

# **Appendix “B”**

AMENDED AND RESTATED AGREEMENT

THIS AGREEMENT is made the • day of MAY, 2011

BETWEEN:

**MUSKOKA STANDARD CONDOMINIUM  
CORPORATION NO. 62**

(hereinafter referred to as the "**Corporation**")

OF THE FIRST PART

- and -

**THE ROSSEAU RESORT DEVELOPMENTS INC. ("RRDI") by  
Alvarez & Marsal Canada ULC, in its capacity as trustee,  
receiver and manager of the assets of RRDI, and not in its  
personal capacity, and by Alvarez & Marsal Canada Inc., in its  
capacity as interim receiver of RRDI and not in its personal  
capacity (the "Receiver")**

(hereinafter referred to as "**RRDI**" and the "**Receiver**",  
respectively)

OF THE SECOND PART

-and -

**THE MEMBERS OF THE AD HOC COMMITTEE OF UNIT  
OWNERS**

(hereinafter referred to as the "**Ad Hoc Committee**")

OF THE THIRD PART

-and -

**GORDON JACOBS AND ROLAND KLASSEN**

(hereinafter referred to as the "**Non-RRDI Directors**", in that  
capacity)

OF THE FOURTH PART

**WHEREAS:**

- A. All of the parties hereto entered into a settlement agreement dated April, 2011 (the "**Original Settlement Agreement**"), along with a potential purchaser of the assets of RRDI, pursuant to which the parties agreed to settle the Set-Off Motion and RPMA Dispute (as defined herein), through the Fresh Start Approach and the RPMA Resolution (as defined herein);

- B. A proposed transaction with 2244811 has been terminated in accordance with its terms. Accordingly, 2244811 is no longer a party to the Original Settlement Agreement;
- C. The Receiver has been authorized by an Order of the Ontario Superior Court of Justice (the "**Court**") dated May 6, 2011 to undertake a process for the sale of the assets of RRDl to a purchaser or purchasers (the "**Sales Process**");
- D. The parties hereto wish to amend and restate the Original Settlement Agreement so as to incorporate the agreement among the parties hereto with respect to the subject matter hereof;
- E. The Rosseau, a J.W. Marriot Resort and Spa, Muskoka, Ontario (the "**Hotel**"), is a mixed-use condominium development constructed by RRDl and consisting of 221 condominium units ("**Units**") (not including the hotel management unit), 132 of which are owned by RRDl. The remaining 89 Units are owned by individual unit owners (the "**Unit Owners**"). The Units, together with their appurtenant common interests, form part of the Muskoka Standard Condominium Plan No. 62 pursuant to a Declaration registered on title on March 9, 2009 as Instrument Number MT63413 (the "**Declaration**");
- F. By Notice of Motion dated March 4, 2011, the Receiver sought advice and directions from the Ontario Superior Court of Justice (the "**Court**") with respect to its position that RRDl's obligation to pay common expense payments to the Corporation has been satisfied in full by setting off any such obligation, when and if quantified, against amounts that RRDl asserts is owed by the Corporation to RRDl pursuant to a number of contracts governing the relationship between RRDl and the Corporation, which contracts include a hotel easement and restrictive covenant agreement, a reciprocal agreement, and a shared facilities agreement (the "**Set-Off Motion**");
- G. The board of directors of the Corporation consists of three nominees of RRDl and the two Non-RRDl Directors. The Non-RRDl Directors have indicated that they oppose the relief sought in the Set-Off Motion;
- H. The Non-RRDl Directors have proposed a resolution of the Set-Off Motion (the "**Fresh Start Approach**") pursuant to which the Corporation would (a) amend its budget for its operations for the period March 2009-March 2010 (the "**First Year**") so as to eliminate common expenses for all Units, including those units owned directly by RRDl, for the First Year, and (b) adopt a similar budget for the subsequent operating years of the Corporation to the earlier of (i) the end of the calendar month in which the closing of a sale by RRDl, by its Receiver of the assets of RRDl to a purchaser occurs, whether such sale transaction takes place pursuant to the Sales Process or otherwise; (ii) the end of the month in which the Sales Process is terminated by Order of the Court; and (iii) December 31, 2011 (the "**Fresh Start Date**"). The Fresh Start Approach also contemplates the establishment of certain assignable credits in favour of the owner of the RRDl Units and certain Unit Owners who have made payments to the Corporation or on behalf of whom payments are currently held in trust by the Receiver for the Corporation for the period prior to the Fresh Start Date. Such credits shall be deemed to apply against future assessments for common expenses over a period of 5 years, in the amounts

as set out in **Schedule "A"** hereto, commencing as of the Fresh Start Date (the "**Common Expense Credits**");

