the property. A summary of the Claims is attached as Appendix D. As at the date of this Report, 11 Lien Claimants have not yet provided the Receiver with the information required pursuant to paragraphs 7 (a-e) of the Claims Process Order. The Receiver's legal counsel is in the process of following up with each Lien Claimant who has not yet provided such information.

4.3. Further, while certain Lien Claimants have provided such information, the Receiver has not yet completed a detailed review of all of the claims due to the substantial amount of documentation received.

4.4. Accordingly the Receiver respectfully requests that this Honourable Court grant an Order extending the October 15, 2009 deadline referenced in paragraph 10 of the Claims Process Order to a date to be determined by the Court following the determination of the RRCI/RRDI Reference.

4.5. As no proceeds have been realized, the Receiver is not in a position at this time to make a distribution. As such, the Receiver is of the view that no parties would suffer any prejudice as a result of the proposed extension of the October 15, 2009 date in the Claims Process Order.

### ***5.0 Requirement for Service***

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5.1. A number of Lien Claimants have requested that the Receiver seek an order from this Honourable Court validating service of (i) any Claim which is served pursuant to section 87 of the CLA, and (ii) in the case of a claim against Muskoka Standard Condominium Corporation No. 62 (the "Condo Corp."), by sending documents by facsimile, courier, or registered mail to the Receiver.

5.2. As RRDI still owns a majority of units which comprise the Condo Corp., the Lien Claimants have specifically requested an order that service of the Claim on the Condo Corp. is effective for the purposes of the Claims Process Order where a copy is sent by facsimile, courier, or registered mail to the Receiver.

**6.0 Additional Information Requested by the Lien Claimants**

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6.1. Several of the Lien Claimants have requested that the Receiver provide additional information with respect to financial relationships between RRDI, RRCI and certain Lien Claimants, including;

- a) Details of payments to all trade contractors, including details with respect to holdback monies released; and
- b) Details with respect to contractual relationships between trade contractors, RRDI and RRCI;

6.2. The Receiver is not prepared to provide information about the contractual relationships, scope of work and terms such work of certain trade contractors to other trade contractors without Court authorization to do so. Accordingly, the Receiver has not provided such information to the Lien Claimants.

6.3. If the RRCI/RRDI Reference determines that RRDI had direct contractor relationships with the various Lien Claimants, the provision of information to all Lien Claimants with respect to specific trade contractor contract terms and payments as contemplated in the previous paragraphs would likely be unnecessary. As such, the Receiver proposes to address the responses to the above inquiries following the determination of the RRCI/RRDI Reference.

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## 7.0 Conclusions and Recommendations

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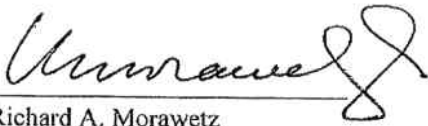
7.1. The Receiver therefore respectfully requests that this Honourable Court:

- a) Approve the Receiver's activities as described in this Seventh Report;
- b) Refer, among other things, the determination of the relationship between RRDI and Lien Claimants having valid Lien Actions to a Construction Lien Master in Toronto;
- c) Amend the date in the Claims Process Order by which a Notice of Determination shall be delivered by the Receiver and posted on the Receiver's website, to a date to be later determined by this Honourable Court once there has been a determination of the RRDI/RRCI Reference; and
- d) Validate service of a Claim (i) upon any party to a Lien Action in accordance with section 87 of the CLA; and (ii) if a copy is served on the Receiver in the case of a Claim against the Muskoka Standard Condominium Corporation No. 62, pursuant to paragraph 6 of the Claims Process Order.

All of which is respectfully submitted, this 7th day of October, 2009

**ALVAREZ & MARSAL CANADA ULC AND  
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.**

Per:

  
Richard A. Morawetz

# APPENDIX “D”

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

THE HONOURABLE MADAM ) WEDNESDAY, THE 14<sup>th</sup> DAY  
JUSTICE PEPALL ) OF OCTOBER, 2009

**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, AS AMENDED,  
AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990,  
C. C.30, AS AMENDED**

B E T W E E N:

