

**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, AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990 C. C. 30, AS AMENDED

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

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

MARCH 3, 2011

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1.0 Introduction and Summary of Proceedings to Date¹

- 1.1 On May 22, 2009, the Ontario Superior Court of Justice (the “Court”) issued an order appointing Alvarez & Marsal Canada ULC (“A&M”) and McIntosh & Morawetz Inc. (now Alvarez & Marsal Canada Inc.) as trustee and interim receiver, respectively (collectively the “Interim Receiver”), pursuant to Section 68 of the *Construction Lien Act* (Ontario) (“CLA”) and Section 47(1) of the *Bankruptcy and Insolvency Act* (Canada) (“BIA”) of all the property, assets and undertakings (the “Assets”) of The Rosseau Resort Developments Inc. (“RRDI” or the “Company”). On June 2, 2009, the Court issued an Amended and Restated Appointment Order (the “Appointment Order”) continuing the appointment of the Interim Receiver and appointing A&M as receiver and manager (the “Receiver and Manager”) pursuant to Section 101 of the *Courts of Justice Act* (Ontario) (“CJA”) and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager collectively defined as the “Receiver”).
- 1.2 All background materials in respect of these proceedings, including, among other things, the Receiver’s past reports to Court and orders of the Court, can be found on the Receiver’s website at www.alvarezandmarsal.com/rosseau.
- 1.3 To date, the Receiver has filed fourteen reports with this Honourable Court. The Twelfth Report provided a summary of the Receiver’s activities and was filed in support of the Receiver’s motion for an order (a) approving additional Receiver’s Borrowings so as to provide continued financing for the receivership proceedings through to an expected transaction in the spring of 2011 (the “Third Tranche Receiver’s Borrowings”); (b) authorizing the distribution to WestLB AG, New York Branch of the sum of \$730,380.32

¹ Capitalized terms in this Fifteenth Report shall have the meanings ascribed to them in either the body of this report or in the Glossary of Defined Terms attached as Appendix “A”.

- in partial repayment of the First Tranche of Receiver's Borrowings; and (c) approving the activities of the Receiver.
- 1.4 On November 12, 2010, the Court issued an order (the "November 12 Order") granting the relief sought by the Receiver in the Twelfth Report, including the authorization of the Third Tranche Receiver's Borrowings.
- 1.5 On December 1, 2010, the Receiver filed its thirteenth report to Court (the "Thirteenth Report") in support of a motion for, among other things, an order requesting (a) approval of amounts determined by the Receiver in its capacity as trustee under the CLA for certain Construction Lien Claims filed by construction lien claimants (the "Lien Claimants") under the Construction Lien Claims Process Order dated July 24, 2009 (the "Construction Lien Claims Process Order") pursuant to notices of determination issued by the Construction Lien Trustee in accordance with the Construction Lien Claims Process Order (the "Notices of Determination"); (b) confirming the priority of the Construction Lien Claims determined pursuant to the Notices of Determination over, among other things, all judgments, executions, assignments, attachments, garnishments, receiving orders, conveyances, mortgages/charges or other agreements affecting RRDI's interest in its premises in accordance with the provisions of the CLA including the charges registered in favour of WestLB, Travelers, and Fortress (if any) other than the Receiver's Charge and the Receiver's Borrowings Charge; and (c) approval of the activities of the Receiver.
- 1.6 On December 7, 2010, the Court issued an order (the "December 7 Order") granting the relief sought by the Receiver in the Thirteenth Report, including, the approval of the Notices of Determination and the priority of the Determined Lien Claims effective upon

delivery to the Construction Lien Trustee of written confirmation (the “Confirmation”) by WestLB and the applicable Lien Claimant of the completion of the assignment of the relevant Determined Lien Claim to WestLB.

- 1.7 On December 13, 2010, the Receiver filed its fourteenth report (the “Fourteenth Report”) with the Court in support of a motion by the Receiver for, among other things, authorization to pay to Fasken Martineau DuMoulin LLP (“Faskens”) the amount of \$145,953.17 in satisfaction of 60% of the amount invoiced by Faskens to Muskoka Standard Condominium Corporation No. 62 (the “Condominium Corporation”) in respect of legal fees and disbursements more particularly described in the Fourteenth Report.
- 1.8 On December 16, 2010, the Court issued an Order (the “December 16 Order”) granting the relief sought by the Receiver in the Fourteenth Report.
- 1.9 The purpose of this Fifteenth Report is to:
 - Provide this Honourable Court with a summary of the Receiver’s activities to date;
 - Summarize the Sales Processes previously undertaken by the Receiver;
 - Advise the Court with respect to recent negotiations that have taken place between WestLB and a third party purchaser related to Maureen Fowler, the spouse of Ken Fowler (the “Potential Purchaser”) in respect of a proposed potential sale transaction (the “Potential Transaction”); and
 - Provide support for a motion by the Receiver seeking an order:
 - Authorizing the Receiver to formally terminate the Institutional Sales Process previously suspended by order of the Court dated May 18, 2010;

- Approving the activities of the Receiver as set out herein;
- Authorizing McCarthys to distribute the balance remaining in its trust account relating to certain closing costs retained from proceeds of sales of Units;
- Authorizing Blakes to remit to the Receiver those funds being held in its trust account on account of certain Unit sales transactions arising from the “One Day Sale” that were not completed, as described below;
- Sealing Confidential Appendix “1” hereto until further order of the Court; and
- Authorizing the Receiver to continue to participate in the negotiations with the Potential Purchaser, to determine if the Potential Transaction can be completed, subject to approval of this Court.

2.0 *Terms of Reference*

- 2.1 In preparing this Fifteenth Report, the Receiver has relied on unaudited financial information prepared by the Company and the Company's consultants and advisors, the Company's books and records and discussions with certain remaining employees of the Company. The Receiver has not performed an audit or other verification of such information. An examination of the Company's financial forecasts as outlined in the Canadian Institute of Chartered Accountants Handbook has not been performed. Future oriented financial information relied on in this Fifteenth Report is based on assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Fifteenth Report, or relied upon by the Receiver in preparing the Fifteenth Report. All references to dollar figures contained in the Fifteenth Report are in Canadian currency unless otherwise specified.

3.0 Receiver Activities and Certain Outstanding Issues

3.1 As described in previous Court Reports, since its appointment, the Receiver has, among other things:

- a) consulted extensively with stakeholders, including WestLB and the other members of the Syndicate, Fortress, the Lien Claimants, Marriott Hotels, Existing Unit Purchasers, the Unit Owners, the District of Muskoka, former employees and contractors of RRDI, and other unsecured creditors;
- b) completed construction of the Hotel;
- c) acted as asset manager in respect of the Hotel, including overseeing its operations and financial performance, along with conducting detailed ongoing reviews of Marriott Hotel's operating and capital budgets, operating results and funding requirements in respect of the Hotel and its operations;
- d) addressed construction deficiencies with respect to the Hotel, including remedying major deficiencies with the Balcony Handrails and suite windows as discussed in detail in the Twelfth Report;
- e) pursuant to an order of the Ministry of Environment, undertook remediation work to correct deficiencies existing prior to the receivership, with respect to the Sewage Treatment Plant and Water Treatment Plant, including conducting an extensive effluent monitoring program;
- f) conducted, in consultation with legal counsel, an extensive review of zoning, permitting, and other issues in respect of the undeveloped lands located adjacent to the Hotel on RRDI's property;
- g) regularized arrangements with numerous suppliers of goods and services to the Hotel;