- I. Fasken Martineau Dumoulin LLP has provided a legal opinion (the "**Fasken Opinion**") to the Corporation that the Fresh Start Approach and the Common Expense Credits are not precluded by the *Condominium Act, 1998* (the "**Condominium Act**");
- J. The Fresh Start Approach is to be implemented as of the Fresh Start Date by way of an amendment to the Declaration substantially in the form attached hereto as Part 1 to **Schedule "B"** (the "**Fresh Start Amendment**");
- K. By Notices of Dispute addressed to RRDI, certain Unit Owners have provided notice that they dispute ("**RPMA Dispute**") the interpretation of the rental pool management agreements between the Unit Owners and RRDI (the "**Rental Pool Management Agreements**"); and
- L. It is proposed to resolve the RPMA Dispute with Unit Owners by amending the Rental Pool Management Agreements on the terms as set out herein (the "**RPMA Resolution**"), conditional on the closing of a transaction for the sale of the assets of RRDI to a purchaser approved by the Court who consents to the RPMA Resolution (the "**Closing**").

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT**, in consideration of the above premises and of the covenants, agreements, representations and warranties hereinafter set forth, it is hereby agreed as follows:

#### **FRESH START APPROACH**

1. **Agreement to Implement.** The Corporation hereby agrees to take such steps as are necessary to implement the Fresh Start Approach as of the Fresh Start Date, including (a) the calling and holding of a board meeting and (b) the calling and holding of an information meeting of all owners of Units in accordance with section 107 of the *Condominium Act* on or before June 15, 2011 or such later date as may be agreed to by the Receiver and the Non-RRDI Directors, such that the Fresh Start Approach will be implemented as of the Fresh Start Date. The Corporation and the Non-RRDI Directors will use their reasonable commercial efforts to seek from all Unit Owners their written consent to the Fresh Start Approach and the Fresh Start Amendment on or before June 15, 2011 or such later date as may be agreed to by the Receiver and the Non-RRDI Directors.
2. **Release.** The Corporation, the Non-RRDI Directors and RRDI by its Receiver hereby agree upon execution of this Agreement to deliver in escrow to the Receiver the releases described in paragraphs a. and b. below, all such releases (collectively, the "**Releases**") being in the forms attached hereto as **Schedule "C"**:
  - a. a release by the Corporation and the Non-RRDI Directors of all alleged liability of RRDI or the Receiver for or in respect of the payment of common expenses or any other amounts to the Corporation as described in the Set-Off Motion or otherwise for the period from the inception of the Corporation to the Fresh Start Date (the "**Common Expense Claims**"), on terms satisfactory to the Receiver; and

- b. a release by RRDI, by its Receiver of all alleged liability of the Corporation to reimburse RRDI for amounts (the "**Reimbursement Claims**") as set out in the Set-Off Motion, for the period up to the Fresh Start Date.

The Releases shall be released from escrow by the Receiver and provided to each of the parties thereto on satisfaction of the conditions set out in paragraphs 9 and 10.

3. **Receiver Authorization.** The Receiver shall seek an order of the Court on or before May 30, 2011 or as soon thereafter as the motion can be heard authorizing and approving this Agreement and authorizing and directing the Receiver on behalf of RRDI to take such steps as are required to implement the Fresh Start Approach as of the Fresh Start Date, including (a) providing to the Corporation written consent to the Fresh Start Amendment in respect of the RRDI Units, (b) consenting to the Fresh Start Amendment on behalf of RRDI in its capacity as declarant of the Corporation, and (c) granting the release required by paragraph 2(b) above. The Receiver shall also seek an order confirming that the Set-Off Motion has been settled and that RRDI and the Receiver are released from the Common Expense Claims and the Corporation is released from Reimbursement Claims to be effective on satisfaction of the conditions in paragraph 10. In the event the conditions in paragraph 10 are not satisfied, the Set-Off Motion may be brought on again on 30 days notice to the Corporation and the Non-RRDI Directors.
4. **Common Expense Credits.** On the terms and conditions of this Agreement, RRDI by its Receiver and the Non-RRDI Directors each hereby consent to the Corporation providing the Common Expense Credits to Unit Owners and the owner of the RRDI Units in the amounts as set out on **Schedule "A"** hereto, to be amortized and applied over a period of 5 years. Upon the implementation of the Fresh Start Approach, the Corporation shall provide the Common Expense Credits to Unit Owners and to the owner of the RRDI Units as of the Fresh Start Date.

