

## **APPENDIX “E”**

**DATED: June 30, 2011**

---

**ASSET PURCHASE AGREEMENT**

**by and between**

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

**as Vendor**

**and**

**CANADIAN NIAGARA HOTELS INC.**

**as Purchaser**

## TABLE OF CONTENTS

	Page
ARTICLE 1 INTERPRETATION.....	1
Section 1.1 Defined Terms .....	1
Section 1.2 Governing Law .....	9
ARTICLE 2 PURCHASE AND SALE.....	9
Section 2.1 Purchased Assets.....	9
Section 2.2 “As Is, Where Is” .....	10
Section 2.3 Permitted Liens .....	11
Section 2.4 Assumption of Certain Liabilities.....	11
Section 2.5 The Dispute .....	14
Section 2.6 Pre-Closing Matters .....	15
Section 2.7 Receipt of Condominium Documents.....	16
Section 2.8 Status Certificate from Resort Association.....	16
Section 2.9 Certificate of Approval .....	16
Section 2.10 Marriott Acknowledgement.....	16
Section 2.11 Resort Association .....	17
Section 2.12 Water Permit and Water Supply Agreement .....	17
Section 2.13 Sewage Treatment Plant Lease .....	18
Section 2.14 Developer’s Responsibility Agreement.....	18
Section 2.15 Resort Corporation.....	19
Section 2.16 Turn-over Meeting.....	19
Section 2.17 Access to Books and Records.....	19
ARTICLE 3 PURCHASE PRICE .....	19
Section 3.1 Purchase Price.....	19
Section 3.2 Allocation of Purchase Price.....	20
Section 3.3 Adjustments .....	21
Section 3.4 Common Expenses.....	22
Section 3.5 Payment of Purchase Price.....	22
Section 3.6 Transfer Taxes .....	22
Section 3.7 HST .....	23
Section 3.8 Operating Losses and Working Capital Requirements.....	23

# TABLE OF CONTENTS

(continued)

	Page
Section 3.9 FF&E Reserve.....	24
Section 3.10 Completion Items under Hotel Management Agreement.....	24
Section 3.11 Resort Association Entry Fees .....	25
Section 3.12 Repair Items .....	25
Section 3.13 StaffRes Agreements .....	25
ARTICLE 4 REPRESENTATIONS AND WARRANTIES.....	25
Section 4.1 Vendor’s Representations and Warranties.....	25
Section 4.2 Purchaser’s Representations and Warranties .....	26
Section 4.3 Survival of Representations and Warranties.....	26
ARTICLE 5 COURT APPROVAL CONDITION.....	27
Section 5.1 Court Approval Condition .....	27
ARTICLE 6 OTHER CLOSING CONDITIONS .....	27
Section 6.1 Conditions for the Purchaser.....	27
Section 6.2 Conditions for the Vendor .....	28
Section 6.3 Non-Satisfaction of Conditions.....	29
ARTICLE 7 CLOSING .....	29
Section 7.1 Time and Place of Closing.....	29
Section 7.2 Insurance Matters.....	29
Section 7.3 Closing Documents.....	29
ARTICLE 8 TERMINATION.....	30
Section 8.1 Termination Rights .....	30
ARTICLE 9 MISCELLANEOUS .....	30
Section 9.1 No Personal Liability of Vendor.....	30
Section 9.2 Confidentiality .....	30
Section 9.3 Expenses .....	31
Section 9.4 Third Party Beneficiaries .....	31
Section 9.5 Notices .....	31
Section 9.6 Further Assurances.....	32
Section 9.7 Enurement.....	32
Section 9.8 Assignment .....	33



# **TABLE OF CONTENTS** (continued)

	<b>Page</b>
Section 9.9	Time of the Essence ..... 33
Section 9.10	Counterparts ..... 33
Section 9.11	Risk of Loss ..... 33
Section 9.12	Communications Plan; Public Announcements; Confidentiality ..... 33
Section 9.13	Planning Act..... 34
Section 9.14	Non-Merger..... 34
Section 9.15	Dispute Resolution..... 34
Section 9.16	Entire Agreement and Modification ..... 34
Section 9.17	Solicitors as Agents..... 35
Section 9.18	Electronic Registration..... 35
Section 9.19	Tender ..... 35
Section 9.20	Broker's Fees ..... 36
Section 9.21	Authorizations..... 36
Section 9.22	Conduct of Business ..... 36
Section 9.23	Offer ..... 36

## ASSET PURCHASE AGREEMENT

Asset Purchase Agreement dated as of June 30, 2011, between THE ROSSEAU RESORT DEVELOPMENTS INC. ("**RRDI**") by Alvarez & Marsal Canada ULC, solely in its capacity as receiver and manager and trustee of the Assets of RRDI and not in its personal capacity, and by Alvarez & Marsal Canada Inc., solely in its capacity as interim receiver of the Assets of RRDI and not in its personal capacity (the "**Vendor**") and CANADIAN NIAGARA HOTELS INC. (the "**Purchaser**").

WHEREAS on May 22, 2009, the Ontario Superior Court of Justice (the "**Court**"), in Court File No. CV-09-8201-00CL, issued an order appointing Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz Inc.) as trustee and interim receiver, respectively (the "**Trustee**" and the "**Interim Receiver**"), pursuant to section 68 of the *Construction Lien Act* (Ontario) and section 47(1) of the *Bankruptcy and Insolvency Act* of all the property, assets and undertakings (collectively, the "**Assets**") of RRDI. On June 2, 2009, the Court issued an amended and restated appointment order (as further amended from time to time, the "**Appointment Order**") continuing the appointment of the Trustee and Interim Receiver and appointing Alvarez & Marsal Canada ULC as receiver and manager of the Assets of RRDI (the "**Receiver and Manager**") pursuant to section 101 of the *Courts of Justice Act* and pursuant to the *Construction Lien Act* (Ontario) (the Trustee, the Interim Receiver and the Receiver and Manager are collectively referred to as the "**Receiver**").

AND WHEREAS by Order dated May 6, 2011, the Court approved the process proposed by the Receiver for the marketing and sale of the Assets of RRDI on an en bloc basis (the "**Sales Process**"), and approved a protocol (the "**Sales Process Protocol**") by which the Sales Process was to be conducted.

AND WHEREAS the Purchaser has participated in the Sales Process and has followed the Sales Process Protocol.

AND WHEREAS the Vendor has agreed to sell all of RRDI's right, title and interest, if any, in and to the Purchased Assets (as hereinafter defined) to the Purchaser and the Purchaser has agreed to purchase all of RRDI's right, title and interest, if any, in and to the Purchased Assets from the Vendor on and subject to the terms and conditions of this Agreement.

In consideration of the foregoing and the mutual agreements contained herein (the receipt and adequacy of which are acknowledged), the parties agree as follows:

### ARTICLE 1 INTERPRETATION

#### Section 1.1 Defined Terms.

As used in this Agreement, the following words and terms have the following meanings:

"**Actual Employee Liability Amount**" has the meaning ascribed to it in Section 2.4(2)(e).

"**Ad Hoc Committee**" means an informal ad hoc committee representing owners of Units (other than those Units owned by RRDI) at the Resort.

**“Adjustment Date”** means July 16, 2011, being the first day of Marriott’s eighth Accounting Period (as defined in the Hotel Management Agreement).

**“Agreement”** means this agreement of purchase and sale and all schedules and all instruments in amendment or confirmation of it.

**“Approval and Vesting Order”** shall have the meaning specified in Section 5.1.

**“Assets”** has the meaning ascribed to it in the first Recital above.

**“Assumed Liabilities”** has the meaning ascribed to it in Section 2.1.

**“Books and Records”** means all books of account, financial and accounting information and records, and records relating to the construction of the Resort (whether in written, printed, electronic or computer printout form, or stored on computer discs or other data and software storage and media devices) of RRDI, in each case which do not relate to the Excluded Assets, and which for greater certainty do not include the books and records of the Receiver.

**“Business Day”** means any day of the year, other than a Saturday, Sunday or a day on which major banks located in Toronto, Ontario, New York, New York or Dusseldorf, Germany are closed.

**“CBRE”** means CB Richard Ellis Limited.

**“CBRE Data Room”** means the virtual data room containing the documents for inspection provided by link from CBRE’s website as at the execution date of this Agreement, as may be updated from time to time by CBRE.

**“Claims”** has the meaning ascribed to it in paragraph (g) of the “Excluded Assets” definition.

**“Closing”** means the closing of the transactions contemplated herein.

**“Closing Date”** means: (i) the 31<sup>st</sup> day following the date of issuance of the Approval and Vesting Order, or (ii) if an appeal to the Court of Appeal for Ontario is filed in respect of the Approval and Vesting Order, the second (2<sup>nd</sup>) Business Day immediately following the date on which such appeal has been dismissed, withdrawn or otherwise disposed of, but in any event no later than October 10, 2011 in either such case.

**“Communications Plan”** has the meaning ascribed to it in Section 9.12.

**“Condo Owner Leases”** has the meaning ascribed to them in Section 2.4(3).

**“Condo Owners”** has the meaning ascribed to it in Section 2.4(3).

**“Confirmation and Estoppel Agreement”** has the meaning ascribed to it in Section 2.13.

**“Confidential Information”** has the meaning ascribed to it in Section 9.2.

**“Confidentiality Agreement”** means the confidentiality agreement made May 10, 2011 by the Purchaser, as accepted and agreed to on May 12, 2011 by CBRE, on its behalf and as advisor for and on behalf of the Receiver.

**“Construction Lien Claims”** means the construction lien claims in the amount of \$2,800,000 held by West LB AG, New York Branch, against the Purchased Assets.

**“Contracts”** means the agreements, contracts, licences, undertakings, engagements or commitments, guarantees or warranties to which RRDI or the Vendor is a party in connection with the Resort, all as more particularly set out in Schedule “F” hereto.

**“Court”** has the meaning ascribed to it in the first Recital above.

**“Deposit”** has the meaning ascribed to it in Section 3.1(3).

**“Developer’s Responsibility Agreement”** means the developer’s responsibility agreement between RRDI, Wallace Marine Limited, 2027588 Ontario Inc., 2027587 Ontario Inc., 2162262 Ontario Inc. and The District Municipality of Muskoka in respect of the private water and sewage facilities servicing the Resort, notice of which is registered against title to the Real Property on February 9, 2009 as Instrument No. MT62543, as amended by agreement dated February 18, 2009, notice of which is registered against title to the Real Property on February 20, 2009 as Instrument No. MT62918.

**“Dispute”** means the dispute(s) in respect of the interpretation of the Rental Pool Management Agreements as described in notices of dispute delivered by 64 owners of Units to RRDI, one of which such notices of dispute is attached hereto as Schedule “D”.

**“District”** has the meaning ascribed to it in Section 2.14.

**“DRA”** has the meaning ascribed to it in Section 9.18.

**“E-Reg”** has the meaning ascribed to it in Section 9.18.

**“Effective Marriott Termination Date”** has the meaning ascribed to it in Section 2.4(2)(a).

**“Employee Termination Escrow Amount”** has the meaning ascribed to it in Section 2.4(2)(e).

**“Excluded Assets”** means the following assets of the Vendor or RRDI related to the Resort:

- (a) all rights and remedies in respect of a lawsuit brought by the Vendor against Ross Windows related to the quality of workmanship and materials supplied to the Resort;

- (b) refunds of realty taxes attributable to the years prior to 2011 and to the portion of 2011 attributable to the period prior to the Adjustment Date, as provided in Section 3.3(3) below;
- (c) any and all other tax refunds (including, without limitation, any goods and services tax or harmonized sales tax refunds) that are owing or may become owing to RRDI and which relate to the period preceding the Adjustment Date;
- (d) the Excluded Contracts;
- (e) the interest of RRDI in contracts of insurance, insurance policies (including director & officer insurance policies) and the full benefit of RRDI's rights under or in respect of the foregoing, including in and to any cash surrender value thereof;
- (f) original income tax (but not property) records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of RRDI;
- (g) any claims, refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment ("**Claims**") whenever and howsoever arising and the interest of RRDI in any litigation and in the proceeds of any judgment, order or decree issued or made in respect thereof and (except as provided in Section 9.11) any insurance proceeds recoverable or claims payable, which arise in respect of facts, occurrences, events, accidents or losses occurring or suffered prior to Closing;
- (h) any and all amounts held back by the Vendor pursuant to the *Construction Lien Act* (Ontario) in connection with any work or services performed by or on behalf of the Vendor;
- (i) cash, cash equivalents and bank or other deposits (other than the Marriott Working Capital, other Marriott Funds and the StaffRes Deposits, if the Purchaser is assuming the Marriott Agreements and the StaffRes Agreements); and
- (j) books and records of the Receiver.

**"Excluded Contracts"** means, collectively:

- (a) any contract with Ross Windows for the supply of windows and related products to the Resort and/or services related thereto, and all books and records related thereto;
- (b) any and all agreements with Travelers Guarantee Company of Canada (formerly known as St. Paul Guarantee Insurance Company);
- (c) Unit Owner Settlement Agreements (as defined in the Order of the Court dated August 18, 2009), any and all moneys held in connection therewith by the Vendor, and the releases delivered thereunder;

- (d) Letter agreement dated October 14, 2004 (and accepted on October 22, 2004) between Intrawest Trading Company Inc. and RRDI with respect to the Resort 2 Resort program;
- (e) Unsigned capital cost recovery agreement with Hydro One Networks Inc.; and
- (f) Website maintenance agreement with NetKeepers Integric Solutions Group Inc.