**WESTLB AG, TORONTO BRANCH**

Applicant

- and -

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Respondent

## ORDER

THIS MOTION, made by Alvarez & Marsal Canada ULC, in its capacity as Court-appointed receiver and manager pursuant to section 101 of the *Courts of Justice Act* (Ontario) (“CJA”) and trustee and receiver and manager under the *Construction Lien Act* (Ontario) (“CLA”), and Alvarez & Marsal Canada Inc. (formerly known as McIntosh & Morawetz Inc.), in its capacity as interim receiver pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the “BIA”), of the undertaking, assets and property of The Rosseau Resort Developments Inc. (“RRDI”) (jointly and collectively, the “Receiver”) for an Order, among other things: (i) abridging and validating the timing and manner of service of this motion; (ii) directing that all capitalized terms not otherwise defined herein have the same meaning as in the Construction Lien Claims Process Order of the Honourable Mr. Justice Campbell dated July 24, 2009 (the “Construction Lien Claims Process Order”); (iii) approving the Seventh Report to Court of

the Receiver dated October 7, 2009 (the "**Seventh Report**") and the activities of the Receiver as described therein; (iv) directing a reference to a Construction Lien Master in Toronto for the determination of, among other things, the relationship between RRDI and the Lien Claimants having valid Lien Actions (the "**Perfectured Lien Claimants**"); (v) amending the date in the Construction Lien Claims Process Order by which a Notice of Determination shall be delivered by the Receiver and posted on the Receiver's website to a date to be determined by this Court following a final determination of the Reference (defined below); and (vi) validating service of a Claim pursuant to the CLA and, in particular, on the Receiver, was heard the 14<sup>th</sup> day of October, 2009 at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver including the Seventh Report, all filed, and on hearing the submissions of independent counsel to the Receiver, counsel for WestLB AG, Toronto Branch and the Receiver, counsel for Fortress Credit Corp. and no one appearing for any other person on the service list, though properly served,

*- counsel for  
Myrfield Holdings  
COB as marel  
Contractors, a lien  
claimant - 80P*

#### **SERVICE & TERMS**

1. THIS COURT ORDERS that the time and manner of service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that all capitalized terms not otherwise defined herein have the same meaning as in the Construction Lien Claims Process Order.

#### **APPROVAL OF RECEIVER'S ACTIVITIES**

3. THIS COURT ORDERS that the Seventh Report and the activities of the Receiver as described therein be and are hereby approved.

#### **REFERENCE**

4. THIS COURT ORDERS that the following issues relating to the Lien Actions shall be referred to a ~~Construction Lien~~ Master at Toronto for trial (the "**Reference**"): *MP*

- (a) are each of the Perfected Lien Claimants a "contractor" as defined in the CLA for the purposes of their respective Claims?

- (b) if the answer to the question in paragraph 4(a) is negative, is Rock Ridge Contractors Inc. a "contractor" as defined in the CLA with respect to the Claims?

870  
87P  
870  
The ~~Construction Lien~~ Master shall take all accounts, make all inquiries, give all directions and do all things necessary to finally determine the above issue, and any associated issues, and the findings of the ~~Construction Lien~~ Master shall be effective on the confirmation of the report by this Court. The ~~Construction Lien~~ Master may also determine the question of costs in the Reference, except that the ~~Construction Lien~~ Master shall not make any award of costs against the Receiver.

5. THIS COURT ORDERS that the determination of the issues in the Reference shall not affect the determination of the validity of the Claims by the Receiver as provided for in the Construction Lien Claims Process Order.

6. THIS COURT ORDERS that the Receiver is hereby authorized, if necessary, to bring a motion to fix a date for the trial of the Reference and give any directions related thereto in accordance with the provisions of the CLA and that service of the Notice of Trial by facsimile, mail, courier or email on each of the Perfected Lien Claimants or their counsel, and anyone else on the service list in these proceedings, shall constitute valid and effective service for the purpose of section 60(4) of the CLA.

#### CONSTRUCTION LIEN CLAIMS PROCESS AMENDMENT

7. THIS COURT ORDERS that the date of October 15, 2009 as provided for in paragraph 10 of the Construction Lien Claims Process Order be and is hereby amended to a date to be determined by this Court following a final determination of the Reference, including all appeals therefrom, or, if before such determination, by further order of this Court.

#### SERVICE OF CONSTRUCTION LIEN CLAIMS

8. THIS COURT ORDERS that service of a Claim (i) upon any party to a Lien Action in accordance with section 87 of the CLA, and (ii) in the case of a Claim against Muskoka Standard Condominium Corporation No. 62, by sending a copy by facsimile, registered mail or courier to

- 4 -

the Receiver, is hereby deemed to be valid and effective service for the purpose of paragraph 6 of the Construction Lien Claims Process Order.