#### **RPMA RESOLUTION**

5. **RPMA Resolution.** RRDI, by its Receiver, and the members of the Ad Hoc Committee agree that, conditional on the Closing, and otherwise on the terms and conditions of this Agreement, the Rental Pool Management Agreements shall be amended as follows:

The Rental Pool Management Agreement is amended by adding the following proviso to the definition of "Adjusted Gross Revenue" after paragraph 3.2(2)(o) thereof:

"PROVIDED THAT, for greater certainty, but without duplication, all amounts referred in paragraph (f) of this definition shall include all amounts on account of utilities, repairs or maintenance in respect of Resort Units paid by the Hotel Operator under the Hotel Management Agreement as "Deductions" as defined thereunder or as other expenses paid by the Hotel Operator under the Hotel Management Agreement or the other agreements referred to in such paragraphs".

6. **Consent of Unit Owners.** Each member of the Ad Hoc Committee agrees to call and hold a meeting of all owners of Units on or before June 15, 2011 or such later date as may be agreed to by the Receiver and two members of the Ad Hoc Committee for purposes of obtaining the requisite approval to amend the Rental

Pool Management Agreements as provided herein and to use their reasonable commercial efforts to pursue and obtain the approval of the requisite number of Unit Owners, conditional on and to be effective upon the Closing.

7. **Support of Ad Hoc Committee.** Each member of the Ad Hoc Committee hereby confirms to RRDI by its Receiver that he supports the RPMA Resolution and shall recommend the RPMA Resolution to all Unit Owners including at a meeting of all owners of Units called for the purpose of approving the RPMA Resolution and at any other meetings or discussions conducted in respect of the RPMA Resolution.
8. **Amendment to Schedule E.** In order to facilitate the RPMA Resolution, the Corporation agrees to take such steps as are necessary to amend Schedule E to the Declaration substantially in the form attached hereto as Part 2 to **Schedule "B"** (the **"Schedule E Amendment"**) including (a) the calling and holding of a board meeting and (b) the calling and holding of an information meeting of all owners of Units in accordance with section 107 of the Condominium Act on or before June 15, 2011 or such later date as may be agreed to by the Receiver and the Non-RRDI Directors, conditional on the Closing. In addition to seeking approval of the Court as provided for at paragraph 3 above, the Receiver shall seek an Order authorizing and directing the Receiver to (a) provide to the Corporation written consent to the Schedule E Amendment in respect of the RRDI Units, and (b) consent to the Schedule E Amendment on behalf of RRDI in its capacity as declarant of the Corporation, conditional on the Closing.

## CONDITIONS

9. The obligation of RRDI to comply with its covenants and agreements contained in this Agreement shall be conditional on RRDI, by its Receiver, obtaining an order of the Court as described in paragraphs 3 and 8, failing which, this Agreement shall be null and void and of no further force or effect, in which case no party shall have any further obligations to the others hereunder, and the Releases shall be returned to the respective parties.
10. The consent of RRDI, by its Receiver to the Fresh Start Approach is subject to, and the Fresh Start Approach will not be implemented on the Fresh Start Date unless and until there occurs, the satisfaction or waiver of the following conditions within the time specified if applicable:
  - a. delivery on or before June 15, 2011 (or such later date as may be agreed to by the Receiver and the Non-RRDI Directors) to the Corporation of the written consent of at least 45 Unit Owners to the Fresh Start Approach, Fresh Start Amendment, and the Schedule E Amendment; and
  - b. the receipt by the Receiver of a release and direction on or before June 15, 2011 (or such later date as may be agreed to by the Receiver and the Non-RRDI Directors) from Unit Owners with indulgence cards or common expense subsidies in respect of which amounts continue to be held in trust by the Receiver, irrevocably authorizing and directing the Receiver to pay such monies to the Corporation for its general account in return for the applicable Common Expense Credit (which condition may be waived by the Receiver in whole or in part).

If such conditions are not satisfied or waived, any and all provisions of this Agreement in respect of the Fresh Start Approach shall be null and void and



be of no further force and effect, and the Releases delivered in escrow by all parties shall be returned to the respective parties.

