

Appendix B

Rock Ridge Original
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CCA Document No. 5 1988

5

CANADIAN STANDARD

CONSTRUCTION

MANAGEMENT CONTRACT FORM

BETWEEN

OWNER AND

CONSTRUCTION MANAGER

PROJECT: Red Leaves Development - Longview, Paignton House

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CANADIAN CONSTRUCTION ASSOCIATION
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Canadian Construction Association
75 Albert Street, Suite 400
Ottawa, Ontario
K1P 5E4

CONSTRUCTION MANAGEMENT CONTRACT

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

This agreement made this 1st day of April in the year 2005

by and between

The Rosseau Resort Developments Inc.
1112 Juddhaven Road, P.O. Box 78
Minett, Ontario P0B 1G0

hereinafter called the "Owner"

and

Rock Ridge Contractors Inc.
1112 Juddhaven Road, P.O. Box 78
Minett, Ontario P0B 1M0

hereinafter called the "Construction Manager"

witnesses: that the parties agree as follows

ARTICLE A-1 SERVICES AND RESPONSIBILITIES

(a) The Construction Manager agrees to provide the services set forth in GC2-CONSTRUCTION MANAGER'S SERVICES

(b) The Owner shall be responsible for the development of the design of the Project and has retained

Stone McQuire Vogt Architects, Toronto Ontario

hereinafter called the "Consultant." The Consultant's services, duties and responsibilities shall be as described in the Agreement between the Owner and the Consultant.

ARTICLE A-2 THE CONSTRUCTION MANAGEMENT TEAM

- (a) The Construction Manager, along with the Owner and the Consultant, shall form the "Construction Management Team," which will work from the commencement of the Pre-Construction Phase through to completion of the Post-Construction Phase for a period of 36 weeks / months (the "Contract Time") and shall strive to achieve Substantial Performance of the Project by the 30th day of April in the year 2008 .
- (b) The Construction Manager shall provide leadership to the Construction Management Team on all matters relating to construction.

The Rosseau Resort Developments.
Rock Ridge Contractors Inc.
Stone McQuire Vogt Architects
Rybka Smith Ginsler Mechanical & Electrical Engineer
Atkins vanGroll Structural Engineer
MDP Landscape Consultants
Pinestone Engineering
and any other consultants as engaged by the Owner or Construction Manager from time to time throughout the course of the Project.

ARTICLE A-3 THE CONSTRUCTION MANAGER AS AGENT

- (a) The Construction Manager represents that he is knowledgeable and experienced in the management of the type of construction required for the Project. The Construction Manager acknowledges that he is being retained by the Owner because of his knowledge and expertise in that regard.
- (b) The Owner appoints the Construction Manager his agent to act in his name in accordance with the terms of this Agreement and for the purpose of the management of the construction of the Project described in ARTICLE A-4 SCOPE OF THE PROJECT.

ARTICLE A-4 SCOPE OF THE PROJECT

This Contract provides for services in connection with the following described Project:

Red Leaves is a Destination resort development located on Lake Rosseau in the District of Muskoka. In general terms it includes the construction of the following facilities and amenities under this Contract;

Longview - Part of the J.W. Marriott Rosseau Resort

Paignton House - Part of the J.W. Marriott Rosseau Resort

Lakeview Residences - Part of the J.W. Marriott Rosseau Resort

Various elements of shared infrastructure including but not limited to Domestic Water Supply, Sanitary Sewer Services, Telecommunications network & infrastructure, power distribution and provision of backup power generation for the facilities, Landscaping, irrigation and other works.

See the attached list of Contract Documents as updated from time to time as design is completed.

ARTICLE A-5 CONTRACT FEE

- (a) The Owner agrees to pay the Construction Manager as compensation for his services a Contract Fee of

One _____ dollars

(\$ 1.00) in Canadian funds earned as follows:

- (1) For services performed during the Pre-Construction Phase, a fee of

(\$ _____) payable at the rate of _____ dollars

(\$ _____) per month; _____ dollars

- (2) For services performed during the Construction Phase, a fee of

One

(\$ 1.00); _____ dollars

- (3) For services performed during the Post-Construction Phase, a fee of

(\$ _____) payable at the rate of _____ dollars

(\$ _____) per month. _____ dollars

Payment of the Contract Fee shall be made in accordance with the provisions of ARTICLE A-8 PAYMENT and GC 10-APPLICATIONS FOR PAYMENT.

- (b) The Contract Fee shall be subject to adjustment as may be required in accordance with the provisions of the Contract Documents

ARTICLE A-6 REIMBURSIBLE EXPENSES

In addition to the Contract Fee stipulated in ARTICLE A-5 CONTRACT FEE of this Agreement, the Owner agrees to pay the Construction Manager for the Reimbursible Expenses he incurs as defined by APPENDIX 'A' to this Agreement in accordance with ARTICLE A-8 PAYMENT and GC 10-APPLICATIONS FOR PAYMENT

ARTICLE A-7 OWN FORCES WORK

The Construction Manager may, subject to the Owner's approval, perform work with his own forces. Such work shall be performed in accordance with the terms of this Agreement. The Owner shall pay to the Construction Manager the cost of such work plus a fee being Zero (0%) _____ per cent of that cost in addition to all other amounts payable pursuant to this Agreement. For the purposes of this provision, cost of the work shall include and be limited to those items set forth in APPENDIX 'A' -REIMBURSIBLE EXPENSES to this Agreement.

ARTICLE A-8 PAYMENT

- (a) The Owner agrees to make monthly payments to the Construction Manager in Canadian funds on account of Reimbursible Expenses incurred to date, the applicable portion of the Contract Fee earned as described in ARTICLE A-5 CONTRACT FEE of this Agreement, any work performed directly by the Construction Manager pursuant to ARTICLE A-7 OWN FORCES WORK and for Additional Services in accordance with GC 2.5

- (b) If the Owner fails to make payments to the Contractor as they become due under the terms of this Contract, or in an award by arbitration or court, interest at zero per cent (0.00 %) above the prime rate per annum as of the date payment became due on such unpaid amounts shall also become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

Prime rate, for the purposes of this Agreement, means the lowest rate of interest quoted by The Royal Bank of Canada from time to time in the City of _____ to the most credit-worthy borrowers for prime business loans.

ARTICLES A-9 RIGHTS AND REMEDIES

- (a) The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a substitution for any duties, obligations, rights and remedies otherwise available by law.
- (b) No action or failure to act by the Owner or Construction Manager shall constitute a waiver of any right or duty afforded either of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

ARTICLE A-10 RECEIPT OF AND ADDRESSES FOR NOTICES

Communications in writing between the parties shall be considered to have been received by the addressee on the date of delivery if delivered by hand to the individual or to a member of the firm or to an officer of the corporation for whom they are intended or if sent by post or by telegram, to have been delivered within five (5) days of the date of mailing, dispatch or delivery to the telegraph company when addressed as follows:

The Owner at

1112 Juddhaven Road
P.O. Box 78
Minett, Ontario P0B 1G0

The Construction Manager at

1112 Juddhaven Road
P.O. Box 78
Minett, Ontario P0B 1G0

ARTICLE A-11 LAW OF THE CONTRACT

The law of the Place of the Project shall govern the interpretation of the Contract.

ARTICLE A-12 LANGUAGE OF THE CONTRACT

When the Contract Documents are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the * English language shall prevail.

This Agreement is drawn in English at the request of all parties hereto;
ce marche est redige en anglais la demande de toutes les parties.

* Complete this statement if the Contract Documents have been prepared and issued in both official languages of Canada.

ARTICLE A-13 PRIOR NEGOTIATIONS, REPRESENTATIONS OR AGREEMENTS

This Agreement supersedes all prior negotiations, representations or agreements, either written or oral.

ARTICLE A-14 SUCCESSION

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.

ARTICLE A-15 DISCOUNTS, REBATES AND REFUNDS

All cash discounts shall accrue to the Construction Manager unless the Owner deposits funds with the Construction Manager with which to make payments, or makes such payments directly, in which case the cash discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment applicable to the Project shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

In witness whereof the parties hereto have executed this Agreement under their respective corporate seals and by the hands of their proper officers thereunto duly authorized.

SIGNED, SEALED AND DELIVERED

In the presence of:

Owner

The Rosseau Resort Developments Inc.

name

signature

Ken Fowler, President

name and title

signature

witness

name and title

name and title

CONSTRUCTION MANAGER

Rock Ridge Contractors Inc.

name

signature

Ken Fowler, President

name and title

signature

witness

name and title

name and title

NB. Where legal jurisdiction, local practice, or Owner or Construction Manager requirement calls for proof of authority to execute this document, proof of such authority in the form of a certified copy of a resolution naming the person or persons in question as authorized to sign the Agreement for and on behalf of the corporation or partnership, parties to this Agreement, should be attached.

