

Altus Tax Group filed 216 realty tax appeals with MPAC on behalf of 82 of the 88 Unit Owners and the 134 unsold (or sold and unclosed) Units (including the Hotel Management Unit) which, at that time, were in the possession of the Receiver.

- 9.11 Altus Tax Group has reported that on March 26, 2010, the District Municipality of Muskoka Corporate and Emergency Services Department (the "District") carried a motion to support Altus' submission to the Ontario Ministry of Finance to have the tax classification of resort condominiums changed in Ontario from a commercial tax class ("CT") to a resort condominium property tax class ("RCPC"), which would result in a lower realty tax rate. Altus Tax Group has advised that obtaining the District's support to change the tax class was an important and positive first step in the process of reducing the overall tax liability of every Unit in the Hotel. Altus Tax Group is now continuing its appeal efforts with the Ontario Ministry of Finance and MPAC, and has advised the Receiver and other Unit Owners that it will provide an update on developments as they occur.

#### **Colliers' Listing Agreement**

- 9.12 Pursuant to the Sales and Marketing Order, the Receiver retained Colliers as broker to conduct the Institutional Sales Process substantially on the terms and conditions as set out in the form of the Exclusive Authority to Sell Agreement, which was attached as Confidential Appendix "A" to the Supplementary Report to the Second Report of the Receiver.
- 9.13 Most recently, the Receiver was advised by those individuals at Colliers who were directly responsible for carrying out the mandate described in the Exclusive Authority to Sell Agreement between the Receiver and Colliers (the "Colliers Deal Team"), that

effective May 3, 2010, the Colliers Deal Team would be leaving Colliers and joining the Canadian Hotel Practice of CB Richard Ellis Ltd. ("CBRE").

- 9.14 Given the intimate knowledge possessed by the Colliers Deal Team in respect of RRDI's Assets, their resort hospitality industry expertise and the work that it has performed to date, the Receiver did not believe that, in the absence of the Colliers Deal Team, it would be appropriate for Colliers to continue to provide the advice and assistance required by the Receiver in respect of the Institutional Sales Process. Accordingly, by letter dated May 5, 2010, the Receiver requested that Colliers and the Receiver mutually agree to terminate the Exclusive Authority to Sell Agreement. By letter dated May 11, 2010, Colliers agreed to the termination of the Exclusive Authority to Sell Agreement. A copy of the letter from the Receiver to Colliers, along with a copy of Colliers' response to the Receiver's letter, are each attached as Appendix "L".
- 9.15 Notwithstanding the Receiver's current suspension of the Institutional Sales Process, the Receiver intends, if deemed desirable, to negotiate the terms of, and enter into, a new exclusive authority to sell arrangement with CBRE at a time determined to be appropriate by the Receiver. It is the Receiver's intention that the terms, if any, to be agreed upon, would be substantially the same as those contained in the Exclusive Authority to Sell Agreement between the Receiver and Colliers, and that the Receiver would seek Court approval at the appropriate time.

#### **Commissions Claim Process**

##### *Notice to Commission Creditors*

- 9.16 The Sales and Marketing Order dated July 8, 2009, authorized the Receiver to pay real estate agents the commissions owed to them from funds set aside on the closing of Unit

sale transactions by McCarthys (the "Commission Funds"), on receipt of satisfactory proof that such claims were valid, and provided that all claims to payment of commissions had been ascertained, and that there were sufficient funds available to satisfy all proven claims. The Receiver determined that it was unable to ascertain all commission claims from the records of RRDI, and as a result, by order dated December 21, 2009, the Receiver was authorized to conduct a commission claims process to assist it with ascertaining such claims (the "Commission Claims Process Order"). As provided for in the Commission Claims Process Order, on January 12, 2010, the Receiver posted on its website, [www.alvarezandmarsal.com/rosseau](http://www.alvarezandmarsal.com/rosseau), copies of the Commission Claims Process Order, Notice and Instruction Letter to Commission Creditors and a Proof of Commission Claim Form (the "Commission Claim Materials").

- 9.17 As provided for in the Commission Claims Process Order, on January 14, 2010, the Receiver caused the Notice and Instruction Letter to Commission Creditors to be published in *The Globe and Mail (National Edition)*. A copy of the published Notice and Instruction Letter to Commission Creditors is attached as Appendix "M".
- 9.18 As provided for in the Commission Claims Process Order, on January 12, 2010, the Receiver sent, by email and ordinary mail, copies of the Commission Claims Materials to all Known Commission Creditors. In a further attempt to ensure all retail sales agents were notified of the Commission Claims Process, the Receiver sent, by email and regular mail, copies of the Commission Claims Materials to all real estate brokerages that were known to have had agents sell, or attempt to sell, Units at the Hotel.

*Claims filed*

- 9.19 Claimants were required to submit their Proof of Commission Claim Form to the Receiver on or before March 1, 2010 (the "Commission Claims Bar Date"). The Receiver is in receipt of 19 claims representing 181 units (many commission claimants have claims for multiple units, some of which had closed and others which had not, and in some cases, multiple claimants made claims for the same units) and in the aggregate amount of approximately \$505,000.
- 9.20 The Receiver has reviewed the claims and has either (a) accepted the amount set out in the Proof of Commission Claim Form in its entirety; (b) revised the amount of the claim as set out in the Proof of Commission Claim Form; or (c) rejected the amount of the claim as set out in the Proof of Commission Claim Form.
- 9.21 On May 11, 2010, the Receiver sent Notices of Revision or Disallowance to 12 claimants. Any claimant who intends to dispute the amount as set out in the Notices of Revision or Disallowance is required to deliver a Notice of Dispute to the Receiver by no later than May 26, 2010.
- 9.22 The Commission Claims Process Order provides that the Receiver is entitled to the payment of its fees and disbursements for administering the Commission Claims Process out of the Commission Funds.
- 9.23 Notwithstanding that the Commission Claims Process is still underway, based on the quantum of claims received prior to the Commission Claims Bar Date and the amount of funds being held by the Receiver to be paid in respect of proven Commission Claims, the Receiver believes that there are sufficient funds available to pay all such valid, proven claims, together with the related Receiver's fees and disbursements in administering the

Commission Claims Process. As a result, the Receiver intends, in accordance with the Sales and Marketing Order, to commence distributions in satisfaction of proven Commission Claims, and will continue to issue payments as any disputed claims, pursuant to the Commission Claims Process, are resolved and determined to be proven.