11. The consent of RRDI, by its Receiver to the RPMA Resolution is subject to, and the RPMA Resolution will not be implemented unless and until there occurs, the satisfaction or waiver of the following conditions within the time specified if applicable:
  - a. the receipt of the requisite 75% vote of Unit Owners to the RPMA Resolution, prior to the Closing (which condition may be waived by RRDI, by its Receiver in whole or in part);
  - b. a purchaser under an agreement for the sale of the assets of RRDI to such purchaser (a "**Purchase Agreement**"), consenting to the RPMA Resolution;
  - c. the Closing; and
  - d. the contemporaneous receipt from those Unit Owners voting in favour of the RPMA Resolution of a certificate addressed to RRDI, by its Receiver, and to a purchaser under a Purchase Agreement confirming that, other than the interpretation of the Rental Pool Management Agreement as raised by the RPMA Dispute which would be resolved in all respects by the RPMA Resolution, there is no material breach or default by the rental pool manager under such Unit Owner's Rental Pool Management Agreement and that such Rental Pool Management Agreement is in good standing in all material respects (which certificate may be relied upon by such purchaser whether or not the purchaser consents to the RPMA Resolution).

If such conditions are not satisfied or waived, any and all provisions of this Agreement in respect of the RPMA Resolution shall be null and void and be of no further force or effect, without prejudice to any and all rights and remedies any of the parties hereto may have in connection with the RPMA Dispute.

## GENERAL PROVISIONS

12. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
13. The parties hereto agree that they will, from time to time at the reasonable request of either of them, execute and deliver such direction and instruments and take any such further action as may be required to accomplish the purposes of this Agreement.
14. Time shall be of the essence of this Agreement.
15. This Agreement supersedes all prior agreements between and among the parties hereto with respect to its subject matter (including, without limitation, the Original Settlement Agreement) and constitutes (along with the documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreements between and among the parties with respect to its subject matter. This Agreement may not be amended, supplemented or otherwise modified except by written agreement of the parties.

16. Notwithstanding anything else contained in this Agreement, the obligations of all parties hereunder in respect of the RPMA Resolution shall terminate in the event that a Closing does not occur on or before December 31, 2012, unless this Agreement is earlier terminated or extended by written agreement by the parties.
17. This Agreement may be executed in separate counterparts, and all such executed counterparts when taken together shall constitute one agreement. The parties shall be entitled to rely on delivery of a facsimile or email PDF copy of the executed agreement and such facsimile or email PDF copy shall be legally effective to create a valid and binding agreement.

*[signature page to follow]*



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

**MUSKOKA STANDARD CONDOMINIUM  
CORPORATION NO. 62**

By: \_\_\_\_\_  
Authorized Signing Officer

By: \_\_\_\_\_  
Authorized Signing Officer

**THE ROSSEAU RESORT DEVELOPMENTS INC.  
by Alvarez & Marsal Canada ULC solely in its  
capacity as receiver and manager and trustee of  
the assets of The Rosseau Resort  
Developments Inc. and not in its personal  
capacity, and by Alvarez & Marsal Canada Inc.  
solely in its capacity as interim receiver of the  
assets of The Rosseau Resort Developments  
Inc. and not in its personal capacity**

By: \_\_\_\_\_  
Authorized Signing Officer

**Ad Hoc Committee:**

---

Witness

---

Johan Demeester

---

Witness

---

Gordon Jacobs

---

Witness

---

Roland Klassen

---

Witness

---

Paul Lachance

---

Witness

---

Alec Rowlands

---

Witness

---

Joe Zinner**Non-RRDI Directors:**

---

Witness

---

Gordon Jacobs

---

Witness

---

Roland Klassen

## SCHEDULE "B"

### AMENDMENTS TO DECLARATION

#### 1. Fresh Start Approach Amendment

The Declaration is amended by adding the following definitions to Section 2 as follows:

“**Fresh Start Date**” means the earlier of (i) that date that is the end of the calendar month in which an acquisition of the commercial and/or retail portions of the Hotel by a purchaser from the Declarant closes; (ii) the end of the month in which the Sales Process is terminated; and (iii) December 31, 2011;”