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APPENDIX 'A'

REIMBURSIBLE EXPENSES

The following items are the Reimbursible Expenses referred to in ARTICLE A-6 REIMBURSIBLE EXPENSES and the cost of the work for the purposes of ARTICLE A-7 OWN FORCES WORK of the Agreement and shall be at rates prevailing in the locality of the Place of the Project except with the prior consent of the Owner:

- (a) wages and benefits paid for labour in the direct employ of the Construction Manager in the performance of the Project under applicable collective bargaining agreements or under a salary or wage schedule agreed upon by the Owner and Construction Manager;
- (b) salaries, wages and benefits of the Construction Manager's personnel in whatever capacity employed; salaries, wages and benefits of personnel engaged at shops, or on the road, in expediting the production or transportation of materials or equipment, for that portion of their time spent on the Project; salaries, wages and benefits of head office or other personnel, as are indicated below, for that portion of their time spent on the Project;

Ted Forbes, Bonnie Goulet, Will Henderson, John MacDonald, Shannon Taylor and other personnel who may be added from time to time as workload requires.

- (c) contributions, assessments or taxes incurred during the performance of the Contract for such items as unemployment insurance, workers' compensation, Canada or Quebec Pension Plan and the Construction Manager's employee benefit plan, insofar as such costs are based on wages, salaries or other remuneration paid to employees of the Construction Manager and included under paragraphs (a) and (b) above;
- (d) the portion of travel and subsistence expenses of the Construction Manager or his officers or employees incurred while travelling in discharge of duties connected with the Project;
- (e) the cost of all materials, products, supplies and equipment incorporated into the Work, including costs of transportation and storage thereof;
- (f) the cost of materials, products, supplies, equipment, temporary services, utilities and facilities, and hand tools not owned by the workers including transportation and maintenance thereof, which are consumed in the performance of the Contract, and cost less salvage value on such items used, but not consumed, which remain the property of the Construction Manager;
- (g) rental costs of all tools, machinery and equipment used in the performance of the Contract, whether rented from the Construction Manager or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof;
- (h) deposits lost;
- (i) the amount of all subcontracts;
- (j) the costs to the Construction Manager that result from any Trade Contractor's insolvency or failure to perform;
- (k) the cost of quality assurance such as independent inspection and testing services;

- (l) charges levied by authorities having jurisdiction at the Place of the Project;
- (m) royalties, patent licence fees, and damages for infringement of patents and costs of defending suits therefore subject always to the Construction Manager's obligation to indemnify the Owner pursuant to paragraph 13.1 of GC 13-PATENT FEES;
- (n) premiums for all bonds and insurances which the Construction Manager is required, by the Contract Documents, to purchase and maintain;
- (o) taxes and duties related to the Project for which the Construction Manager is liable other than tax on income payable by the Construction Manager;
- (p) losses and expenses sustained by the Construction Manager for matters which are the subject of the insurance coverages obtained pursuant to GC 17-INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, within the deductible amounts or are not insurable;
- (q) charges for telegrams, telexes, site telephones, courier services, expressage, and petty cash items;
- (r) the cost of removal and disposal of waste products and debris;
- (s) costs incurred due to emergencies affecting the safety of persons or property;
- (t) legal costs, incurred by the Construction Manager, arising out of the performance of the Contract;
- (u) costs incurred by the Construction Manager, with the Owner's permission, in expediting the rejected work or the warranty work of Trade Contractors and costs incurred by the Construction Manager in correcting defects or deficiencies in the work undertaken by his own forces and repairing damages resulting therefrom either during the course of construction or the warranty period except those arising from a negligent or wilful act of the Construction Manager;
- (v) the cost of financing the Project in accordance with the method determined by the parties;
- (w) the cost of auditing when requested by the Owner;
- (x) the cost of computer time and usage in accordance with the method determined by the parties;
- (y) such other costs directly incurred by the Construction Manager in the performance of the Contract including the following:

All costs directly and indirectly attributable to The Work to maximum amounts as follows:

For Longview, including Off Site Servicing, On Site Servicing, Landscaping and Building Construction Cost of the Work shall not exceed \$64,389,736.00 in Canadian Funds.

For Paignton House, including Off Site Servicing, On Site Servicing, Landscaping and Building Construction Cost of the Work shall not exceed \$13,326,272.00 in Canadian Funds.

It is the intention of the parties that the items referred to herein shall cover and include any and all costs and contingencies incurred by the Construction Manager in connection with the Project.

DEFINITIONS

The following Definitions shall apply to all Contract Documents.

1. The Contract

The Contract Documents form the Contract. The Contract is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the entire agreement between the parties.

2. Contract Documents

The Contract Documents consist of the executed Agreement between the Owner and the Construction Manager, the General Conditions of the Contract, Supplementary Conditions, Definitions, specifications, drawings and such other documents as are listed in ARTICLE A-4 - SCOPE OF THE PROJECT including amendments thereto incorporated before the execution of the Contract and subsequent amendments thereto made pursuant to the provisions of the Contract and agreed upon between the parties.

3. Owner

The Owner is the person, firm or corporation identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized agent or representative as designated to the Construction Manager in writing.

4. Consultant

The Consultant is the person, firm or corporation identified as such in the Agreement, and is an architect or engineer licensed to practice in the province or territory of the Place of the Project, and is referred to throughout the Contract Documents as if singular in number and masculine in gender.

5. Construction Manager

The Construction Manager is the person, firm or corporation identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Construction Manager means the Construction Manager or his authorized representative as designated to the Owner in writing.

6. Trade Contractor

A Trade Contractor is a person, firm or corporation having a direct contract with the Owner to perform the Work. The term Trade Contractor is referred to throughout the Contract Documents as if singular in number and masculine in gender.

7. The Project

The Project means the total construction and related services to be managed under this Contract of which the Work is a part.

8. The Work

The Work means that portion of the Project performed by a Trade Contractor or by the Construction Manager directly using own forces.

9. Place of the Project

The Place of the Project is the designated site or location of the Project.

10. Time

The Contract Time is the time stipulated in paragraph (a) of ARTICLE A-2.

Day means calendar day.

Working day means days other than Saturdays, Sundays and holidays which are observed by the construction industry in the area of the Place of the Project.

11. Substantial Performance of the Project

Substantial Performance of the Project is the date when the total construction contemplated by the Project is sufficiently complete in accordance with the Contract Documents.

12. Total Performance of the Project

Total Performance of the Project is the date when the total construction and related services contemplated by the Project have been performed to the requirements of the Contract Documents.

13. Changes in the Project

Changes in the Project means additions, deletions, or other revisions to the Project within the general scope of the Contract.

THE GENERAL CONDITIONS OF THE CONSTRUCTION MANAGEMENT CONTRACT

(Hereinafter referred to as the General Conditions)

GC 1 DOCUMENTS

- 1.1 The Contract Documents shall be signed in duplicate by the Owner and the Construction Manager.
- 1.2 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

GC 2 CONSTRUCTION MANAGER'S SERVICES

- 2.1 The Construction Manager will perform the following services in each of the three phases described below but in doing so, he assumes no responsibility nor offers any expertise with respect to the design of the Project including any and all architectural or engineering aspects which shall be the responsibility of the Consultant and Owner.

2.2 PRE-CONSTRUCTION PHASE

2.2.1 *Consultation During Project Development:*

Attend regular meetings with the Construction Management Team during the development of conceptual and preliminary design and preparation of working drawings to advise on site use and improvements, selection of materials, building systems and equipment. Provide recommendations on construction feasibility, availability of materials and labour, time requirements for installation and construction, and factors related to cost including costs of alternative designs or materials, preliminary budgets, and possible economies.

2.2.1.1 Acquaint the Owner and other members of the Construction Management Team with the labour conditions applicable for the duration of the Project.

2.2.1.2 Assist in providing liaison and co-ordination among government authorities, utility companies, and other authorities having jurisdiction over the Place of the Project.

2.2.2 *Planning and Scheduling:*

Prepare, for the Owner's review, a preliminary master time schedule, following consultation with the Construction Management Team, incorporating the sequence and timing of the required basic program decisions, including design time, documentation, bid calls, bid evaluations, trade contract awards and on-site construction activities.

2.2.2.1 Monitor and, if required, revise and update the preliminary schedule as the design proceeds.

2.2.2.2 Finalize the master time schedule for the Owner's approval, and, if necessary, estimate the manpower requirements. Break down this schedule into individual networks for each phase of the Project where necessary showing the sequence and timing for the main construction operations and the milestone completion operations and the milestone completion dates for the various phases.

2.2.2.3 Recommend any equipment or materials which should be pre-ordered to meet the master time schedule

2.2.3 *Project Construction Budget:*

Prepare a Project budget as soon as major Project requirements have been identified, and update periodically for the Owner's approval.

2.2.3.1 Prepare an estimate based on a quantity survey of drawings and specifications at the end of the schematic design phase for approval by the Construction Management Team as the "Project Construction Budget".

