

# TAB 5

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**WESTLB AG, TORONTO BRANCH**

**Applicant**

**and**

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

**Respondent**

**APPLICATION UNDER 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**

**REPORT OF ALVAREZ & MARSAL CANADA ULC,  
AS PROPOSED RECEIVER AND MANAGER AND TRUSTEE  
OF THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.**

**MAY 19, 2009**

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## ***1.0 Introduction***

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- 1.1 WestLB AG, Toronto Branch, as agent for the Lender Syndicate of WestLB AG, Toronto Branch, and CIT Financial Ltd. (the “Syndicate”) has brought an application before this Honourable Court seeking the appointment of a receiver and manager, pursuant to Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended, and trustee pursuant to Section 68 of the *Construction Lien Act*, R.S.O. 1990 c. C. 30 (collectively, the “Receiver”) of all the property, assets and undertaking (the “Assets”) of The Rosseau Resort Developments Inc. (“RRDI” or the “Company”).
- 1.2 Alvarez & Marsal Canada ULC (“A&M”) has consented to act as Receiver in these proceedings. This report (the “Report”) has been prepared at the request of the Syndicate by A&M in its capacity as the proposed Receiver of the assets of the Company, to assist this Honourable Court in considering the Syndicate’s application for the appointment of a Receiver.
- 1.3 The purpose of this Report is to:
- Provide background information concerning the Company, its ownership and capital structure, and its relationship to and importance within the Red Leaves Partnership (“Red Leaves”), the parent entity of the Company and master developer of the Red Leaves project currently being developed in Minett, Muskoka, Ontario;
  - Set out the issues that caused the Syndicate to bring this receivership application;
  - Summarize the Company’s current financial and operating status, and estimated funding requirements;

- Describe the terms upon which the Syndicate will provide funding to the Receiver;
- Describe the activities that A&M, if appointed Receiver, intends to embark upon subsequent to its appointment; and
- Provide this Honourable Court with A&M's conclusions and recommendations.

## ***2.0 Terms of Reference***

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- 2.1 In preparing this Report, A&M has relied upon unaudited financial information prepared by the Company's management and the Company's consultants and advisors, the Company's books and records and discussions with its management. A&M 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 upon in this Report is based on management's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. A&M expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by A&M in preparing this Report. All references to dollar figures contained in this Report are in Canadian currency unless otherwise specified.

### ***3.0 Appointment of A&M***

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3.1 Pursuant to a letter agreement among A&M, the Syndicate, the Company and Ken Fowler Enterprises Ltd. (guarantor of the Company's indebtedness to the Syndicate and the majority partner of the sole shareholder of the Company) ("KFE" or the "Guarantor"), dated February 3, 2009 (the "Consulting Engagement Letter"), A&M was engaged by the Syndicate as its consultant to review, report and make recommendations to the Syndicate on the business, assets, affairs and operations of the Company, as well as the Company's financing needs. Pursuant to the Consulting Engagement Letter, the Company and the Guarantor understood and agreed that the Syndicate may, upon the Syndicate being entitled to exercise its rights and remedies under its security, if it considers same necessary or appropriate, appoint A&M as Receiver.



#### ***4.0 Background Information***

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- 4.1 Red Leaves is a master planned community currently being developed in phases on approximately 1,400 acres of land bordering on Lake Rosseau in Muskoka, Ontario, approximately 250 kilometres north of Toronto. Upon completion (which has been forecast for 2030), Red Leaves was envisaged to consist of approximately 2,900 residential units, including condominium/hotel units, single family dwellings, cottages, apartments, as well as other recreational amenities. Attached as **Appendix “A”** is a copy of the proposed ‘master plan’ for Red Leaves.
- 4.2 To date, Red Leaves has constructed The Rock Golf Course (“The Rock”), and RRDI is in the final stages of completing construction of a 221 unit J.W. Marriott Hotel/Condominium (the “Hotel”). The Hotel is comprised of two buildings – Longview (178 units) and Paignton House (43 units). The Hotel is the first ‘J.W. Marriott’ branded property in Canada and is intended to be a flagship property for Marriott in Canada. The Hotel includes a 15,000 square foot spa, conference centre, restaurants and common areas. The construction of Paignton House is scheduled to be completed some time in late May or early June 2009. Marriott commenced operating the Hotel in December 2008. Interim occupancy was granted to the purchasers of units in Longview in December 2008.
- 4.3 In connection with the Hotel, the Company entered into various agreements with Marriott Hotels of Canada, Ltd. and certain of its affiliates (“Marriott Hotels”) including, *inter alia*, a Hotel Management Agreement (the “Hotel Management Agreement”); License and Royalty Agreement (the “LRA”); and Technical Services Agreement (“TSA”) (the Hotel Management Agreement, LRA, and TSA are collectively referred to as the