**“Fresh Start Approach”** means an approach whereby the 2009 budget of the Resort Corporation would be amended with the result that no common expenses would be assessed against any Unit owner, including RRDI, whereby the board of the Resort Corporation would agree to approve a similar budget for each of the second and third operating years of the Resort Corporation for the period prior to the Fresh Start Date (as defined in the Settlement Agreement), and by providing that some or all amounts previously paid by Unit owners (which amounts are more particularly set out in the Settlement Agreement, in an aggregate amount not exceeding \$1,216,017.84) to or for the benefit of the Resort Corporation in respect of common expenses or other expenses shall be carried forward as credits to be applied in sixty equal monthly amounts as a credit against future assessments of their condominium fees.

**“General Conveyance”** means a general conveyance of the Purchased Assets from the Vendor to the Purchaser and assumption of certain liabilities as provided herein by the Purchaser to be entered into as of the Closing Date between the Vendor and the Purchaser, substantially in the form attached as Schedule “C”.

**“Hotel Management Agreement”** means the hotel management agreement dated as of January 22, 2010 between RRDI, by its Receiver and Manager, and Marriott Hotels of Canada Ltd.

**“Hourly Employees”** has the meaning ascribed to it in Section 2.4(2)(d).

**“HST”** has the meaning ascribed to it in Section 3.7.

**“Lien”** means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), title retention agreement, conditional sale, deemed or statutory trust or any other arrangement or condition which, in substance, secures payment or performance of an obligation, other than Permitted Liens.

**“Marriott”** means, in respect of the Marriott Agreements, Marriott Hotels of Canada Ltd., or Global Hospitality Licensing S.À R.L., having regard to who is party to such Marriott Agreement.

**“Marriott Agreements”** means, collectively:

- (a) the Hotel Management Agreement;
- (b) the international services agreement dated as of January 22, 2010 between RRDI, by its Receiver and Manager, and International Hotel Licensing Company S.À R.L. (as assigned to Global Hospitality Licensing S.À R.L.);



- (c) the license and royalty agreement dated as of January 22, 2010 between RRDI, by its Receiver and Manager, and International Hotel Licensing Company S.À R.L. (as assigned to Global Hospitality Licensing S.À R.L.); and
- (d) the hotel management unit lease dated January 22, 2010 between RRDI, by its Receiver and Manager, as landlord, and Marriott Hotels of Canada Ltd., as tenant.

**“Marriott Consent Date”** has the meaning ascribed to it in Section 2.4(2)(b).

**“Marriott Funds”** has the meaning ascribed to it in paragraph (g) of the definition of Purchased Assets.

**“Marriott Working Capital”** has the meaning ascribed to it in Section 3.8.

**“Non-RRDI Directors”** means Gordon Jacobs and Roland Klassen, the current directors of the Resort Corporation who were not nominated by RRDI.

**“Performance Audit”** has the meaning ascribed to it in Section 3.12(a).

**“Permits”** means all orders, permits, approvals, consents, waivers, licences and similar authorizations from governmental or public authorities held or used by the Vendor or RRDI which are capable of assignment by the Vendor to the Purchaser.

**“Permitted Liens”** means the liens, encumbrances, easements, restrictive covenants, agreements and other claims listed in Schedule “B” hereto.

**“Prohibited Names”** means the names and marks “JW Marriott” and “Marriott”, the “JW Marriott” logo, and any other word, name, logo, design, service mark or other distinctive feature that by reason of extent of use is associated with hotels operated by Marriott or one of its affiliates under the “JW Marriott” brand name.

**“Public Announcement”** has the meaning ascribed to it in Section 9.12.

**“Purchase Price”** shall have the meaning specified in Section 3.1(1).

**“Purchased Assets”** means all of RRDI’s right, title and interest, if any, in and to the following:

- (a) the Real Property;
- (b) the lessee’s interest in and under the Wallace Marine Lease, and the lessee’s interest in the sewage treatment plant referred to therein;
- (c) the Wedge Parcel, but if and only if the consent of the holder of the first mortgage thereon is obtained to such conveyance;
- (d) all furniture, furnishings, trade fixtures, equipment, machinery, and accessories and spare parts;

- (e) one truck and one all terrain vehicle;
- (f) all inventories and supplies of all kinds, if any (including unopened alcohol if the Purchaser is not assuming the Marriott Agreements on Closing but only if the liquor licences are transferred to the Purchaser as of the Closing Date, or if not yet transferred as of the Closing Date, if the Purchaser has obtained an authorization to contract out issued by the Alcohol and Gaming Commission of Ontario with respect to such liquor licences permitting the Purchaser to sell liquor at the Resort under such licences for a period not exceeding 60 days after Closing), but excluding any such inventory with generic Prohibited Names (i.e. not having any marks specific to the Resort) in the event that the Purchaser does not assume the Marriott Agreements;
- (g) all accounts receivable, notes receivable and other debts due or accruing due to the Vendor in connection with the Resort (other than the Purchase Price), including, only if the Purchaser is assuming the Marriott Agreements on Closing, all funds (the "**Marriott Funds**") of the Owner (as defined in the Hotel Management Agreement) which are held or controlled by Marriott with respect to the Resort to which the Owner is entitled in accordance with the terms of any of the Marriott Agreements, including the Marriott Working Capital;
- (h) all prepaid expenses of the Resort which do not relate to the Excluded Assets, which will inure to the benefit of Purchaser after the Closing Date;
- (i) the full benefit of all Contracts (to the extent assignable), but excluding the Excluded Contracts;
- (j) the Permits;
- (k) all right, title and interest of the Vendor or RRDI in and to trade names, business names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and all other intellectual property, and the goodwill associated with any of the foregoing (including, without limitation, all of the Vendor's or RRDI's right, title and interest in and to the names "The Rosseau", "Red Leaves", "Minett Landing", "The Grand Muskoka", or any variation of any of them), owned by, licensed to or used by any of them, subject to any licenses entered into by the Receiver as authorized by Order of the Court dated December 21, 2009;
- (l) the Books and Records; and
- (m) the goodwill of the Resort;

but excluding the Excluded Assets.

**"Real Property"** means the lands and premises legally described in Schedule "A" hereto, including all buildings, structures, fixtures, systems and facilities situate thereon and/or forming a part thereof.



**“Receiving Party”** has the meaning ascribed to it in Section 9.19.

**“Rental Deficiency Agreement”** means the rental deficiency agreement made August 17, 2007 between StaffRes (TF) Inc. and RRDI.

**“Rental Pool Management Agreements”** means, collectively, the rental pool management agreements entered into by each owner of a Unit and RRDI, by its Receiver and Manager, as rental pool manager, as such agreements may be modified.

**“Reserve Fund Study”** has the meaning ascribed to it in Section 3.12(b).

**“Resort”** means the resort known as at the date hereof as “The Rosseau – a J.W. Marriott Resort and Spa”, Muskoka, Ontario, and includes the Real Property and related infrastructure.

**“Resort Association”** means the Red Leaves Resort Association established under the *Resort Association Act*.

**“Resort Association Act”** means *Red Leaves Resort Association Act*, 2006 (Ontario).

**“Resort Association Undertaking”** has the meaning ascribed to it in Section 2.11(b).

**“Resort Condominium”** means Muskoka Standard Condominium Plan No. 62.

**“Resort Corporation”** means Muskoka Standard Condominium Corporation No. 62.

**“Resort Lands”** has the meaning ascribed to it in Section 2.11(a).

**“Sales Process”** has the meaning ascribed to it in the second Recital.

**“Sales Process Protocol”** has the meaning ascribed to it in the second Recital.

**“Set-Off Claim”** means claims by the Vendor against the Resort Corporation for reimbursement to the Vendor of expenses, pursuant to certain contractual obligations of the Resort Corporation to the Vendor, including a reciprocal agreement, a shared facilities agreement, a water/sewage treatment services agreement, a hotel easement and restrictive covenant agreement, and otherwise, against which the Vendor has set off, or may set off its liability, if any, to the Resort Corporation for condominium fees that have been or may be assessed in future against the Vendor in respect of the period prior to Closing, such claims to be to the extent of such condominium fees.

**“Settlement Agreement”** means the amended and restated agreement made May 30, 2011 between the Resort Corporation, RRDI, by its Receiver, the members of the Ad Hoc Committee and the Non-RRDI Directors, as further amended from time to time, setting out terms of settlement in respect of the Set-Off Claim and the Dispute.

**“StaffRes Agreements”** means the Rental Deficiency Agreement and the separate agreement made August 17, 2007 between StaffRes (TF) Inc. and RRDI with respect to construction of three staff residences.

**“StaffRes Deposits”** has the meaning ascribed to it in Section 3.13.

**“Suspended Amounts”** has the meaning ascribed to it in Section 3.9.

**“Tendering Party”** has the meaning ascribed to it in Section 9.19.

**“Termination Date Operating Losses”** has the meaning ascribed to it in Section 3.8(2).

**“Transferred FF&E Amount”** has the meaning ascribed to it in Section 3.9.

**“Unit”** means a unit in the Resort Condominium save and except the hotel management unit (which hotel management unit is Unit 28, Level 1 in the Resort Condominium).

**“Vendor’s Share of Operating Losses”** has the meaning ascribed to it in Section 3.8(1).

**“Wallace Marine Lease”** means a lease made as of February 13, 2009 from Wallace Marine Limited to RRDI, notice of which was registered in the Land Registry Office for the Land Titles Division of Muskoka on February 13, 2009 as Instrument No. MT62702, as amended by ground lease amending agreement dated as of March 18, 2011 between Wallace Marine Limited and RRDI, by its Receiver and Manager, notice of which was registered in such Land Registry Office on May 9, 2011 as Instrument No. MT96827.

**“Water Permit”** means the permit to take water 3350-82DJZM (surface water) in favour of RRDI.

**“Water Supply Agreement”** has the meaning ascribed to it in Section 2.12.

**“Wedge Parcel”** means that certain property legally described as Part of Lot 25, Concession 11, Medora, and part of the original road allowance between Lots 25 and 26, Concession 11, Medora, designated as Part 1 on Plan 35R-22637, which is currently owned by 1515511 Ontario Inc. and is subject to a first mortgage in favour of Romspen Investment Corporation.

## **Section 1.2 Governing Law.**

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein which apply to contracts made and to be performed entirely in Ontario.

## **ARTICLE 2 PURCHASE AND SALE**

### **Section 2.1 Purchased Assets.**

- (1) Subject to the terms and conditions hereof, the Vendor agrees to sell, assign and transfer the Purchased Assets to the Purchaser and the Purchaser agrees to purchase the Purchased Assets from the Vendor, on the Closing Date.

- (2) Contemporaneously with the purchase of the Purchased Assets, the Purchaser shall assume, and agrees to discharge, perform and fulfil, the following obligations and liabilities of RRDI and the Vendor, as applicable, with respect to the Purchased Assets as and from 12:01 a.m. (Toronto time) on the Closing Date:
- (a) all obligations and liabilities of RRDI and the Vendor under the Permitted Liens, the Contracts and the Permits; and
  - (b) all other obligations and liabilities expressly assumed under this Agreement
- (collectively, the “**Assumed Liabilities**”).

## **Section 2.2 “As Is, Where Is”.**

- (1) The Purchaser shall accept on Closing the Purchased Assets and the Assumed Liabilities on an entirely “as is, where is” basis as they exist as of the completion date of this Agreement without regard to the state of repair, condition, use or occupation of the Purchased Assets, location of structures, walls, fences, wires, lines, pipes or conduits, in, on or outside of the Real Property, including, without limitation, the condition of the soil, subsoil, surface or other physical condition of the Real Property and Purchased Assets; the existence or non-existence of hazardous or toxic materials, wastes, substances or mould, including without limitation, access rights; the fitness or suitability of the Real Property and the Purchased Assets for any particular use or purpose; applicable restrictive covenants, governmental laws, rules, regulations, and limitations; the zoning, subdivision, use, density, location or development of the Real Property and Purchased Assets; the necessity or availability of any rezoning, zoning variances, conditional use permits, special management area permits, building permits, environmental impact statements and other governmental permits, approvals or acts; the physical condition of the Real Property and the Purchased Assets, including, without limitation, the structural elements, foundation, roof, appurtenances, access, landscaping, spa, swimming pools, cabana and other recreational equipment, and the electrical, mechanical, HVAC, plumbing, water treatment plant, sewage treatment plant, propane and utility systems, facilities and appliances; the Real Property and Purchased Assets’ compliance with any building code, and other laws, statutes, regulations or ordinances; the size, dimension, or topography of the Real Property or the Purchased Assets; any surface, soil, geologic, drainage, flooding or groundwater conditions or other physical conditions and characteristics of or affecting the Real Property and Purchased Assets or adjoining land, such as drainage, flooding, air, conservation restrictions and its investment value or resale value and with all faults, limitations and defects (latent and apparent), and without limiting the generality of the foregoing, the Purchaser acknowledges that the mechanical system servicing the Resort may not have the capacity to cool certain rooms during certain times which are exposed to prolonged sunlight and despite certain noise control features in the Units noise levels from other commercial establishments in the vicinity of the Resort may interfere with some activities of dwelling occupants. The Purchaser agrees to accept the Purchased Assets without representation and/or warranty and without recourse to the Vendor or the Receiver with respect to the condition of any of them. The Purchaser acknowledges that the Vendor makes no representation, warranty or declaration of any kind with respect to any aspect of the Purchased Assets (including any

representation or warranty express or implied pursuant to the *Sale of Goods Act* (Ontario), the *New Home Warranties Plan Act* (Ontario) or with respect to description, physical or environmental condition, size, marketability, zoning, development potential, compliance with law, fitness for any particular purpose, any projections, estimates or budgets delivered to or made available to the Purchaser of future revenues, future results of operations, future cash flows or future financial condition (or any component thereof) of the Resort business, accuracy or completeness of documentation provided by the Vendor, any agent, employee or other person or provided in the CBRE Data Room or any other matter whatsoever) and that the Purchaser has carried out and relies on the results of its own examinations, investigations and searches with respect to the Purchased Assets. The provisions of this Section shall survive the Closing of this transaction.