- h) overseen the administration of RRDI, including the preparation of tax returns and financial statements and collection of a significant GST/HST refund;
- i) in conjunction with Representative Counsel to the Unit Owners (appointed by Order of the Court dated August 20, 2009), applied to the Court for the appointment of a receiver of RRMSI. By Order dated September 1, 2009, the Court appointed A&M as the receiver of certain rights relating to the contracts which RRMSI was a party to, including the Current HMA and the Current RPMAs;
- j) conducted lengthy negotiations and entered into settlement agreements with Unit Owners and Existing Unit Purchasers as described in the Eighth Report;
- k) repudiated the Current HMA with Marriott Hotels and Current RPMAs, including repudiating RRMSI as rental pool manager;
- l) after extensive negotiations with the Unit Owners and Marriott Hotels, entered into New RPMAs;
- m) after extensive negotiations with Marriott Hotels, entered into the New HMA and New Marriott Agreements as described in section 9 of the Eleventh Report;
- n) liaised extensively with the Hotel's executive management team and Marriott Hotel's senior leadership on all matters in respect of the Hotel's operations;
- o) reviewed the Notices of Dispute delivered to the Receiver by certain Unit Owners and undertook significant financial analysis on the effect of the RPMA Dispute on the ultimate cashflow available to an owner of the Hotel and the Unit Owners. The Receiver developed alternative solutions and held privileged and confidential

discussions and negotiations with members of the Ad Hoc Committee in an effort to settle the RPMA Dispute;

- p) negotiated and permitted the repudiation of agreements with Existing Unit Purchasers, as directed by the Court, who were unable or unwilling to close, and facilitated the return of the applicable deposits from Travelers;
- q) considered various retail sale strategic alternatives, and ultimately conducted the Retail Sales Program, including the One Day Sale Event, which resulted in the sale of 15 Units;
- r) implemented an Institutional Sales Process in December 2009, and as described further below, took various steps related to the Institutional Sales Process;
- s) engaged in discussions with the Unit Owners and WestLB regarding the Unit Owner Proposal (as discussed below) as late as December 2010;
- t) retained, along with the Unit Owners, Altus Tax Group to pursue an appeal of realty tax assessment of the Units and the Commercial Space;
- u) initiated the Construction Lien Claims Process and requested that certain matters relating to the relationship between RRDI and RRCI be referred to a Master as outlined in the RRCI/RRDI Reference. Given the complexity, cost and time expected to be involved in the litigation of the RRCI/RRDI Reference, WestLB negotiated settlements with all but two of the Lien Claimants. In conjunction with these settlements, the Receiver issued Notices of Determination and sought the December 7 Order. To date the Receiver has received 25 Confirmations indicating that such Construction Lien Claims have been assigned to WestLB. There remain two Construction Lien Claims which have not been assigned to

West LB, and for which the Receiver has not issued Notices of Determination, one for which cash is held in Court on account of the Lien Claim and the other, Parry Sound Glass Limited o/a Ross Windows & Doors, which is the subject of a significant counterclaim by the Receiver;

- v) established, implemented and completed a claims process to determine the entitlement of unpaid real estate agents and brokers to amounts set aside by McCarthys and held in trust for real estate commissions (the “Commissions Claims Process”) related to pre-receivership sales of units; and
- w) performed, with legal counsel, extensive analysis on certain trust funds held by McCarthys as described in the Eighth Report, and negotiated with the Unit Owners a settlement of the entitlements to such trust funds that was approved by the Order of the Court dated December 21, 2009.

3.2 Notwithstanding the Receiver’s substantial progress and accomplishments, as highlighted above, there remain a number of outstanding issues that the Receiver has been unable to settle to date. These outstanding issues relate primarily to (i) the interaction and interconnectedness between RRDI and its neighbouring properties including matters concerning disputes over water and sewage infrastructure, certain development rights, the Resort Association (the “Outstanding Neighbouring Property Issues”); and (ii) the Unit Owners in respect of the RPMA Dispute.

3.3 In addition, certain Unit Owners as well as certain members of the Condominium Corporation’s board of directors have raised concerns over the Receiver’s interaction with the Condominium Corporation. These concerns will be addressed in a subsequent report to Court by the Receiver, but focus on the ability of the Receiver to satisfy RRDI’s

common expense obligations to the Condominium Corporation with respect to those Units which it remains owner of, by setting off against those amounts that were owed by the Condominium Corporation to RRDI for shared common expenses, such amounts paid by RRDI pursuant to certain agreements and by way of RRDI's funding of all operating losses of the Hotel prior to and since the appointment of the Receiver.

McCarthys Settlement

- 3.4 In its Second Report dated July 3, 2009, the Receiver advised the Court of certain funds held in the trust account of McCarthy Tetrault LLP ("McCarthys") relating to certain closing costs retained from proceeds of sales of Units closed prior to the receivership (the "Closing Costs Holdback"). The amounts had been retained pursuant to certain Joint Undertakings agreed to with the Syndicate, Travelers, and Fortress. By Order dated July 8, 2009 (the "July 8 Order"), the Court authorized certain distributions out of those amounts held in trust, and ordered that McCarthys make no further distributions from the Closing Costs Holdback without approval of the Court.
- 3.5 By Order dated December 21, 2009, the Court ordered certain further distributions from the McCarthys trust account in resolution of certain claims to those funds in respect of common expense payments and the like, as detailed more fully by the Receiver in its Eighth Report dated December 14, 2009.
- 3.6 The July 8 Order also authorized the payment by the Receiver of funds held for payments to real estate agents and brokers of their fees out of the Closing Costs Holdback, once such claims were determined by the Receiver. A Commission Claims Process was established by separate Order dated December 21, 2009 to determine such claims. Distribution of payments to agents and brokers, once determined by the Commission

Claims Process, were made out of the Closing Costs Holdback, and as reported in the Receiver's Twelfth Report, the surplus of funds after payment of all Commission Claims was retained as property of RRDI.

- 3.7 The balance remaining in the trust account, after such distributions, is the sum of \$295,655.03. This amount was the subject matter of a claim by McCarthys for payment of outstanding legal accounts relating to work performed for RRDI prior to the receivership, as outlined in detail in the Second Report. The Receiver has engaged in discussions with McCarthys, and a settlement of the amount remaining has been reached, which would involve the payment of \$225,000 to McCarthys, and the balance of \$70,655.03 to the Receiver as property of RRDI. The Receiver recommends this settlement and requests an Order authorizing McCarthys to distribute the balance in its trust account accordingly.

4.0 Summary of Various Sale Processes and Marketing Initiatives

- 4.1 As highlighted above and as detailed in previous reports to this Honourable Court, the Receiver has undertaken significant efforts to realize on, and maximize the value of the Assets of RRDI. Specifically, these efforts have included: (a) conducting the Retail Sales Program; (b) commencing the Institutional Sales Process; and (c) exploring a transaction with the Condominium Corporation, whereby, among other things, the Condominium Corporation would acquire the commercial operations of the Hotel, potentially allowing for the simplification and restructuring of the Assets (the “Unit Owner Proposal”). The Retail Sales Program, the Institutional Sales Process and the Receiver’s pursuit and efforts to negotiate the Unit Owner Proposal were each approved by this Honourable Court. The following paragraphs provide a summary of the Receiver’s efforts, the outcomes achieved, and the impediments encountered by the Receiver with respect to the various Sales Processes.

The Sales and Marketing Process

- 4.2 The Receiver recommended the Sales and Marketing Process for the Assets of RRDI in its Second Report. Subsequently, the Court issued the Sales and Marketing Order, authorizing the Receiver to undertake the Sales and Marketing Process as described. In the Second Report, the Receiver recommended that a “twin track” process be undertaken consisting of both the Retail Sales Program and the Institutional Sales Process given the nature of the Assets; namely (a) individual unsold condominium Units; (b) development lands surrounding the Hotel; and (c) the residual interest (or commercial elements) of the Hotel itself.