2.2.3.2 Update and refine this estimate for the Owner's approval as the development of the drawings and specifications proceeds, and advise the Construction Management Team if it appears that the Project Construction Budget will not be met and make recommendations for corrective action.

2.2.3.3 Evaluate possible alternatives as the design proceeds, in order to permit the selection of the most economical materials and methods that will satisfy the design concept, and the schedule.

2.2.3.4 Establish a cost control program and prepare a projected cash flow for the Project.

2.2.4 *Coordination of Trade Contract Documents:*

Review the drawings and specifications as they are being prepared, recommending alternative solutions whenever design details affect construction feasibility or schedules.

2.2.4.1 Make recommendations to the Owner and the Consultant regarding the division of Work in the drawings and specifications to help facilitate the bidding and awarding of trade contracts, allowing for phased construction, taking into consideration such factors as time of performance, availability of labour, overlapping trade jurisdictions, and provisions for temporary facilities.

2.2.5 *Construction Planning:*

Plan and arrange for supply of temporary services and site facilities including but not limited to office accommodation and supplies, site hoardings, access, storage areas, temporary power and lighting, temporary enclosures, heating, drainage and water facilities, job offices, job security, materials and personnel hoisting facilities and equipment, safety measures, access stairs and ladders, protection of finishes and continuous cleanup.

2.2.5.1 Review with the Consultant the drawings and specifications to eliminate areas of conflict and overlapping in the Work to be performed by the various Trade Contractors.

2.2.5.2 Review with the Construction Management Team the construction insurance needs for the Project.

2.2.5.3 Make recommendations to the Construction Management Team with respect to the bonding of Trade Contractors.

2.2.5.4 Assemble all bid documents for the solicitation of competitive bids for Work to be performed by Trade Contractors. Arrange for the advertising of such bid calls and prepare the necessary prequalification criteria.

2.2.5.5 Analyze the bids received and recommend awards to the Owner. Once awards are approved by the Owner, prepare the trade contracts for execution.

2.2.5.6 Assemble the trade contract documents for all successful Trade Contractors. Check where required that all bonds, insurance policies, and workers' compensation certificates are provided.

- 2.2.5.7 Assist the Construction Management Team in obtaining all approvals, permits, and licenses required for the Project.
- 2.2.5.8 Assist the Owner to arrange for legal surveys of the Project. The Construction Manager shall be responsible for the maintenance of base lines and levels but Trade Contractors shall be responsible for detailed setting out of their work.

2.3 CONSTRUCTION PHASE

2.3.1 *Project Control:*

Monitor the Work of the Trade Contractors and coordinate the Work with the activities and responsibilities of the Owner, Consultant and Construction Manager.

- 2.3.1.1 Maintain a competent full-time staff at the Place of the Project to coordinate and provide general direction of the Project and progress of the Trade Contractors on the Project.
- 2.3.1.2 Establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Management Team.
- 2.3.1.3 Establish procedures for coordination among the Owner, Consultant, Trade Contractors and Construction Manager with respect to all aspects of the Project and implement such procedures.
- 2.3.1.4 Schedule and conduct progress meetings at which Trade Contractors, Owner, Consultant and Construction Manager can discuss jointly such matters as procedures, progress, problems and scheduling.
- 2.3.1.5 Provide regular monitoring of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for work not started or incomplete and recommend to the Owner and Trade Contractors adjustments in the schedule to meet the probable completion date. Provide summary reports of each monitoring and document all changes in schedule. Revise the schedule as required by GC 5-DELAYS and GC 9-CHANGES IN THE PROJECT.
- 2.3.1.6 Review the adequacy of the Trade Contractors' personnel and equipment and the availability of materials and supplies to meet the schedule. Recommend courses of action to the Owner when requirements of a trade contract are not being met.

2.3.2 *Physical Construction:*

Provide all of the construction facilities and services common to the requirements of all Trade Contractors, both temporary and permanent, as are planned and called for in Item 2.2.5 above. Ensure that all bidders are informed of the facilities and services being provided.

- 2.3.2.1 Advise the Owner of work which should best be done by the Construction Manager. Where the Owner approves of work to be done by the Construction Manager, such work shall be performed in accordance with the Contract Documents and, unless otherwise agreed, paid for by the Owner pursuant to ARTICLE A-7 OWN FORCES WORK.
- 2.3.2.2 Provide advice and assistance on labour problems in order to minimize work stoppages and in the settlement of jurisdictional or other labour disputes.

2.3.3 *Cost Control and Accounting:*

Develop, implement and maintain an effective system of Project cost control. Revise and refine the initially approved Project Construction Budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Consultant whenever projected cost exceeds budgets or estimates.

2.3.3.1 Maintain accounting records and afford the Owner access to these records.

2.3.3.2 Provide for and administer the necessary procedures to permit recovery of all tax rebates where applicable.

2.3.3.3 If requested, assist the Construction Management Team in implementing changes necessary to bring the projected costs within budgets or estimates.

2.3.4 *Changes in the Work:*

Develop and implement a system for the preparation, review and processing of Changes in the Work. Recommend necessary or desirable Changes in the Work to the Construction Management Team, review requests for Changes in the Work, submit recommendations to the Construction Management Team and assist in their negotiation.

2.3.5 *Payments to Trade Contractors:*

Develop and implement a procedure for the review, certification, processing and payment of applications by Trade Contractors for progress and final payments.

2.3.5.1 Expedite the processing of Trade Contractors' invoices.

2.3.6 *Other Consultants:*

Assist the Owner in selecting and retaining the professional services of a surveyor, testing laboratories, geotechnical and other specialists and coordinate these services, without assuming any responsibility or liability of or for these consultants or their work.

2.3.7 *Inspection:*

Periodically inspect the Work of Trade Contractors for defects and deficiencies in the Work without assuming any of the Consultant's responsibilities for inspection. Inspection by the Construction Manager shall not relieve the Trade Contractor from their responsibility for nor make the Construction Manager responsible for construction means, methods, techniques, sequences and procedures, nor for their responsibility to carry out the Work in accordance with their contracts.

2.3.7.1 Review the safety programs of each of the Trade Contractors and make appropriate recommendations. In making such recommendations and carrying out such reviews, the Construction Manager shall not be required to make exhaustive or continuous inspections to check safety precautions and programs in connection with the Project. The performance of such services by the Construction Manager shall not relieve the Trade Contractors of their responsibilities for the safety of persons and property, and for compliance with the federal, provincial and local statutes, rules, regulations and orders applicable to the conduct of the Work.

2.3.8 *Document Interpretation:*

Refer all questions for interpretation of the documents prepared by the Consultant to the Consultant.

2.3.9 *Shop Drawings and Samples:*

With the Consultant, establish and implement procedures for expediting the receipt, processing and review of shop drawings and samples.

2.3.10 Reports and Project Site Documents:

Submit written progress reports to the Owner and the Consultant including budget and scheduling information. Keep a daily log available to the Owner and the Consultants.

2.3.10.1 Maintain at the Place of the Project, on a current basis, records of all necessary contracts, drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all revisions. Obtain data from Trade Contractors and maintain a current set of Project record documents and operating manuals. At the completion of the Project, deliver all such records to the Owner.

2.3.11 Substantial Performance of the Work:

Subject to applicable legislation arrange with the Consultant for the issuance of the necessary certificates respecting substantial performance of the Work or designated portions thereof and prepare with the Consultant a list of incomplete or unsatisfactory items and a schedule for their completion.

2.3.11.1 Distribute substantial performance and total performance certificates.

2.3.12 Start-Up:

With the Owner's maintenance personnel and the Consultant, direct the check-out of utilities, operations systems and equipment for readiness and assist in their initial start-up and testing by the Trade Contractors.

2.3.13 Total Performance of the Work:

Arrange with the Consultant for the certification of total performance and provide written notice to the Owner and Consultant that the Work is ready for final inspection. Seek and transmit to the Consultant as received warranties, affidavits, releases, bonds, waivers, manuals and record drawings. Turn over to the Owner all keys and maintenance stocks.

2.4 POST-CONSTRUCTION PHASE

2.4.1 Operations:

Maintain a close relationship with the Owner's operating staff to ensure a smooth and proper takeover of the Project.

2.4.2 Warranties:

Assist the Owner in administering warranties of the Trade Contractors.

2.5 ADDITIONAL SERVICES

At the request of the Owner, the Construction Manager will provide the following additional services upon written agreement between the Owner and Construction Manager defining the extent of such additional services and the amount and manner in which the Construction Manager will be compensated for additional services.

2.5.1 Services related to investigation, appraisals or valuations of existing conditions, facilities or equipment, or verifying the accuracy of existing drawings or other Owner-furnished information.

2.5.2 Services related to Owner-furnished equipment, furniture and furnishings which are not a part of this Contract.

2.5.3 Services for tenant or rental spaces not a part of this Contract.

2.5.4 Obtaining or training maintenance personnel or negotiating maintenance service contracts.

2.5.5 Services related to the resolution of claims, adjudication of disputes or litigation.

2.5.6 Other:

Not Used.