“Marriott Hotel Agreements”). The Marriott Hotel Agreements govern the relationship between the Company and Marriott Hotels, and specify the terms, conditions and standards upon which the Company would construct the Hotel and Marriott Hotels would operate the Hotel. The Hotel was constructed as a condominium/hotel whereby the residential units of the Hotel would be marketed and sold to purchasers, who upon entering into certain agreements with both the Company and Marriott Hotels, would have defined access to the use of the unit which was purchased. When not in use by a respective owner, the unit would be included in the ‘rental pool’, and function as a traditional hotel suite operated by Marriott Hotels.

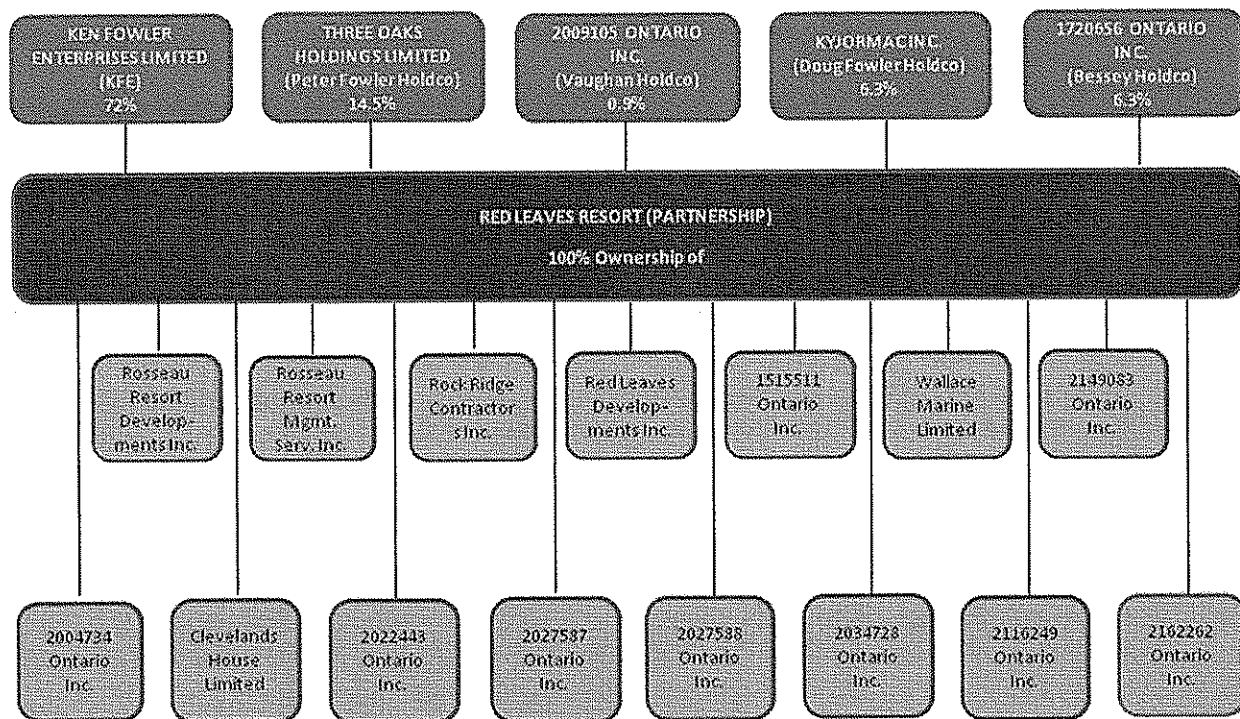
- 4.4 The terms of the Marriott Hotel Agreements require that any net operating losses generated by the Hotel or working capital requirements of the Hotel, are to be funded by the Company. A&M has had limited access to information regarding the Hotel’s operations and its personnel; however, A&M has been advised by the Company that since the commencement of operations, the Hotel has continuously generated monthly net operating losses, and is forecast to continue to do so at least until May 31, 2009. Pursuant to the terms of a letter agreement dated April 1, 2009 (the “Marriott Funding Letter”), among the Company, the Syndicate and Marriott Hotels, the Company agreed to fund approximately \$1.95 million to Marriott Hotels, to fund net operating losses and working capital requirements. In consideration of such payment, Marriott Hotels agreed not to declare a default or event of default prior to May 31, 2009, subject to certain conditions as set out in the Marriott Funding Letter. On April 30, 2009, pursuant to the Marriott Hotel Agreements, Marriott Hotels requested that the Company provide a further \$850,000 by June 2, 2009 to fund operating losses and working capital needs of the Hotel