### **Section 2.3 Permitted Liens.**

The Purchaser shall, at Closing and subject to the terms and conditions herein:

- (a) accept title to the Real Property (a portion of which is part of the Resort Condominium) pursuant to the Approval and Vesting Order and subject to the Permitted Liens;
- (b) satisfy itself as to the due compliance with the provisions of such Permitted Liens and not require releases of any Permitted Lien with respect to the Real Property or the Resort Condominium; and
- (c) be subject to the covenants, obligations and restrictions imposed on the owner of the Purchased Assets as set out in the Permitted Liens in respect of the period from and after the Closing Date.

### **Section 2.4 Assumption of Certain Liabilities.**

#### **(1) Marriott Agreements Election**

The Purchaser acknowledges having had the opportunity to contact Marriott prior to the date hereof to discuss the Marriott Agreements and to consider whether it wishes to assume the Marriott Agreements on Closing. The Purchaser hereby advises that it shall assume the Marriott Agreements on Closing. The Vendor shall be responsible for all liabilities and obligations under the Marriott Agreements in respect of the pre-Closing period, except as otherwise provided in Sections 3.8, 3.9 and 3.10 hereof.

#### **(2) Termination or Retention of Marriott Agreements**

- (a) Termination. The Purchaser acknowledges being advised by the Vendor that Marriott may issue a notice of termination of the Hotel Management Agreement and a corresponding notice of termination to each of its employees at the Resort on or about July 18, 2011 terminating the Hotel Management Agreement and each employee's employment at the Resort effective on or about October 12, 2011 (the "**Effective Marriott Termination Date**"). The Vendor understands from Marriott that the notices of termination may be withdrawn by Marriott on Closing



if the Purchaser assumes the Marriott Agreements on Closing. The Vendor will use its reasonable commercial efforts to obtain from Marriott draft copies of the notices of termination that Marriott intends to issue for prior review and approval by the Vendor and the Purchaser.

If the Marriott Agreements are to be terminated (because Marriott does not grant its consent to an assignment of the Marriott Agreements to the Purchaser on Closing), then any notices of termination issued by Marriott as contemplated in this Section 2.4(2)(a) shall not be withdrawn on Closing, and such Marriott Agreements shall be terminated pursuant to such notices of termination as of the Effective Marriott Termination Date, subject to such transitional arrangements during the period following the Closing Date to the Effective Marriott Termination Date, including interim occupancy rights, acceptable to the Vendor, the Purchaser and Marriott, each acting reasonably. For greater certainty, the Purchaser must provide Marriott with continued occupancy of the Hotel from the Closing Date to the Effective Marriott Termination Date on substantially similar terms. If the Marriott Agreements are terminated hereunder, the Purchaser shall be subject to (i) the provisions of section 11.11.E of the Hotel Management Agreement dealing with the cessation of use of the Marriott trademarks, and (ii) the provisions of section 2.11 of the Rental Pool Management Agreements in respect of the replacement of Marriott as Hotel operator.

- (b) Assumption of Marriott Agreements. If the Purchaser elects, pursuant to Section 2.4(1) above, to assume the Marriott Agreements on Closing, the Vendor shall deliver to Marriott notice of the proposed sale to the Purchaser pursuant to section 10.02.B of the Hotel Management Agreement as soon as possible after the date of execution and delivery of this Agreement by both parties. Each of the Vendor and the Purchaser shall use its reasonable commercial efforts to obtain the consent of Marriott, by no later than the 20<sup>th</sup> day after the date of execution and delivery of this Agreement by both parties (the “**Marriott Consent Date**”), to (i) the assignment of the Marriott Agreements on Closing to the Purchaser (or to an affiliate of the Purchaser who has taken an assignment of this Agreement pursuant to Section 9.8 hereof) and (ii) the withdrawal or revocation of the notices of termination, if any, delivered by Marriott as contemplated in Section 2.4(2)(a) above, upon the assumption by the Purchaser (or an affiliate of the Purchaser pursuant to Section 9.8 hereof) of the Marriott Agreements on Closing. Without limiting the generality of the foregoing, the Purchaser shall provide to Marriott and the Vendor contemporaneously with the Purchaser’s submission of this offer for the purchase of the Purchased Assets such evidence as may be reasonably requested by Marriott to endeavour to satisfy Marriott that the Purchaser (or an affiliate of the Purchaser who takes an assignment of this Agreement pursuant to Section 9.8 hereof) does not fall within any of the criteria of an unacceptable buyer set out in clauses 10.02.A(2), (3) and (4) of the Hotel Management Agreement. In addition, the Purchaser shall provide to Marriott and the Vendor contemporaneously with the Purchaser’s submission of this offer for the purchase of the Purchased Assets such evidence as may be reasonably requested by Marriott and which is in the Purchaser’s possession or control to endeavour to

satisfy Marriott that the Purchaser (or an affiliate of the Purchaser who takes an assignment of this Agreement pursuant to Section 9.8 hereof) has sufficient financial resources and liquidity to fulfil the owner's obligations under the Hotel Management Agreement, and in particular, that the Purchaser (or such Purchaser's affiliate) has sufficient financial resources and liquidity to (i) fulfil the obligations of a successor owner under Exhibit B to the Hotel Management Agreement, and (ii) fund projected operating losses (if any) and/or working capital needs of the Hotel for thirteen (13) Accounting Periods following the sale of the Hotel to the Purchaser. The Purchaser shall also enter into an assumption agreement, or a new management and related agreements if required by Marriott pursuant to section 10.02.D of the Hotel Management Agreement, all in accordance with the terms of the Hotel Management Agreement. If Marriott does not provide its consent by the Marriott Consent Date, the provisions of Section 2.4(2)(a) shall govern (provided that the Vendor does not elect to terminate the Purchase Agreement pursuant to Section 6.2(a) hereof).

- (c) Marriott Estoppel Certificate. If the Purchaser is assuming the Marriott Agreements on Closing, on or before Closing, the Vendor shall use its reasonable commercial efforts to obtain from Marriott an estoppel certificate pursuant to section 11.19 of the Hotel Management Agreement and pursuant to the other Marriott Agreements.
- (d) Offers to Employees. If the Purchaser is not assuming the Marriott Agreements, then effective as of the Effective Marriott Termination Date, the Purchaser: (i) shall offer employment to all of the hourly employees (other than seasonal hourly employees whose employment will come to an end in the ordinary course prior to the Effective Marriott Termination Date) (the "**Hourly Employees**") currently employed by Marriott in connection with the Resort, and (ii) may offer employment to any or all of the remaining employees (i.e. employees in a management or supervisory role) currently employed by Marriott in connection with the Resort, in each case on terms and conditions of employment (including, without limitation, with respect to compensation, benefits, hours of work, location and duties) that are substantially similar to the current terms and conditions of employment with Marriott. The Purchaser shall make such offers on July 18, 2011, and shall leave such offers open for acceptance until seven (7) days prior to the Closing Date. The Purchaser shall recognize the past service of such employees with Marriott for such purposes and for any required notice of termination, termination or severance pay (contractual, statutory or at common law).
- (e) Employee Liabilities. The Purchaser shall be responsible for all liabilities in respect of: (i) each Hourly Employee who is eligible to receive an offer of employment from the Purchaser pursuant to Section 2.4(2)(d) but does not receive such offer of employment; and (ii) each Hourly Employee who receives such offer of employment but does not accept such offer of employment, in each case which liabilities arise directly or indirectly out of, as a result of, in connection with or pursuant to Marriott's termination of the employment of such Hourly Employee, up to a maximum amount, in the aggregate, of \$500,000.00. At least

six (6) days prior to the Closing Date, the Purchaser shall provide the Vendor with copies of all of the Purchaser's offers of employment, if any, that have been accepted so that the Vendor can determine and advise the Purchaser of the amount (the "**Employee Termination Escrow Amount**") of the estimated liabilities of the Purchaser under this Section 2.4(2)(e). On the Closing Date, the Purchaser shall pay to the Receiver the Employee Termination Escrow Amount, which shall in no event exceed \$500,000.00, and which shall be held by the Receiver in escrow until such time as the actual amount (the "**Actual Employee Liability Amount**") of the liabilities under this Section 2.4(2)(e) in respect of Hourly Employees has been finally determined and audited by the Receiver. Once the Actual Employee Liability Amount has been finally determined and audited, the Receiver shall retain the lesser of the Actual Employee Liability Amount and the Employee Termination Escrow Amount in reimbursement of such liabilities. To the extent the Actual Employee Liability Amount is less than the Employee Termination Escrow Amount, the balance shall be returned to the Purchaser. For greater certainty, the Employee Termination Escrow Amount payable under this Section 2.4(2)(e) shall not be an adjustment to the Purchase Price.

- (f) Post-Closing Employee Liabilities. The Purchaser shall be responsible for all liabilities in respect of the termination of employment of Marriott employees that it hires and whose employment it terminates subsequent to the Effective Marriott Termination Date, it being understood and agreed that such liabilities shall include contractual, common law and statutory obligations in respect of termination of employment on the basis of total service including service with Marriott.

(3) Sale/Leasebacks

The Purchaser acknowledges and agrees that the Vendor has advised it that certain owners of Units in the Resort ("**Condo Owners**") have renegotiated certain lease rental guarantees pursuant to 34 leases (collectively, the "**Condo Owner Leases**"), copies of which Condo Owner Leases have been provided to the Purchaser (the previously existing ones having heretofore been terminated by the Unit Owner Settlement Agreements).

On the Closing, the Purchaser shall not assume any of the obligations of RRDI and the Vendor under such Condo Owner Leases.

The Purchaser acknowledges that, pursuant to each of the Condo Owner Leases, the Condo Owner has the right to terminate its Condo Owner Lease on the 30<sup>th</sup> day after such Condo Owner gives written notice of termination to RRDI, as tenant.

## **Section 2.5 The Dispute**

- (1) Pursuant to the Settlement Agreement, the Vendor and the members of the Ad Hoc Committee agreed to a settlement of the Dispute in the manner set out therein, subject to and conditional upon: (i) obtaining the requisite Unit owner vote, (ii) obtaining the consent of the purchaser of the Purchased Assets and (iii) the closing of the sale of the Purchased Assets to such purchaser. The requisite Unit owner vote has been obtained.

- (2) If the Purchaser does not wish to consent to the settlement of the Dispute as set out in the Settlement Agreement, the Purchaser shall be free to negotiate with any member of the Ad Hoc Committee who has executed a confidentiality acknowledgement pursuant to the Confidentiality Agreement and/or their representatives in compliance with the Purchaser's obligations under the Confidentiality Agreement with a view to resolving the Dispute and the Vendor shall reasonably cooperate in such negotiations (provided that the Vendor's rights and obligations in respect of the pre-Closing period are not materially adversely affected without the Vendor's consent).
- (3) The Purchaser shall execute and deliver on Closing separate assumption agreements in favour of the counterparties to the Rental Pool Management Agreements to assume RRDI's and the Vendor's obligations under the Rental Pool Management Agreements whether before or after the Closing Date.

In the event that the Purchaser does not consent to the settlement of the Dispute as set out in the Settlement Agreement, and the Dispute is not otherwise resolved by the Purchaser and the Ad Hoc Committee prior to the Closing Date, the Purchaser shall assume RRDI's and the Vendor's obligations under the Rental Pool Management Agreements subject to the Dispute, whether before or after the Closing Date, and shall deliver the separate assumption agreements contemplated above.

## **Section 2.6 Pre-Closing Matters.**

The Vendor shall, from the date hereof until the Closing or earlier termination of this Agreement:

- (a) continue to maintain the current insurance on the Purchased Assets;
- (b) give the Purchaser reasonable access to the Purchased Assets and the Books and Records, on reasonable prior notice to the Vendor, and in the company of a representative of the Vendor when at the Real Property, and the Purchaser shall exercise such access rights without material interference or disruption to the operations or guests of the Resort and in a manner so as not to cause damage, loss, cost or expense to the Vendor, the Real Property or the occupants or guests of the Resort; the Purchaser covenants to promptly restore the Real Property to its condition immediately preceding the Purchaser's investigations, but the Purchaser confirms that it shall not be permitted to conduct any soil or environmental testing or any other testing involving physical intrusion of the Real Property;
- (c) not sell or agree to sell any Unit or any other material part of the Purchased Assets unless approved in writing by the Purchaser;
- (d) deal exclusively with the Purchaser in respect of the sale of the Purchased Assets or any material part thereof; and
- (e) not enter into a new contract in relation to the Purchased Assets or the Resort other than in the ordinary course of business (which contract in the ordinary course shall promptly be provided to the Purchaser), or (except as expressly



permitted hereunder) cancel, terminate or amend any existing Contract other than in the ordinary course of business (which cancellation, termination or amendment in the ordinary course shall promptly be provided to the Purchaser), without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld, and which consent shall be deemed to be given if the Purchaser does not respond to the Vendor's written request for consent within three (3) Business Days after delivery of such request by the Vendor.