- 9.24 By the Sales and Marketing Order, the Court authorized the Receiver to approve the release of certain funds held in trust by McCarthys, in respect of McCarthys' fees once the Receiver had determined whether there were sufficient funds to pay Commission Claims. As the Receiver has been able to confirm this, by email dated April 8, 2010, legal counsel for the Receiver advised McCarthys that these funds could be released to them.

*Zoning and Permitting Matters in Respect of RRDI's Property*

- 9.25 As noted in the Eighth Report, the Receiver identified certain ambiguities with respect to zoning and permitting entitlements, which RRDI management had not disclosed to the Receiver prior to the receivership. In particular, the gross floor area ("GFA") available for future development, after taking into account the total developed area of the Hotel, was uncertain, and significantly less than thought by the Syndicate prior to the receivership. With the assistance of its legal counsel and certain other advisors, the Receiver was able to clarify this matter with the Township of Muskoka Lakes (the "Township"). Attached as Appendix "N", is a copy of the letter dated January 25, 2010 that the Receiver sent to the Township, together with the response provided by the Township to the Receiver dated January 28, 2010, clarifying the remaining development potential of the Project, and stating that the remaining GFA which can be constructed in the CICA1 and CICA2 development zones is 40,121 square feet. Attached as Appendix

"O" is an overview of RRDI's property containing the identification of the CICA1 and CICA2 development zones.

*Status and Key Highlights of the Institutional Sales Process*

- 9.26 In accordance with the Protocol, Colliers commenced the marketing of the Assets in respect of the Institutional Sales Process in early January 2010. Colliers, with the assistance of the Receiver, assembled a proprietary and confidential list of prospective purchasers (the "Prospect List"). On January 6, 2010, Colliers sent an email "blast" to all parties on the Prospect List, approximately 875 companies or approximately 1,350 individuals, inviting the parties included on the Prospect List to take part in the Institutional Sales Process. Colliers expanded the Prospect List, with the aid of the Receiver, as Colliers and/or the Receiver became aware of other parties with an expressed or perceived interest.
- 9.27 In total, 23 parties executed the Confidentiality Agreement and submitted a non-binding expression of interest ("EOI") for consideration by the Receiver pursuant to the Protocol. All but one of the parties to submit a Confidentiality Agreement and EOI pursuant to the Protocol were pre-qualified to proceed in the Institutional Sales Process (the "Pre-Qualified Bidders"). Pre-Qualified Bidders were notified of their acceptance as such on February 5, 2010. Upon execution of the Data Room Protocol (as provided for pursuant to the Protocol), Pre-Qualified Bidders were provided access to Colliers data room (the "CDR"). In addition to the Pre-Qualified Bidders, ten other parties signed a Confidentiality Agreement, but ultimately did not submit an EOI to the Receiver. Two Pre-Qualified Bidders advised Colliers of their intention to withdraw from the Institutional Sales Process soon after being qualified as Pre-Qualified Bidders.

9.28 Pre-Qualified Bidders were given the opportunity to tour the Hotel with Colliers and undertake financial, legal and operational due diligence with the intention that Offers would be submitted by March 31, 2010. Of the 23 Pre-Qualified Bidders, the majority demonstrated medium to high levels of activity in the CDR and a number of parties attended at tours of the Hotel with representatives of Colliers. Several Pre-Qualified Bidders expressed to Colliers and/or the Receiver that they were having difficulty understanding the Rental Pool management structure. Accordingly, on March 5, 2010, the Receiver, its legal counsel and Colliers, held two conference calls (attended by the majority of Pre-Qualified Bidders) to present the Rental Pool structure and financial implications for Pre-Qualified Bidders. The Receiver understands that these conference calls were well received by Pre-Qualified Bidders and provided significant assistance in respect of understanding the Rental Pool structure and financial implications thereof. However, as described in Section 4 of this Eleventh Report, the interpretation of the New RPMA is now the subject of the RPMA Dispute.

*The Construction Lien Claims Process*

9.29 The Construction Lien Claims Process is continuing with an exchange of documents between various legal counsel for the lien claimants, the Receiver and WestLB in reference to the timetables established by the Court. With the suspension of the Institutional Sales Process, the Receiver recognized that there could be a lengthy delay before any recoveries could be realized by lien claimants, to the extent their claims are established through the Construction Lien Claims Process. In light of the revised estimated timing for recoveries to lien claimants, the Receiver believes that settlement discussions between WestLB and the lien claimants could have merit.

## 10.0 Conclusions and Recommendations

- 10.1 While Hotel operations have been stabilized, and occupancy and revenues have improved and begun to either meet or exceed forecast, the Receiver has been faced with numerous, complex challenges which have interfered with its ability to pursue an en bloc sale in the Institutional Sales Process. Furthermore, notwithstanding that representatives of the Ad Hoc Committee negotiated the New RPMA with the Receiver in July and August of 2009, the Disputing Unit Owners commenced the RPMA Dispute in the midst of the Institutional Sales Process. Subsequent to the issuance of the Notices of Dispute in respect of the RPMA Dispute, the Ad Hoc Committee and the Independent Directors of the Condominium Corporation have brought forward the Unit Owner Proposal as a means to settle the RPMA Dispute. The Receiver believes that the Unit Owner Proposal, while complicated, may result in a significantly simplified Rental Pool structure and potentially, ultimately enhance the value of the Hotel and the Units for the stakeholders.
- 10.2 These matters and events described in this Eleventh Report have caused significant uncertainty in respect of the potential value of the Assets being offered for sale by the Receiver, and may require further direction and assistance from the Court. In order to preserve the integrity of the receivership proceedings, protect all stakeholders and ultimately maximize recoveries to the estate, the Receiver suspended the Institutional Sales Process on April 30, 2010, and does not intend to recommence a sales process until such time as the Receiver is able to settle the matters creating such uncertainty, and determine how best to maximize value from the Assets.