- 4.3 Accordingly, the Court authorized the Receiver to (a) retain Colliers to conduct the Institutional Sales Process which process would include the marketing of all of the Assets of RRDI on an en bloc basis; and (b) retain Baker Real Estate to implement the Retail Sales Program in an effort to realize on the 84 Units which were unsold and were not the subject of pre-existing asset purchase agreements.²

The Retail Sales Program

- 4.4 It was the Receiver's view that the most prudent way to maximize the value of the Assets would be to first execute on the Retail Sales Program, as all interested parties, including real estate advisors consulted by the Receiver, agreed that the likely value of the Units sold to retail purchasers would be significantly greater than if those units were sold, en bloc, institutionally. Accordingly, on July 21, 2009, the Receiver filed its Third Report to Court seeking approval of the Retail Sales Program proposed by Baker Real Estate. The Court issued an order dated July 24, 2009 authorizing the Receiver to instruct Baker Real Estate to proceed with the Retail Sales Program.
- 4.5 Subsequently and commensurate with planning for the Retail Sales Program, which included the execution of the "One Day Sale" to be held on August 22 and 23, 2009, the Receiver, along with its legal counsel, worked to implement a restructuring of the Rental

² As described in the Receiver's Supplementary Report to the Sixth Report, subsequent to the filing of the Third Report and prior to the One Day Sale, the Receiver became aware that two Existing Unit Purchasers (which, collectively had agreements to purchase three Units) had each objected to the closing of their transactions on account of breach by RRDI. They each independently agreed to enter into standstill agreements with RRDI prior to the commencement of the receivership proceedings (the "Standstill Agreements"), as a means of resolving the issues. Pursuant to the Standstill Agreements, RRDI agreed to take steps to sell each of the respective Units at minimum prices agreed upon between RRDI and the respective Existing Unit Purchaser. The Standstill Agreements stipulated that if sale transactions were completed at a value less than the initial purchase price of the Unit under consideration, the respective Existing Unit Purchaser would forfeit a portion of their deposit in respect of that particular Unit. Given the nature and terms of these existing Standstill Agreements, the Receiver believed it would be in the best interests of all stakeholders to honour the Standstill Agreements and accordingly, the total number of Units made available for sale at the One Day Sale was 87.

Pool arrangements governing the operation of the Hotel. This restructuring was carried out with the intention of maximizing the value of the Units and correcting blatant deficiencies in the existing structure which were apparent to the Receiver. The restructuring of the Rental Pool arrangement included, among other things, the negotiation of the New RPMAs with the Unit Owners, the negotiation of the Settlement Agreements with the Unit Owners, the development of a strategy whereby RRDI would become Rental Pool Manager, transferring such authority from RRMSI, and developing the necessary condominium disclosure document required to be provided to purchasers at the time of agreeing to purchase a Unit. All of these matters were addressed in detail in the Receiver's Third Report to Court, and on July 24, 2009, this Honourable Court authorized the Receiver to proceed with the One Day Sale.

- 4.6 The One Day Sale initially achieved strong results, whereby the Receiver, over the sale weekend, entered into agreements of purchase and sale with 76 New Unit Purchasers.
- 4.7 However, the *Condominium Act* provides purchasers with a right to rescind such agreements of purchase and sale for a period of 10 days during which time a purchaser is permitted to seek and obtain legal advice, further consider the purchase, and if they so desire, on notice to the vendor, rescind such purchase agreements and seek a return of their deposit.
- 4.8 Given the uncertainty afforded to the Hotel and the Units as a result of the receivership, the forecast high costs of ownership, and the fact that, at that time, the Receiver had not yet completed its negotiations with Marriott Hotels with respect to the New HMA (albeit the successful completion of this latter point was a condition precedent to the closing of any transaction with any New Unit Purchaser), all but 18 agreements of purchase and sale

executed in connection with the One Day Sale, were rescinded within the applicable 10 day rescission period.

- 4.9 As a result, in late January and early February, the Receiver closed fifteen unit sale transactions resulting in gross proceeds of \$4.3 million. One additional sale was closed by the Receiver in March 2010. Subsequent to the closing of all of these transactions, of the 221 Units in the Hotel, 89 (40%) were owned by individual Unit Owners and 132 remained in the possession of RRDI (60%).
- 4.10 Subsequent to the expiry of the 10-day rescission period in which purchasers were entitled to a return of their deposit, three purchasers advised the Receiver that they were not prepared to close on the Units for which they had entered into agreements during the One Day Sale. The Receiver's legal counsel communicated with these purchasers and advised them that failure to close would result in forfeiture of those deposits which were provided at the time of entering into their respective transactions (the "Forfeited Deposits"). Copies of correspondence from the Receiver's legal counsel with respect to the Forfeited Deposits are attached as **Appendix "B"**.
- 4.11 The Forfeited Deposits, amounting to \$37,000, continue to be held by the Receiver's legal counsel, Blakes, in its trust account. The Receiver is hereby requesting the Court's authorization to permit Blakes to transfer the Forfeited Deposits to the Receiver and declare that the Forfeited Deposits have been forfeited.

The Institutional Sales Process

- 4.12 On December 14, 2009, the Receiver filed its Eighth Report to the Court seeking the Court's approval of the Institutional Sales Process Protocol. The Institutional Sales Process Protocol set out the steps and timeline in connection with the Institutional Sales

Process. The Receiver also sought the Court's approval of the various forms of marketing materials, including investment overview, information memorandum, data room protocol and form of confidentiality agreement, to be used in connection with the Institutional Sales Process. On December 21, 2009, the Court issued an order granting the Receiver the relief it sought and authorizing it to proceed with the Institutional Sales Process.

- 4.13 With the assistance of Colliers, the Assets of RRDI were initially marketed to 875 companies and 1,350 individuals (all potential purchasers). This resulted in the execution of 23 confidentiality agreements and receipt of non-binding Expressions of Interest (with no indication of purchase price) demonstrating the bidder's financial wherewithal or ability to obtain financing.
- 4.14 All of the parties that executed confidentiality agreements received copies of the confidential information memorandum. The Receiver and Colliers held numerous meetings with prospective purchasers, including conducting numerous tours of the property. Approximately 16 purchasers actively engaged in due diligence by reviewing information made available in the electronic data room.
- 4.15 By March 31, 2010, the Receiver and Colliers were of the view that there were four parties that remained seriously interested in considering a transaction in respect of the Assets, and the Receiver and Colliers were working with those parties in the hopes of receiving firm offers. However, in late March and April 2010, the Receiver received 64 Notices of Dispute from individual Unit Owners who objected to the calculation of

distributions payable pursuant to the New RPMA that had been negotiated and entered into with the Receiver and each respective Unit Owner (except two).³

- 4.16 As a result of the RPMA Dispute, which brought into question the ultimate cash flow distributions that would be available to a purchaser upon completion of a transaction to acquire the Assets, the Receiver was faced with a significant impediment in continuing with the Institutional Sales Process. The Unit Owner Proposal was subsequently proposed by the Unit Owners as a means to settle this dispute. As described in the Receiver's Twelfth Report to the Court, the Receiver sought and obtained authority from the Court to suspend the Institutional Sales Process and attempt to negotiate the terms of the Unit Owner Proposal with the Independent Directors of the Condominium Corporation and members of the Ad Hoc Committee, and to come back with recommendations to the Court as to how it should proceed.