“**Sales Process**” means a process for the sale of the assets of the Declarant by Alvarez & Marsal Canada ULC in its capacity as receiver and manager of the Declarant and Alvarez & Marsal Canada Inc. in its capacity as Interim Receiver of the Declarant, as approved by Order of the Ontario Superior Court of Justice on May 6, 2011 in Ontario Superior Court (Commercial List) File No. CV-09-8201-00CL;”

The Declaration is further amended by adding thereto Section 7.1 as follows

- “(a) The first operating year budget of the Corporation (for the period March 9, 2009 to March 8, 2010) as disclosed in the initial Disclosure Statement of the Corporation has been amended by resolution of the Board so that as a result of such amendment, no common expenses will be assessed for such first operating year of the Corporation. To the extent that any Owner (or its predecessor in title), including the Declarant, has made payments, directly or indirectly, to the Corporation or for the benefit of the Corporation, such payments shall be carried forward as credits for the benefit of such Owner (or its successors or assigns) to be utilized in five equal annual amounts as payment for common expenses that arise after the Fresh Start Date.
- (b) The Board, as of the date of this amendment, has fixed no budget or assessed any common expenses for the second operating year of the Corporation (for the period March 9, 2010 to March 8, 2011) or for the third operating year of the Corporation (for the period March 9, 2011 to March 8, 2012), but such budgets, when approved by the Board, will not provide for any common expenses arising prior to the Fresh Start Date. To the extent that any Owner (or its predecessor in title), including the Declarant, has made payments, directly or indirectly, to the Corporation or for the benefit of the Corporation such payments shall be carried forward as credits for the benefit of such Owner (or its successors or assigns) to be utilized in five equal annual amounts as payment for common expenses that arise after the Fresh Start Date.”

## 2. **RPMA Resolution Amendment**

The Declaration is amended by

- (a) deleting the first twelve words of Schedule E thereto and substituting the following:

“Common Expenses shall, subject to the proviso after paragraph (l) below, include but shall not be limited to the following:”

and

- (b) adding the following proviso after paragraph (l):

“PROVIDED THAT, for greater certainty, Common Expenses shall not include any amounts paid by the Hotel Operator under the Hotel Management Agreement as “Deductions” as defined thereunder or as other expenses paid by the Hotel Operator under the Hotel Management Agreement or other agreements with the Hotel Operator.”

## FULL AND FINAL RELEASE

**TO:** Alvarez & Marsal Canada ULC, in its personal capacity, and its capacity as receiver and manager and trustee of all property, assets and undertakings (the "Assets") of The Rosseau Resort Developments Inc. ("RRDI") and not in its personal capacity and Alvarez & Marsal Canada Inc., in its personal capacity, and in its capacity as interim receiver of the Assets of RRDI and not in its personal capacity (collectively hereafter referred to as the "Receiver"), and RRDI

**RE:** Full and Final Release ("Release") effective as of May , 2011 by Gordon Jacobs ("Jacobs"), and Roland Klassen ("Klassen" and together with Jacobs, the "Non-RRDI Directors") in their respective capacities as directors of the Corporation (as defined herein), and the Muskoka Standard Condominium Corporation No. 62 (the "Corporation") in favour of the Receiver and RRDI

**DATE:** May\_\_\_2011

IN CONSIDERATION of the mutual covenants and obligations set out in the Amended and Restated Agreement among the Corporation, the Receiver, the Members of the Ad Hoc Committee of Unit Owners and the Non-RRDI Directors dated \_\_\_\_\_, 2011 (the "**Settlement Agreement**") and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Non-RRDI Directors and the Corporation hereby severally covenant and agree as follows:

**1. Defined Terms.**

Capitalized terms used in this Release and not otherwise defined shall have the meanings specified in the Settlement Agreement.

**2. The Releases.**

- 2.1. The Corporation and the Non-RRDI Directors, on their own behalf and on behalf of their respective successors, assigns, heirs, executors or administrators, absolutely, unconditionally and irrevocably release, remise and forever discharge the Receiver and RRDI, and each of their present and former shareholders, partners, affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, employees, agents, and other representatives, and their respective successors and assigns (RRDI and the Receiver and such other persons being hereinafter referred to collectively as the "**RRDI Releasees**" and individually as a "**RRDI Releasee**"), of and from all demands, actions, causes of action, applications, suits, covenants, contracts, complaints, controversies, agreements, promises, sums of money, accounts, bills, bonds, indebtedness, reckonings, obligations, duties, breaches of contract, breaches of duty or any relationship, acts, omissions, compensations, promises, costs, losses, expenses, claims for interest or disbursements, damages, remedies for losses, choses in action, entitlements, rights of indemnity, and any and all other claims, counterclaims, defences, demands and liabilities whether known or unknown, both at law and in equity, which any of the

Corporation and Non-RRDI Directors or any of their respective successors, assigns, heirs, executors or administrators may now or later have against any of the RRDI Releasees on account of, or in relation to, or in any way in connection with common expenses assessed or which could have been or could be assessed by the Corporation for the period up to the Fresh Start Date (individually, a "Claim" and collectively, "Claims").