10.3 At this time, the Receiver respectfully requests that this Honourable Court:

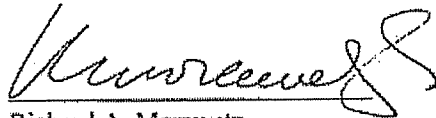
- Approve the continued suspension of the Institutional Sales Process, pending further recommendations from the Receiver;
- Direct the Receiver to pursue the Unit Owner Proposal;
- Authorize the Receiver to repudiate the existing APSs with Existing Unit Purchasers; and
- Grant all of the relief sought by the Receiver in the form of order filed with the Motion Record and as described in this Eleventh Report, including the approval of all of the activities of the Receiver since the date of the Eighth Report.

\* \* \*

All of which is respectfully submitted, this 12<sup>th</sup> day of May, 2010

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

Per:



Richard A. Morawetz

**SCHEDULE "A"****Chronology of the Receiver's Efforts to Engage in Discussions and Obtain Information in Respect of the Resort Association**

- (a) On December 10, 2009, the Receiver and its legal counsel met with Ken Fowler and KFE's legal counsel, Stikeman Elliott LLP ("Stikemans"), during which the Receiver raised the status of the Association and confirmed to Mr. Fowler and his legal counsel the Receiver's view, as supported by the Ad Hoc Committee, that the operations of the Association ought to be suspended. The Receiver requested that the Board of Directors of the Association (the "Board") call a Board meeting as soon as possible in order to call a meeting of members to pass a resolution suspending its operations. The Receiver was advised that KFE did not know the current composition of the Board. Despite this request, no confirmation was forthcoming that a meeting of the Board would be called.
- (b) By letter dated February 8, 2010, legal counsel to the Receiver, Blake, Cassels & Graydon LLP ("Blakes") forwarded to Stikemans, draft corporate documents for purposes of calling the proposed members meeting and passing the proposed resolution suspending the Association. In order to assist with the Receiver's understanding of the current circumstances of the Association, and an analysis of its structure and governance, Blakes requested copies of the Association's current directors' and members' registers and requested the opportunity to review the minute book of the Association. Blakes also asked Stikemans to advise by February 19, 2010, whether a meeting would be undertaken by the Board to suspend the Association's operations.
- (c) At a meeting on February 18, 2010 between the Receiver, Blakes, a representative of KFE and Stikemans, the Receiver again requested copies of the registers and the

opportunity to review the minute book of the Association. The Receiver also requested a response to the proposal to call a meeting of the Board. The Receiver was advised that the documents would be made available and that a response would be forthcoming.

- (d) By letter dated March 3, 2010 to Stikemans, Blakes reiterated the request for copies of the requested documents and advised that if the documents were not forthcoming, relief would be sought under the Corporations Act. Blakes also requested evidence of the fees paid to the Association by other members.
- (e) By email dated March 11, 2010, Stikemans forwarded to Blakes copies of resolutions from the minute book of the Association. The most recent resolution dated from 2008 and did not disclose an up-to-date list of directors of the Association. Blakes was advised that no registers of members or directors was available. By separate email, Stikemans also delivered copies of certain invoices rendered to two members of the Association for fees and information regarding the fees paid by two other members, but such information was incomplete.
- (f) By email dated March 12, 2010 to Stikemans, Blakes followed up with further questions regarding the fees charged by the Association and requested a list of current directors and members. Blakes again requested a response to the proposal put forward by the Receiver to suspend the operations of the Association.
- (g) By email dated March 23, 2010, Stikemans advised Blakes that a list of members and directors would be provided. Stikemans also advised for the first time that in KFE's view, it was not appropriate to suspend all operations of the Association and the payment of all fees to the Association. Instead, Stikemans advised that the directors of the

Association had discussed a reduction in the scale and scope of the Association's operations in the "medium term", suggesting that if the operations were fully suspended, "it would likely, among other things, result in the neighbouring landowners immediately refusing hotel guests, unit owners and others further access to or use of their properties, trails, etc...". In addition, Stikemans communicated a concern in the draft documents delivered in February. Stikemans advised that the directors would be prepared to consider a reduction in operations if the fees that had been withheld to date were paid.

- (h) By letter dated March 29, 2010, Blakes confirmed again the request for a list of directors and members and sought answers to various questions regarding the fees charged to other members which were affiliates of KFE, with a goal to better understanding the structure of the Association. Blakes requested a copy of the current budget of the Association and advised that the Receiver needed to understand the voting structure, the fees paid by all members and the votes allocated to all members. In order to obtain these details, Blakes requested that the Association deliver status certificates in respect of the properties owned by RRDI, as the Association is mandated to provide under the Act. The Act prescribes the information that must be provided to members in a status certificate, including the identity of directors, and details regarding the voting structure of the Association.
- (i) In respect of the proposal to reduce the scope of the Association's operations, Blakes on behalf of the Receiver, sought details of the proposal, and outlined a number of questions in respect thereof. Blakes advised that the royalty fees outstanding to the Association would be remitted to the Association in connection with a global solution for the Association.

- (j) By email dated April 5, 2010, Stikemans advised that, with respect to the other matters referred to in the letter of March 29, 2010, responses were being prepared, and that Robert Comish would be in touch with the Receiver to set up a without prejudice meeting to discuss the Association.
- (k) Efforts were made to set up a meeting regarding the Association during the week of April 5, 2010, but were not successful.
- (l) By email dated April 21, 2010, Stikemans delivered to Blakes the requested status certificates. Those certificates gave rise to further questions regarding the governance of the Association. For the first time, for example, it was disclosed that the Board was comprised solely of Ken Fowler, Peter Fowler, and Doug Fowler. Not disclosed was the basis on which these individuals had been appointed or elected to the Board, as the most recent resolution of 2008 delivered to Blakes had disclosed a different Board composition.
- (m) By email dated April 23, 2010, without having yet delivered its proposal in respect of reduced operations of the Association, Stikemans advised Blakes that the Association was objecting to the non-payment of amounts owing to the Association and advised that if arrears were not paid, the Association would be registering liens against the property of RRDI. No responses to the requests from Blakes were provided in this email.
- (n) By email dated April 26, 2010, Stikemans asserted certain further charges owing by RRDI to the Association and suggested that a meeting with a representative of KFE and the Receiver be arranged to discuss the issues between them.