GC 3 TRADE CONTRACTORS

3.1 The Construction Manager will, in accordance with the direction of the Owner, arrange for contracts to be entered into between the various Trade Contractors and the Owner.

3.2 The terms and conditions of all trade contracts, including any amendments thereto, shall be subject to the approval of the Construction Manager.

GC 4 OWNER'S RESPONSIBILITY

4.1 The Owner shall provide full and timely information regarding his requirements for the Project.

4.2 The Owner shall designate in writing a representative who shall be fully acquainted with the Project and shall have the authority to act on the Owner's behalf in relation to all duties and responsibilities of the Owner under this Contract including the authority to issue and approve the Project Construction Budget and Changes in the Project and who shall furnish information expeditiously and tender decisions promptly. The Construction Manager shall in all respects be entitled to rely upon such designated representative as having full and complete authority in all matters.

4.3 The Owner shall retain a Consultant who shall be responsible for the design and design-related services required for the Project. The duties, responsibilities and services to be provided by the Consultant shall be described in the agreement between the Owner and the Consultant, a copy of which shall be furnished to the Construction Manager. The agreement between the Owner and the Consultant shall not be modified without written notification to the Construction Manager.

4.4 The Owner shall furnish promptly to the Construction Manager all necessary information regarding the Place of the Project including surveys as to the physical characteristics of the site, soils reports and subsurface investigations, legal limitations, utility locations and legal description. The Construction Manager shall have no responsibility or liability with respect to these matters including their suitability or non-suitability to the Project and shall be entitled to rely entirely upon the completeness and accuracy thereof.

4.5 The Owner shall arrange to secure and pay for all necessary approvals, permits, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

4.6 The Owner shall furnish such legal and auditing services as are required for the performance of the Contract.

4.7 The Owner shall provide, maintain and pay for the insurance coverages outlined in GC 17-INSURANCE.

- 4.8 The Owner shall promptly notify the Construction Manager in writing of any defective, faulty or nonconforming work of which he becomes aware.
- 4.9 The Owner shall provide for the payment of all Trade Contractors in accordance with the terms and conditions of his agreements with such Trade Contractors and in conformity with the payment certificates issued by the Consultant.
- 4.10 The Owner and the Consultant shall communicate with the Trade Contractors solely through the Construction Manager.
- 4.11 The Owner shall ensure that adequate financing is available in order to ensure the completion of the Project

GC 5 DELAYS

- 5.1 If the Construction Manager is delayed at any time in the progress of the Project by any act or omission of the Owner or the Consultant or anyone engaged by them directly or indirectly, then the Contract Time shall be extended by a reasonable period of time and the Contract Fee shall be adjusted by a reasonable amount.
- 5.2 If the Construction Manager is delayed at any time in the progress of the Project by a stop work order issued by a court or other public authority and, providing that such order was not issued as the result of an act or fault of the Construction Manager or anyone employed or engaged by him directly or indirectly, then the Contract Time shall be extended by a reasonable period of time and the Contract Fee shall be adjusted by a reasonable amount.
- 5.3 If the Construction Manager is delayed in the progress of the Project by labour disputes, strikes, lock-outs, fire, unusual delay in transportation, adverse weather conditions not reasonably foreseeable, unavoidable casualties or, without limit to the foregoing, any cause beyond the Construction Manager's control, then the Contract Time shall be extended by a reasonable period of time and the Contract Fee shall be adjusted accordingly.
- 5.4 No extension of the Contract Time nor adjustment to the Contract Fee shall be made for delay unless written notice of claim is given to the Owner within thirty (30) days after the occurrence of the event giving rise to the delay.
- 5.5 Where the Owner and Construction Manager are unable to agree upon the appropriate adjustment to be made to the Contract Time or Contract Fee, such adjustment shall be determined in accordance with GC 11-DISPUTES.

GC 6 OWNER'S RIGHT TO PERFORM CONTRACT OR TO TERMINATE CONTRACT

- 6.1 If the Construction Manager should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of his insolvency, or if a receiver is appointed because of his insolvency, the Owner may, without prejudice to any other right or remedy he may have, by giving the Construction Manager or receiver or trustee in bankruptcy written notice, terminate the Contract.
- 6.2 If the Construction Manager should neglect to provide the services required by the Contract to a substantial degree, the Owner may notify the Construction Manager in writing that he is in default of his contractual obligations and instruct him to correct the default within seven (7) working days immediately following the receipt of such notice.

- 6.3 If the correction of the default cannot be completed in the seven (7) working days specified, the Construction Manager shall be in compliance with the Owner's instructions if he:
- (a) commences the correction of the default within the specified time and,
 - (b) provides the Owner with an acceptable schedule for such correction, and
 - (c) completes the correction in accordance with such schedule.
- 6.4 If the Construction Manager fails to correct the default in the time specified or subsequently agreed upon, the Owner, without prejudice to any other right or remedy he may have, may:
- (a) correct such default and deduct the cost thereof from any payment of fee then or thereafter due the Construction Manager, or
 - (b) terminate the Construction Manager's right to perform the Contract in whole or in part or terminate the Contract.
- 6.5 If the Owner terminates the Construction Manager's right to perform the Contract, he shall:
- (a) be entitled to take possession of the premises and all materials, equipment, tools, construction equipment and machinery owned by the Construction Manager and finish the Project by whatever method he may consider expedient, and
 - (b) pay to the Construction Manager those further amounts to which he is entitled in accordance with ARTICLE A-6 REIMBURSIBLE EXPENSES and ARTICLE A-7 OWN FORCES WORK plus the proportionate amount of the Contract Fee earned to the date of termination, and
 - (c) pay to the Construction Manager fair compensation, either by purchase or rental, at the option of the Owner, for any construction tools or machinery and equipment retained for use on the Project, and
 - (d) assume and become liable for all obligations, commitments and unliquidated claims that the Construction Manager may have therefore, in good faith, undertaken or incurred in connection with the said Project.

The Construction Manager shall, as a condition of receiving the payments described, execute and deliver all such papers and take such action, including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in himself the rights and benefits of the Construction Manager under the obligations or commitments to be assumed by the Owner.

- 6.6 After the completion of the Pre-Construction Phase, if the final cost estimates make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate the Contract and shall pay the Construction Manager his fee in accordance with ARTICLE A-5 CONTRACT FEE plus any Reimbursible Expenses incurred pursuant to ARTICLE A-6 REIMBURSIBLE EXPENSES or ARTICLE A-7 OWN FORCES WORK.

GC 7 SUSPENSION ABANDONMENT OR TERMINATION BY OWNER WITHOUT CAUSE

- 7.1 Should the Project be suspended, abandoned or terminated at any time prior to its completion by the Owner, the Construction Manager shall be entitled to be paid in addition to the fee computed in accordance with ARTICLE A-5 CONTRACT FEE and those further amounts recoverable under ARTICLE A-6 REIMBURSIBLE EXPENSES and ARTICLE A-7 OWN FORCES WORK, a sum in compensation for the loss of income experienced by the Construction Manager as a result of the premature termination of this Agreement calculated as follows:
- (a) Zero (0%) per cent of the Contract Fee if the suspension, abandonment or termination occurs during the Pre-Construction Phase;
 - (b) Zero (0%) per cent of the Contract Fee if the suspension, abandonment or termination occurs during the Construction Phase;
 - (c) Zero (0%) per cent of the Contract Fee if the suspension, abandonment or termination occurs during the Post-Construction Phase.

- 7.2 Suspension shall be deemed to have occurred should work on the Project have been stopped at the Owner's request and should such stoppage or stoppages have continued individually or collectively for a period of sixty (60) days.

GC 8 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE CONTRACT

- 8.1 If the Owner should be adjudged bankrupt or makes a general assignment for the benefit of creditors because of his insolvency or if a receiver is appointed because of his insolvency, the Construction Manager may, without prejudice to any other right or remedy he may have, by giving the Owner or receiver or trustee in bankruptcy written notice, terminate the Contract.
- 8.2 If the Project or a substantial part thereof should be stopped or otherwise delayed for a period of thirty (30) days or more under an order of a court or other public authority having jurisdiction and providing that such order was not issued as the result of an act or fault of the Construction Manager, the Construction Manager may, without prejudice to any other right or remedy he may have, by giving the Owner written notice, terminate the Contract.
- 8.3 Should the Owner suspend the Project for a period of sixty (60) days as contemplated by GC 7-SUSPENSION ABANDONMENT OR TERMINATION BY OWNER WITHOUT CAUSE, and the Owner has not instructed the Construction Manager to resume the Project within five (5) working days after the Construction Manager gives the Owner written notice of his intention to resume the Project, and providing such suspension was not due to the default of the Construction Manager, then the Construction Manager may, without prejudice to any other rights or remedies he may have, by giving the Owner written notice, terminate the Contract.
- 8.4 The Construction Manager may notify the Owner in writing that the Owner is in default of his contractual obligations if:
- (a) the Owner fails to pay the Construction Manager when due those amounts which are due and payable in accordance with the Contract or an award by arbitration or court, or
 - (b) the Owner violates the requirements of the Contract to a substantial degree.