- 2.2. The Corporation and the Non-RRDI Directors each severally acknowledge and agree that the releases set out in Section 2.1 may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such releases.
- 2.3. The Corporation and the Non-RRDI Directors severally agree that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the releases set out in Section 2.1.
- 2.4. The Corporation and the Non-RRDI Directors absolutely, unconditionally and irrevocably, covenant and agree, severally, with and in favour of each RRDI Releasee that it/they will not sue (at law, in equity, in any regulatory proceeding or otherwise) any RRDI Releasee on the basis of any Claim released under Section 2.1 above. If any of the Corporation and the Non-RRDI Directors violate the foregoing, the Corporation and the Non-RRDI Directors severally agree to pay (and fully indemnify the RRDI Releasees for) in addition to any other damages that any RRDI Releasee may sustain as a result of that violation, all legal fees and costs incurred by any RRDI Releasee as a result of that violation.

### **3. Representations and Warranties.**

The Corporation and the Non-RRDI Directors severally represent and warrant that they have the authority to enter into and fully perform each term of this Release and grant the releases and discharges herein contemplated.

### **4. Miscellaneous.**

- 4.1. The Corporation and the Non-RRDI Directors severally undertake and agree not to assert any Claim or take any proceedings in furtherance of such Claim against any person, partnership, corporation, or other such entity which might be entitled to claim contribution, indemnity, or other relief over against any RRDI Releasee on account of such Claim under the provisions of any statute or otherwise, including the *Negligence Act*, R.S.O. 1990, c.N.1 and any amendments and successor legislation thereto, with respect to any of the matters to which this release applies.
- 4.2. In addition to Section 2.2 above, in the event that any of the Corporation or the Non-RRDI Directors should hereafter commence any proceedings involving any Claims against any RRDI Releasee, this document may be raised as an estoppel to any such



Claims in the proceedings. In the event that any of the Corporation or the Non-RRDI Directors commences any such proceedings, the party commencing the proceedings undertakes and agrees to indemnify the party against whom the proceedings are commenced, on a solicitor and client basis, in respect of any legal fees incurred in relation to any such Claims.

- 4.3. The Corporation and the Non-RRDI Directors severally represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person, partnership, corporation, or other such entity any of the Claims released above, or any of the matters about which they agree herein not to make any claim or take any proceedings.
- 4.4. The Corporation and the Non-RRDI Directors severally represent and warrant that no consent, approval, waiver or other intervention or involvement of any kind by any other party is required for the effective release of the Claims or the effective execution of this Release, other than those described in the Settlement Agreement.
- 4.5. And it is understood and agreed that the aforesaid consideration is deemed to be no admission whatsoever of liability on the part of the Receiver or RRDI and that such liability is denied.
- 4.6. And for the aforesaid consideration, the Non-RRDI Directors and the Corporation severally acknowledge, declare and agree that they are satisfied with the information provided and have no outstanding requests for information, that they have had sufficient time and opportunity to seek independent legal and other professional advice with respect to the terms of this settlement and this release, that they have been represented by counsel in connection with the negotiation and execution of this Release and have had a full and adequate opportunity to consider this Release and consult with counsel in connection with same, that they have read this Release in its entirety, and it has been explained to them by their counsel, that they understand the terms of this release and voluntarily accept the consideration referred to above for the purpose of making full and final compromise, adjustment and settlement of all Claims as aforesaid, and severally represent and warrant that they have not been induced to enter into this release by reason of any representation or warranty of any kind whatsoever, that no threat or suggestion or promise has been made to either the Corporation or the Non-RRDI Directors to influence them to sign the Release, other than the statements set forth herein, that in signing this Release they have not been subjected to any coercion, undue influence, or duress, and that there is no condition, express or implied, or collateral agreement affecting the said settlement other than the Settlement Agreement.