- (o) By email dated April 27, 2010, Blakes pointed out the stay of proceedings at paragraph 9 of the Appointment Order and reminded Stikemans that the Receiver had been waiting for a substantive response to the questions asked and requests made in its letter of March 29, 2010. Blakes confirmed again that the payment of the fees outstanding to date would be made in connection with a global resolution of the issues regarding the Association. Blakes confirmed that the Receiver was open to scheduling a meeting with KFE regarding the Association.
- (p) By email dated April 27, 2010, Stikemans advised that in its view, the Association's lien could be filed as an exception to the stay at paragraph 9 of the Appointment Order.
- (q) By email to Stikemans dated April 29, 2010, Blakes advised that the Receiver would be obtaining the advice and direction of the Court regarding the proposed lien. Blakes requested confirmation that no steps would be taken to register any lien pending a determination by the Court of that issue. Blakes also confirmed that a meeting had been scheduled with Mr. Cornish and a representative of KFE on May 5, 2010.
- (r) By email dated April 29, 2010, Stikemans delivered certain further responses to the questions raised by Blakes in various earlier correspondence and confirmed the scheduled meeting. Stikemans continued to assert the ability of the Association to register a lien against the property to RRDI.

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

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

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



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

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

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

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

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

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

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

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

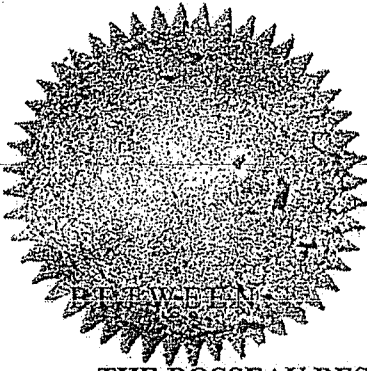


## APPENDIX “C”

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CV-10-412956

Court File No.



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**THE ROSSEAU RESORT DEVELOPMENTS INC. BY ITS COURT-APPOINTED  
RECEIVER AND MANAGER, ALVAREZ & MARSAL CANADA ULC**

Plaintiff

- and -

**PARRY SOUND GLASS LIMITED carrying on business as ROSS WINDOWS AND  
DOORS**

Defendant

**STATEMENT OF CLAIM**

**TO THE DEFENDANT**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

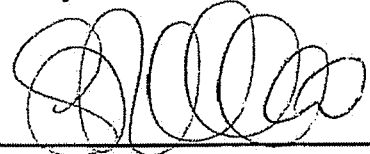
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL

FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date      25      October      , 2010

Issued by

  
Local Registrar

Address of      393 University Avenue,  
court office      10<sup>th</sup> floor  
Toronto, Ontario M5G 1E6

TO:      Parry Sound Glass Limited cob Ross Windows & Doors  
7 Mall Drive  
Parry Sound, Ontario  
P2A 3A9

### CLAIM

1. The plaintiff, The Rosseau Resort Developments Inc. ("RRDI") by its court-appointed receiver and manager, Alvarez & Marsal Canada ULC (the "Receiver") claims as against the defendant, Parry Sound Glass Limited carrying on business as Ross Windows & Doors ("Ross Windows"):

- (a) damages in the amount of 1.5 million dollars;
- (b) pre-judgment and post-judgment interest on the amount set forth in paragraph (a) above pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. 43, as amended;
- (c) its costs of this action on a substantial indemnity basis, together with applicable taxes; and
- (d) such further and other relief as this court deems just.

### THE PARTIES

2. RRDI is the developer of The Rosseau, a J.W. Marriott Resort and Spa (the "The Rosseau") located on Lake Rosseau in Minett, Ontario.

3. By order of this Court dated June 2, 2009 (the "Receivership Order"), the Receiver was appointed as receiver and manager of RRDI and, under the Receivership Order, given the power and authority to initiate and prosecute proceedings with respect to RRDI and, in that regard, it is exclusively authorized and empowered to initiate and prosecute claims to the exclusion of all other persons.

4. Ross Windows carries on business as manufacturer, supplier and installer of commercial and residential windows, doors, and railings in Ontario.

## THE CONTRACTS WITH ROSS WINDOWS

5. In or about 2008, The Rosseau was under construction and RRDI (through its agent and construction manager, Rock Ridge Contracting Inc. ("RRCI")) contracted with Ross Windows for the supply and installation of balcony railings and suite and common area windows at The Rosseau.

6. Under the terms of the contract for the balcony railings (the "Railing Contract"), Ross Windows agreed to supply and install CR Laurence manufactured exterior aluminum railings on the balconies of The Rosseau in accordance with architectural specifications and drawings of Stone McQuire Vogt Architects given to Ross Windows.

7. Under the Railing Contract, Ross Windows had an obligation to:

- (a) install the balcony railing system using proper parts and fittings so that the railings would be safe for occupants of the balconies;
- (b) install the balcony railings using all reasonable care and skill;
- (c) exercise all reasonable care and skill in the supervision of the installation of the balcony railings;
- (d) ensure that the balcony railing system was reasonably fit for its intended purpose and that it was safe and effective; and
- (e) ensure that the balcony railing system was free from defects and deficiencies and that, as installed, the balconies complied with the requirements of the *Building Code* of Ontario.

8. Further, and in the alternative, Ross Windows owed RRDI a duty of care in tort to ensure that the balcony railings and their component parts were manufactured and installed in such a manner as to ensure that they were safe and that they did not pose a danger to occupants of the balconies of The Rosseau.