#### **Section 2.7 Receipt of Condominium Documents.**

- (1) The Purchaser acknowledges having received a copy of the declaration, by-laws and the rules of the Resort Corporation, along with the second amended disclosure statement dated August 20, 2009 prepared with respect to the sale of Units in the Resort Condominium and other documents included therein and shall, on the date of execution of this Agreement, execute the Acknowledgement of Receipt in the form attached hereto as Schedule "G". In accordance with section 73 of the *Condominium Act*, the Purchaser has the right to rescind this Agreement by providing notice of such rescission to the Vendor or the Vendor's solicitors within ten (10) days after the date of execution and delivery of this Agreement by both parties.
- (2) If the Purchaser exercises its right of rescission as contemplated in Section 2.7(1) above after the Vendor has already served its materials in respect of its application for the Approval and Vesting Order, the full amount of the Deposit and all interest earned thereon shall become the property of, and may be retained by, the Vendor to compensate the Vendor for expenses incurred (and not as a penalty), and this Agreement shall be terminated.

#### **Section 2.8 Status Certificate from Resort Association.**

The Vendor and the Purchaser acknowledge that the Resort Association has issued a status certificate(s) in respect of the Real Property on or before the date of execution of this Agreement by both parties.

#### **Section 2.9 Certificate of Approval**

The Purchaser acknowledges having received a copy of the amended certificate of approval 2176-74DPM9 (municipal and private sewage works) issued by the Ministry of the Environment on July 20, 2007, and is aware of the conditions contained therein.

#### **Section 2.10 Marriott Acknowledgement.**

The Purchaser acknowledges and agrees that (i) the Purchased Assets are being sold by the Vendor and not by Marriott or its affiliates, (ii) Marriott and its affiliates are not part of or an agent for RRDI, the Receiver or the Vendor, and have not acted as a broker, finder or agent in connection with the sale of the Purchased Assets, and (iii) the Purchaser waives and releases Marriott and its affiliates from and against any liability with respect to any representations or defects, or any other claim whatsoever, relating to the marketing, sale or construction of the Units or the Resort or any part thereof.

## **Section 2.11 Resort Association.**

- (a) RRDI and certain of its affiliates incorporated the Resort Association under the Resort Association Act, which requires that all persons having a real property interest in the lands covered by the Resort Association Act (the “**Resort Lands**”) be members of the Resort Association. The purposes of the Resort Association is, among other things, to maintain and manage the Resort Lands, to create events, attractions and activities throughout the year to market the Resort Lands and to negotiate and provide a number of guest benefits and services related to the operation of the Resort Lands. The Resort Association is governed by a board of directors, who are elected from different categories of membership in the Resort Association. The Resort Association members are required pursuant to the Resort Association general by-law to pay membership fees and other fees to the Resort Association. The Resort Association has the right to register a lien against the property of a member who is in default of paying fees. The Purchased Assets are subject to the Resort Association Act and to the jurisdiction of the Resort Association. The Purchaser acknowledges that neither the Vendor nor the Receiver controls the Resort Association and that the Vendor makes no representations or warranties whatsoever with respect to the Resort Association’s ability to undertake those activities for which it was created.
- (b) The Vendor entered into a mutual undertaking dated March 18, 2011 (the “**Resort Association Undertaking**”) with Ken Fowler Enterprises Limited, Red Leaves Resort Partnership, 1515511 Ontario Inc., Cleavelands House Limited and Wallace Marine Limited, being the principal members of the Resort Association, to proceed in good faith and use reasonable commercial efforts to complete definitive documentation relating to the Resort Association, the principal terms of which are set out in Schedule “A” to the Resort Association Undertaking (and include, among other things, the suspension of some of the Resort Association’s activities and a waiver of certain fees until April 30, 2013). The Resort Association Undertaking is one of the Contracts to be assumed by the Purchaser on Closing. At Closing, the Purchaser shall also enter into an assumption agreement as required pursuant to the terms of the Resort Association Undertaking.

## **Section 2.12 Water Permit and Water Supply Agreement.**

The Purchaser acknowledges having received a copy of the Water Permit. The Purchaser further acknowledges that the Water Permit is not assignable, and that the Purchaser will apply for a new water permit at its sole cost and expense.

The water supply agreement (the “**Water Supply Agreement**”) made as of March 15, 2011 between RRDI, by its Receiver and Manager, and 1515511 Ontario Inc. is one of the Contracts to be assumed by the Purchaser on Closing. At Closing, the Purchaser shall enter into an assumption agreement as required pursuant to the terms of the Water Supply Agreement, and will agree to require future purchasers of the Resort to enter into a similar assumption agreement.

### **Section 2.13 Sewage Treatment Plant Lease.**

The Purchaser acknowledges having received a copy of the confirmation and estoppel agreement (the "**Confirmation and Estoppel Agreement**") dated March 18, 2011 in respect of the Wallace Marine Lease. Pursuant to paragraph 7 of the Confirmation and Estoppel Agreement, the consent of Wallace Marine Limited to an assignment of the Wallace Marine Lease to the Purchaser is not required provided that the conditions set out in such paragraph 7 are satisfied. In order to satisfy the condition in paragraph 7(ii) of the Confirmation and Estoppel Agreement, the Purchaser agrees that it will enter into an assumption agreement with Wallace Marine Limited on Closing as contemplated in Section 15.02(a) of the Wallace Marine Lease, in a form satisfactory to Wallace Marine Limited and the Purchaser, each acting reasonably, and shall also assume the obligations of RRDI in paragraph 6 of the Confirmation and Estoppel Agreement, in a form satisfactory to Wallace Marine Limited and the Purchaser, each acting reasonably.

### **Section 2.14 Developer's Responsibility Agreement.**

- (a) Forthwith after the execution and delivery of this Agreement by both parties, each of the Vendor and the Purchaser shall use its reasonable commercial efforts to obtain the consent of The District Municipality of Muskoka (the "**District**") to the assignment of the Developer's Responsibility Agreement to the Purchaser on Closing. Without limiting the generality of the foregoing, the Purchaser shall apply to the District for the District's consent within two (2) Business Days after the date of execution and delivery of this Agreement by both parties, and will provide to the District such evidence as may be reasonably requested by the District that the Purchaser satisfies the criteria in section 74(2) of the Developer's Responsibility Agreement, and shall deliver to the District such acknowledgement and/or assumption agreements required pursuant to the terms of the Developer's Responsibility Agreement. For greater certainty, it shall not be a condition of Closing that such consent be obtained.
- (b) Pursuant to paragraph 30 of the Developer's Responsibility Agreement, RRDI was required to establish a reserve fund in the amount of \$1,700,000 to ensure funds were available for the repair and maintenance of the private water and sewage treatment services facilities. Such reserve fund was established by the delivery of a letter of credit in the amount of \$1,700,000 to BNY Trust Company of Canada, which letter of credit is held pursuant to a trust agreement made January 9, 2009 between BNY Trust Company of Canada and RRDI. On Closing, the Purchaser shall provide to BNY Trust Company of Canada a replacement letter of credit in the amount of \$1,700,000, and otherwise on substantially the same terms as the existing letter of credit, so that the Vendor may have the existing letter of credit returned to it on Closing.

### **Section 2.15 Resort Corporation.**

Because of the Dispute, the Resort Corporation has been unable to fulfil or complete certain matters contemplated under the Condominium Act, the declaration and/or the rules, including but not limited to the matters set out in Schedule "H" hereto. The Purchaser shall release on Closing the appointees of RRDI on the board of directors of the Resort Corporation, the Vendor and the Receiver, and their respective directors, officers, employees and agents from any and all claims, liabilities, losses or damages arising from or relating to any and all such matters, and the Purchaser agrees that the Approval and Vesting Order shall contain a similar clause confirming that the foregoing releasees are not liable in respect of the matters set out above.

### **Section 2.16 Turn-over Meeting.**

Upon the completion of this transaction, the requirement for a turn-over meeting pursuant to the Condominium Act will be triggered. The Purchaser acknowledges and agrees that no one of RRDI, the Vendor or the Receiver shall fulfil the obligations of the declarant in respect of such turn-over meeting, and the Purchaser shall release on Closing the Vendor and the Receiver, and their respective directors, officers, employees and agents from any and all claims, liabilities, losses or damages arising from or relating to the failure of the declarant to fulfil such obligations, and the Purchaser agrees that the Approval and Vesting Order shall contain a similar clause confirming that the foregoing releasees are not liable in respect of such matters.

### **Section 2.17 Access to Books and Records.**

For a period of one year from the Closing Date or for such longer period as may be required by applicable law, the Purchaser shall retain all original Books and Records for the period prior to the Closing Date. So long as such Books and Records are retained by the Purchaser pursuant to this Agreement, the Vendor and its representatives shall have the reasonable right to inspect and make copies (at its own expense) of them upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and in confidence (except as reasonably required in order to allow the Receiver to complete its administration of RRDI's estate) and without undue interference to the business operations of the Purchaser. The provisions of this Section 2.17 shall survive the Closing.

## **ARTICLE 3 PURCHASE PRICE**

### **Section 3.1 Purchase Price.**

- (1) The purchase price (the "**Purchase Price**") payable by the Purchaser to the Vendor for the Purchased Assets shall be \_\_\_\_\_, payable on Closing by certified cheque or bank draft from one of the six largest Schedule 1 Canadian chartered banks or by wire transfer of immediately available funds, subject to adjustment as provided in Section 3.3 below and subject to this Section 3.1.



- (2) The portion of the Purchase Price payable at Closing shall be reduced by the Deposit (as defined below).
- (3) The Purchaser shall pay to Vendor's counsel, Blake, Cassels & Graydon LLP, in trust, with the Purchaser's submission of this offer to purchase the Purchased Assets, a deposit in the amount of \_\_\_\_\_ by way of certified cheque or bank draft and, within one (1) Business Day after the execution and delivery of this Agreement by both parties, a further deposit of \_\_\_\_\_ by wire transfer in immediately available funds (collectively, the "**Deposit**"). Upon the receipt of the Deposit by Blake, Cassels & Graydon LLP, the Deposit will be invested by the Vendor's counsel, in trust, in an interest-bearing account, term deposit or guaranteed investment certificate with any Canadian Schedule 1 bank maturing on the Closing Date.
- (4) As the Resort Condominium has been created, no interest is payable on the Deposit pursuant to the Condominium Act, and the Purchaser acknowledges that there is no deposit insurance under Tarion applicable to the Deposit paid under this Agreement.
- (5) The Deposit and all interest earned thereon will be applied on Closing in satisfaction of an equivalent amount of the Purchase Price. Except as expressly provided in Section 2.7(2), if the Closing does not occur for any reason other than (i) a breach by the Purchaser of its representations, warranties or covenants under this Agreement or (ii) any other default of the Purchaser under this Agreement, the full amount of the Deposit and all interest earned thereon shall be immediately returned to the Purchaser.
- (6) If the Closing does not occur because the Purchaser breached any of its representations, warranties or covenants under this Agreement, or because of any other default of the Purchaser under this Agreement, the full amount of the Deposit and all interest earned thereon shall become the property of, and may be retained by, the Vendor as liquidated damages (and not as a penalty) and which are to compensate it for the expenses incurred and opportunities foregone as a result of the failure of the transaction to close and in lieu of any other right or remedy that the Vendor may have at law or in equity.

### **Section 3.2 Allocation of Purchase Price.**

The Vendor and the Purchaser shall endeavour to agree on or before Closing on an allocation of the Purchase Price among the components of the Purchased Assets set out in Schedule "I". If such an allocation is agreed upon, the parties agree to execute and file all of their own tax returns and prepare all of their own financial statements and other instruments on the basis of this allocation. If such allocation is disputed by any taxation or other governmental authority, the party receiving notice of such dispute will promptly notify the other party and the parties will use their reasonable efforts to sustain the final allocation. The parties will share information and cooperate to the extent reasonably necessary to permit the transactions contemplated by this Agreement to be properly, timely and consistently reported. In the event that the parties are unable to agree on an allocation of the Purchase Price prior to Closing, such failure shall have no effect on the respective rights and obligations of the parties hereunder. The covenants contained herein shall survive Closing.

### **Section 3.3 Adjustments.**

- (1) Except to the extent expressly provided herein, conditional on Closing, the Vendor shall be responsible for all expenses referred to below and shall be entitled to all revenues accrued from the Purchased Assets for the period ending on the day before the Adjustment Date. From and including the Adjustment Date, conditional on Closing, the Purchaser shall be responsible for all expenses referred to below and shall be entitled to all revenues from the Purchased Assets. Adjustments shall be made solely in respect of the following items (and the other items expressly contemplated hereunder):
  - (a) realty taxes, local improvement charges and other similar levies;
  - (b) the costs of water, sewage, hydro-electric power, gas and other utilities, to the extent same cannot be determined as at the Adjustment Date from a meter or similar device definitively showing the amount for which the Vendor is responsible up until such time;
  - (c) amounts received, paid or payable under any of the Contracts; and
  - (d) deposits and prepaid expenses.

Fire and other insurance shall not be transferred. In the event that final billings are not available at the time of calculating the adjustments, the adjustments shall be made on the basis of the most recent billings then available and, provided that final billings become available within thirty (30) days after the Closing Date, the Purchaser and the Vendor agree to readjust all such items, if necessary. This agreement to readjust shall survive the completion of the transaction for a period of thirty (30) days after the Closing Date, but any claim for adjustment by any party made within such period shall remain in effect after the expiration thereof until resolved. If final billings do not become available within thirty (30) days after the Closing Date, the Purchaser and the Vendor agree not to readjust such items.