**5. Further Assurances.**

The Non-RRDI Directors and the Corporation, on the request of RRDI or the Receiver, shall severally execute and deliver to RRDI and the Receiver, such further assurances as may reasonably be required to effect the payments, releases and discharges.

**6. Governing Law.**

This Release is governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein and the Non-RRDI Directors and the Corporation submit to the exclusive jurisdiction of the courts of Ontario in connection with any dispute or interpretation regarding this Release.

**7. Successors and Assigns.**

This Release shall be binding upon the Non-RRDI Directors and the Corporation and shall enure to the benefit of the RRDI Releasees and each of their respective successors, assigns, heirs, executors, administrators and/or legal or personal representatives, as applicable.

**8. Several Liability.**

Notwithstanding anything in this Release, the obligations under this Release of the Corporation and each of the Non-RRDI Directors are several. Under no circumstance is the Corporation or either of the Non-RRDI Directors liable for any breach of this Release, or the terms herein, by any other party. Only the party in breach of the Release is liable.

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Release, has been executed as of the \_\_\_\_\_ day of May, 2011.

**MUSKOKA STANDARD CONDOMINIUM  
CORPORATION NO. 62**

By: \_\_\_\_\_  
Authorized Signing Officer

By: \_\_\_\_\_  
Authorized Signing Officer

**Non-RRDI Directors:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Gordon Jacobs

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Roland Klassen



## FULL AND FINAL RELEASE

**TO:** Muskoka Standard Condominium Corporation No. 62 (the "Corporation")

**RE:** Full and Final Release ("Release") effective as of May , 2011 by The Rosseau Resort Developments Inc. ("RRDI"), by its receiver, Alvarez & Marsal Canada ULC in its capacity as receiver and manager and trustee of all property, assets and undertakings (the "Assets") of RRDI and in its personal capacity and Alvarez & Marsal Canada Inc., in its capacity as interim receiver of the Assets of RRDI and in its personal capacity (the "Receiver") in favour of the Corporation

**DATE:** May\_\_\_2011

**IN CONSIDERATION** of the mutual covenants and obligations set out in the Amended and Restated Agreement among the Corporation, the Receiver, the Members of the Ad Hoc Committee of Unit Owners and the Non-RRDI Directors dated \_\_\_\_\_, 2011 (the "**Settlement Agreement**") and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), RRDI, by its Receiver, hereby covenants and agrees as follows:

**1. Defined Terms.**

Capitalized terms used in this Release and not otherwise defined shall have the meanings specified in the Settlement Agreement.

**2. The Releases.**

- 2.1.** RRDI, by its Receiver, on its own behalf and on behalf of its successors and assigns, absolutely, unconditionally and irrevocably releases, remises and forever discharges the Corporation and each of its present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, employees, agents, and other representatives, and their respective successors and assigns (the Corporation and such other persons being hereinafter referred to collectively as the "**Corporation Releasees**" and individually as a "**Corporation Releasee**"), of and from all demands, actions, causes of action, applications, suits, covenants, contracts, complaints, controversies, agreements, promises, sums of money, accounts, bills, bonds, indebtedness, reckonings, obligations, duties, breaches of contract, breaches of duty or any relationship, acts, omissions, compensations, promises, costs, losses, expenses, claims for interest or disbursements, damages, remedies for losses, choses in action, entitlements, rights of indemnity, and any and all other claims, counterclaims, defences, demands and liabilities whether known or unknown, both at law and in equity, which RRDI or any of its successors and assigns may now or later have against any of the Corporation Releasees on account of, or in relation to, or in any way in connection with all liabilities of the Corporation to reimburse, to account to, or to be subject to set off by, RRDI (and its successors and assigns) for amounts or obligations as set out in the Set-Off Motion,

for the period up to the Fresh Start Date (individually, a "Claim" and collectively, "Claims").

- 2.2. RRDI, by its Receiver, acknowledges and agrees that the releases set out in Section 2.1 may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such releases.
- 2.3. RRDI, by its Receiver, agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the releases set out in Section 2.1.
- 2.4. RRDI, by its Receiver absolutely, unconditionally and irrevocably covenants and agrees with and in favour of each Corporation Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Corporation Releasee on the basis of any Claim released under Section 2.1 above. If RRDI violates the foregoing, RRDI agrees to pay (and fully indemnify the Corporation Releasees for) in addition to any other damages that any Corporation Releasee may sustain as a result of that violation, all legal fees and costs incurred by any Corporation Releasee as a result of that violation.