9. Under the terms of the contract for the suite and common area windows (the "Window Contract"), Ross Windows agreed to supply and install certain of the custom made windows and doors of The Rosseau in accordance with architectural drawings supplied to Ross Windows.

10. Under the Window Contract, Ross Windows had an obligation to:

- (a) supply windows that are reasonably fit for their purpose and that are watertight;
- (b) install the windows using all reasonable care and skill to ensure that they are watertight;
- (c) exercise all reasonable care and skill in the supervision of the installation of the windows;
- (d) ensure that the windows as installed are reasonably fit for their intended purpose; and
- (e) ensure that the windows as installed are free from defects and deficiencies.

11. Further, and in the alternative, Ross Windows owed RRDI a duty of care in tort to ensure that the windows and their component parts were manufactured and installed in such a manner as to ensure that they were watertight and safe.

#### **ROSS WINDOWS' BREACH OF CONTRACT AND NEGLIGENCE**

##### **(a) Balcony Railings**

12. Ross Windows used improper and inappropriate parts to install the balcony railings and then installed them improperly, rendering the balconies as installed structurally unsound and dangerous for occupants at The Rosseau.

13. The particulars of Ross Windows' breach of contract and negligence include the following:

- (a) at numerous locations, Ross Windows failed to install the screws required to secure the picket assembly (consisting of the bottom rail, the pickets and the top rail without the top handrail cap) to the posts, creating a hazardous situation in which the whole picket assembly could become loose and fall off the balcony without prior warning;
- (b) at numerous locations, Ross Windows used screws made of incorrect materials, causing screw shearing and corrosion. Contrary to specifications prepared by Stone McQuire Vogt Architects for The Rosseau, Ross Windows used fasteners to secure the base plate to the concrete balcony slab made of carbon steel rather than stainless steel, making the fasteners more susceptible to corrosion;
- (c) at numerous locations, Ross Windows used anchors made of zinc plated carbon steel to anchor post base plates to balcony slabs instead of stainless steel wedge anchors as specified;
- (d) at numerous locations, Ross Windows improperly installed the anchors that secure the post base plates to the balcony slabs. For example, in numerous locations, Ross Windows failed to fully tighten nuts on anchors and installed anchors with inadequate embedment. The improper installations caused reduction in anchor capacity and resulted in a hazardous condition in which a post could fail suddenly under normal loading conditions;
- (e) at numerous locations, Ross Windows shimmed between the underside of the base plate and the top of the concrete slab, resulting in inadequate embedment and reduced 'pull out capacity' of the anchor. The reduction in anchor capacity resulted in a condition in which the posts could fail suddenly under normal loading conditions;
- (f) in one suite, Ross Windows anchored the base plates of corner posts to an airspace filled with rigid (blue) insulation board, rather than to the concrete

slab, resulting in a hazardous condition in which the posts could fail suddenly under normal loading conditions; and

- (g) Ross Windows improperly installed bracket legs connecting the top and bottom rails to the posts by failing to pre-drill holes in the bracket legs before installing the screws. This caused the vertical legs of the brackets to break and compromised the integrity of the connection between the top and bottom rails and the posts resulting in a hazardous condition in which rails could fail under normal loading conditions.

**(b) The Windows**

14. Ross Windows manufactured all and installed certain of the suite and common area windows improperly at The Rosseau. Since their installation, the windows have not passed basic pressure testing requirements, numerous windows have leaked during rainstorms and, as a result, rainwater has entered the suites causing a situation of danger to the occupants of the suites during and after rainstorms.

**DAMAGES**

15. The plaintiff has suffered damages as a result of Ross Windows' negligence and breaches of contract.

**(a) The Balcony Railings**

16. Due to the defects in the balcony railings as supplied and installed by Ross Windows at The Rosseau and the hazard created for occupants of the balconies, access to the balconies from the suites was blocked, and the Receiver engaged engineering firms, Morrison Hershfield and Trow Associates ("Trow"), to carry out a review of the structural adequacy of the balcony railings and to recommend a rectification plan for the correction of any defects.

17. Following completion of the reviews by Morrison Hershfield and Trow, deficiencies were identified. Due to the severity of the deficiencies in the railings and the safety hazard



that they posed, the Receiver engaged Trow to remediate the balcony railings by removing the railings and using as much of the railing parts as could be used to effect the remediation. This remediation was completed in the Spring of 2010.

18. The particulars of the damages suffered by RRDI with respect to balcony railings include, but are not limited to, the following:

- (a) costs of the investigation of the balcony railing deficiencies and the design of a retrofit to address the deficiencies;
- (b) costs of construction to implement the retrofit and remediation;
- (c) lost booking revenue due to the discounting of room prices as a result of patrons not having access to their balconies until completion of the remediation;
- (d) the Receiver's costs of administering the rectification work; and
- (e) costs of Trow's report on the balcony railing deficiencies.

**(b) The Windows**

19. The Receiver was made aware of the window deficiencies following testing completed by Trow as part of Tarion warranty requirements. Following its discovery of the leaking windows, and numerous unsuccessful attempts by Ross Windows to remediate, the plaintiff engaged Trow to develop a repair methodology. In April of 2010, RRDI engaged R.D.E. Inc. to remediate the windows in the suites and the common areas. This remediation was completed in the Spring of 2010.

20. The particulars of the damages suffered by the plaintiff with respect to windows include, but are not limited to, the following:

- (a) costs of the remediation of the suite and common area windows by R.D.E. Inc.;
- (b) costs of testing and construction supervision by Trow; and

(c) the Receiver's costs of administering the rectification work.