Recent Developments

- 4.17 As described in the Receiver's Twelfth Report, the completion of the Unit Owner Proposal would simplify the Rental Pool structure of the Hotel, and potentially create a scenario whereby the value of the Units could be maximized/realized on at a greater price than otherwise would have been the case. The Receiver and its legal counsel spent significant time discussing with and providing analysis of the proposed Unit Owner Proposal to WestLB which, from June to November, 2010, supported such a strategy, subject to internal and Syndicate approvals.
- 4.18 Notwithstanding the Receiver's efforts to pursue the Unit Owner Proposal on an expeditious and timely manner, its completion was ultimately not supported by WestLB.

³ In total the Receiver has received 65 Notices of Dispute, as one additional notice was received in July, 2010.

The Receiver has been advised by WestLB that it wishes to pursue the alternative scenario of the Potential Transaction which in WestLB's view could offer the most comprehensive and cost-effective exit strategy for WestLB, the conclusion of the receivership and attendant costs.

- 4.19 The Receiver was advised by WestLB in late December 2010, that it had been approached by the Potential Purchaser in respect of the Potential Transaction. The Receiver was subsequently advised that WestLB did not want the Receiver to undertake a further sales process, as WestLB favoured pursuit of the Potential Transaction, which would include a global resolution of issues and costly litigation with the guarantors of RRDI's indebtedness to WestLB. Since WestLB had acquired the Construction Lien Claims, it was of the view that it had the only economic interest at play, and no other stakeholders would benefit from sale proceeds.

5.0 *Economic Interest of WestLB, the Receiver's Current Cash Position, and Urgency to Complete a Transaction*

- 5.1 The Receiver recognizes that, based on the reasonable expectations of realization values under any realistic scenario, WestLB is the only party with any significant economic interest in the Assets of RRDI. As previously discussed, WestLB has entered into settlement agreements with all but two of the Lien Claimants whereby such claims have been assigned to WestLB in exchange for releases from the applicable Lien Claimants. Of the remaining two Lien Claimants, the Receiver has a significant litigation claim against one and the other is secured by funds paid into Court, prior to the Receivership.
- 5.2 The only other parties with a remaining economic interest, which could benefit from proceeds of sale in any transaction, are the Unit Owners and Marriott Hotels, in the event Marriott Hotels is terminated as Hotel operator. The Potential Purchaser, as part of the Potential Transaction, has indicated that it would assume any such claims of Unit Owners secured by the Unit Owners Charges and of Marriott Hotels secured by the Marriott Charges in the event the New HMA and other Marriott Agreements are terminated. The Potential Transaction, if concluded, would see approximately \$950,000 of payments on closing to Unit Owners with Sale Leasebacks for accrued rental obligations under the Sale Leasebacks secured by the Unit Owners Charges.
- 5.3 Currently, the total amount of outstanding indebtedness arising from the three tranches of Receiver's Borrowings is approximately \$30 million. The total value of the Determined Lien Claims, which have been assigned to WestLB, is approximately \$2.8 million. The Syndicate, of which WestLB is the Agent, is also owed approximately \$68 million as at May 19, 2009, not including interest accrued since then and substantial costs related to the original construction mortgage. The Receiver has received an opinion from its

independent legal counsel, FMC, that the Syndicate's security is valid and enforceable, subject to customary assumptions and qualifications.

- 5.4 Accordingly, other than the Unit Owners and Marriott Hotels, as mentioned above, unless more than \$100 million of proceeds are achieved, there would be no funds available to anyone other than WestLB, the Syndicate, the Unit Owners and Marriott Hotels. The Receiver considers it remote that a sales process for the Assets, if conducted, would conceivably yield proceeds anywhere approaching this amount. In fact, based on input from bidders last year in the Institutional Sales Process, CBRE today, and the Receiver's own analysis of the estimated value, the Receiver believes that, in any sale process, the Syndicate would suffer a significant loss on the construction mortgage.
- 5.5 The Receiver has been advised by WestLB that WestLB will not support or fund any further borrowings by the Receiver. As at February 28, 2011, the balance of funds held by the Receiver is approximately \$7.4 million, and is comprised of the remaining Third Tranche Receiver Borrowings, certain funds remitted to the Receiver from McCarthys as a result of the completion of the Commission Claims Process, and a GST refund.
- 5.6 Attached as Appendix "C" is the Receiver's statement of Receipts and Disbursements for the period from May 22, 2009 to February 28, 2011 (the "R&D"). Attached as Appendix "D" is a copy of the Receiver's monthly cash flow forecast for the period ending April 30, 2011 (the "2011 Budget"). This cash flow forecast indicates that, on a status quo basis (without any sale transaction occurring), approximately \$6.6 million of the \$8.7 million of proceeds from the Third Tranche Receiver's Borrowings would be utilized by April 30, 2011, with the balance of \$2.1 million available to fund costs

incurred thereafter.⁴ This analysis suggests that the Receiver could possibly utilize all of its remaining funding at some time between June and July 2011. Accordingly, time is of the essence to complete a sale transaction. The Receiver recognizes the need for these proceedings to be brought to conclusion in an expeditious manner in light of the limited amount of remaining available funding and considering the interests of WestLB, as the only apparent remaining stakeholder with a significant economic interest in the Assets.

⁴ Refer to Note 8 of Appendix "D"

6.0 *The Receiver's Concerns and the Potential Transaction*

- 6.1 As mentioned above, the Institutional Sales Process was suspended in May 2010 due to issues and uncertainty arising primarily as a result of the RPMA Dispute. Prospective purchasers were also concerned with the Outstanding Neighbouring Property Issues, including matters concerning water and sewage infrastructure and entitlements thereto as between RRDI and the neighbouring properties which were complicated and had not been resolved.
- 6.2 The Receiver discussed with WestLB's legal counsel the Receiver's concerns over proceeding with the Potential Transaction without completing a Court-approved sales process. Although the Receiver's view is that the unresolved issues referenced in Paragraph 6.1 could potentially be resolved in the context of a formal sales process, those issues remain outstanding and could negatively impact realizable value. The Potential Transaction eliminates the Outstanding Neighbouring Property Issues, thereby eliminating risk in that regard.
- 6.3 Since the Receiver has not completed a formal sales process (as the Institutional Sales Process was suspended), it has not fully tested the market, and therefore, cannot advise the Court with certainty whether or not the Potential Transaction represents the best offer. Based on recent discussions the Receiver has had with industry experts, the Receiver understands that market conditions for resort properties such as the Hotel have improved significantly over the past year since the time of the active phase of the Institutional Sales Process. Transaction activity has increased sharply, with numerous U.S. investors returning to the market, players who were not interested in pursuing acquisition opportunities in early 2010.

- 6.4 Accordingly, valuation metrics have increased over the past year, such that the Hotel's potential value could exceed the purchase price contemplated by the Potential Transaction. The Receiver discussed with WestLB a condensed sales process which could be implemented concurrently while negotiating the Potential Transaction in order to quickly determine whether an offer in excess of the proposed purchase price in the Potential Transaction could be achieved. WestLB did not support such a recommendation. The Potential Transaction, if concluded, would resolve disputes between WestLB and guarantors of the RRDI indebtedness as well as bring certainty and resolution to the receivership proceedings. However, an alternative sales process is still a possibility if the Potential Transaction is not concluded, which sales process would benefit from the resolution of the Outstanding Neighbouring Property Issues contemplated by the Potential Transaction.
- 6.5 The Receiver, in weighing its concerns with the prospect of not undertaking a sales process, also balanced those concerns against the benefits of the Potential Transaction, as presented to the Receiver by WestLB. WestLB anticipated additional benefits including: (i) a quick sale of the Assets which would decrease operating costs and continuing expenses, maximizing a return of Tranche Three Receiver's Borrowings; (ii) a resolution of the Outstanding Neighbouring Property Issues which would be available to the Receiver if the Potential Transaction did not close for any reason; and (iii) additional consideration to WestLB as between WestLB and its guarantors, the details of which are confidential and privileged and have not been made available to the Receiver.
- 6.6 In the circumstances, given the strong preference of WestLB to pursue the Potential Transaction as part of a broader settlement of certain receivership issues as well as

guarantor obligations to WestLB, and recognizing the paramountcy of WestLB's economic interest, the Receiver is supportive of the continued negotiation of the Potential Transaction.