(the "April 30, 2009 Marriott Funding Request"). A&M has not been provided with sufficient information to determine for what period this additional funding relates.

4.5 Pursuant to the LRA, Marriott Hotels is entitled to be paid certain amounts, capped at \$1.2 million, as a royalty fee with respect to assistance provided in the marketing for sale of Hotel units. Amounts payable under the LRA become due as unit closings occur and are payable the following month. The first such payment (estimated to be approximately \$85,000) was due April 20, 2009, but was not paid by the Company. A&M understands that the next payment owing to Marriott Hotels under the LRA is due May 20, 2009 (estimated to be approximately \$400,000).

4.6 As stated above, Longview and Paignton House comprise a total of 221 units. As at May 14, 2009, a total of 72 Longview units have been sold (and closed), and net proceeds of approximately \$22.5 million have been received. In addition, 40 units also located in Longview are subject to agreements of purchase and sale and had been forecast to close over the next several weeks. An additional 25 units located in Paignton House are also subject to agreements of purchase and sale and had been expected to close upon completion of construction of Paignton House and occupancy permits being obtained. In addition to the 72 units already closed (for net proceeds of \$22.5 million), if all other units which are currently subject to agreements of purchase and sale were to close, estimated net proceeds from those units are forecast to be approximately \$44 million. There are 84 units remaining to be sold but no marketing program is underway as described further below.

4.7 The corporate structure of Red Leaves is reflected in the following chart:



4.8 The majority partner of Red Leaves is KFE. A&M understands that KFE has invested approximately \$111 million into Red Leaves to date, of which approximately \$45 million relates to RRDI. As discussed further in this Report, A&M understands that KFE is unable to advance further equity funding to either Red Leaves or the Company.

4.9 The Assets which are owned by the Company, and are subject to the Syndicate's security, include:

- The Hotel and the real estate it is situated on; and
- Certain undeveloped lakefront and golf course lands surrounding the Hotel amounting to approximately 40 acres in total (the "Rosseau Lands").

4.10 The remaining Red Leaves assets are owned by the various other legal entities detailed on the corporate chart above (the "Non-RRDI Red Leaves Entities"). A&M understands

that the Syndicate has no security interest in the Non-RRDI Red Leaves Entities or the assets which they own, but does hold security granted by KFE. Unrelated parties hold various security interests in the Non-RRDI Red Leaves Entities. In addition to the principal Assets of the Company, the following provides a brief summary of the major entities and operating assets comprising the Non-RRDI Red Leaves Entities:

- Rock Ridge Contractors Inc. (“RRCI”) – RRCI is the general contractor/construction manager of the Hotel. The majority of the construction trades have provided services in connection with the construction of the Hotel to RRCI. Historically, the Syndicate has advanced funds to RRDI pursuant to the Syndicate Loan Facilities (as defined below), and RRDI would then make disbursements to RRCI to allow RRCI to meet its obligations to the subcontractors. Given the nature of the relationship between RRDI and RRCI (i.e. common ownership by Red Leaves), the administrative, finance and operating functions of these entities are intertwined. Consistent with the Company’s accounting records, the obligations of RRDI and RRCI have historically been presented on a combined basis.
- Red Leaves Developments Inc. (“RLDI”) – Developer of future Red Leaves developments.
- 1515511 Ontario Inc. – Owns The Rock. The Rock is a championship style, 18 hole golf course which was constructed in the Spring of 2004. The Rock is managed pursuant to an operating agreement with an affiliate of Marriott Hotels. A&M understands that Marriott has recently issued a default notice to The Rock and KFE, as guarantor of the financial obligations of The Rock.

- Clevelands House Limited (“Clevelands House”) – Owns the assets of Clevelands House which includes approximately 390 acres of nearby property. Clevelands House was founded more than 150 years ago and currently operates as a family style summer resort.
- Wallace Marine Limited (“Wallace”) – Owns the Wallace assets as well as approximately 700 acres of surrounding lands. Wallace operates as a marina and includes a gas bar, small general store, rest area, boat docks and other amenities.
- 2116249 Ontario Inc. (“Lakeside Lodge”) – Owns the Lakeside Lodge assets which include approximately 16 acres of surrounding lands. Lakeside Lodge previously operated as a family style summer resort but is currently not operating. Lakeside Lodge however, is being used as a residence for summer workers at the Hotel.
- Other numbered entities noted in the corporate structure chart above – A&M has been advised that the other numbered entities not described herein are either inactive, and/or are for potential future use or holding companies that contain certain minor parcels of real property.

With respect to the Non-RRDI Red Leaves Entities, A&M has had recent discussions with various Company employees, and understands that each of these entities are facing liquidity challenges.

## ***5.0 The Financing of the Company***

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5.1 The initial construction budget developed by the Company in April 2006 (the “April 2006 Budget”), forecast total costs to construct the Hotel of approximately \$135.2 million. As a result of cost overruns due to weather delays and construction change orders, the most recent budget developed by the Company (the “Current Budget”) indicates a total cost to complete the Hotel of \$169.6 million, which represents an increase from the April 2006 Budget of \$34.4 million or 25.4%. During February and March 2009, Altus Group Inc. (“Altus”), a reputable firm of construction cost consultants (formerly known as Helyar) conducted a review of the Current Budget on behalf of the Syndicate, and recommended that an additional \$5 million be added to the Current Budget (\$3.75 million for general construction contingency purposes and \$1.25 million for unit sale marketing costs). Accordingly, the revised Current Budget, based on Altus’ recommendations, is \$174.6 million.

5.2 Construction of the Hotel and development of the Rosseau Lands was to be financed from the following sources:

- \$113.5 million senior secured facility from the Syndicate which was divided into three tranches: (a) an \$83.8 million senior secured construction facility for the purpose of funding the construction of the Hotel (the “Longview/Paignton House Construction Phase”); (b) a \$12.8 million senior secured construction facility for the purpose of developing 31 residential condominium units on lands between Longview and Lake Rosseau (the “Waterfront Residences Construction Phase”); and (c) a \$16.9 million senior secured construction facility for the purpose of developing 51

residential units along The Rock (the “Golf Residences Construction Phase”) (the Longview/Paignton House Construction Phase, the Waterfront Residences Construction Phase, and the Golf Residences Construction Phase are collectively referred to as the “Syndicate Loan Facilities”). In addition to the aggregate funding available under the Syndicate Loan Facilities, pursuant to the terms of the Syndicate Loan Facilities and the security granted to the Syndicate, and also pursuant to the intercreditor agreement between Fortress Investment Group (“Fortress”) and the Syndicate (as discussed below), the Syndicate was permitted to advance an additional amount of up to 10% of the funded amount of the Syndicate Loan Facilities as a senior secured protective advance (the “Syndicate Protective Advance”) if deemed appropriate and necessary by the Syndicate to do so. The specific terms of the Syndicate Loan Facilities and the security granted to the Syndicate are detailed in the affidavit of Robert Dyck in support of the Syndicate’s application for the appointment of the Receiver.