21. The plaintiff proposes that this action be tried at the City of Toronto, in the province of Ontario.

October 25, 2010

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

Hugh DesBrisay LSUC#: 25746U  
Tel: (416) 863-2426  
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Kate Wylde LSUC#: 56988A  
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Fax: (416) 863-2653

Lawyers for the Plaintiff

CV-10-412956

THE ROSSEAU RESORT DEVELOPMENTS  
INC., by its Court-Appointed Receiver and  
Manager, ALVAREZ & MARSAL CANADA

ULC  
Plaintiff

ROSS WINDOWS AND DOORS  
and

Defendant

Court File No:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**STATEMENT OF CLAIM**

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

Hugh DesBrisay LSUC#: 25746U  
Tel: (416) 863-2426 - Fax: (416) 863-2653

Kate Wylde LSUC#: 56988A  
Tel: (416) 863-3311 - Fax: (416) 863-2653  
Lawyers for the Plaintiff

## APPENDIX “D”

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The Rosseau Resort Developments Inc. ("RRDI")  
by its Receiver and Manager and Trustee of its Assets,  
Alvarez & Marsal Canada ULC  
Receipts and Disbursements for the period - May 22, 2009 to October 31, 2010  
Unaudited (\$)

	<u>TOTAL</u>
<b>Receipts:</b>	
Receiver's Borrowings	\$ 22,500,000
Condo retail sale proceeds, gross	4,523,129
Funds distributed from McCarthys - Commission Funds	869,347
Funds distributed from McCarthys - RRDI Trust Allocation	730,380
Interest	6,530
GST collected	26,225
PST collected	92,806
Pre-Receiver's bank account transfers	91,060
Miscellaneous	76,121
Marriott GST collected [1]	48,003
<b>Total Receipts</b>	<u>28,963,601</u>
<b>Disbursements:</b>	
RRDI payroll costs incl. source deductions	825,632
Independent contractors	535,082
Construction costs	3,144,971
Railing remediation - Direct costs	540,697
Furniture, fixtures & equipment	350,931
Red Leaves Resort Association	36,454
Construction consultants/contractors	586,241
Marriott working capital funding	3,175,000
Marketing & advertising	747,680
Real estate commissions on retail sales	113,660
Commission claims payouts	303,432
Utilities, resort operating costs & realty taxes	286,360
GST paid	776,881
PST paid	122,283
HST paid	83,594
Marriott GST repayment [1]	48,003
Insurance	135,152
Office expenses	37,774
Loan paydown and fees on First Tranche Receiver's Borrowings	4,182,766
Interest and fees on Second Tranche Receiver's Borrowings	724,264
Security	21,410
Professional fees and costs	10,127,130
Miscellaneous	11,729
Holdback trust account [2]	5,988
<b>Total Disbursements</b>	<u>26,923,113</u>
<b>Excess Receipts over Disbursements [3]</b>	<u><u>\$ 2,040,489</u></u>

**NOTES:**

[1] GST related to Marriott's operation of the Hotel. GST is remitted by Marriott, however, the GST number is through RRDI's corporate account. GST refunds are collected by RRDI and then flowed back to Marriott.

[2] The Receiver maintains a segregated trust account which holds funds related to construction holdback amounts for post-receivership contracts. These funds will be released to trade contractors pursuant to the provisions of the Construction Lien Act (Ontario). Once released, the disbursement is recorded in "construction costs".

[3] As at October 31, 2010, the Receiver was holding cash of \$2.040 million comprised of approximately \$744,000 representing the remaining funds on hand from the Tranche 2 borrowings; \$566,000 of funds previously held by McCarthys related to unpaid real estate commissions arising on pre-receivership unit sales, which are unclaimed following a commission claims process; and \$730,000 of proceeds from the funds previously held by McCarthys for the benefit of the Estate.

## APPENDIX “E”

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The Rosseau Resort Developments Inc.  
Operating Forecast  
For the Period Ending April 30, 2011

	Note	Nov-10 Forecast	Dec-10 Forecast	Jan-11 Forecast	Feb-11 Forecast	Mar-11 Forecast	Apr-11 Forecast	Total
<b>Receipts</b>								
Receiver's Borrowings		-	-	-	-	-	-	-
Miscellaneous Receipts		-	-	-	-	-	-	-
Proceeds from Condo Sales		-	-	-	-	-	-	-
GST Receivable	1	-	-	-	-	-	-	-
Litigation Proceeds	2	-	-	-	-	-	-	-
<b>Disbursements</b>								
Staff Wages & Benefits		8,200	8,200	8,200	8,200	8,200	8,200	49,200
Condo Corporation Fees	3	46,200	46,200	46,200	46,200	46,200	46,200	277,200
Utilities		7,300	7,300	3,100	2,600	2,600	3,100	26,000
Insurance	4	-	-	50,000	-	-	-	50,000
Construction Costs		74,000	147,000	321,000	-	-	-	542,000
Marriott Funding	5	250,000	700,000	250,000	250,000	250,000	250,000	1,950,000
Marriott Incentive Fee	6	-	180,000	-	-	-	-	180,000
Professional Fees	7	450,000	295,000	295,000	450,000	450,000	295,000	2,235,000
Accrued Professional Fees		-	1,344,000	-	-	-	-	1,344,000
Resort Association		50,000	-	-	-	-	-	50,000
Outside consultants		106,500	26,500	69,000	-	-	-	202,000
Post Closing Receivables Costs		-	-	-	-	-	2,107,300	2,107,300
West/B Interest - Tranche 2	8	122,200	62,100	62,100	56,100	62,100	60,100	424,700
West/B Interest - Tranche 3		-	74,500	74,500	67,300	74,500	72,100	362,900
Contingency - general		50,000	50,000	25,000	25,000	25,000	25,000	200,000
Total Disbursements		1,164,400	2,940,800	1,204,100	905,400	918,600	2,867,000	10,000,300
Net Cash Flow		(1,164,400)	(2,940,800)	(1,204,100)	(905,400)	(918,600)	(2,867,000)	(10,000,300)
<b>Cash Roll forward</b>								
Opening Cash	9	1,310,489	146,089	(2,794,711)	(3,998,811)	(4,904,211)	(5,822,811)	1,310,489
Net Cash Flow		(1,164,400)	(2,940,800)	(1,204,100)	(905,400)	(918,600)	(2,867,000)	(10,000,300)
Closing Cash	10	146,089	(2,794,711)	(3,998,811)	(4,904,211)	(5,822,811)	(8,689,811)	(8,689,811)