The Construction Manager's written notice to the Owner shall advise that if the default is not corrected in the seven (7) working days immediately following the receipt of the written notice the Construction Manager may, without prejudice to any other right or remedy he may have, terminate the Contract.

- 8.5 If the Construction Manager terminates the Contract as herein set out, he shall be paid forthwith all sums to which he is entitled pursuant to paragraph 7.1 of GC 7-SUSPENSION, ABANDONMENT OR TERMINATION BY OWNER WITHOUT CAUSE.

GC 9 CHANGES IN THE PROJECT

- 9.1 Should the Owner during the Pre-Construction Phase require a significant revision in the design concept then developed, the Contract-Fee and the Contract Time shall be subject to an appropriate adjustment. Any additional fee to which the Construction Manager is entitled shall be such sum as having regard to the total fee payable by this Contract for the Pre-Construction Phase represents the amount of the services provided by the Construction Manager which must be duplicated by such change. The Contract Time and the date for Substantial Performance of the Project shall each be extended to reflect such additional time as may reasonably be required having regard to all circumstances as a result of the change required by the Owner.

- 9.2 Should the Owner or his Consultant make changes in all or any portion of the work during the course of the Construction Phase and should such changes singly or collectively have the effect of extending the Contract Time or the date of Substantial Performance or Total Performance of the Project, the Construction Manager shall be entitled to payment of an additional fee having regard to that portion of the fee allocated to the Construction Phase of the Agreement as reflects the additional time for which the Construction Manager is required to be engaged on the Project.
- 9.3 The Construction Manager shall advise the Owner promptly when he determines that changes as herein contemplated will delay the date of Substantial Performance of the Project, extend the Contract Time, and entitle the Construction Manager to payment of an additional fee.
- 9.4 If the Owner and Construction Manager cannot agree on the change in Contract Time and Contract Fee, the matter shall be determined in accordance with the provisions of GC 11-DISPUTES.

GC 10 APPLICATIONS FOR PAYMENT

- 10.1 The Construction Manager shall submit to the Owner on a monthly basis an application for payment covering all Reimbursible Expenses incurred during the previous period pursuant to ARTICLE A-6 REIMBURSIBLE EXPENSES and the amount of the Contract Fee then due as provided in ARTICLE A-5 CONTRACT FEE and for work performed directly by the Construction Manager pursuant to ARTICLE A-7 OWN FORCES WORK.
- 10.2 (a) The Pre-Construction Phase portion of the Contract Fee shall be payable monthly as set out in ARTICLE A-5 CONTRACT FEE. The balance of the Pre-Construction Phase fee, if any, shall be paid at the commencement of construction.
- (b) Prior to commencement of construction, the Construction Manager shall, in accordance with sub-paragraph 2.2.2.2 of GC-2 CONSTRUCTION MANAGER'S SERVICES, provide a schedule showing the time required to achieve Substantial Performance of the Project. That portion of the fee payable for the Construction Phase shall be payable in equal monthly installments determined by dividing the Construction Phase portion of the fee by the number of months scheduled from commencement of construction to achievement of Substantial Performance of the Project. Upon certification of Substantial Performance of the Project, the balance, if any, of the Construction Phase fee shall become due and payable.
- (c) Should the state of completion of the Project at any time during the Construction Phase be delayed through no fault of the Owner or his Consultant, then the amount payable by the Owner each month shall be such that the total of all sums paid in monthly installments on account of the Construction Phase fee to the Construction Manager to date of payment when related to the total Construction Phase fee as a percentage reflects the degree of completion of the construction of the Project at the date of that payment. Thereafter the amount of the fee payable monthly shall be adjusted either up or down so as to ensure that the total fees paid to the Construction Manager monthly when related to the total fee payable under this Contract for the Construction Phase is equal to the degree of completion of construction of the Project. In any event the Construction Manager shall be entitled to payment in full of his Construction Phase fee upon certification of Substantial Performance of the Project.
- (d) The fee for the Post-Construction Phase shall be paid in equal monthly installments in accordance with ARTICLE A-5 CONTRACT FEE commencing the end of the first month following Substantial Performance of the Project with the balance paid at Total Performance of the Project.
- 10.3 The Owner shall make payment to the Construction Manager on account in accordance with the provisions of ARTICLE A-8 PAYMENT no later than fifteen (15) days following the date of receipt of an application for payment.

GC 11 DISPUTES

- 11.1 Differences between the parties to the Contract as to the interpretation, application or administration of this Contract or any failure to agree where agreement between the parties is called for, herein collectively called disputes, shall be settled in accordance with the requirements of this General Condition.
- 11.2 If the parties so agree the dispute shall be submitted to arbitration in accordance with the provisions of the arbitration legislation of the Place of the Project.
- 11.3 If no agreement is made for arbitration then either party may submit the dispute to such judicial tribunal as the circumstances may require.

GC 12 ASSIGNMENT

- 12.1 Neither party to the Contract shall assign the Contract or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

GC13 PATENT FEES

- 13.1 The Construction Manager shall hold the Owner harmless from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Construction Manager's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent or invention by the Construction Manager or anyone for whose acts he may be liable.
- 13.2 The Owner shall hold the Construction Manager harmless against, claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Construction Manager's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent or invention in executing anything for the purpose of the Contract, the model, plan or design of which was supplied to the Construction Manager for the performance of the Contract.

GC 14 WAIVER

- 14.1 As of the date of Total Performance of the Project, the Owner expressly waives and releases the Construction Manager from all claims against the Construction Manager including without limitation those that might arise from the negligence or breach of contract by the Construction Manager except one or more of the following:
 - (a) those made in writing prior to Total Performance of the Project and still unsettled;
 - (b) those arising from the provisions of GC 16 -INDEMNIFICATION BY CONSTRUCTION MANAGER;
 - (c) those made in writing within a period of one (1) year from the date of Substantial Performance of the Project and arising from any liability of the Construction Manager for damages resulting from the performance of this Contract with respect to substantial defects or deficiencies in the Project for which the Construction Manager is proven responsible.

As used herein 'substantial defects or deficiencies' means those defects or deficiencies in the Project which affect the Project to such an extent or in such a manner that a significant part or the whole of the Project is unfit for the purposes intended.

- 14.2** As of the date of Total Performance of the Project, the Construction Manager expressly waives and releases the Owner from all claims against the Owner including without limitation those that might arise from the negligence or breach of contract by the Owner except:
- (a) those made in writing prior to the date of Total Performance of the Project;
 - (b) those arising from the provisions of GC 15-INDEMNIFICATION BY THE OWNER.

GC 15 INDEMNIFICATION BY THE OWNER

- 15.1** The Owner shall indemnify and hold harmless the Construction Manager, his agents and employees, from and against all claims, demands, losses, costs, damages, actions, suits or proceedings by third parties, including all legal fees, costs and expenses incurred in defending such claims, that arise out of or are attributable to the performance of the Contract except any proportion thereof which is attributable to acts or omissions of the Construction Manager, his agents or employees, which constitute a breach of this Contract and for which the Construction Manager is liable under the terms of this Contract.
- 15.2** The Owner shall indemnify and hold harmless the Construction Manager, his agents and employees, from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the performance of the Contract which are:
- (a) attributable to a lack of or defect in title or an alleged lack of or defect in title to the Place of the Project; or
 - (b) attributable to the negligence of or a breach of contract by the Consultant or Owner; or
 - (c) attributable to the negligence or breach of contract by any Trade Contractor.

GC 16 INDEMNIFICATION BY CONSTRUCTION MANAGER

- 16.1** The Construction Manager shall indemnify and hold harmless the Owner, his agents and employees, from and against claims, demands, losses, costs, damages, actions, suits or proceedings by third parties that arise out of, or are attributable to, the Construction Manager's performance of the Contract (hereinafter the called 'claims'), provided such claims are:
- (a) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property; and
 - (b) caused by negligent acts or omissions of the Construction Manager or those directly employed or engaged by the Construction Manager;
 - (c) made in writing within a period of one (1) year from the date of Substantial Performance of the Project.

The Owner expressly waives the right to indemnity for claims other than those stated above.

- 16.2** The obligation of the Construction Manager to indemnify hereunder shall be limited to the dollar amounts which are recoverable under the insurance coverages maintained pursuant to GC 17-INSURANCE.

GC 17 INSURANCE

- 17.1** The Owner undertakes and agrees at his cost to maintain insurance insuring the interest of and indemnifying the Construction Manager against any liability which he might incur as a result of damage to or injury sustained to any portion of the Project. The Owner agrees that the Construction Manager may place the liability portion of such insurance with the insurer of his choice providing the premiums are competitive or to maintain continuity in regard to completed operations coverage.