- (2) All prepaid rentals, room rental deposits and all other deposits for advance registrations or reservations for periods after 12:01 a.m. on the Adjustment Date shall be credited to Purchaser.
- (3) The Vendor shall be entitled to all refunds of realty taxes attributable to the years prior to 2011 and to the portion of 2011 attributable to the period prior to the Adjustment Date, and the Purchaser shall provide on Closing a written direction to the Township of Muskoka Lakes for the payment of such Vendor refunds, if any, to the Vendor or as the Vendor may direct. The Purchaser acknowledges that the assessments for property tax years 2009 through 2012 related to the Resort and the Real Property have been appealed. As and from the Closing Date, the Purchaser shall assume carriage of all such appeals at its own expense. Each of the Vendor and the Purchaser shall co-operate with the other, both before and after the Closing Date, in respect of such appeals. The contingency fees of Altus Group and Altus Group Tax Consulting Professional Paralegal Corporation shall be split between the Vendor (in respect of the period prior to the Adjustment Date to which the refund relates) and the Purchaser (in respect of the period after the Adjustment

Date to which the refund relates, if any) and the party receiving the refunds may deduct the other party's share of such fees before remitting to such other party its share of such refunds. In the event that the Purchaser receives any or all of the refund money to which the Vendor is entitled hereunder, such refund money shall be deemed to be the property of, segregated, received and held in trust for the benefit of, and shall be promptly paid over and delivered to, the Vendor or as the Vendor may direct (subject to deduction for the Vendor's share of Altus fees as contemplated herein). In the event that the Vendor receives any or all of the refund money to which the Purchaser is entitled hereunder, such refund money shall be deemed to be the property of, segregated, received and held in trust for the benefit of, and shall be promptly paid over and delivered to, the Purchaser or as the Purchaser may direct (subject to deduction for the Purchaser's share of Altus fees as contemplated herein).

### **Section 3.4 Common Expenses.**

Pursuant to the Settlement Agreement, the Vendor, the Resort Corporation and the Non-RRDI Directors agreed to a settlement of the Set-Off Claim through the Fresh Start Approach, subject to and conditional on several implementation steps, including obtaining the requisite Unit owner consent, and to be effective at the end of the calendar month in which Closing occurs. The requisite Unit owner consent to the Fresh Start Approach has been obtained. The Purchaser acknowledges and agrees that it is acquiring the Purchased Assets on Closing subject to the Fresh Start Approach and agrees on Closing to execute a consent to the Fresh Start Approach, including the common expense credits set out in the Settlement Agreement. The Purchaser also acknowledges and agrees to the amendment to the declaration of the Resort Corporation to incorporate the Fresh Start Approach.

The Purchaser agrees to notify any future purchaser of a Unit from the Purchaser, prior to entering into a purchase agreement with such purchaser, that the declaration of the Resort Corporation has been amended to incorporate the Fresh Start Approach.

### **Section 3.5 Payment of Purchase Price.**

The Purchase Price shall be paid by the Purchaser to the Vendor on the Closing Date by way of wire transfer, certified cheque or draft of a Schedule 1 Canadian chartered bank.

### **Section 3.6 Transfer Taxes.**

On Closing, the Vendor and the Purchaser shall jointly elect under Section 167 of the *Excise Tax Act* (Canada) and any similar Ontario legislation that no harmonized sales tax be payable under Part IX of the *Excise Tax Act* (Canada) with respect to the sale and purchase of the Purchased Assets. Such election shall be made in prescribed form pursuant to the said Act and legislation and the Purchaser shall file the joint election in accordance with the said Act and legislation. The Purchaser shall be responsible for any land transfer taxes and registration fees in connection with any instruments of transfer provided for in this Agreement. At the Purchaser's option, an election will be filed in respect of section 22 of the *Income Tax Act* (Canada) in respect of accounts receivable. The Purchaser shall pay the cost of registration of the Approval and Vesting Order.

### Section 3.7 HST.

With respect to harmonized sales tax ("HST") payable pursuant to the *Excise Tax Act* (Canada), the Purchaser covenants that:

- (a) Subject to Section 3.6, the Purchaser will report and pay any applicable HST payable as required by the provisions of the *Excise Tax Act* in the manner and within the time prescribed by that Act;
- (b) The Purchaser will indemnify the Vendor from any HST, penalty, interest or other amounts which may be payable by or be assessed against the Vendor under the *Excise Tax Act* as a result of, or in connection with,
  - (i) the Vendor's failure to collect and remit any HST applicable to the sale of the Purchased Assets to the Purchaser, and
  - (ii) the Purchaser's failure to file the election under section 167 of the *Excise Tax Act*, as required by that Act;
- (c) The Purchaser will indemnify the Vendor from any HST, penalty, interest or other amounts which may be payable by or be assessed against the Vendor under the *Excise Tax Act* should any third party with the authority to do so, including the Canada Revenue Agency, determine that a section 167 election under the *Excise Tax Act* cannot be validly made, in whole or in part, by the parties to this Agreement.

### Section 3.8 Operating Losses and Working Capital Requirements.

#### (1) If Marriott Agreements are being Assumed

If the Purchaser is assuming the Marriott Agreements on Closing, the Vendor and the Purchaser agree that the Vendor shall be responsible for actual operating losses as calculated by Marriott for the period up to but not including the Adjustment Date (the "**Vendor's Share of Operating Losses**"). On Closing, the Purchaser shall be responsible for operating losses from and after the Adjustment Date. To the extent that the Vendor has provided funding to Marriott by the Closing Date in an amount less than the Vendor's Share of Operating Losses, the Purchaser shall receive a credit on Closing equal to the difference between the Vendor's Share of Operating Losses and the amount funded to Marriott by the Vendor. To the extent that the Vendor has provided funding to Marriott by the Closing Date in excess of the Vendor's Share of Operating Losses, the Vendor shall receive a credit on Closing in the amount of such excess. If the final Vendor's Share of Operating Losses has not been determined by the Closing Date, an adjustment shall be made on the basis of the estimated losses as set out above for the period up to but not including the Adjustment Date, and the Vendor and the Purchaser agree to readjust such amount within thirty (30) days after the Closing Date based on the final Vendor's Share of Operating Losses.

The Purchaser also acknowledges that RRDI has provided Marriott with permanent working capital ("**Marriott Working Capital**") in the amount of                      On Closing, the



Vendor shall be entitled to a credit in the amount of \_\_\_\_\_ on account of such Marriott Working Capital.

(2) If Marriott Agreements are being Terminated

If the Marriott Agreements are to be terminated on Closing, then the Vendor and the Purchaser agree that the Vendor shall be responsible for actual operating losses as calculated by Marriott for the period up to and including the Effective Marriott Termination Date (the "**Termination Date Operating Losses**"). To the extent that the Vendor has provided funding to Marriott by the Effective Marriott Termination Date in an amount less than the Termination Date Operating Losses, the Vendor shall be solely responsible to pay Marriott the difference between the Termination Date Operating Losses and the amount funded to Marriott by the Vendor. To the extent that the Vendor has provided funding to Marriott by the Effective Marriott Termination Date in excess of the Termination Date Operating Losses, the Vendor shall be entitled to such excess. The Purchaser also acknowledges that the Vendor is entitled to the Marriott Working Capital and other Marriott Funds.

Furthermore, if the Marriott Agreements are to be terminated on Closing, then notwithstanding the provisions of Section 3.3 hereof, the only items to be adjusted as of the Adjustment Date are realty taxes, local improvement charges and other similar levies. All other items that are the subject of adjustment in Section 3.3 shall be adjusted as of the day immediately following the Effective Marriott Termination Date.

**Section 3.9 FF&E Reserve.**

The Purchaser acknowledges having been advised by the Vendor that, in accordance with section 11.34 of the Hotel Management Agreement, when the Hotel Management Agreement became effective, Marriott agreed with the Vendor to (i) retain in the FF&E Reserve \_\_\_\_\_ of the outstanding balance in the FF&E Reserve and to transfer the balance of the FF&E Reserve (the "**Transferred FF&E Amount**") to the Operating Accounts, and (ii) temporarily suspend further transfers to the FF&E Reserve during the first five (5) Accounting Periods of Fiscal Year 2010 (the "**Suspended Amounts**"). The estimated amount of the Transferred FF&E Amount and the Suspended Amounts is \_\_\_\_\_ the aggregate. If the Purchaser is assuming the Marriott Agreements on Closing, the Purchaser shall assume the obligation to pay such amount to Marriott for deposit in the FF&E Reserve in accordance with the terms of the Hotel Management Agreement. For greater certainty, there shall be no adjustment to the Purchase Price in respect of the foregoing amount.

**Section 3.10 Completion Items under Hotel Management Agreement.**

If the Purchaser is assuming the Marriott Agreements on Closing, the Purchaser acknowledges and agrees that it will be assuming on Closing the obligation to complete the Category B items set out in Exhibit B to the Hotel Management Agreement, at its sole cost and expense, in accordance with the terms of the Hotel Management Agreement.

### **Section 3.11 Resort Association Entry Fees.**

All entry fees chargeable by and payable to the Resort Association pursuant to the Resort Association Act and by-laws shall be payable by the Purchaser to the Resort Association on Closing.

### **Section 3.12 Repair Items**

- (a) The Purchaser acknowledges receipt of a copy of the common element performance audit report prepared by Trow Associates Inc. dated March 8, 2010 (the "**Performance Audit**"). The Purchaser also acknowledges being advised by the Vendor that certain of the matters noted in the Trow Report have been remedied by the Vendor. The Purchaser acknowledges and agrees that the Vendor has no further responsibility in respect of the matters set out in the Trow Report, and that the Purchaser accepts the Purchased Assets subject to the matters set out in the Trow Report.
- (b) The Purchaser also acknowledges receipt of a copy of a draft comprehensive reserve fund study prepared by Trow Associates Inc. dated March 12, 2010 (the "**Reserve Fund Study**"). The Purchaser acknowledges and agrees that the Vendor has no responsibility in respect of the matters set out in the Reserve Fund Study, and that the Purchaser accepts the Purchased Assets subject to the matters set out in the Reserve Fund Study.
- (c) The provisions of this Section 3.12 do not limit the provisions of Section 2.2, and shall survive Closing.

### **Section 3.13 StaffRes Agreements**

The Purchaser acknowledges that RRDI has paid a rent deposit in the amount of \_\_\_\_\_ and a damage deposit in the amount of \_\_\_\_\_ (collectively, the "**StaffRes Deposits**") under the Rental Deficiency Agreement. If the Purchaser is assuming the StaffRes Agreements on Closing or makes alternate arrangements with StaffRes (TF) Inc. with respect to staff housing, the Purchaser agrees that on Closing the Vendor shall be entitled to a credit in the amount of \_\_\_\_\_ on account of such StaffRes Deposits.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

### **Section 4.1 Vendor's Representations and Warranties.**

The Vendor represents and warrants to the Purchaser and acknowledges that the Purchaser is relying on same, that:

- (a) the Receiver is the court-appointed trustee, interim receiver and receiver and manager of the Assets of RRDI and, subject to the approval of the Court, has the power, authority and capacity to enter into this Agreement and to carry out the transaction contemplated hereby;

- (b) the Receiver has not created any encumbrance on the Purchased Assets, other than the Receiver's Charge and the Receiver's Borrowings Charge pursuant to the Appointment Order, and the Unit Owners' Charges, the Primary Marriott Charge and the Secondary Marriott Charge pursuant to the order of the Court dated August 18, 2009 (as amended); and
- (c) neither RRDI nor the Receiver is a non-resident of Canada within the meaning of section 116 of the Tax Act.

#### **Section 4.2 Purchaser's Representations and Warranties.**

The Purchaser represents and warrants to the Vendor and acknowledges that the Vendor is relying on same, that:

- (a) the Purchaser is a subsisting corporation and has full corporate power and authority to enter into and to perform its obligations under this Agreement;
- (b) the Purchaser is a Canadian for purposes of the Investment Canada Act;
- (c) neither the Purchaser nor any subsidiary of the Purchaser (i) has been convicted of a felony in any state, provincial, national or federal court, or is in control of or controlled by Persons who have been convicted of felonies in any state, provincial, national or federal court, or (ii) is a Specially Designated National or Blocked Person (as each such term is defined in the Hotel Management Agreement);
- (d) the Purchaser has no record of contravention of provincial law or regulation, or The District Municipality of Muskoka by laws or permits, relating to the operation of sewage or water supply facilities;
- (e) the Purchaser has sufficient cash, available lines of credit or other sources of immediately available funds to enable it to make all the payments required of it hereunder; and
- (f) the Purchaser represents and warrants that it is registered under Subdivision d of Division V of Part IX of the *Excise Tax Act* (Canada) for the collection and remittance of the harmonized sales tax and shall so be registered at the Closing Date.

#### **Section 4.3 Survival of Representations and Warranties.**

The representations and warranties herein shall survive the Closing for a period of sixty (60) days from the Closing Date, except for claims for breach of any such representation or warranty made within such sixty (60) day period.

## **ARTICLE 5 COURT APPROVAL CONDITION**

### **Section 5.1 Court Approval Condition.**

- (1) No party shall be obligated to complete the transactions contemplated by this Agreement unless the Vendor obtains an Order substantially in the form attached hereto as Schedule "E" (the "**Approval and Vesting Order**").
- (2) The Vendor shall diligently apply to the Court for the Approval and Vesting Order as soon as reasonably possible. The Vendor shall advise the Purchaser at least four (4) Business Days prior to such application of the parties to whom notice of such application is to be sent and shall provide notice in accordance with the Rules of Civil Procedure or as determined by Court order to such additional parties as the Purchaser may demonstrate to the satisfaction of the Vendor, acting reasonably, to have an absolute or contingent interest in the Purchased Assets.
- (3) The Purchaser shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Court's approvals, including without limitation, the commitment letter, term sheet or other financing documentation setting out the terms of the financing obtained by the Purchaser in connection with the transactions contemplated herein (provided that to the extent requested by the Purchaser, its financing arrangements and any other commercially sensitive information that it provides shall be sealed).
- (4) Notwithstanding anything else contained in this Agreement, if an appeal of the Approval and Vesting Order has been filed with the Court of Appeal for Ontario, either the Vendor or the Purchaser shall have the option of, subject to Section 8.1(1) below, extending the Closing Date for a period or periods of time, in either case, by notice in writing to the other or to the other's solicitors.
- (5) Notwithstanding anything else contained in this Agreement, if the Court shall refuse to grant the Approval and Vesting Order, either party shall have the right to immediately terminate this Agreement. In the event of termination under this Section, the full amount of the Deposit and all interest earned thereon shall be immediately returned to the Purchaser.