- 6.7 The Receiver and its independent legal counsel have been provided with drafts of the agreements connected with the Potential Transaction, and have provided their input accordingly. Certain terms of the agreements are still the subject of negotiation, and WestLB and Syndicate approvals.
- 6.8 A summary of the key terms of the Potential Transaction, are attached as Confidential Appendix "1". As the Potential Transaction has not yet been finalized and remains subject to negotiation, and approval by this Honourable Court, the Receiver requests that Confidential Appendix "1" be sealed until further order of the Court.

7.0 Conclusions and Recommendations

7.1 For the reasons outlined herein, the Receiver respectfully recommends that this Honourable Court grant an Order for the relief set out in section 1.9 hereof.

* * *

All of which is respectfully submitted, this 3rd day of March, 2011.

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

Per:


Richard A. Morawetz

APPENDIX “A”

Glossary of Defined Terms for Receiver's Reports

<u>Term</u>	<u>Definition</u>
2010 Budget	A budget prepared by the Receiver for the six-month period ending May 31, 2010 being the period during which the Institutional Sales Process is contemplated to be conducted
2011 Budget	The budget prepared by the Receiver and approved by WestLB for the period to April 30, 2011, at which time the Receiver expects to have concluded a transaction which will exit the Hotel from receivership
A&M	Alvarez & Marsal Canada ULC
Act	<i>Red Leaves Resort Association Act, 2006</i>
Ad Hoc Committee	The Ad Hoc Committee of Unit Owners, consisting of certain Unit Owners and Existing Unit Purchasers
Altus Tax Group	Altus Group Tax Consulting Paralegal Professional Corporation
Amended August 18 Order	The Order of Madam Justice Pepall dated August 18, 2009, as amended August 20, 2009
Appointment Order	Amended and Restated Appointment Order issued June 2, 2009, as amended by Orders dated December 21, 2009 and April 15, 2010
APS	Agreement(s) of purchase and sale
Assets	All the property, assets and undertakings of The Rosseau Resort Developments Inc.
Baker Real Estate	Baker Real Estate Inc.
Balcony Handrails	The Hotel's balcony handrails that required substantial remediation work, as described in the Twelfth Report
BIA	<i>Bankruptcy and Insolvency Act</i> (Canada)
Blakes	Blake, Cassels & Graydon LLP
Board	Board of Directors of the Red Leaves Resort Association
Building Consultants	Designers, building architects, mechanical, structural, and electrical engineers
Bulletin 19 Reporting Requirements	Certain reporting requirements pursuant to the Tarion New Home Warranty Program
By-laws	The Red Leaves Resort Association By-laws dated April 2008
CJA	<i>Courts of Justice Act</i> (Ontario)
CLA	<i>Construction Lien Act</i> (Ontario)

<u>Term</u>	<u>Definition</u>
Closing Costs Holdback	Certain funds held in the trust account of McCarthys relating to certain closing costs retained from proceeds of sales of Units closed prior to the Receivership
COA	The sewage treatment plant operates pursuant to Certificate of Approval No. 2176-74DPM9, issued by the Ministry of the Environment on July 20, 2007
Colliers	Colliers Macaulay Nicolls (Ontario) Inc.
Commission Claim Materials	The Commission Claims Process Order, Notice and Instruction Letter to Commission Creditors and a Proof of Commission Claim Form
Commission Claims	As defined in the Commission Claims Process Order
Commission Claims Bar Date	Creditors were required to submit their Proof of Commission Claim Form to the Receiver on or before March 1, 2010
Commission Claims Process	A claims process for the determination of entitlements of real estate agents and brokers to amounts set aside by McCarthys and held in trust for real estate commissions
Commission Claims Process Order	Order dated December 21, 2009, authorizing the Receiver to conduct a commission claims process
Commission Funds	The funds available to pay real estate commissions owed to them, which were set aside on closing of Unit sale transactions by McCarthy Tetrault LLP
Committee	Same as the Ad Hoc Committee
Company	The Rosseau Resort Developments Inc.
Condominium Corporation	The Muskoka Standard Condominium Corporation No. 62
Confirmation	Written confirmation by WestLB and the applicable Lien Claimant of the completion of the assignment of the relevant Determined Lien Claim to WestLB
Construction Lien Claims	Lien claims registered on title to the real property owned by RREDI pursuant to the CLA
Construction Lien Claims Process	The construction lien claims process set out in the Claims Process Order
Construction Lien Claims Process Order	Order of the Court dated July 24, 2009
Construction Lien Trustee	Alvarez & Marsal Canada ULC
Court	Ontario Superior Court of Justice
CRA	Conestoga-Rovers & Associates
CT	Commercial tax class

<u>Term</u>	<u>Definition</u>
Current HMA	Amended and Restated Hotel Management Agreement among RRDI, RRMSI, and Marriott Hotels dated October 6, 2006
Current RPMA(s)	The form of rental pool management agreement Unit Owners entered into with RRMSI, as Rental Pool Manager
December 7 Order	The Order issued by the Court on December 7, 2010
December 16 Order	The Order issued by the Court in December 16, 2010
December 21 Order	The Order issued by the Court on December 21, 2009
Declaration	The Rosseau Resort Condominium Declaration, made pursuant to the <i>Condominium Act</i> , 1998
Determined Lien Claim	Construction Lien Claims determined pursuant to the Notices of Determination and approved by the Court
Development Lands	The undeveloped lands located adjacent to the Hotel on RRDI's property, principally along the waterfront and neighbouring The Rock Golf Course
Disputing Unit Owners	63 Unit Owners who delivered notices of dispute to the Receiver in respect of the RPMA Dispute
District or District of Muskoka	The District Municipality of Muskoka Corporate and Emergency Services Department
Eighth Report	The Receiver's Eighth Report dated December 14, 2009
Eleventh Report	The Receiver's Eleventh Report dated May 12, 2010
Existing Unit Purchasers	Existing purchasers who have not yet closed outstanding APSs with RRDI
Faskens	Fasken Martineau DuMoulin LLP
Fifteenth Report	The Receiver's Fifteenth Report dated March 3, 2011
First Tranche Receiver's Borrowings	The monies borrowed by the Receiver from the Syndicate, on a priority basis, to fund the costs and expenses of the receivership in the principal amount of \$15,000,000
FMC	Fraser Milner Casgrain LLP
Forfeited Deposits	Funds held by Blakes in respect of deposits provided by three unit purchasers at the time of signing agreements of purchase and sale to purchase a Hotel Unit during the One Day Sale
Fortress	Fortress Credit Corp.
Fourteenth Report	The Receiver's Fourteenth Report dated December 13, 2010
Hotel	221 unit condominium hotel complex located on the property owned by RRDI situated along the north-west end of Lake Rosseau in Muskoka, Ontario