Appendix C



FRASER MILNER CASGRAIN LLP

Jane O. Dietrich
Direct Line: 416-863-4467
jane.dietrich@fmc-law.com

July 23, 2009

TO ALL LIEN CLAIMANTS:

**Re: WestLB AG, Toronto Branch ("West LB") v. The Rosseau Resort
Developments Inc. ("RRDI") (Court File No. CV-09-8201-00CL)
Request for Information under Section 39 of the *Construction Lien Act*
(Ontario)**

We represent Alvarez & Marsal Canada ULC and McIntosh & Morawetz Inc., jointly as receiver and manager and trustee and interim receiver of RRDI (in such capacities, jointly, the "Receiver") pursuant to Section 47(1) of the *Bankruptcy and Insolvency Act* (Canada), Section 101 of the *Courts of Justice Act* (Ontario) and Section 68 of the *Construction Lien Act* (Ontario) (the "CLA") and orders of the Honourable Madam Justice Pepall dated May 22, 2009 and June 2, 2009 (collectively, the "Appointment Order").

The Receiver has requested that we provide you with the information below in response to your request.

DISCLAIMER

In providing this information, the Receiver has relied on unaudited financial information prepared by RRDI's management, its consultants and advisors, RRDI's books and records and discussions with its management. Neither the Receiver nor any of its advisors have performed an independent audit or other verification of such information. Neither the Receiver nor any of its advisors, including its legal counsel Fraser Milner Casgrain LLP and Blake Cassels & Graydon LLP, express any opinion or other form of assurance with respect to the accuracy of any financial information presented herein, or relied upon in preparing this letter and the schedules hereto. As well, the lenders to RRDI have not confirmed the accuracy of the information contained herein and this response is without prejudice to the positions of the lenders. All references to dollar figures contained herein are in Canadian currency unless otherwise specified.

STATE OF ACCOUNTS AS BETWEEN WEST LB AND RRDI

West LB is the chargee under a building mortgage registered as Instrument No. MT29969 on March 6, 2007 in the principal amount of \$125,000,000¹. West LB advanced the aggregate sum of \$89,463,939.37 to RRDI plus costs and expenses which are estimated to be in excess of \$914,945.00. See attached Schedule "A" for the details of each advance by West LB to RRDI. Note that of the aggregate sum advanced by West LB, the net sum of \$74,167,831 was advanced for the purpose of financing construction improvements.

CONSTRUCTION MANAGEMENT AGREEMENT

Under a construction management agreement made between The Rosseau Resort Developments Inc. ("RRDI"), as Owner of the subject lands developed as The Rosseau, A JW Marriott Resort & Spa, including Longview and Paignton House (the "Project") to which the improvements were made and Rock Ridge Contractors Inc. ("RRCI") as Construction Manager, dated April 1, 2005 (the "CMA"), RRCI agreed to provide construction management services to RRDI in relation to completion by trade contractors of construction of the improvements. The contract price payable under the CMA to RRCI was \$1.00. According to the records of RRDI, all trade contracts were made directly with the Owner, through RRCI in its capacity as agent and Construction Manager for the Owner.

STATE OF ACCOUNTS AS BETWEEN RRDI AND RRCI

According to the records of RRDI:

- (a) the aggregate gross cost to date as invoiced to RRDI by RRCI as at May 22, 2009 is \$80,810,436.
- (b) the aggregate sum of \$72,085,500 was released from RRDI through RRCI for payment to trade contractors, based on requests for progress and/or final payments submitted to RRDI through RRCI.
- (c) the sum of \$7,478,404 represents the aggregate holdback values of all trade contracts based on the construction costs reporting as of May 22, 2009, of which \$4,139,663 has been released for payment to the trade contractors and the sum of \$3,338,741 remains outstanding. There are \$NIL holdback funds currently set aside and held in a separate trust account.
- (d) To the best of the Receiver's knowledge, no labour and material payment bonds were posted by RRCI or any trade contractors.

SUBSTANTIAL PERFORMANCE/COMPLETION OF CONTRACTS/OCCUPANCY

The list of published certificates of substantial performance for the Project was included with our letter of June 18, 2009, and is attached hereto as Schedule "B" for reference. Occupancy permits

¹ There is also a mortgage registered in favour of WestLB in 2009 in the same principal amount.

were issued for the condominium units and the Hotel generally as per the list attached as Schedule "C".

SALE OF CONDOMINIUM UNITS

Of the total resort condominium units in the Project, there are 137 condominium resort units under existing agreements of purchase and sale between RRDI and a third party purchaser, of which 73 units closed prior to May 22, 2009, and 64 units are yet to close. There are 84 units in inventory which will be marketed for sale over the coming weeks. Proceeds of sale of the remaining units scheduled to close and the as yet unsold units are to be held by the Receiver and disbursed under direction of the Court..

Yours truly,

FRASER MILNER CASGRAIN LLP



Jane O. Dietrich
JOD/te

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SCHEDULE "A"

ROSSEAU RESORT - WESTLB ADVANCES

EFFECTIVE DATE	TOTAL SCAD
April 24, 2007	1,076,689.00
May 3, 2007	2,061,593.00
June 1, 2007	2,905,197.00
June 28, 2007	2,638,277.00
July 30, 2007	2,496,430.00
August 31, 2007	2,389,496.00
September 28, 2007	3,351,428.00
October 30, 2007	6,806,569.00
November 29, 2007	5,143,782.00
January 31, 2008	2,979,621.00
February 29, 2008	5,168,112.00
June 3, 2008	6,951,860.00
July 10, 2008	3,407,160.00
August 5, 2008	5,673,505.00
September 5, 2008	6,487,709.00
October 9, 2008	4,612,985.00
November 5, 2008	4,728,423.00
December 15, 2008	13,104,275.00
February 5, 2009	1,142,291.09
February 6, 2009	244,289.91
February 27, 2009	438,316.00
April 9, 2009	2,493,637.00
April 14, 2009	1,171,185.00
April 21, 2009	1,966,370.37
May 13, 2009	24,739.00

SCHEDULE "B"

List of Published Certificates of Substantial Performance

Red Leaves Project (as of June 2, 2009)

	Date Published	Contractor	Improvement
1.	February 12, 2007	Fowler Construction Company Limited	Civil Contract #2 & 3 – Blasting & Crushing Work
2.	July 13, 2007	Hepp Contractors Inc.	J.W. Marriott Hotel, Structural Foundation
3.	November 30, 2007	Steelrite Construction Canada Inc.	Supply and Install Structural Steel Base Shell
4.	March 7, 2008	Builder's Choice Air Systems	Longview Building - Gas Fireplaces
5.	June 23, 2008	DMC Reinforcing Products Ltd.	Supply and Install Rebar at Longview Building
6.	July 24, 2008	Asian Technologies Inc.	Sewage Treatment Plant and Water Treatment Plant
7.	August 29, 2008	Fowler Construction Company Ltd.	Site Servicing, Excavation, Grading, Paving – Paignton House
8.	August 29, 2008	Fowler Construction Company Ltd.	Site Servicing, Excavation, Grading, Paving – Longview
9.	August 29, 2008	Fowler Construction Company Ltd.	Landscaping – Longview
10.	August 29, 2008	Fowler Construction Company Ltd.	Landscaping – Paignton House
11.	September 2, 2008	Cutting Bros Inc.	Supply and Installation of Timberframes Porte de Corchere No. 1 and No. 2
12.	October 31, 2008	Can-Barr Mechanical Ltd.	Mechanical Longview
13.	October 31, 2008	Wallwin Electric Services Ltd.	A.J.W. Marriott Hotel and Resort
14.	November 19, 2008	Barzelle Designs Ltd.	J.W. Marriott - Longview

	Date Published	Contractor	Improvement
15.	November 20, 2008	Grafton Stone Masons and Restorations Ltd.	J.W. Marriott Hotel – Longview
16.	November 25, 2008	Quanbury Contract Interiors	J.W. Marriott – Longview
17.	November 26, 2008	MSF International Ltd.	J.W. Marriott – Water Treatment Plant
18.	November 26, 2008	MSF International Ltd.	J.W. Marriott – Utility Building
19.	November 26, 2008	MSF International Ltd.	J.W. Marriott – Sewage Treatment Plant
20.	November 26, 2008	MSF International Ltd.	J.W. Marriott – Longview – Conference Wing
21.	November 26, 2008	MSF International Ltd.	J.W. Marriott Bridge – Paignton House
22.	December 3, 2008	Dawson's Incorporated	J.W. Marriott – The Rosseau
23.	December 3, 2008	Designed Roofing	J.W. Marriott – Longview
24.	December 3, 2008	Grafton Stone Masons and Restorations Ltd.	J.W. Marriott – Paignton House/Bridge
25.	December 3, 2008	InterArt Decor Ltd.	Painting and Wall Covering
26.	December 4, 2008	Alcona Aluminum	J.W. Marriott - Longview
27.	December 10, 2008	Rock Solid Granite Tops	J.W. Marriott - Longview
28.	December 18, 2008	Fowler Construction Company Limited	Red Leaves Paignton House Servicing, Access Road & Wallace Marina Servicing
29.	January 13, 2009	Schindler Elevator Corporation	J.W. Marriott – Longview
30.	January 21, 2009	BonaVista Pools	Longview - Indoor/Outdoor Pool and Hot Tub
31.	February 10, 2009	GM Exteriors	Siding Work for Water