## **ARTICLE 6 OTHER CLOSING CONDITIONS**

### **Section 6.1 Conditions for the Purchaser.**

The obligation of the Purchaser to complete the purchase of the Purchased Assets contemplated by this Agreement is subject to fulfilment of the following conditions on or before the Closing Date, which are included for the exclusive benefit of the Purchaser and may be waived by the Purchaser in whole or in part:

- (a) the representations and warranties of the Vendor contained in Article 4 hereof shall be true and correct as of the Closing Date in all material respects;
- (b) the Vendor shall have complied with all terms and conditions contained in this Agreement applicable to them prior to the Closing Date in all material respects;
- (c) the Vendor shall have executed and delivered the General Conveyance, any specific assignment agreement or transfer document that may be required to register the assignment or transfer to the Purchaser of any trademarks or motor vehicles that form part of the Purchased Assets, and all other documents contemplated by this Agreement or the Approval and Vesting Order; and
- (d) the Approval and Vesting Order shall have been granted by the Court and no appeal therefrom shall have been filed, or if an appeal to the Court of Appeal for Ontario in respect of the Approval and Vesting Order has been filed, such appeal shall have been dismissed, withdrawn or otherwise disposed of.

#### **Section 6.2 Conditions for the Vendor.**

The obligation of the Vendor to complete the sale of the Purchased Assets contemplated by this Agreement is subject to fulfilment of the following conditions on or before the Closing Date (or such other date as may be otherwise specified herein), which are included for the exclusive benefit of the Vendor and may be waived by the Vendor in whole or in part:

- (a) on or before July 22, 2011, the Vendor shall have obtained the consent of WestLB AG, New York Branch, to this transaction;
- (b) if the Purchaser is assuming the Marriott Agreements on Closing, then on or before the Marriott Consent Date, Marriott shall have provided its consent to (i) an assignment of the Marriott Agreements to the Purchaser, and (ii) the withdrawal or revocation of the notices of termination, if any, delivered by Marriott as contemplated in Section 2.4(2)(a) upon the assumption by the Purchaser of the Marriott Agreements on Closing;
- (c) the representations and warranties of the Purchaser contained in Article 4 hereof shall be true and correct as of the Closing Date in all material respects;
- (d) the Purchaser shall have complied with all terms and conditions contained in this Agreement applicable to it prior to the Closing Date in all material respects;
- (e) receipt of the balance of the Purchase Price (as adjusted in accordance with this Agreement) by way of wire transfer, bank draft or certified cheque;
- (f) the Purchaser shall have executed and delivered the General Conveyance, all other documents contemplated by this Agreement and any specific assumption agreement as may be required for any Contract which has not otherwise been expressly set out herein; and



- (g) the Approval and Vesting Order shall have been granted by the Court and no appeal therefrom shall have been filed, or if an appeal to the Court of Appeal for Ontario in respect of the Approval and Vesting Order has been filed, such appeal shall have been dismissed, withdrawn or otherwise disposed of.

### **Section 6.3 Non-Satisfaction of Conditions.**

If any of the conditions set out in Section 5.1, Section 6.1 or Section 6.2 is not satisfied or performed on or before the Closing Date (as such date may be extended pursuant to Section 5.1(4) in respect of the condition set out in Section 5.1) or on or before July 22, 2011 in the case of Section 6.2(a) or on or before the Marriott Consent Date in the case of Section 6.2(b), any party, in the case of the conditions set out in Section 5.1, or the Purchaser, in the case of the conditions set out in Section 6.1, or the Vendor, in the case of the conditions set out in Section 6.2, may either (i) terminate this Agreement by written notice to the other parties hereto delivered on or before the Closing Date, or on or before July 22, 2011 in the case of Section 6.2(a), or on or before the Marriott Consent Date in the case of Section 6.2(b), in which case no party shall be under any further obligation to the others to complete the transactions contemplated by this Agreement, or (ii) except in the case of the conditions contained in Section 5.1, waive compliance with any such condition without prejudice to its right of termination of this Agreement in respect of the non-satisfaction or performance of any other condition.

Each party shall use its reasonable efforts to satisfy the closing conditions set forth herein that are within its reasonable control.

All conditions to be satisfied on Closing shall be deemed to be satisfied if Closing occurs.

## **ARTICLE 7 CLOSING**

### **Section 7.1 Time and Place of Closing.**

The completion of the transactions contemplated by this Agreement shall take place at 2:00 p.m. (Toronto time) on the Closing Date at the offices of Blake, Cassels & Graydon LLP, Toronto, Ontario or at such other place as may be agreed upon among the parties hereto.

### **Section 7.2 Insurance Matters.**

Any property, liability and other insurance maintained by the Vendor shall not be transferred as of the Closing Date, but shall remain the responsibility of the Vendor until the Closing Date. The Purchaser shall be responsible for placing its own property, liability and other insurance coverage with respect to the Purchased Assets in respect of the period from and after the Closing Date.

### **Section 7.3 Closing Documents.**

- (1) On Closing, subject to the provisions of this Agreement, the Vendor shall execute and deliver the General Conveyance, any specific assignment agreement or transfer document that may be required to register the assignment or transfer to the Purchaser of any

trademarks or motor vehicles that form part of the Purchased Assets, and all other documents contemplated by this Agreement or the Approval and Vesting Order.

- (2) On Closing, subject to the provisions of this Agreement, the Purchaser shall execute and deliver, or cause to be executed and delivered, the General Conveyance, all other documents contemplated by this Agreement and any specific assumption agreement as may be required for any Contract which has not otherwise been expressly set out herein.

## **ARTICLE 8 TERMINATION**

### **Section 8.1 Termination Rights.**

- (1) This Agreement may be terminated by the Purchaser or the Vendor if Closing has not occurred by 5:00 p.m. (Toronto time) on October 10, 2011, provided that the Purchaser may not terminate this Agreement if its default is the reason for such failure.
- (2) If this Agreement is terminated as provided in this Section 8.1 or in Section 6.3, the Deposit shall be dealt with as provided in Section 3.1.

## **ARTICLE 9 MISCELLANEOUS**

### **Section 9.1 No Personal Liability of Vendor.**

Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Inc. are signing this Agreement in their capacities as receiver and manager and trustee and interim receiver, respectively, of the Assets of RRDI, and the Purchaser acknowledges and agrees that Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Inc., and their respective agents, directors, officers and employees, shall have no personal liability under, as a result of or in connection with any obligations of RRDI (and anyone for whom it is in law responsible) or the Vendor under this Agreement. The Purchaser shall have no recourse in respect of this Agreement against any property or assets except for an unsecured claim against RRDI's Assets.

### **Section 9.2 Confidentiality**

The Purchaser shall keep in strict confidence all Confidential Information made available or obtained by it with respect to the Purchased Assets in accordance with the terms of the Confidentiality Agreement, *mutatis mutandis*. For the purposes of this Section, "**Confidential Information**" has the meaning ascribed to it in the Confidentiality Agreement, and includes, for greater certainty, the information contained in the CBRE Data Room, the transaction contemplated by this Agreement, the existence of this Agreement, the terms and conditions of this Agreement and the Purchase Price. Notwithstanding the foregoing, during the currency of this Agreement, the Purchaser and its duly authorized representatives may contact and hold discussions with, orally and/or in writing, a representative of any governmental or public authority having jurisdiction or any representative of a party to a Contract where: (i) the Purchaser, in its commercially reasonable judgement, believes such contact is necessary or is advisable in facilitating the Closing and/or the ownership and/or operation of the Purchased

Assets after Closing, and (ii) the counterparty is advised of and agrees to hold any disclosed confidential information in confidence. The provisions of this Section 9.2 shall terminate on the Closing of this Agreement, but shall otherwise survive any other termination of this Agreement in accordance with the terms of the Confidentiality Agreement. The Confidentiality Agreement shall terminate on Closing.

### **Section 9.3 Expenses.**

Except as otherwise expressly provided herein, all costs and expenses (including the fees and disbursements of legal counsel, investment advisers and auditors) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

### **Section 9.4 Third Party Beneficiaries.**

Each party hereto intends that (except as expressly contemplated herein) this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto and their successors and permitted assigns, and no person, other than the parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

### **Section 9.5 Notices.**

Any notice, direction or other instrument required or permitted to be given hereunder shall be in writing and given by delivering or sending it by facsimile or other similar form of communication addressed:

(a) To the Purchaser at:

Canadian Niagara Hotels Inc.  
P. O. Box 1012, 5685 Falls Avenue  
Niagara Falls, ON L2E 6W7

Attention: Michael DiCienzo  
E-mail: [michaeld@niagarafallshotels.com](mailto:michaeld@niagarafallshotels.com)  
Fax: (905) 358-0443

With a copy to:

Sullivan Mahoney LLP  
4781 Portage Road  
Niagara Falls, ON L2E 6B1

Attention: Victor Muratori / Rocco Vacca  
E-mail: [vmuratori@sullivanmahoney.com](mailto:vmuratori@sullivanmahoney.com)  
[rvacca@sullivanmahoney.com](mailto:rvacca@sullivanmahoney.com)  
Fax: (905) 357-0501

(b) To the Vendor at:



c/o Alvarez & Marsal Canada ULC  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900, P.O. Box 22  
Toronto, ON M5J 2J1

Attention: Richard A. Morawetz / Adam Zalev  
E-mail: [rmorawetz@alvarezandmarsal.com](mailto:rmorawetz@alvarezandmarsal.com)  
[azalev@alvarezandmarsal.com](mailto:azalev@alvarezandmarsal.com)  
Fax: (416) 847-5201

With copies to:

Blake, Cassels & Graydon LLP  
199 Bay Street, Suite 4000  
Toronto, ON M5L 1A9

Attention: Pamela L.J. Huff / Silvana M. D'Alimonte  
E-mail: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)  
[smda@blakes.com](mailto:smda@blakes.com)  
Fax: (416) 863-2653

- and -

Fraser Milner Casgrain LLP  
77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON M5K 0A1

Attention: Shayne Kukulowicz  
E-mail: [shayne.kukulowicz@fmc-law.com](mailto:shayne.kukulowicz@fmc-law.com)  
Fax: (416) 863-4592

Any such notice, direction or other instrument given as aforesaid shall be deemed to have been effectively given if sent by facsimile or other similar form of telecommunications, on the next Business Day following such transmission or, if delivered, to have been received on the date of such delivery. Either party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to the party at its changed address.

#### **Section 9.6 Further Assurances.**

Each of the parties hereto, upon the request of another party hereto, up until the Closing Date, shall make or cause to be made all such further acts, deeds and assurances, as may be reasonably necessary to more effectually implement the transactions contemplated by this Agreement.

#### **Section 9.7 Enurement.**

This Agreement shall enure to the benefit of and be binding upon the parties and their successors and permitted assigns.

#### **Section 9.8 Assignment.**

This Agreement shall not be assignable in whole or in part by the Vendor or the Purchaser without the written consent of the other party, which consent may be unreasonably withheld. Notwithstanding the foregoing, the Purchaser shall be entitled, prior to the Marriott Consent Date, to assign its interest in this Agreement to an affiliate (as defined in the *Business Corporations Act* (Ontario)) of the Purchaser without the consent of the Vendor, provided that such affiliate enters into an assumption agreement, in form and substance acceptable to the Vendor, acting reasonably, in favour of the Vendor assuming all of the liabilities and obligations of the Purchaser under this Agreement and the Confidentiality Agreement.

#### **Section 9.9 Time of the Essence.**

Time shall be of the essence of this Agreement.

#### **Section 9.10 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. Each counterpart may be delivered by way of facsimile or via e-mail including by way of pdf.

#### **Section 9.11 Risk of Loss.**

If, prior to the Closing Date, all or any material part of the Purchased Assets having a repair or restoration cost in excess of \_\_\_\_\_ is or are destroyed or damaged by fire or any other casualty or are appropriated, expropriated or seized by any governmental entity, the Vendor shall forthwith notify the Purchaser thereof, and the Purchaser shall have the option, exercisable by notice in writing:

- (a) to complete the transaction contemplated in this Agreement without any reduction of the Purchase Price, in which event all proceeds of any insurance (including the proceeds of business interruption insurance, but only in respect of the period from and after the Adjustment Date) or compensation for expropriation or seizure shall be payable to the Purchaser and all right and claim of the Vendor to any such amounts not paid by the Closing Date shall be assigned to the Purchaser (and the Vendor shall pay to the Purchaser the amount of any applicable deductible); or
- (b) to terminate this Agreement and not complete the purchase, in which case all obligations of the parties shall terminate immediately upon the Purchaser giving notice as required herein and the Deposit shall forthwith be returned to the Purchaser without deduction and together with all interest earned thereon.