<u>Term</u>	<u>Definition</u>
Hotel Management Unit	The condominium unit designated for the operations of the Hotel
Independent Directors	The independent directors of the Muskoka Standard Condominium Corporation No. 62
Independent Engineers	Collectively, Morrison Hershfield and Trow
Initial Water Taking Permit	The water taking permit issued on September 21, 2001
Institutional Sales Process	The sales and marketing process for all of the Assets of RRDI on an en bloc basis, as conducted by Colliers
Interim Receiver	Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz Inc.)
July 8 Order	The Order dated July 8, 2009
KFE	Ken Fowler Enterprises Limited
Known Commission Creditors	As defined in the Commissions Claims Process Order
Lender Syndicate	WestLB AG, New York Branch and CIT Financial Ltd.
Lien Claimants	Those parties which filed Construction Lien Claims under the Construction Lien Claims Process Order dated July 24, 2009
Marriott Hotels	Marriott Hotels of Canada, Ltd.
May 19 Order	The Order of Madam Justice Pepall dated May 19, 2010
McCarthys	McCarthy Tetrault LLP
Miller Thomson	Miller Thomson LLP
MOE	Ministry of the Environment
MPAC	Municipal Property Assessment Corporation
New HMA	A New Hotel Management Agreement that is based on the template of the Current HMA and modified by the Side Letter, the financial terms and conditions of which are set out in the Summary of Terms approved by the Court
New Marriott Agreements	Other New Marriott Agreements together with the New HMA
New RPMA	New forms of Rental Pool Management Agreements agreed upon by the Committee and RRDI, and approved by the Court
New Unit Purchasers	New purchasers of unsold Units
Ninth Report	The Receiver's Ninth Report dated April 9, 2010
Notices of Determination	Notices issued by the Construction Lien Trustee determining the amounts under the CLA for certain Construction Lien Claims filed by construction lien claimants under the Construction Lien Claims Process Order

<u>Term</u>	<u>Definition</u>
Notices of Dispute	The notices delivered to the Receiver by the Disputing Unit Owners in connection with the RPMA Dispute
November 12 Order	The Order issued by the Court on November 12, 2009 granting the relief sought by the Receiver in the Twelfth Report
OBC	Ontario Building Code
Outstanding Neighbouring Property Issues	The interaction and interconnectedness between RRDI and its neighbouring properties including matters concerning disputes over water and sewage infrastructure, certain development rights, and the Resort Association
Other Current Marriott Agreements	Royalty and Licensing Agreement between RRDI, RRMSI and IHLC dated October 6, 2006, and any other current agreements between RRDI, RRMSI, and Marriott Hotels or its affiliates
Performance Audit	A common element performance audit undertaken by Trow Associates Inc. on behalf of the Board
Potential Purchaser	A third party purchaser related to Maureen Fowler, the spouse of Ken Fowler
Potential Transaction	A proposed potential sale transaction of the Assets of RRDI to the Potential Purchaser
Priority Lien Claims	The portion of construction lien claims which are determined to have priority over all mortgages registered on title to the real property of RRDI
Project	The development and construction of the Hotel and surrounding property, all of which is on the property owned by RRDI
Protocol	The Institutional Sales Process Protocol prepared by the Receiver, in conjunction with its legal counsel and Colliers
Provincial Officer's Order	Consensual Order issued by the MOE on September 29, 2010 requiring RRDI to complete the Remediation Plan by January 31, 2011
R&D	The Receiver's statement of receipts and disbursements
RCPC	Resort condominium property tax class
Receiver	Collectively, the Interim Receiver and the Receiver and Manager
Receiver and Manager	Alvarez & Marsal Canada ULC in its capacity as receiver and manager

<u>Term</u>	<u>Definition</u>
Receiver's Borrowings	Collectively, those receiver's borrowings authorized by the Appointment Order, including the First Tranche Receiver's Borrowings, Second Tranche Receiver's Borrowings and Third Tranche Receiver's Borrowings
Remediation Plan	Plan developed by the Receiver, with the assistance of CRA and the Receiver's legal counsel, and the MOE to remediate the STP
Rental Pool	The rental pool in which all Unit Owners are required to participate
Rental Pool Manager	Rental pool manager
Resort	Red Leaves Resort complex
Resort Association	The Red Leaves Resort Association
Retail Sales Program	Proposed retail sales and marketing program of the Company's unsold condominium units, as well as potentially the development lands surrounding the Hotel, on an individual or lot basis
Ross Windows	Parry Sound Glass Limited o/a Ross Windows
RPMA Dispute	A dispute commenced by the Disputing Unit Owners regarding the Receiver's interpretation of the New RPMA
RPMA(s)	Rental Pool Management Agreement(s)
RRCI	Rock Ridge Contractors Inc.
RRCI/RRDI Reference	The reference to a Master of the Ontario Superior Court to determine the preliminary issue of whether RRCI is a general contractor or a construction manager for RRDI, and whether certain certificates of substantial performance are valid
RRDI	The Rosseau Resort Developments Inc.
RRDI Infrastructure	The water treatment plant and certain water taking infrastructure, including pumps, pumping equipment and piping
RRDI/RRCI Contract	The contract between RRDI and RRCI
RRMSI	The Rosseau Resort Management Services Inc.
RRMSI Receiver	A&M as receiver over certain assets of RRMSI, namely RRMSI's rights in any contracts with Marriott Hotels and/or affiliates which relate to the Hotel (including the Current HMA) and in any Current RPMAs
Sales and Marketing Order	The Order issued by the Court on July 8, 2009

<u>Term</u>	<u>Definition</u>
Sales and Marketing Process	Generally, the process the Receiver intends to run in respect of selling the Assets of the Company approved by the Sales and Marketing Order
Second Tranche Receiver's Borrowings	A second tranche of Receiver's Borrowings in the principal amount of \$7.5 million to be provided by WestLB
Service List	List of all interested parties who are entitled to receive copies of all documents filed with the Court and have either served a Notice of Appearance or requested to be added to the Service List
Standstill Agreements	Those agreements pursuant to which prior to the Receivership two additional Existing Unit Purchasers had each independently agreed to enter into agreements whereby RRDI agreed to attempt to sell each of the respective Units at minimum prices agreed upon between RRDI and the Existing Unit Purchaser
STP	Sewage treatment plant
STP Lease	A lease agreement dated February 13, 2009, between RRDI, as tenant and Wallace Marine, as landlord, for a term of 21 years less a day in respect of the lands on which the sewage treatment plant is situated
Syndicate	The lender syndicate being WestLB AG, New York Branch and CIT Financial Ltd.
Tarion	Tarion Warranty Corporation
Tenth Report	The Receiver's Tenth Report dated April 19, 2010
The Rock	1515511 Ontario Inc. o/a The Rock Golf Club
Third Tranche Receiver's Borrowings	A third tranche of Receiver's Borrowings in the principal amount of \$8.7 million to be provided by WestLB
Third Tranche Term Sheet	The term sheet negotiated by the Receiver with WestLB for the Third Tranche Receiver's Borrowings, consistent with the form of term sheets executed in respect of prior Receiver's Borrowings
Thirteenth Report	The Receiver's Thirteenth Report dated December 1, 2010
Township	The Township of Muskoka Lakes
TPL	Total phosphorus level(s)
Travelers	Travelers Guarantee Company of Canada
Trow	Trow Associates Inc.
Twelfth Report	The Receiver's Twelfth Report dated November 5, 2010