**The Rosseau Resort Developments Inc.**  
**Operating Forecast**  
**For the Period Ending April 30, 2011**

**Notes:**

1. The Receiver is in the process of collecting a GST refund. The quantum and timing of the receipt are unknown.
2. The Receiver issued a statement of claim for \$1.5 million against Ross Windows relating to the supply and installation of defective railings and windows. At this time, it is difficult to estimate the quantum and timing of any net proceeds.
3. Condo Corporation fees are estimates and are payable once the 2011 Condominium Corporation budget is finalized.
4. RRDJ property insurance for the commercial space to be paid in January 2011.
5. This is based on forecast operating losses provided to A&M by Marriott for the period up to December 31, 2010. As Marriott has not yet provided a forecast for 2011, forecast operating losses for the period January to April 2011 are based on January to June 2010 operating losses, but reflect an improvement of 20%.
6. Marriott is owed approximately \$180,000 with respect to an incentive fee payment related to the Receiver's sale of retail units.
7. Professional fees and costs includes payments to the Receiver, the Receiver's legal counsel, and the Receiver's independent legal counsel.
8. \$2.1 million in the budget is available to fund costs incurred after April 30, 2010 in connection with a sale transaction. The costs would be incurred subsequent to April 30, 2011.
9. As at October 31, 2010, the Receiver was holding cash of \$2,040 million comprised of \$744,000 representing the remaining funds on hand from the Tranche 2 borrowings, \$566,000 of funds previously held by McCarthy's related to unpaid real estate commissions arising on pre-receivership unit sales, which are unclaimed following a commission claims process, and \$730,000 of proceeds from funds previously held by McCarthy's which are for the benefit of the Estate. Once Tranche 3 borrowings are established, the Receiver plans to distribute the \$730,000 against the Tranche 1 borrowings and therefore has not included the \$730,000 in the Opening Cash balance.
10. The forecast cash requirement is approximately \$8.7 million, which provides for approximately \$2.1 million to be available for costs associated with the receivership period after April 30, 2011.

11/3/2010



## APPENDIX “F”

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### THIRD TRANCHE TERM SHEET

<b>BORROWER:</b>	Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Inc., jointly and severally, solely in their respective capacities as receiver and manager, trustee and interim receiver (collectively, the " <u>Receiver</u> ") of all of the assets, properties and undertaking (the " <u>Assets</u> ") of The Rosseau Resort Developments Inc. (" <u>RRDI</u> "), as appointed by an Amended and Restated Order of the Ontario Superior Court of Justice dated June 2, 2009, as amended by Order of the Ontario Superior Court of Justice dated December 21, 2009, as further amended by Order of the Ontario Superior Court of Justice dated April 15, 2010, and as further amended by Order of the Ontario Superior Court of Justice to be obtained on November 12, 2010 (collectively, the " <u>Amended Appointment Order</u> ")
<b>LENDER:</b>	WestLB AG, New York Branch (the " <u>Lender</u> ").
<b>CREDIT FACILITY:</b>	Third tranche senior secured loan facility (the " <u>Third Tranche Facility</u> ") in the total principal amount of \$8,700,000 (the " <u>Third Tranche Commitment</u> "), repayable on demand. Amounts repaid by the Receiver following demand by the Lender and applied against the Third Tranche Facility cannot be reborrowed.
<b>DRAWDOWN:</b>	As required by delivery by the Receiver of drawdown notice (" <u>Drawdown Notice</u> ") from time to time in form and substance satisfactory to the Lender. Funding will be available on a day that banks are open for business in Toronto and New York.
<b>USE OF FUNDS:</b>	General receivership purposes including but not limited to the funding of (i) construction and maintenance expenses and operational expenses of RRDI and/or the Receiver in respect of The Rosseau Hotel located in Muskoka, Ontario; (ii) obligations of RRDI to Marriott Hotels of Canada Ltd. (" <u>Marriott</u> ") under the Hotel Management Agreement dated January 22, 2010 and related agreements, as such agreements may be amended, supplemented or restated from time to time; (iii) the sales process to be conducted by the Receiver with respect to the assets and business of RRDI; (iv) professional fees and costs of the Receiver, its counsel and advisors; (v) interest payable on the Third Tranche Facility pursuant to this Third Tranche Term Sheet; (vi) administrative expenses of Alvarez & Marsal Canada ULC in its capacity as receiver and manager of The Rosseau Resort Management Services Inc. and the professional costs related thereto and (vii) all other activities of the Receiver.
<b>REPAYMENT:</b>	Immediately upon demand, provided that the Third Tranche Facility shall be repayable in full on September 30, 2011, or such later date as the Lender may agree to in writing.

**WestLB AG**  
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250 Greenwich Street  
New York, NY 10007

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Dietrich Voigtländer (Chairman),  
Hubert Beckmann (Vice Chairman),  
Klemens Breuer, Thomas Groß,  
Dr. Hans-Jürgen Niehaus, Werner Taiber