- \$25.5 million subordinate loan from Fortress and certain of its affiliated funds which is secured by, *inter alia*, a second charge on the Assets and a second charge over the assets of the Non-RRDI Red Leaves Entities. A&M understands that the amount currently outstanding to Fortress is approximately \$30 million, including interest that has been accrued on the principal amount.
- The balance of funding required to complete construction of the Hotel was to be provided by equity from KFE and the other minority shareholders of Red Leaves, as well as the permitted use of up to 50% of deposit proceeds received in connection with the sale of Hotel units to purchasers, subject to the terms and conditions of a



Deposit Trust Agreement between the Company and the unit sale deposit insurer, Travelers Guarantee Company of Canada.

- 5.3 As at the date of this Report, the Syndicate has fully advanced the Longview/Paignton House Construction Phase of the Syndicate Loan Facilities. Furthermore, the Syndicate cancelled its commitments to the Company under the Waterfront Residences Construction Phase and the Golf Residences Construction Phase and accordingly, the Syndicate has fully advanced the Syndicate Loan Facilities. Notwithstanding the full advance of the Syndicate Loan Facilities, the Syndicate has provided funding to the Hotel by way of the Syndicate Protective Advance in response to the Company's urgent funding requirements. As at the date of this Report, the Syndicate has advanced approximately \$5.6 million under the terms of the Syndicate Protective Advance, resulting in total funding to the Company of approximately \$89.4 million.
- 5.4 Pursuant to the terms of an intercreditor agreement between the Syndicate and Fortress, all proceeds received from the sale of units were to be applied first to the repayment of the outstanding Syndicate Loan Facilities. As at the date of this Report, the Company has closed 72 unit transactions resulting in total net proceeds of approximately \$22.5 million. Accordingly, the outstanding amount under the terms of the Syndicate Loan Facilities would be reduced by this amount to approximately \$66.9 million; however, A&M understands that the Syndicate has not yet applied approximately \$255,000 of funds received against the Syndicate Loan Facilities. Therefore, the current outstanding balance of the Syndicate Loan Facilities is \$67.2 million.

## **6.0 *Current Financial and Operating Status of the Company and the Urgent Need to Commence Insolvency Proceedings***

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- 6.1 The Hotel commenced operations in December 2008 and unit sale closings for Longview commenced in March 2009. As at the date of this Report, some finishing work is still required for Longview and construction of Paignton House is nearing completion; however, a significant amount of money remains owing and outstanding to RRCI and other trade creditors, some or all of which may be in a position to assert valid lien claims over the Assets. A significant portion of the obligations owing by the Company relate back to the period prior to December 31, 2008.
- 6.2 The table below summarizes the total estimated outstanding and future costs necessary to complete construction of the Hotel and sell the remaining unsold Assets:

<b>Hotel Construction Costs to Complete</b> <b>As at April 21, 2009</b> <b>Unaudited</b>	
	<b>CAD\$000s</b>
<b>Hotel construction costs to complete:</b>	
Forecast costs to complete construction (excluding interest)	4,263
Estimated accounts payable (arising from January 1 to April 10, 2009)	1,825
Accounts payable (due prior to January 1, 2009)	536
Unfunded construction holdbacks (due prior to January 1, 2009)	3,363
Total amounts owing in respect of arrears	5,723
Unpaid interest (construction related) owing to Syndicate	379
<b>Subtotal</b>	<b>10,366</b>
Altus general construction purpose contingency	3,750
Altus sales and marketing contingency	1,250
<b>Total Hotel construction costs to complete</b>	<b>15,366</b>

As can be seen, the Company estimates it requires additional funding of \$10.366 million to complete construction of the Hotel and meet all of the actual and forecast obligations to creditors. Of that amount, \$5.723 million relates to amounts owing to creditors in arrears, with respect to either unpaid holdback deficiencies or trade accounts payable. On behalf of

the Syndicate, Altus has conducted a review of the forecast costs to complete construction of the Hotel and, subject to the inclusion of the contingency amounts of \$5 million, described in the table above, Altus is of the view that the forecast construction costs of \$15.366 million to complete the Hotel is reasonable.