<u>Term</u>	<u>Definition</u>
Unit Owner Proposal	The proposal of the Independent Directors and the Ad Hoc Committee to acquire certain assets of RRDI, specifically the commercial property and operations of the Hotel and RRDI's interest in the Marriott Hotel Agreements and New RPMAs, and simplify the rental pool structure.
Unit Owners	Current owners of Units at the Hotel
Units	The 221 condominium units of the Hotel
Unsold Units	132 unsold condominium units of the Hotel (note that in prior reports, "Unsold Units" was defined as 84 unsold condominium units of the Hotel, this past definition excluded those units that were subject to an APS but not sold)
Wallace Marine	Wallace Marine Limited
Water and Sewage Infrastructure	Water and sewage infrastructure on or adjacent to RRDI's property including the sewage treatment plant and the water treatment plant
Water Supply Agreement	A proposed, mutually acceptable water supply agreement, whereby RRDI would continue to supply The Rock with water for irrigation purposes
Water Taking Permit	Permit No. 0465-5ZTL4C, which provides RRDI with the authority to take water primarily from Lake Rosseau, governed by the Ontario <i>Water Resources Act</i>
WestLB	WestLB AG, Toronto Branch or WestLB AG, New York Branch
Window and Door Systems	The windows and exterior balcony doors of the Units
WTP	Water treatment plant that is situated on RRDI's property

APPENDIX “B”



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Suzanne M. Séguin
Lawyer
Dir: 416-863-5843
Assistant: 416-863-2920

FACSIMILE

August 26, 2010

Number of Pages Including Cover Page: *2*

To: Robert J. Basserman
Toronto, ON
Fax: 416-924-7166 Dir: 416-323-3741

MESSAGE:

RE: The Rosseau Resort Developments Inc. ("RRDI") by Alvarez & Marsal Canada ULC, in its capacity as receiver and manager and trustee and not in its personal capacity, and by Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz Inc.), in its capacity as interim receiver and not in its personal capacity (collectively, the "Receiver") (RRDI, by its Receiver, hereinafter the "Vendor") Sale to ROBSON, Farrukh D. (the "Purchaser") Suite 2114, Unit 36, Level 1, Muskoka Standard Condominium Plan No. 62 (the "Resort Unit")

21928177.1

ORIGINALS SENT BY: (check one) ☐ MAIL ☐ COURIER ☐ NOT SENT ☐ (PLEASE SPECIFY) _____

ANY PROBLEMS? PLEASE CONTACT THE BLAKES FAX OPERATOR AT 416-863-3192

CONFIDENTIALITY NOTE: This message is CONFIDENTIAL and is legally privileged. It is intended only for the person(s) or organization(s) named above and any other use or disclosure is strictly forbidden. If this message is received by anyone else, please notify us at once by telephone and return the original by mail to the above address. Thank You

FILE REFERENCE: 75334/9

SENDER: SMS

RETURN TO:

TIME IN: _____

TIME SENT: *11:52 am*

OPERATOR: *Jodie Tang*

* * * TRANSMISSION RESULT REPORT (AUG. 26. 2010 11:53AM) * * *

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L : SEND LATER
D : DETAIL
B : FAX ON DEMAND

T : TRANSFER
G : FORWARDING
F : FINE

P : POLLING
E : ECM
J : REDUCTION



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

August 26, 2010

VIA FACSIMILE AND OVERNIGHT COURIER

Suzanne M. Séguin
Lawyer

Dir: 416-863-5843
suzanne.seguin@blakes.com

Reference: 75334/9

Mr. Robert J. Basserman
Barrister and Solicitor
214-120 Carlton Street
Toronto, ON M5A 4K2

RE: The Rosseau Resort Developments Inc. ("RRDI") by Alvarez & Marsal Canada ULC, in its capacity as receiver and manager and trustee and not in its personal capacity, and by Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz Inc.), in its capacity as interim receiver and not in its personal capacity (collectively, the "Receiver") (RRDI, by its Receiver, hereinafter the "Vendor")

RE: Sale to Robson, Farruk D. (the "Purchaser")

RE: Suite 2114, Unit 36, Level 1, Muskoka Standard Condominium Plan No. 62

RE: Closing Date: February 5, 2010 (the "Closing Date")

Dear Mr. Basserman:

We write further to our letter to you of February 5, 2010. We reiterate that the Purchaser is in breach of the agreement of purchase and sale dated August 23, 2009 (the "Agreement") as a result of wrongfully refusing to complete the Agreement on the Closing Date or thereafter despite the Vendor being ready, willing and able to complete the Agreement as stated in our letter to you of February 5, 2010.

In the circumstances, our client, the Vendor, treats the Agreement as terminated by reason of the Purchaser's default and treats the deposit as being forfeited to the Vendor as liquidated damages pursuant to section 20 of the Agreement. The Vendor reserves its rights to damages and costs against the Purchaser.

Yours truly,

Suzanne M. Séguin

SMS/malp

22017254.1



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9 Canada
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FACSIMILE

Suzanne M. Séguin
Lawyer
Dir: 416-863-5843
Assistant: 416-863-2920

August 26, 2010

Number of Pages Including Cover Page: *2*

To: Michael S. Slan
Fogler, Rubinoff LLP Toronto, ON
Fax: 416-941-8852 Dir: 416-941-8857

MESSAGE:

RE: The Rosseau Resort Developments Inc. ("RRDI") by Alvarez & Marsal Canada ULC, in its capacity as receiver and manager and trustee and not in its personal capacity, and by Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz Inc.), in its capacity as interim receiver and not in its personal capacity (collectively, the "Receiver") (RRDI, by its Receiver, hereinafter the "Vendor") Sale to Wayne Cipollone and Mary Cipollone (the "Purchaser")

RE: Suite 1439, Unit 19, Level 4, Muskoka Standard Condominium Plan No. 62

RE: Closing Date: January 28, 2010 (the "Closing Date")

22025855.1

ORIGINALS SENT BY: (check one) ☐ MAIL ☐ COURIER ☐ NOT SENT ☐ (PLEASE SPECIFY) _____

ANY PROBLEMS? PLEASE CONTACT THE BLAKES FAX OPERATOR AT 416-863-3192

CONFIDENTIALITY NOTE: This message is CONFIDENTIAL and is legally privileged. It is intended only for the person(s) or organization(s) named above and any other use or disclosure is strictly forbidden. If this message is received by anyone else, please notify us at once by telephone and return the original by mail to the above address. Thank You

FILE REFERENCE: 75334/13

SENDER: SMS

RETURN TO:

TIME IN: _____

TIME SENT: *11:49 am*

OPERATOR: *Joslin Tang*

MONTREAL OTTAWA TORONTO CALGARY VANCOUVER

NEW YORK CHICAGO LONDON BAHRAIN AL-KHOBAR BEIJING SHANGHAI **blakes.com**

* Associated Office

* * * TRANSMISSION RESULT REPORT (AUG. 26. 2010 11:50AM) * * *

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DATE	TIME	ADDRESS	MODE	TIME	PAGE	RESULT	PERS. NAME	FILE
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Patent & Trade-mark Agents
199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

August 26, 2010

VIA FACSIMILE AND MESSENGER

Fogler, Rubinoff LLP
Barristers and Solicitors
1200-95 Wellington St. W.
Toronto, ON
M5J 2Z9

Suzanne M. Séguin
Lawyer

Dir: 416-863-5843
suzanne.seguin@blakes.com

Reference: 75334/13

Attention: Mr. Michael Slan

RE: The Rosseau Resort Developments Inc. ("RRDI") by Alvarez & Marsal Canada ULC, in its capacity as receiver and manager and trustee and not in its personal capacity, and by Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz Inc.), in its capacity as interim receiver and not in its personal capacity (collectively, the "Receiver") (RRDI, by its Receiver, hereinafter the "Vendor") Sale to Wayne Cipollone and Mary Cipollone (the "Purchaser")

RE: Suite 1439, Unit 19, Level 4, Muskoka Standard Condominium Plan No. 62

RE: Closing Date: January 28, 2010 (the "Closing Date")

Dear Sir:

We write further to our letter to Messrs Lee, Roche & Kelly, the Purchaser's former solicitors, of January 28, 2010. We reiterate that the Purchaser is in breach of the agreement of purchase and sale dated August 22, 2009 (the "Agreement") as a result of wrongfully refusing to complete the Agreement on the Closing Date or thereafter despite the Vendor being ready, willing and able to complete the Agreement as stated in our letter to Lee, Roche & Kelly of January 28, 2010.