Head of the Supervisory Board:  
Michael Breuer

Reg. Amtsgerichte  
Düsseldorf, HRB 42975  
Registered Office:  
Düsseldorf

INTEREST RATE:	The Prime rate of interest per annum established and reported by the Lender from time to time as the reference rate of interest it charges to customers for Canadian Dollar denominated commercial loans made by the Lender in Canada, plus 7%, such interest to be accrued on the principal amount then outstanding and payable monthly on the first day of every month commencing with the month immediately following the date of execution of this Third Tranche Term Sheet, until the principal amount outstanding is repaid in full.
CONDITIONS PRECEDENT TO FUNDING:	The obligation of the Lender to make the Third Tranche Commitment available to the Receiver is subject to the following conditions precedent, which shall be satisfied on or before November 26, 2010:
	<p>(a) the Amended Appointment Order shall be in full force and effect, unamended, (i) authorizing the Receiver to execute and deliver this Third Tranche Term Sheet and authorizing the Receiver to borrow funds from the Lender on the terms and conditions set forth hereunder; (ii) authorizing the Receiver to secure its obligations hereunder by the issuance, from time to time, of Receiver's Certificates, as defined in the Amended Appointment Order; (iii) providing that the Third Tranche Facility is secured by the first priority Receiver's Borrowings Charge established by the Amended Appointment Order in favour of the Lender (the "<u>Lender's Charge</u>"), in priority to all other present and future liens, charges, construction liens, security and encumbrances, whether legal or equitable, on the assets, properties and undertaking of RRDI, subject only to the Receiver's Charge as defined in the Amended Appointment Order (the "<u>Receiver's Charge</u>"), to secure all obligations owing by the Receiver to the Lender hereunder, provided that all Receiver's Certificates issued by the Receiver in respect of the Third Tranche Facility shall rank subordinate to all Receiver's Certificates issued by the Receiver to the Lender in connection with a Senior secured loan facility in the total principal amount of \$15,000,000 pursuant to a Term Sheet provided to the Receiver by the Lender in its capacity as agent for certain lenders from time to time dated May 15, 2009, as authorized and approved by the Amended Appointment Order (the "<u>First Tranche Facility</u>"), and provided that all Receiver's Certificates issued by the Receiver in respect of the Third Tranche Facility shall rank in priority to all Receiver's Certificates issued by the Receiver to the Lender in connection with a Senior secured loan facility in the total principal amount of \$7,500,000 pursuant to the Second Tranche Term Sheet provided to the Receiver by the Lender dated February 1, 2010, as authorized and approved by</p>

	the Amended Appointment Order (the " <u>Second Tranche Facility</u> "); (iv) authorizing and directing the Receiver to execute and deliver such other documents as may be required by the Lender from time to time and such other security documents as the Lender may require; (v) authorizing the Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the Lender's Charge; (vi); authorizing the Receiver to receive funds on behalf of RRDI; and (vii) authorizing the Receiver to use the funds borrowed for the purposes set out herein under the heading "Use of Funds";
	(b) the Lender shall be satisfied that there are no mortgages, pledges, charges, security interests or other encumbrances ranking ahead of the Lender's Charge, including any such mortgages, pledges, charges, security interests or other encumbrances as provided for by the Court, except the Receiver's Charge, and except Receiver's Certificates issued in respect of the First Tranche Facility, and except as have been disclosed to and hereafter expressly accepted by the Lender;
	(c) the Lender shall be satisfied that there have been no material adverse changes, individually or in the aggregate, in the business, activities, financial condition or other condition of RRDI, except as disclosed to the Lender on or before the date hereof.
COVENANTS:	(a) The Receiver shall not incur financial liabilities on behalf of RRDI other than as set out herein except in accordance with its operation of the business of RRDI in the ordinary course of business and its activities described under "Use of Funds" or in the Amended Appointment Order;
	(b) The Receiver shall not enter into any arrangements (or amend any existing arrangements) with Marriott or any other material creditor without the written consent of the Lender, other than as already disclosed to the Lender on or before the date hereof;
	(c) The Receiver shall obtain the Lender's prior written consent to any sale, lease or other disposition of assets, properties and undertaking of RRDI (a " <u>Sale</u> ") for a sale price greater than \$100,000;
	(d) The Receiver shall provide to the Lender such reports as it currently provides with respect to RRDI's cash flow and working capital, and shall promptly notify the Lender of any material adverse change in the business, activities, financial condition or other condition of RRDI;
	(e) All amounts received by the Receiver from the Sale shall, subject to obtaining approval of the Court, and subject to the

	Receiver's Charge and the First Tranche Facility, be applied to permanently reduce the obligations owing by the Receiver to the Lender hereunder; and
	(f) There shall be no change or amendment to the form of Amended Appointment Order, without the consent of the Lender.
SECURITY:	<p>Security shall include the following, in form and substance satisfactory to the Lender:</p> <p>(a) The Amended Appointment Order containing the Lender's Charge registered against title to all real property of RRDI; and</p> <p>(b) Receiver's Certificates issued by the Receiver to the Lender to secure each drawdown in the amount set forth in each Drawdown Notice, provided that all Receiver's Certificates issued by the Receiver in respect of the Third Tranche Facility shall rank subordinate to all Receiver's Certificates issued by the Receiver to the Lender in connection with the First Tranche Facility, and shall rank in priority to all Receiver's Certificates issued by the Receiver to the Lender in connection with the Second Tranche Facility.</p>
EVENTS OF DEFAULT:	Usual events of default to apply and to include:
	(a) Any order amending, supplementing, staying, vacating or otherwise modifying the Amended Appointment Order or terminating the Receiver's appointment, without the Lender's consent;
	(b) Failure by the Receiver to pay any principal amount outstanding hereunder when the same shall become due and payable hereunder (including when demanded); and
	(c) Failure by the Receiver to pay when demanded any interest accrued on the Second Tranche Facility or the Third Tranche Facility, or any expenses, including reasonable fees and disbursements (including legal and other professional fees) incurred by the Lender in the preparation and negotiation of this Term Sheet and any enforcement of the Lender's rights hereunder or pursuant to the Lender's Charge.
NO LIABILITY:	Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Inc. shall not have any personal liability to repay any principal amount or any interest, fee or other amount owing hereunder and the Lender's recourse with respect thereto shall be limited to the Assets.



## ACCEPTANCE

The foregoing term sheet is hereby accepted and agreed to.

**ALVAREZ & MARSAL CANADA  
ULC** solely in its capacity as  
receiver and manager and trustee  
of the Assets and not in its personal  
capacity

**WESTLB AG, NEW YORK BRANCH**

By: [Signature]  
Name: RA MORAWETZ  
Date: NOV. 5, 2010

By: [Signature]  
Name: CHRISTOPHER ROSENBERG, Managing Director  
Date: 11/5/10

**ALVAREZ & MARSAL CANADA INC.**  
solely in its capacity as interim receiver of the  
Assets, and not in its personal capacity

By: [Signature]  
Name: RA MORAWETZ  
Date: NOV. 5, 2010

By: [Signature]  
Name: James Winikor  
Date: Associate Director  
11/5/2010