Sam Lyall, J.

ENTRÉD AT / INSCRIT A TORONTO  
ON / BOOK NO.  
LE / DANS LE REGISTRE NO.

OCT 14 2009

PER / PAR: TV

Court File No. CV-09-8201-00CL  
WESTLB AG, TORONTO BRANCH  
Applicant

v. THE ROSSEAU RESORT DEVELOPMENTS INC.  
Respondent

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT  
TORONTO**

**ORDER  
(October 14, 2009)**

FRASER MILNER CASGRAIN LLP  
1 First Canadian Place, 100 King Street West,  
Toronto, Ontario, M5X 1B2

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Independent Lawyers for Alvarez & Marsal Canada  
ULC, and Alvarez & Marsal Canada Inc. (formerly  
McIntosh & Morawetz Inc.), in their respective  
capacities as Court-appointed Interim Receiver,  
Trustee, Receiver and Manager

# APPENDIX “E”

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
 (Commercial List)

THE HONOURABLE MADAM	)	WEDNESDAY, THE 21 <sup>st</sup> DAY
	)	
JUSTICE PEPALL	)	OF APRIL, 2010

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, AS AMENDED,  
 AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990,  
 C. C.30, AS AMENDED



**B E T W E E N:**

**WESTLB AG, TORONTO BRANCH**

Applicant

- and -

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Respondent

**ORDER**

THIS MOTION, made by Alvarez & Marsal Canada ULC, in its capacity as Court-appointed receiver and manager pursuant to section 101 of the *Courts of Justice Act* (Ontario) ("CJA") and trustee and receiver and manager under the *Construction Lien Act* (Ontario) ("CLA"), and Alvarez & Marsal Canada Inc. (formerly known as McIntosh & Morawetz Inc.), in its capacity as interim receiver pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the "BIA"), of the undertaking, assets and property of The Rosseau Resort Developments Inc. ("RRDI") (jointly and collectively, the "Receiver") for an Order, among other things: (i)

expanding the terms of the Reference (as defined by the Order of the Honourable Justice Pepall made on October 15, 2009 in these proceedings (the “**Reference Order**”)); and (ii) approving the Tenth Report to Court of the Receiver dated April 19, 2010 (the “**Tenth Report**”) and the activities of the Receiver as described therein was heard the 21st day of April, 2010 at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver including the Tenth Report, all filed, and on hearing the submissions of independent counsel to the Receiver, counsel for WestLB AG and the Receiver, and no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Laura Bowles-Dove sworn April 19, 2010,

### **SERVICE & TERMS**

1. THIS COURT ORDERS that the time and manner of service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that all capitalized terms not otherwise defined herein have the same meaning as in the Reference Order.

### **APPROVAL OF RECEIVER'S ACTIVITIES**

3. THIS COURT ORDERS that the Tenth Report and the activities of the Receiver as described therein be and are hereby approved.

### **REFERENCE**

4. THIS COURT ORDERS that the Master hearing the trial of the Reference shall also determine whether each of the Certificates of Substantial Performance which are described at Schedule “A” hereto, and any other Certificates of Substantial Performance which may have been issued, executed, delivered and/or published in relation to the property and improvements which are the subject of the Reference, are valid for the purpose of determining the expiry of the corresponding lien rights pursuant to the provisions of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended.

5. THIS COURT ORDERS that the provisions of paragraphs 4, 5 and 6 of the Reference Order, shall also apply to the determination of the issues described in paragraph 4, above.

**MISCELLANEOUS**

6. THIS COURT ORDERS that the Order of the Honourable Justice Pepall made in these proceedings on April 15, 2010 reflecting the change from WestLB AG, Toronto Branch to WestLB AG, New York Branch has no effect on the priority claims advanced by the Lien Claimants in any outstanding proceeding and there is no need to seek any change of name in those proceedings or amend any pleadings, notices or other court documents to reflect such change.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

APR 21 2010

PER / PAR: 