In the circumstances, our client, the Vendor, treats the Agreement as terminated by reason of the Purchaser's default and treats the deposit as being forfeited to the Vendor as liquidated damages pursuant to section 20 of the Agreement. The Vendor reserves its rights to damages and costs against the Purchaser.

Yours truly,

Suzanne M. Séguin

SMS/malp

22014766.1



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

January 26, 2010

Suzanne M. Séguin
Lawyer
Dir: 416-863-5843
suzanne.seguin@blakes.com

VIA EMAIL, OVERNIGHT COURIER AND REGULAR MAIL

Reference: 75334/27

Ms. Michelle Simmonds
29 Vista Green Crescent
Brampton, ON
L7A 2S4

Dear Madam:

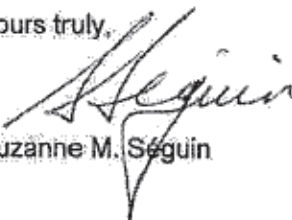
RE: The Rosseau Resort Developments Inc. ("RRDI") by Alvarez & Marsal Canada ULC, in its capacity as receiver and manager and trustee and not in its personal capacity, and by Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz Inc.), in its capacity as interim receiver and not in its personal capacity (collectively, the "Receiver") (RRDI, by its Receiver, hereinafter the "Vendor")
Sale to SIMMONDS, Michelle (the "Purchaser") pursuant to Agreement of Purchase and Sale dated August 22, 2009 (the "Purchase Agreement")
Suite 1110, Unit 22, Level 1, Muskoka Standard Condominium Plan No. 62 (the "Resort Unit")
RE: **Closing Date: January 28, 2010**

We are in receipt of your email dated January 25, 2010.

We advise, on behalf of the Vendor, that since you have not delivered your second deposit as required pursuant to the terms of the Purchase Agreement, despite our numerous requests, you are in breach of the Purchase Agreement. Accordingly, the Vendor hereby gives you notice of termination of the Purchase Agreement pursuant to clause 20 thereof. In addition to any other remedies to which the Vendor may be entitled, your deposit is hereby forfeited to the Vendor as liquidated damages.

The Vendor reserves its right to claim from you any and all damages arising out of your breach, as well as its legal costs for pursuing such claims.

Yours truly,



Suzanne M. Séguin

SMS/mm

APPENDIX “C”

The Rosseau Resort Developments Inc. ("RRDI")
by its Receiver and Manager and Trustee of its Assets,
Alvarez & Marsal Canada ULC
Receipts and Disbursements for the period - May 22, 2009 to February 28, 2011
Unaudited (\$)

	TOTAL
Receipts:	
Receiver's Borrowings	\$ 31,200,000
Condo Retail Sale Proceeds, Gross	4,523,129
Funds distributed from McCarthys - Commission Funds	869,347
Funds distributed from McCarthys - RRDI Trust Allocation	730,380
Interest	19,581
GST collected	886,617
PST collected	92,806
Pre-Receiver's bank account transfers	91,060
Miscellaneous	76,121
Marriott GST collected [1]	72,464
Total Receipts	38,561,505
Disbursements:	
RRDI payroll costs incl. source deductions	858,186
Independent contractors	552,432
Construction costs	3,241,605
Railing remediation	541,132
Furniture, fixtures & equipment	350,931
Red Leaves Resort Association	36,454
Construction consultants/contractors	618,872
Marriott working capital funding	4,175,000
Marriott Marketing & Licensing Agreement Fee	183,160
Marketing & advertising	747,840
Real estate commissions on retail sales	113,660
Commission claims payouts	303,432
Utilities, resort operating costs & realty taxes	303,514
GST paid	779,938
PST Paid	122,283
HST Paid	285,656
Marriott GST repayment [1]	72,464
Insurance	164,003
Office expenses	38,778
Loan paydown and fees on First Tranche Receiver's Borrowings	4,913,147
Interest and fees on Second and Third Tranche Receiver's Borrowings	1,121,147
Security	21,410
Professional fees and costs	11,603,179
Miscellaneous	13,395
Holdback trust account [2]	2,471
Total Disbursements	31,164,089
Excess Receipts over Disbursements [3]	\$ 7,397,416

NOTES:

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

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

[3] As at February 28, 2011, the Receiver was holding cash of approximately \$7.397 million comprised of approximately \$5.971 million representing the remaining funds on hand from Third Tranche Receiver Borrowings; \$566,000 previously held by McCarthys related to unpaid real estate commissions arising on pre-receivership unit sales, which are unclaimed following a commission claims process; and \$860,000 for a GST refund.

APPENDIX “D”

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

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

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

Notes:

1. The Receiver is in the process of collecting a GST refund. The quantum and timing of the receipt are unknown.
2. The Receiver issued a statement of claim for \$1.5 million against Ross Windows relating to the supply and installation of defective railings and windows. At this time, it is difficult to estimate the quantum and timing of any net proceeds.
3. Condominium Corporation fees are estimates and are payable once the 2011 Condominium Corporation budget is finalized. To date all Condominium Corporation fees have been satisfied by setting off such fees against amounts owing to RRD1 by the Condominium Corporation for reimbursement of costs paid by RRD1 in funding the costs that are to be shared by the Condominium Corporation pursuant to contractual arrangements between RRD1 and the Condominium Corporation. It is expected that future amounts payable in respect of Condominium Corporation fees, as estimated herein, will be similarly satisfied.
4. RRD1 property insurance for the commercial space to be paid in January 2011.
5. This is based on forecast operating losses provided to A&M by Marriott for the period up to December 31, 2010. As Marriott has not yet provided a forecast for 2011, forecast operating losses for the period January to April 2011 are based on January to June 2010 operating losses, but reflect an improvement of 20%.
6. Marriott is owed approximately \$180,000 with respect to an incentive fee payment related to the Receiver's sale of retail units.
7. Professional fees and costs includes payments to the Receiver, the Receiver's legal counsel, and the Receiver's independent legal counsel.
8. \$2.1 million in the budget is available to fund costs incurred after April 30, 2010 in connection with a sale transaction. The costs would be incurred subsequent to April 30, 2011.
9. As at October 31, 2010, the Receiver was holding cash of \$2,040 million comprised of \$744,000 representing the remaining funds on hand from the Tranche 2 borrowings; \$566,000 of funds previously held by McCarthy's related to unpaid real estate commissions arising on pre-receivership unit sales, which are unclaimed following a commission claims process; and \$730,000 of proceeds from funds previously held by McCarthy's which are for the benefit of the Estate. Once Tranche 3 borrowings are established, the Receiver plans to distribute the \$730,000 against the Tranche 1 borrowings and therefore has not included the \$730,000 in the 'Opening Cash' balance.
10. The forecast cash requirement is approximately \$8.7 million, which provides for approximately \$2.1 million to be available for costs associated with the receivership period after April 30, 2011.

APPENDIX 1
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