### 3. Representations and Warranties.

RRDI, by its Receiver, represents and warrants that it has the authority to enter into and fully perform each term of this Release and grant the releases and discharges herein contemplated.

### 4. Miscellaneous.

- 4.1. RRDI, by its Receiver, undertakes and agrees not to assert any Claim or take any proceedings in furtherance of such Claim against any person, partnership, corporation, or other such entity which might be entitled to claim contribution, indemnity, or other relief over against any Corporation Releasee on account of such Claim under the provisions of any statute or otherwise, including the *Negligence Act*, R.S.O. 1990, c.N.1 and any amendments and successor legislation thereto, with respect to any of the matters to which this release applies.
- 4.2. In addition to Section 2.2 above, in the event that RRDI or RRDI, by its Receiver, should hereafter commence any proceedings involving any Claims against any Corporation Releasee, this document may be raised as an estoppel to any such Claims in the proceedings. In the event that RRDI or RRDI, by its Receiver, commences any such proceedings, RRDI undertakes and agrees to indemnify the party against whom the proceedings are commenced, on a solicitor and client basis, in respect of any legal fees incurred in relation to any such Claims.



- 4.3. RRDI, by its Receiver, represents and warrants that it has not assigned or transferred, or purported to assign or transfer, to any person, partnership, corporation, or other such entity any of the Claims released above, or any of the matters about which it agrees herein not to make any claim or take any proceedings.
- 4.4. RRDI, by its Receiver, represents and warrants that no consent, approval, waiver or other intervention or involvement of any kind by any other party is required for the effective release of the Claims or the effective execution of this Release, other than those described in the Settlement Agreement.
- 4.5. And it is understood and agreed that the aforesaid consideration is deemed to be no admission whatsoever of liability on the part of the Corporation and that such liability is denied.
- 4.6. And for the aforesaid consideration, RRDI, by its Receiver, acknowledges, declares and agrees that it is satisfied with the information provided and has no outstanding requests for information, that it has had sufficient time and opportunity to seek independent legal and other professional advice with respect to the terms of this settlement and this release, that it has been represented by counsel in connection with the negotiation and execution of this Release and has had a full and adequate opportunity to consider this Release and consult with counsel in connection with same, that it has read this Release in its entirety, and it has been explained to it by its counsel, that it understands the terms of this release and voluntarily accepts the consideration referred to above for the purpose of making full and final compromise, adjustment and settlement of all Claims as aforesaid, and represents and warrants that it has not been induced to enter into this release by reason of any representation or warranty of any kind whatsoever, that no threat or suggestion or promise has been made to RRDI to influence it to sign the Release, other than the statements set forth herein, that in signing this Release it has not been subjected to any coercion, undue influence, or duress, and that there is no condition, express or implied, or collateral agreement affecting the Release other than the Settlement Agreement.

**5. Further Assurances.**

RRDI, or the Receiver (until its discharge) on the request of the Corporation, shall execute and deliver to the Corporation, such further assurances as may reasonably be required to effect this Release.

**6. Governing Law.**

This Release is governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein and RRDI submits to the exclusive jurisdiction of the courts of Ontario in connection with any dispute or interpretation regarding this Release.

**7. Successors and Assigns.**

This Release shall be binding upon RRDI and the Receiver and shall enure to the benefit of the Corporation Releasees and their respective heirs, executors, administrators, successors and assigns, as applicable.

**8. Limitation of Liability.**

Notwithstanding anything contained herein, Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Inc. are signing this Release in their respective capacities as receiver and manager and interim receiver of the Assets of RRDI and shall have no personal liability hereunder for any payment or for any other obligation. The Corporation Releasees shall have no recourse in respect of this Release against the Assets except for an unsecured claim against RRDI's Assets.

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Release, has been executed as of the \_\_\_\_\_ day of May, 2011.

**THE ROSSEAU RESORT DEVELOPMENTS  
INC. by Alvarez & Marsal Canada ULC in its  
capacity as receiver and manager and trustee of  
the assets of The Rosseau Resort Developments  
Inc. and in its personal capacity, and by Alvarez  
& Marsal Canada Inc. in its capacity as interim  
receiver of the assets of The Rosseau Resort  
Developments Inc. and in its personal capacity**

By:

Authorized Signing Officer