	Date Published	Contractor	Improvement
			Treatment and Utility Buildings
32.	February 26, 2009	Aqua North Contracting Ltd.	J.W. Marriott - Paignton House
33.	February 26, 2009	Aqua North Contracting Ltd.	J.W. Marriott - Longview
34.	March 11, 2009	Old Tymer Welding	J.W. Marriott - Longview
35.	March 19, 2009	Vipond Fire Protection	J.W. Marriott - Longview
36.	March 20, 2009	Rock Solid Granite Tops	J.W. Marriott - Paignton House
37.	March 25, 2009	GRC Contracting	J.W. Marriott - Water Treatment Plant
38.	March 25, 2009	GRC Contracting	J.R. Marriott - Sewage Treatment Plant
39.	March 25, 2009	GRC Contracting	J.W. Marriott - Utility Building
40.	March 26, 2009	GM Exteriors Inc.	J.W. Marriott - Paignton House
41.	March 26, 2009	Marek Contractors	J.W. Marriott - Paignton House
42.	March 26, 2009	Vipond Fire Protection	J.W. Marriott - Paignton House
43.	April 21, 2009	Can-Barr Mechanical Ltd.	J.W. Marriott - Paignton House
44.	April 28, 2009	Quanbury Contract Interiors	J.W. Marriott - Paignton House
45.	May 19, 2009	All Construction	J.W. Marriott - Paignton House
46.	Publication not found (certificate signed March	Corflex Partitions Inc.	J.W. Marriott - Longview

	Date Published	Contractor	Improvement
	2, 2009)		
47.	Publication not found (certificate signed April 14, 2009)	Egress Systems of Canada Ltd.	J.W. Marriott -- Longview
48.	Publication not found (certificate signed December 15, 2008)	Schindler Elevator Corporation	J.W. Marriott -- Paignton House

SCHEDULE "C"

Schedule of Occupancy Permits/CSP

Red Leaves Project

Date of Permit	Legal Description	Area Cleared
November 19, 2008	Con 10, PT Lot 25, Con 11 PT Lots 24 and 25 PT RD Allow RP 35R19775 PARTS 1, 4 and 5 RE35R20257, Parts 1, 4 to 8, Lake Rosseau	All areas except as noted
November 21, 2008	Same as above	All areas except as noted
December 5, 2008	Same as above	All areas except as noted
December 8, 2008	Same as above	All areas except as noted
December 12, 2008	Same as above	All areas except as noted
December 18, 2009	Same as above	All areas except as noted
December 19, 2008	Same as above	All areas except as noted
February 13, 2009	Same as above	All areas except as noted
February 20, 2009	Same as above	All areas except as noted

Appendix D

SUMMARY OF REGISTERED LIEN CLAIMS¹

	Claimant (and Solicitor for Claimant)	Amount of Claim	Claim for Construction Lien – Preservation Date	Certificate of Action – Perfection Date	Property Affected (PINs)
1.	GM Exteriors Inc. Berkow, Cohen LLP 141 Adelaide Street West, Suite 400, Toronto, ON M5H 3L5 (Jack Berkow - 416-364-4900)	\$204,558.83	May 27, 2009 Inst. No. MT66654	July 10, 2009 Inst. No. MT68732 Statement of Claim dated July 7, 2009 – Court File No. 102-09	PIN 48143-0527
2.	GM Exteriors Inc. Berkow, Cohen LLP 141 Adelaide Street West, Suite 400, Toronto, ON M5H 3L5 (Jack Berkow - 416-364-4900)	\$204,558.83	June 2, 2009 Inst. No. MT66936	July 10, 2009 Inst. No. MT68732 July 7, 2009 – Court File No. 102-09	PIN 48862-0001-0222
3.	Egress Systems of Canada Ltd. Graham Wilson & Green 190 Cundles Road East at St. Vincent Street, Suite 107, Barrie, ON L4M 4S5 (Mary Vallee – 705-737-1811)	\$60,280.25	May 29, 2009 Inst. No. MT66719	August 6, 2009 Inst. No. MT70186 Notice of Discontinuance by Egress dated September 10, 2009	PINs 48862-0001 to 0222
4.	Can-Barr Mechanical Ltd. Stewart, Esten 100 Collier Street, Barrie, ON L4M 4V3 (Judith Turner - 705-728-5591)	\$995,181.36	May 28, 2009 Inst. No. MT66689	June 30, 2009 Inst. No. MT68326 Statement of Claim dated June 30, 2009 – Court File No. CV-09-94-00 Notice of Intent to Defend of Wallace Marine Limited dated September 9, 2009	PINs 48862-0001 to 0222, 48143-0527, 48143-0518

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	Claimant (and Solicitor for Claimant)	Amount of Claim	Claim for Construction Lien – Preservation Date	Certificate of Action – Perfection Date	Property Affected (PINs)
5.	G.R.C. Contracting Stewart, Esten 100 Collier Street, Barrie, ON L4M 4V3 (Judith Turner - 705-728-5591)	\$29,855.73	May 28, 2009 Inst. No. MT66713	June 30, 2009 Inst. No. MT68336	PINs 48862-0001 to 0222, 48143-0527, 48143-0518
6.	Parry Sound Glass Limited Joel W. Kennedy 7 James Street, Parry Sound, ON P2A 1T4 (705-746-6444)	\$298,614.34	June 2, 2009 Inst. No. MT66939	July 20, 2009 Inst. No. MT69231	PINs 48143-0518, 48143-0527 and 48862-0001 to 0222
7.	Ayrfield Holdings Limited, Romper Investments Inc., Loaded Dice Investments Inc., Toro Developments Inc., Ayrtight Investments Inc. and Peregrine Construction Inc. c.o.b. as Marel Contractors Bianchi Presta LLP 9100 Jane Street, 3 rd Floor, Building "A", Vaughan, ON L4K 0A4 (Domenic Presta – 905-738-1078)	\$248,826.12 (plus costs, interest, GST)	May 27, 2009 Inst. No. MT66660	July 9, 2009 Inst. No. MT68702	PINs 48143-0527 and 48862-0001 to 0222
8.	1569243 Ontario Inc. c.o.b. as Rock Solid Granite Tops Wyjad Fleming 39 Dominion Street, Bracebridge, ON P1L 1T6 (Daniel Wyjad 705-645-8787)	\$69,966.40	March 30, 2009 Inst. No. MT64192	None Statement of Claim dated May 12, 2009 – Court File No. CV-09-48-00	PINs 48862-0001 to 0222
9.	John B. Petch c.o.b as Outland Maintenance Company Lee, Roche & Kelly 6 Dominion Street, Bracebridge, ON P1L 1R6 (Nicholas Roche – 705-645-2286)	\$4,441.45 (inclusive of GST)	June 19, 2009 Inst. No. MT67704	August 12, 2009 Inst. No. MT70470 Statement of Claim dated August 11, 2009 – Court File No. CV-09-138-00	PINs 48143-0527, 48862-0001 to 0222

	Claimant (and Solicitor for Claimant)	Amount of Claim	Claim for Construction Lien – Preservation Date	Certificate of Action – Perfection Date	Property Affected (PINs)
10.	Fowler Construction Company Limited Devry, Smith & Frank LLP 95 Barber Greene Road, Suite 100, Toronto, ON M3C 3E9 (Mark Mancini – 416-449-1400)	\$445,690.54	1. June 18, 2009 Inst. No. MT67685	July 31, 2009 Inst. No. MT69965 Certificate of Action Court File No. CV-09-134-00	PIN s 48862-0001 to 0148 and 48143-0527
11.	Fowler Construction Company Limited Devry, Smith & Frank LLP 95 Barber Greene Road, Suite 100, Toronto, ON M3C 3E9 (Mark Mancini – 416-449-1400)	\$445,690.54	June 19, 2009 Inst. No. MT67754	July 31, 2009 Inst. No. MT69965 Certificate of Action Court File No. CV-09-134-00	PIN s 48143-0527 and 48862-0001 to 0222
12.	Fowler Construction Company Limited Devry, Smith & Frank LLP 95 Barber Greene Road, Suite 100, Toronto, ON M3C 3E9 (Mark Mancini – 416-449-1400)	\$562,467.54	June 30, 2009 Inst. No. MT68353	July 31, 2009 Inst. No. MT69979 Certificate of Action Court File No. CV-09-133-00	PINs 48143-0527 and 48862-0001 to 0222
13.	Trillium Architectural Products Ltd. Pallett Valo LLP 90 Burnhamthorpe Road West, Suite 1600, Mississauga, ON L5B 3C3 (Francesca Maio – 905-273-3022 ext. 210)	\$9,230.40	June 23, 2009 Inst. No. MT67908	None	PINs 48143-0527, 48862-0001 to 0222
14.	Rolla Landscaping Construction Ltd. Richard J. Mazar (advised by previous lawyer of change to Richard Mazar)	\$23,923.53	June 12, 2009 Inst. No. MT67420	July 27, 2009 Inst. No. MT69594 Statement of Claim dated July 22, 2009 – Court File No. CV-09-117	PINs 48143-0527, 48862-0001 to 0222, 48143-0518