**Schedule "A"**

**INDEX FOR CERTIFICATES OF SUBSTANTIAL PERFORMANCE**

<b>CONTRACTOR NAME</b>	<b>IMPROVEMENT</b>	<b>SUBSTANTIAL PERFORMANCE DATE</b>	<b>DATE CERTIFICATE SIGNED</b>	<b>DATE CERTIFICATE PUBLISHED</b>
All Construction	J.W. Marriott – Paignton House	May 11, 2009	May 12, 2009	May 19, 2009
Barzelle Design Ltd.	J.W. Marriott – Longview	November 10, 2008	November 11, 2008	November 19, 2008
Bona Vista Ltd.	Longview Indoor/Outdoor Pool & Hot Tub	December 22, 2008	January 14, 2009	January 21, 2009
Builders Choice Air Systems	Longview Building – Gas Fireplaces	January 21, 2008	March 4, 2008	March 7, 2008
	J.W. Marriott – Longview	October 15, 2008	October 28, 2008	Not Published
Can-Barr Mechanical Ltd.	Mechanical, Longview	October 27, 2008	October 28, 2008	October 31, 2008
	J.W. Marriott – Paignton House	April 14, 2009	April 14, 2009	April 21, 2009
Dawson's Incorporated	J.W. Marriott- The Rosseau	November 15, 2008	November 27, 2008	December 3, 2008
Egress System of Canada	J.W. Marriott – Longview	April 14, 2009	April 14, 2009	Not Published

CONTRACTOR NAME	IMPROVEMENT	SUBSTANTIAL PERFORMANCE DATE	DATE CERTIFICATE SIGNED	DATE CERTIFICATE PUBLISHED
Fowler Construction Company Ltd.	Site Servicing, Excavation, Grading, Paving – Paignton House	January 31, 2008	August 25, 2008	Not Published
	Site Servicing, Excavation, Grading, Paving – Longview	January 31, 2008	August 25, 2008	Not Published
	Landscaping – Longview	January 31, 2008	August 25, 2008	Not Published
	Landscaping – Paignton House	January 31, 2008	August 25, 2008	Not Published
	Paignton House Servicing, Access Road & Wallace Marina Servicing	December 11, 2008	December 11, 2008	December 18, 2008
GM Exteriors Inc.	Siding work for Water Treatment and Utility Buildings	December 15, 2008	January 22, 2009	February 10, 2009
	J.W. Marriott – Paignton House	March 18, 2009	March 19, 2009	March 26, 2009
GRC Contracting	J.W. Marriott – Sewage Treatment Plant	September 1, 2008	March 2, 2009	March 25, 2009
	J.W. Marriott – Water Treatment Plant	September 1, 2008	March 2, 2009	March 25, 2009
	J.W. Marriott – Utility Building	September 1, 2008	March 2, 2009	March 25, 2009
Marel Contractors	J.W. Marriott – Paignton House	March 1, 2009	March 19, 2009	March 26, 2009

CONTRACTOR NAME	IMPROVEMENT	SUBSTANTIAL PERFORMANCE DATE	DATE CERTIFICATE SIGNED	DATE CERTIFICATE PUBLISHED
Old Tymer Welding	J.W. Marriott – Longview	December 22, 2008	March 2, 2009	March 11, 2009
Quanbury	J.W. Marriott – Longview	November 21, 2008	November 21, 2008	November 25, 2008
	J.W. Marriott – Paignton House	April 16, 2009	April 22, 2009	April 28, 2009
Rock Solid Granite Tops	J.W. Marriott – Longview	December 2, 2008	December 2, 2008	December 10, 2008
	J.W. Marriott – Paignton House	February 13, 2009	March 9, 2009	March 20, 2009
Schindler Elevator Corporation	J.W. Marriott – Longview	December 10, 2008	December 15, 2008	January 13, 2009
	J.W. Marriott – Paignton House	December 15, 2008	December 15, 2008	Not Published
Vipond Fire Protection	J.W. Marriott – Longview	December 15, 2008	February 20, 2009	March 19, 2009
	J.W. Marriott – Paignton House	March 11, 2009	March 19, 2009	March 26, 2009
Wallwin Electric Services Ltd.	AJW Marriott Hotel & Resort	September 30, 2008	October 15, 2008	October 31, 2008

WESTLB AG, TORONTO BRANCH  
Applicant

v.

THE ROSSEAU RESORT DEVELOPMENTS INC.  
Respondent

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT  
TORONTO**

**ORDER  
(April 21, 2010)**

FRASER MILNER CASGRAIN LLP  
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Independent Lawyers for Alvarez & Marsal ULC Canada,  
and Alvarez & Marsal Canada Inc., in their respective  
capacities as Court-appointed Interim Receiver, Trustee,  
Receiver and Manager