#### **Section 9.12 Communications Plan; Public Announcements; Confidentiality.**

Except as disclosure is required by applicable law or in order to obtain the Approval and Vesting Order, any public announcement or similar publicity with respect to this Agreement or the contemplated transactions will be issued, if at all, at such time and in such manner as the Vendor and the Purchaser shall mutually agree, acting reasonably. The Vendor and the Purchaser shall develop in good faith a mutually agreeable plan for the method and content of the disclosure of the transactions contemplated by this Agreement to their respective employees, customers and suppliers, the owners of Units and others having dealings with the parties (the “**Communications Plan**”), provided that the Vendor and the Purchaser hereby confirm that the Vendor has in confidence informed Marriott of the transactions contemplated by this Agreement.

The parties shall include as part of the Communications Plan a mutually agreeable release which shall announce the Closing of the contemplated transactions (the “**Public Announcement**”), which Public Announcement shall be finalized by the parties within a reasonable period of time prior to the date established in the Communications Plan for disclosure of the contemplated transactions and may be released by the parties at any time thereafter. The obligations and liabilities contained herein shall survive Closing or the earlier termination of this Agreement.

#### **Section 9.13 Planning Act.**

The Vendor and the Purchaser hereby confirm and agree that this Agreement and the transactions reflected herein are subject to compliance with section 50 of the *Planning Act* (Ontario).

#### **Section 9.14 Non-Merger.**

None of the provisions of this Agreement or of any agreements, instruments, certificates or other documents contemplated to be executed and delivered pursuant to this Agreement shall merge on Closing and all of the provisions of this Agreement and of such agreements, instruments, certificates or other documents shall survive and shall continue in full force and effect from and after the Closing Date, except as specifically limited pursuant to Section 4.3.

#### **Section 9.15 Dispute Resolution.**

The parties hereto hereby irrevocably submit to the exclusive jurisdiction of the Court over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action or proceeding related thereto shall be brought within the proceedings commenced in connection with the appointment of the Receiver to be heard and determined by way of summary adjudication in such proceedings or any of the competent Ontario courts taking appeals therefrom. Notwithstanding the foregoing, each of the parties hereto confirms that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

#### **Section 9.16 Entire Agreement and Modification.**

This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes (along with the Confidentiality Agreement and the documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented or otherwise modified except in a written document executed by the party against whose interest the modification will operate.

#### **Section 9.17 Solicitors as Agents.**

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated by this Agreement may be given or delivered and accepted or received by the Purchaser's solicitors on behalf of the Purchaser and by the Vendor's solicitors on behalf of the Vendor and any tender of closing documents and/or funds to be delivered under this Agreement may be made upon the Vendor's solicitors and the Purchaser's solicitors, as the case may be.

#### **Section 9.18 Electronic Registration.**

The Purchaser's solicitors and the Vendor's solicitors shall each be obliged to be authorized electronic registration ("**E-Reg**") users and in good standing with the Law Society of Upper Canada, and are hereby authorized by the parties hereto to enter into a document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004 or any replacement thereof, with such amendments as are required to incorporate any agreement between the parties as to the co-ordination of the Closing and/or as the Vendor's solicitors and the Purchaser's solicitors may agree, acting reasonably (hereinafter referred to as the "**DRA**"), establishing the procedures and timing for completing this transaction, which DRA shall be exchanged between the Vendor's solicitors and the Purchaser's solicitors prior to the Closing Date. The delivery and exchange of all Closing deliveries hereunder and the release hereof to the parties hereto shall be governed by the DRA, pursuant to which the solicitor receiving any Closing deliveries will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of this DRA. Despite section 4 of the Joint LSUC-CBAO form of DRA, release of deliveries shall not happen until all of the real property registrations (i.e. registration of the Approval and Vesting Order) have been completed (other than the Deposit, the release of which in the event of no Closing is governed by Section 3.1).

#### **Section 9.19 Tender.**

Any tender of documents or money (including the payment of the Deposit) shall be made upon the party being tendered or upon its solicitors and money shall be tendered by certified cheque or bank draft from one of the six largest Schedule I Canadian chartered banks or by wire transfer of immediately available funds. It is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by either party (the "**Tendering Party**") upon the other party (the "**Receiving Party**") when the solicitor for the Tendering Party has completed, in addition to all other requirements to effect a valid tender in accordance with the provisions of this Agreement and the DRA (if applicable), all steps required

by E-Reg in order to complete this transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has, where possible, electronically "signed" the transfer and all other instruments to be registered against title to the Real Property at the time of the Closing for completeness and granted "access" to the Receiving Party's solicitor.

#### **Section 9.20 Broker's Fees.**

Except for the retention of CBRE by the Vendor, neither party has retained any investment banker, broker, agent, finder or other person, or incurred any obligation for brokerage fees, finder's fees or commissions, with respect to the sale of the Purchased Assets. Each party shall indemnify and hold harmless the other party against any liability, damage, cost or expense involving a finder's or broker's fee payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for such party. Any expenses or fees due to CBRE shall be borne by the Vendor pursuant to separate agreement. The obligations and liabilities contained herein shall survive Closing or the earlier termination of this Agreement.

#### **Section 9.21 Authorizations.**

The Vendor shall deliver to the Purchaser, as soon as reasonably possible and in any event within three (3) Business Days after being requested by the Purchaser, written authorizations addressed to governmental authorities in such form as may be provided by the Purchaser necessary to permit the Purchaser to obtain information from the files of such governmental authorities with respect to the Resort, provided that such authorizations shall expressly prohibit any inspections with respect to the Resort.

#### **Section 9.22 Conduct of Business.**

As soon as reasonably possible after this Agreement has been executed by both parties, the Vendor and the Purchaser shall request a meeting or telephone discussion with Marriott in order to discuss with Marriott the continued management and operation of the Resort during the period up to the Closing Date.

#### **Section 9.23 Offer.**

This offer, as it may be amended as part of the Sales Process, shall be irrevocable by the Purchaser until 5:00 p.m. on the fifth Business Day after the Receiver is to have selected the successful bidder in accordance with the timeline set out in the Sales Process Protocol (as such timeline may be extended by the Receiver by written notice or electronic transmission via e-mail delivered to the Purchaser by either the Receiver or CBRE on the Receiver's behalf), after which time, if not accepted, this offer shall be null and void.



IN WITNESS WHEREOF the Purchaser has executed this offer this 30th day of June, 2011.

CANADIAN NIAGARA HOTELS INC.

By: \_\_\_\_\_

Name:

Dino DiCenzo

Title:

President

I have authority to bind the Corporation

The Vendor accepts the above offer and agrees to carry it out in accordance with its terms.

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

By: \_\_\_\_\_

Name:

R A MORAWETZ

Title:

July 4, 2011 .

### **Index of Schedules**

Schedule "A"	Legal Description of the Real Property
Schedule "B"	Permitted Liens
Schedule "C"	Form of General Conveyance
Schedule "D"	Particulars of the Dispute
Schedule "E"	Form of Approval and Vesting Order
Schedule "F"	List of the Contracts
Schedule "G"	Form of Acknowledgement of Receipt
Schedule "H"	Unfulfilled/Uncompleted Condominium Matters
Schedule "I"	Allocation of the Purchase Price

**Schedule "A"**

**Legal Description of the Real Property**

**See Schedule as attached to the  
Approval and Vesting Order**

Schedule "B"

Permitted Liens

**See Schedule as attached to the  
Approval and Vesting Order**

## SCHEDULE "C"

### GENERAL CONVEYANCE AND ASSUMPTION AGREEMENT

General Conveyance dated \_\_\_\_\_, 2011 between The Rosseau Resort Developments Inc. ("**RRDI**") by Alvarez & Marsal Canada ULC, solely in its capacity as receiver and manager and trustee of the Assets of RRDI and not in its personal capacity, and by Alvarez & Marsal Canada Inc., solely in its capacity as interim receiver of the Assets of RRDI and not in its personal capacity (the "**Vendor**") and [ • ] (the "**Purchaser**").

#### RECITALS:

- (a) Pursuant to an asset purchase agreement dated \_\_\_\_\_, 2011 (the "**Purchase Agreement**") between the Vendor and the Purchaser, the Vendor has agreed to sell, transfer and assign to the Purchaser and the Purchaser has agreed to purchase from the Vendor all of RRDI's right, title and interest, if any, in and to the assets which are more particularly described in Schedule "A" hereto (the "**Purchased Assets**") for the consideration and upon and subject to the terms and conditions set forth therein; and
- (b) Contemporaneously with the purchase of the Purchased Assets, the Purchaser has agreed to assume, discharge, perform and fulfil, with respect to the Purchased Assets, the obligations and liabilities of RRDI and the Vendor, as more particularly set out herein.

In consideration of the foregoing and the mutual agreements contained herein (the receipt and adequacy of which are acknowledged), the parties agree as follows:

#### **Section 1 Defined Terms.**

Capitalized terms used in this agreement and not otherwise defined herein shall have the meanings specified in the Purchase Agreement.

#### **Section 2 Conveyance of Assets.**

The Vendor hereby sells, assigns, conveys and transfers to the Purchaser the Purchased Assets and all right, title and interest of the Vendor, if any, in and to the Purchased Assets, effective as of the Closing. The Purchaser acknowledges and agrees that the Vendor's right, title and interest, if any, in and to the Purchased Assets are being purchased on an "as is, where is" basis in accordance with Section 2.2 of the Purchase Agreement.



**Section 3 Assumption of Obligations.**

The Purchaser assumes and will perform, discharge and fulfil, with respect to the Purchased Assets, (a) the obligations and liabilities of RRDI and the Vendor, as applicable, under the Permitted Liens and the assigned Contracts as and from 12:01 a.m. (Toronto time) on the Closing Date, that accrue before and after the Closing Date and (b) all other obligations and liabilities the Purchaser has agreed to expressly assume pursuant to the terms of the Purchase Agreement.

**Section 4 Indemnity.**

The Purchaser hereby indemnifies and holds the Vendor harmless and will reimburse and compensate the Vendor for any loss, liability, claim, demand, interest, fine, penalty, assessment, damages available at law or in equity, expense or diminution in value arising from, in connection with or related in any manner whatsoever to, the Purchaser's failure to fulfil its obligations pursuant to Section 3 of this agreement.

**Section 5 Subject to Purchase Agreement.**

This agreement is subject to the terms and conditions of the Purchase Agreement. In the event of any conflict or inconsistency between the provisions of this agreement and the provisions of the Purchase Agreement, the provisions of the Purchase Agreement shall prevail.

**Section 6 Binding Nature.**

This agreement shall enure to the benefit of and be binding upon the Purchaser and the Vendor and their respective successors and assigns.

**Section 7 Governing Law.**

This agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**Section 8 Counterparts.**

This agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Each counterpart may be delivered by way of facsimile or via e-mail including by way of pdf.

IN WITNESS WHEREOF the parties have executed this General Conveyance Agreement.

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

By: \_\_\_\_\_

Name:

Title:

[ • ]

By: \_\_\_\_\_

Name:

Authorized Signing Officer

#### SCHEDULE D

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

Dated the 24 day of March, 2010

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

#### NOTICE OF DISPUTE

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

The nature of the Dispute is:

1. the interpretation of the calculation of Adjusted Gross Revenue under Section 3.2(2) of the RPMA and in particular the deductions in computing Adjusted Gross Revenue under paragraph (f) and/or (n) or otherwise of Section 3.2(2) of certain expenses that are within the definition of Deductions under the Hotel Management Agreement as defined in the RPMA and that are also within the definition of common expenses under the declaration of the Resort Corporation as defined in the RPMA. Examples of such expenses that appear in both contexts are light, heat, power, routine maintenance and repairs but reference should be had to the complete definitions in the Hotel Management Agreement and the declaration of the Resort Corporation. Such expenses total in excess of \$2,000,000.00 in the Pro Forma 2010 Draft Budget for the Resort Corporation prepared by the Receiver for the purposes on the one-day sale in August, 2009, and based on that number, the disputed amount for all unit owners under this Section 1 of this Notice of Dispute is approximately 30% thereof or \$600,000.00 annually for all unit owners.
2. as a matter related thereto, and in particular with reference to Section 3.10 of the RPMA regarding the collection by the Receiver of common expenses under the declaration of the Resort Corporation, the determination of the entitlement to such common expense payments paid by the Resort Corporation on behalf of the Owner through the Resort Corporation to the Receiver under the Reciprocal Agreement between the Resort Corporation and the Receiver dated March 9, 2009 and specifically the entitlement thereto when such common expenses have already been paid by Marriott under the Hotel Management Agreement. The disputed amount under this Section 2 of this Notice of Dispute is up to the full amount of the common expenses collected under Section 3.10 of the RPMA by the Receiver and then paid under the Reciprocal Agreement to the Receiver i.e.

