

## **TAB 3**

**To the Notice of Motion**

Court File No. 00000 CV-09-8201-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

THE HONOURABLE 0000

)

~~WEEKDAY~~ THURSDAY, THE #

)

MADAM

)

21<sup>ST</sup> DAY

JUSTICE 0000 MESBUR

OF MONTH JULY, 20YR 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:

**PLAINTIFF**

Plaintiff

—and—

**DEFENDANT**

Defendant

**WESTLB AG, TORONTO BRANCH**

Applicant

and

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Respondent

## APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ Alvarez & Marsal Canada ULC in its capacity as the Court-appointed receiver (the "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 of ~~[DEBTOR]~~ (the "Debtor") (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 Purchase Agreement**") between ~~the RRDI by its Receiver and [NAME OF PURCHASER]~~ Canadian Niagara Hotels Inc. (the "Purchaser") dated ~~[DATE]~~ as of June 30, 2011 and appended to the Twenty-First Report of the Receiver dated [DATE] July 11, 2011 (the "Report"), and vesting in the Purchaser ~~the Debtor RRDI's~~ right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**" (as defined in the Purchase 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, [NAMES OF OTHER PARTIES APPEARING] 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 NAME]~~ [NAME NAME] sworn ~~[DATE DATE]~~ [DATE DATE] filed<sup>1</sup> (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 each individual Unit

<sup>1</sup> This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

Owner by way of email to the email address for each Unit Owner maintained by the Receiver in its records from time to time pursuant to the Order of Mr. Justice Campbell dated July 5, 2011, 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 Purchase Agreement**

3. ~~1-~~THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the ~~Sale~~Purchase Agreement by the Receiver<sup>3</sup> is hereby authorized and approved, with such 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. ~~2-~~THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's ~~certificate~~Certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), all of the ~~Debtor~~RRDI's right, title and interest in and to the Purchased Assets described in the ~~Sale Agreement~~ [and listed on **Schedule B** hereto]<sup>4</sup> 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

<sup>2</sup> In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

<sup>3</sup> In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

<sup>4</sup> To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Appointment Order of and the Honourable Justice [NAME] dated [DATE] ~~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) ~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*]<sup>6</sup>, the Land Registrar for the said Land Titles Division is hereby directed to enter the Purchaser (or an affiliate of the Purchaser as it may direct) as the owner of the subject real property identified in Part 1 of Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).

(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 (or an affiliate of the Purchaser as it may direct) as the owner of the leasehold estate in the real property identified in Part 2 of Schedule B hereto (the said 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").

and 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. 4.-THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> 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<sup>8</sup>, 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. 5.-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. 6.-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 the

<sup>7</sup> The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

<sup>8</sup> This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

Company RRDI's records pertaining to the Debtor RRDI's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. 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 the Debtor RRDI.

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

9. ~~7.~~ 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 the Debtor RRDI and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor 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 the Debtor RRDI and shall not be void or voidable by creditors of the Debtor 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 Purchase Agreement constitutes a sale of substantially all of the assets of a business.

### **Bulk Sales Act**

11. ~~8-~~THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

12. ~~9-~~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.



Revised: May 11, 2010

**Schedule A —to the Approval and Vesting Order -  
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:

**PLAINTIFF**

Plaintiff

—and—

**DEFENDANT**

Defendant

**WESTLB AG, TORONTO BRANCH**

Applicant

and

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Respondent

**RECEIVER'S CERTIFICATE**

## RECITALS

A. Pursuant to an Order of the Honourable [DATE OF JUDGE] of the Ontario Superior Court of Justice (the "~~Court~~") dated [DATE OF ORDER], [NAME OF RECEIVER]) 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 the receiver (the "~~Receiver~~" interim receiver pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the "**Interim Receiver**") of the undertaking, property and assets of [DEBTOR] (the "~~Debtor~~" (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 [DATE] July 9, 2011, the Court approved the agreement of purchase and sale made ~~dated~~ as of [DATE OF AGREEMENT] June 30, 2011 (the "~~Sale~~ **Purchase Agreement**") between the ~~RRDI~~ by its Receiver [Debtor] and [NAME OF PURCHASER] Canadian Niagara Hotels Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser (or an affiliate of the ~~Debtor~~ Purchaser as it may direct) 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 5 and 6~~ Articles 5 and 6 of the ~~Sale~~ Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction contemplated by the Purchase Agreement (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~~ Purchase 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~~Purchase Agreement;
2. The conditions to Closing as set out in ~~section~~ Articles 5 and 6 of the ~~Sale~~Purchase 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]~~ \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE] ~~[DATE]~~.

~~[NAME OF RECEIVER], in its capacity as Receiver~~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  
~~[DEBTOR], THE ROSSEAU RESORT DEVELOPMENTS INC.~~THE ROSSEAU RESORT DEVELOPMENTS INC., and not in its personal capacity

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Document comparison by Workshare Professional on Tuesday, July 12, 2011 1:14:08 PM

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Document 2 ID	PowerDocs://TOR_2024/12474696/9
Description	TOR_2024-#12474696-v9-Vesting Order May 2011 with Schedules
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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