	Claimant (and Solicitor for Claimant)	Amount of Claim	Claim for Construction Lien – Preservation Date	Certificate of Action – Perfection Date	Property Affected (PINs)
15.	Barzelle Designs Ltd. Cassels Brock & Blackwell LLP 40 King Street West, Suite 2100, Toronto, ON M5H 3C2 (Cara L. Shamess – 416-642-7447)	\$208,883.03	May 29, 2009 Inst. No. MT66730	August 4, 2009 Inst. No. MT70046 Statement of Claim dated July 23, 2009 – Court File No. CV-09-120- 00 Notice of Discontinuance dated September 4, 2009	PINs 48143-0527, 48862-0001-0222
16.	Schindler Elevator Corporation Blaney McMurtry LLP 2 Queen Street East, Suite 1500, Toronto, ON M5C 3G5 (*Shawn Wolfson – 416-593-1221)	\$147,241.56	May 29, 2009 Inst. No. MT66780	July 10, 2009 Inst. No. MT68751	PINs 48143-0527, 48862-0001-0222
17.	Builders Choice Air Systems Ltd. Speigel Nichols Fox 400-30 Eglinton Avenue West, Mississauga, ON L5R 3E7 (*Ashley Wortman – 905-366-9700 Ext. 223)	\$23,175.98	June 1, 2009 Inst. No. MT66860	None	PINs 48143-0527, 48143-0518, 48862-0001-0222
18.	Blain, Randy c.o.b. as Randy Blain Construction Lee, Roche & Kelly 6 Dominion Street, Box 990, Bracebridge, ON P1L 1V2 (Nicholas Roche – 705-645-2286)	\$19,972.53	June 2, 2009 Inst. No. MT66932	July 22, 2009 Inst. No. MT69408 Statement of Claim dated July 22, 2009 – Court File No. CV-09-118- 00	PINs 48143-0527, 48862-0001-0222

	Claimant (and Solicitor for Claimant)	Amount of Claim	Claim for Construction Lien – Preservation Date	Certificate of Action – Perfection Date	Property Affected (PINs)
19.	Vipond Inc. Goldman Sloan Nash & Haber LLP 480 University Avenue, Unit 1600, Toronto, ON M5G 1V6 (*Stanley Nafiolin – 416-597-9922)	\$113,786.14	June 5, 2009 Inst. No. MT67121	July 17, 2009 Inst. No. MT69181 Statement of Claim dated July 17, 2009 – Court File No. CV-09-112- 00	PINs 48143-0527, 48143-0518, 48862-0001-0222
20.	BACC Enterprises Inc. o/a Rona Building Centre BACC Enterprises Inc. o/a Rona Building Centre Oldham Law Firm, A Professional Corporation 88 James Street, Parry Sound, ON P2A 1T9 (Howard Oldham – 705-746-8852)	\$18,594.63	June 9, 2009 Inst. No. MT67217	August 20, 2009 Inst. No. MT70916 Statement of Claim dated August 18, 2009 – Court File No. CV-09- 148-00 Amended Statement of Claim amended September 4, 2009	PINs 48143-0527, 48143-0518, 48862-0001-0222
21.	Creighton, Michael c.o.b. as All Construction Purser Dooley Cockburn Smith LLP 300-151 Ferris Lane, Barrie, ON L4M 6C1 (*Eric Gionet – 705-792-6910)	\$15,561.00	June 11, 2009 Inst. No. MT67325	July 27, 2009 Inst. No. MT69625	PINs 48143-0527, 48862-0001-0222
22.	Quanbury Contract Interiors Inc. Purser Dooley Cockburn Smith LLP 300-151 Ferris Lane, Barrie, ON L4M 6C1 (*Eric Gionet – 705-792-6910)	\$169,522.44	June 11, 2009 Inst. No. MT67348	August 7, 2009 Inst. No. MT70284	PINs 48143-0527, 48862-0001-0222
23.	1581659 Ontario Limited c.o.b. as CRS Contractors Rental Supply Purser Dooley Cockburn Smith LLP 300-151 Ferris Lane, Barrie, ON L4M 6C1 (*Eric Gionet – 705-792-6910)	\$68,309.57	June 11, 2009 Inst. No. MT67349	August 7, 2009 MT70271 Statement of Claim dated July 30, 2009 – Court File No. CV-09-126- 00	PINs 48143-0527, 48862-0001-0222

	Claimant (and Solicitor for Claimant)	Amount of Claim	Claim for Construction Lien – Preservation Date	Certificate of Action – Perfection Date	Property Affected (PINs)
24.	Polished Professional Painting & Decorating Limited Purser Dooley Cockburn Smith LLP 300-151 Ferris Lane, Barrie, ON L4M 6C1 (*Eric Gionet – 705-792-6910)	\$126,359.64	June 11, 2009 Inst. No. MT67351 Statement of Claim dated July 30, 2009 – Court File No. CV- 09-129-00	August 7, 2009 Inst. No. MT70278	PINs 48143-0527, 48862-0001-0222
25.	Wallwin Voice & Data Ltd. Purser Dooley Cockburn Smith LLP 300-151 Ferris Lane, Barrie, ON L4M 6C1 (*Eric Gionet – 705-792-6910)	\$10,334.73	June 11, 2009 Inst. No. MT67362	August 7, 2009 Inst. No. MT70277	PINs 48143-0527, 48862-0001-0222
26.	Wallwin Electric Services Ltd. and Wallwin North Ltd. Purser Dooley Cockburn Smith LLP 300-151 Ferris Lane, Barrie, ON L4M 6C1 (*Eric Gionet – 705-792-6910)	\$1,184,039.99	June 11, 2009 Inst. No. MT67364	August 7, 2009 Inst. No. MT70273	PINs 48143-0527, 48862-0001-0222
27.	Dawson's Incorporated Purser Dooley Cockburn Smith LLP 300-151 Ferris Lane, Barrie, ON L4M 6C1 (*Eric Gionet – 705-792-6910)	\$124,779.98	June 15, 2009 Inst. No. MT67475	August 7, 2009 Inst. No. MT70285 Statement of Claim dated July 30, 2009 – Court File No. CV-09-131- 00	PINs 48143-0527, 48862-0001-0222
28.	1194400 Ontario Limited/Old Tymer Welding Purser Dooley Cockburn Smith LLP 300-151 Ferris Lane, Barrie, ON L4M 6C1 (*Eric Gionet – 705-792-6910)	\$120,811.13	June 15, 2009 Inst. No. MT67532	August 7, 2009 Inst. No. MT70289 Statement of Claim dated July 30, 2009 – Court File No. CV-09-125- 00	PINs 48143-0527, 48862-0001-0222

	Claimant (and Solicitor for Claimant)	Amount of Claim	Claim for Construction Lien – Preservation Date	Certificate of Action – Perfection Date	Property Affected (PINs)
29.	Muskoka Ready Mix Inc. Devry, Smith & Frank 100-95 Barber Greene Road, Toronto, ON M3C 3E9 (*Wayne Wolfe – 416-449-1400)	\$5,782.97	June 19, 2009 Inst. No. MT67748	July 31, 2009 Inst. No. MT69985	PINs 48143-0527, 48862-0001-0222
30.	Bonavista Pools Limited Jin Han Barrister & Solicitor 250 Consumers Road, Suite 801, Toronto, ON M2J 4V6 (Jin Han – 647-436-8866)	\$153,952.60	June 19, 2009 Inst. No. MT67765	None Statement of Claim dated June 22, 2009 – Court File No. CV-09-115- 00	PINs 48862-0001-0222
31.	Artech Communications Inc. Zaldin and Fine 60 Yonge Street, Suite 900, Toronto, ON M5E 1H5 (*Karen Ceifets – 416-868-1431)	\$107,565.62	June 22, 2009 Inst. No. MT67848	None	PINs 48143-0527, 48862-0001-0222
32.	1581659 Ontario Limited Purser Dooley Cockburn Smith LLP 300-151 Ferris Lane, Barrie, ON L4M 6C1 (*Eric Gionet – 705-792-6910)	\$68,309.57	June 24, 2009 Inst. No. MT67929	August 7, 2009 Inst. No. MT70271	PINs 48143-0527, 48862-0001-0222