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

\_\_\_\_\_  
Registered Owner

Suite No. \_\_\_\_\_

**Schedule “E”**

**Form of Approval and Vesting Order**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) DAY, THE • DAY  
MR. JUSTICE • ) OF •, 2011

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

B E T W E E N:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by Alvarez & Marsal Canada ULC in its capacity as Court-appointed receiver and manager pursuant to Section 101 of the *Courts of Justice Act* (Ontario) and trustee and receiver and manager under the *Construction Lien Act* (Ontario) and Alvarez & Marsal Canada Inc. in its capacity as interim receiver pursuant to Section 47(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), (jointly and collectively, the “**Receiver**”), of the undertaking, property and assets (the “**Assets**”) of The Rosseau Resort Developments Inc. (“**RRDI**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an



agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and ● (the "**Purchaser**") dated as of [●, 2011] and appended to the [●] Report of the Receiver dated [●, 2011] (the "**Report**"), and vesting in the Purchaser RRDI's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver and counsel for WestLB AG, New York Branch, ("**WestLB AG**"), independent counsel for the Receiver, counsel for Marriott Hotels of Canada Ltd., and counsel for ●, no one appearing for any other person on the service list, although properly served as appears from the affidavits of [NAME] sworn [DATE] filed (the "**Affidavits of Service**"):

1. THIS COURT ORDERS AND DECLARES that all capitalized terms not otherwise defined herein have the same meaning as in the Report.
2. THIS COURT ORDERS AND DECLARES that service of the Notice of Motion and the Motion Record in accordance with the Affidavits of Service, including the method and timing of notice, service to the service list by way of email and courier, and service on the Unit Owners by email to the email addresses last known to the Receiver, shall be and is hereby abridged and validated, so that this Motion is properly returnable today and any further service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

**Approval of Sale Agreement**

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

**Purchased Assets**

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), all of RRDI's right, title and interest in and to the Purchased Assets listed on **Schedule B** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens (whether contractual, statutory, or otherwise), executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Appointment Order and the Order dated August 18, 2009 (as such Orders have been amended), namely the Receiver's Charge, the Receiver's Borrowings Charge, the Unit Owners' Charges and the Primary and Secondary Marriott Charges; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D** hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

**Registration**

5. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Muskoka (No. 35) of

- (a) an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar for the said Land Titles Division is hereby directed to enter the Purchaser as the owner of the subject real property identified in Part 1 of **Schedule B** hereto in fee simple, and
- (b) an Application to Amend Based on Court Order in the form prescribed by the *Land Titles Act*, the Land Registrar for the said Land Titles Division is hereby

directed to enter the Purchaser as the owner of the leasehold estate in the real property identified in Part 2 of **Schedule B** hereto

(the said subject real property identified in Part 1 of **Schedule B** hereto and the said leasehold estate in the real property identified in Part 2 of **Schedule B** being referred to, collectively, as the "**Real Property**") the said Land Registrar is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule C** hereto.

#### **Net Proceeds**

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

#### **Filing of Certificate**

7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

#### **PIPEDA**

8. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in RRDI's records pertaining to RRDI's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by RRDI.

#### **Binding on Trustee in Bankruptcy**

9. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of RRDI and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of RRDI;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of RRDI and shall not be void or voidable by creditors of RRDI, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **Tax Election**

10. THIS COURT ORDERS AND DIRECTS that, in connection with the Closing, the Receiver is authorized to execute an election pursuant to s. 167 of the *Excise Tax Act* as the Sale Agreement constitutes a sale of substantially all of the assets of a business.

#### **Bulk Sales Act**

11. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

13. THIS COURT ORDERS that pursuant to the BIA, section 195, this Order is subject to provisional execution notwithstanding any appeal therefrom.

---



**Schedule A – Form of Receiver’s Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

**WESTLB AG, TORONTO BRANCH**

Applicant

and

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Ontario Superior Court of Justice (the “**Court**”) dated May 22, 2009, Alvarez & Marsal Canada ULC was appointed as trustee under the *Construction Lien Act* (Ontario) (“**Trustee**”), and Alvarez & Marsal Canada Inc. was appointed as interim receiver pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the “**Interim Receiver**”) of the undertaking, property and assets (the “**Assets**”) of The Rosseau Resort Developments Inc. (“**RRDI**”). Pursuant to an Amended and Restated Appointment Order dated June 2, 2009 (as further amended from time to time), the Court continued the appointment of the Trustee and the Interim Receiver, and Alvarez & Marsal Canada ULC was appointed receiver and manager

pursuant to section 101 of the *Courts of Justice Act* (Ontario) and the *Construction Lien Act* (Ontario) (jointly and collectively, the "**Receiver**").

B. Pursuant to an Order of the Court dated ●, 2011, the Court approved the agreement of purchase and sale dated as of ●, 2011 (the "**Sale Agreement**") between the Receiver, RRDI and ● (the "**Purchaser**") and provided for the vesting in the Purchaser of RRDI's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

ALVAREZ & MARSAL CANADA ULC in its capacity as Court-appointed receiver and manager pursuant to section 101 of the *Courts of Justice Act* (Ontario) and trustee and receiver and manager under the *Construction Lien Act* (Ontario), and ALVAREZ & MARSAL CANADA INC. in its capacity as interim receiver pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, of the undertaking, property and assets of THE ROSSEAU RESORT DEVELOPMENTS INC. and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

Applicant

Respondent

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**

**BLAKE, CASSELS & GRAYDON LLP**

P.O. Box 25, Commerce Court West  
199 Bay Street, Suite 2800  
Toronto, Ontario M5L 1A9

Pamela L.J. Huff - LSUC#: 27344V

Tel: 416-863-2958

Fax: 416-863-2653

Katherine McEachern - LSUC#: 38345M

Tel: 416-863-2566

Fax: 416-863-2653

Lawyers for WestLB AG, New York Branch, and Alvarez & Marsal  
Canada ULC and Alvarez & Marsal Canada Inc. in their respective  
capacities as Court-appointed Receiver and Manager, Trustee, and  
Interim Receiver

**FRASER MILNER CASGRAIN LLP**

1 First Canadian Place  
39th Floor, 100 King Street West  
Toronto, Ontario M5X 1B2

R. Shayne Kukulowicz LSUC#: 30729S

Jane Dietrich LSUC # 49302U

Tel: 416-863 4467

Fax: 416-863 4592

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

**Schedule “B” – Purchased Assets**

**See Schedule as attached to the  
Approval and Vesting Order  
of Schedule “A” to the Notice of Motion**

**Schedule “C” –  
Claims to be deleted and expunged from title to Real Property**

**See Schedule as attached to the  
Approval and Vesting Order  
of Schedule “A” to the Notice of Motion**



**Schedule “D” -  
Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**See Schedule as attached to the  
Approval and Vesting Order  
of Schedule “A” to the Notice of Motion**

**SCHEDULE "F"**  
**LIST OF CONTRACTS**

1. Propane supply agreement made effective November 22, 2007 between Sparling's Propane Co. Ltd. and RRDI (if the Purchaser has elected to assume in writing at least four (4) Business Days prior to the date that the Receiver appears in Court to request the Approval and Vesting Order).
2. Propane management and maintenance services agreement made as of December 22, 2010 between Sparling's Propane Co. Limited and RRDI, by its Receiver and Manager and *Construction Lien Act* trustee (if the Purchaser has elected to assume in writing at least four (4) Business Days prior to the date that the Receiver appears in Court to request the Approval and Vesting Order).
3. Wallace Marine Lease, and Confirmation and Estoppel Agreement.
4. Developer's Responsibility Agreement.
5. Trust agreement between RRDI and BNY Trust Company of Canada dated as of January 9, 2009.
6. Operations agreement effective January 1, 2011 between RRDI, by its Receiver and Manager, and TEAM Aquatic Management Inc.
7. Water/sewage treatment services agreement made as of February 9, 2009, between RRDI and Muskoka Standard Condominium Corporation No. 62.
8. Water Supply Agreement.
9. Property tax consulting services agreement dated February 4, 2010 between RRDI, by its Receiver and Manager, and Altus Group Tax Consulting Paralegal Professional Corporation and Altus Group Limited.
10. Rental Pool Management Agreements.
11. Side letter dated November 26, 2009 amending the rental pool management agreement with one of the unit owners.
12. Resort Association Undertaking.
13. Settlement Agreement (re resolution of Set-Off Claim by Fresh Start Approach, and only at Purchaser's option, re resolution of the Dispute).
14. Acknowledgement and undertaking dated March 18, 2011 from 1515511 Ontario Inc. re priority tee times at The Rock golf course.

15. Trade-mark License Agreement executed June 9, 2011 between RRDI, by its Receiver and Manager and Trustee, as licensor, and 1515511 Ontario Inc., Clevelands House Limited and Wallace Marine Limited, as licensees.
16. StaffRes Agreements (if the Purchaser has elected to assume in writing at least four (4) Business Days prior to the date that the Receiver appears in Court to request the Approval and Vesting Order).
17. Existing warranties, if any, remaining in existence for the construction of the Real Property, to the extent the same are assignable.

- and -

Contracts shall also include:

18. Marriott Agreements, if Marriott has consented to the assignment of such Marriott Agreements to the Purchaser on Closing.

**SCHEDULE "G"**  
**ACKNOWLEDGEMENT OF RECEIPT OF**  
**CONDOMINIUM DOCUMENTS**

TO: The Rosseau Resort Developments Inc. ("RRDI") by Alvarez & Marsal Canada ULC, solely in its capacity as receiver and manager and trustee of the assets, property and undertaking of RRDI and not in its personal capacity, and by Alvarez & Marsal Canada Inc., solely in its capacity as interim receiver of the assets, property and undertaking of RRDI and not in its personal capacity

The undersigned, being the Purchaser of the Purchased Assets (which includes units in the Resort Condominium), hereby acknowledges having received from the Vendor:

1. the Second Amended Disclosure Statement dated August 20, 2009, with respect to the purchase of the Purchased Assets, which includes the following as Exhibits thereto:

Exhibit A	Site Plan and Resort Condominium Plans
Exhibit B	Permitted Encumbrances
Exhibit C	Resort Condominium Declaration
Exhibit D	By-law Nos. 1 to 7, inclusive
Exhibit E	Rules
Exhibit F	Rental Pool Covenant
Exhibit G	Hotel Easement and Restrictive Covenant Agreement
Exhibit H	First Year Budget Statement and Proforma Draft Fiscal 2010 Proposed Budget Statement
Exhibit I	Form of Agreement of Purchase and Sale
Exhibit J	Certain Tax Matters Schedule
Exhibit K	OSC Exemption Ruling
Exhibit L	Form of Rental Pool Management Agreement
Exhibit M	Interim Financial Statement of the Rental Pool
Exhibit N	<i>Condominium Act</i> – Sections 73 and 74
Exhibit M	Red Leaves Resort Association Members' Guide

2. Asset Purchase Agreement dated as of \_\_\_\_\_, 2011, executed by the Vendor and the Purchaser.

DATED at Monday this 4<sup>th</sup> day of July, 2011.

**CANADIAN NIAGARA HOTELS INC.**

By: \_\_\_\_\_

Name: Dino DiCenzo

Title: President

I have authority to bind the Corporation.

**Schedule "H"**  
**Resort Corporation Outstanding Matters**

Because of the Dispute, the Resort Corporation has been unable to fulfil or complete certain matters contemplated under the *Condominium Act*, the declaration and/or the rules, including but not limited to the matters set out below:

**1. RRDI Condominium Fee Obligations 2009-2010**

The Vendor had set off the condominium fee obligation to the Resort Corporation in respect of the units that it owns, against those amounts that the Resort Corporation owes to RRDI for its share of expenses relating to the Hotel. The two Non-RRDI Directors for the Resort Corporation disagreed that this set-off was appropriate and asserted that RRDI continued to owe condominium fees to the Resort Corporation. A motion as described in section 3.4 was commenced in respect of this matter. The set-off motion has been settled through the Fresh Start Approach, as set out in the Settlement Agreement.

**2. Condominium Fees 2010-2011**

No budget for the Resort Corporation has been set for 2010-2011 or following, and no Condominium Fees have been assessed, as a result of issues raised in the Dispute, pursuant to which certain unit owners, including the Non-RRDI Directors, assert that utility and maintenance charges are not properly expenses of the Resort Corporation. Condominium fees have been collected from unit owners who purchased units from the Vendor subsequent to the receivership, based on an estimated budget.

**3. Resort Corporation Financial Statements and Audit**

Draft internal financial statements have been prepared for the fiscal year 2009-2010. An audit of these financial statements has not been completed. No financial statements have been prepared for subsequent fiscal years, as no budget has been set or condominium fees assessed as the Non-RRDI Directors disagree with the proposed budget for the Resort Corporation.

**4. CRA Informational Return**

The Resort Corporation has been unable to fulfill its requirement to file informational tax returns with CRA, as a result of its inability to complete an audit of its financial statements.

**5. Board of Directors and Officers of Resort Corporation**

The Board of Directors of the Resort Corporation currently consists of one employee and two former employees of RRDI, as well as the two Non-RRDI Directors. All directors have been appointed and hold office in accordance with and subject to the rights and limitations provided for in the *Condominium Act*. There are no current officers of the Resort Corporation.

6. HST

No determination has been made regarding whether the Resort Corporation must collect and remit HST. The Resort Corporation has not to date collected or remitted GST/HST.

7. Reserve Fund Study

The *Condominium Act* requires a condominium corporation to conduct periodic reserve fund studies. A reserve fund study was commissioned from Trow Associates Inc. in accordance with the *Condominium Act*, and a copy of the draft study was provided to the members of the Board of Directors of the Resort Corporation in March, 2010. A copy of this draft reserve fund study has been provided to the Purchaser. However, as a result of conflicts arising with the Non-RRDI Directors, the Resort Corporation has not fulfilled its obligations with respect to the reserve fund study, including, without limiting, preparing a proposal of a plan for future funding of the reserve fund and sending a summary of the study to unit owners.

8. Performance Audit

The *Condominium Act* requires a performance audit to be prepared between 6 months and 10 months of the registration of the declaration and description of the Resort Corporation. A performance audit has been prepared by Trow Associates Inc. in accordance with this requirement (the "Performance Audit"). A copy of the Performance Audit has been submitted to the Board of Directors, and a copy has been provided to Tarion. The Performance Audit identifies a number of items for repair, replacement or remediation. RRDI has addressed certain of the items identified in the performance audit, as disclosed to the Purchaser, but does not intend to address any further matters identified in the Performance Audit.



**Schedule "I"**

**Allocation of Purchase Price**

To be settled by the Vendor and the Purchaser prior to the Closing Date in accordance with Section 3.2 of the Agreement.

---