6.3 The Syndicate has advanced substantially all of the funds available under the terms of the Syndicate Protective Advance, and neither the Company nor the Syndicate has been able to reach an agreement with Fortress whereby the Syndicate would be permitted to advance additional funds on a senior secured basis. KFE is either unwilling or unable to advance further equity to the Company. A&M understands that KFE is under significant pressure with respect to the extensive funding requirements of the other Non-RRDI Red Leaves Entities. While the Company has sought to obtain fresh financing, no other third party source of financing has been identified which could provide liquidity to the Company in the immediate timeframe and on the urgent basis required.

6.4 In the absence of immediate funding being made available to the Company, it is expected that construction trade creditors will assert their lien rights pursuant to the *Construction Lien Act (Ontario)* and discontinue efforts to complete construction of the Hotel. This will interfere with the ability of the Company to continue to realize on proceeds from the sale of units currently under agreements of purchase and sale, and also interfere with the Company's sale and marketing program to sell the remaining units. Furthermore, the Company will not have the ability to pay its employees, independent contractors and/or meet its other obligations in respect of the Assets. With summer approaching, the Hotel should be nearing its peak operating season and the Company is approaching its peak selling season for units in the Hotel. If funding is not made available and if construction of

the Hotel cannot be completed on an expeditious basis, the benefit of the peak selling season will be lost, summer revenues will be reduced, and the Company is at risk of defaulting on its obligations with respect to the Marriott Hotel Agreements, thus jeopardizing the operation of the Hotel, and eroding the Syndicate's security position.

6.5 Since the execution of the Consulting Engagement Letter, the majority of the Company's key employees in the financial and accounting area have resigned from their positions. On or about March 1, 2009, the Company's Director of Finance and Administration resigned from his position. On or about April 17, 2009, the Company's Chief Financial Officer advised A&M that he had resigned from his position. On or about April 24, 2009, the Company's Controller resigned from her position. Accordingly, only one individual remains who is employed by the Company in a financial control and accountability position. A&M is of the view that the impact of these resignations has left a significant management void at the Company.

6.6 Due to the lack of sufficient funding available to RRDI, construction at the Hotel has slowed considerably over the last several weeks. In some cases, suppliers have refused to deliver goods or render services due to significant arrears owing. Additionally, A&M understands that approximately \$140,000 of the Syndicate Protective Advance was recently paid by RRDI to trades to facilitate the delivery of goods for completion of Paignton House. However, upon receipt of funds from RRDI, these trades continued to refuse to deliver the goods and demanded payment in full. Altus has advised A&M that onsite construction has been reduced, in most cases, to skeleton crews principally focused on painting, finishing, deficiency rectification, and limited landscaping.

- 6.7 In addition to the above, A&M understands that on May 15, 2009, the Company had insufficient funds to pay construction holdback amounts (approximately \$900,000) owing to certain of its trade creditors pursuant to letter agreements entered into between those trade creditors and the Company. Also, approximately nine key individuals provide site supervision and construction services to RRCI (the "RRCI Subcontract Employees"). The RRCI Subcontract Employees were owed amounts (approximately \$50,000) in connection with their contractor fees for the two-week period ended May 15, 2009. Prior to May 15, 2009, A&M understands that the RRCI Subcontract Employees had always been paid on time and are accordingly expected to withdraw their services effective May 19, 2009.
- 6.8 A&M understands that since April 30, 2009 only two Hotel units have closed. In a few cases, the Company has been unable to complete unit sales due to Fortress being unwilling to provide its consent to the release of its security over those particular Hotel units. As a result of the unit closing process stalling, the Company has been unable to further reduce the Syndicate Loan Facility, notwithstanding that in some instances, unit purchasers have been prepared to close their respective sale transactions.
- 6.9 As a result of insufficient funds available to it, the Company has been unable to put in place a sales and marketing program with respect to the remaining unsold Hotel units and the Rosseau Lands. A&M understands that the Company has engaged a real estate broker to assist in this sales process; however, no formal sales and marketing program has been communicated to the Syndicate and A&M. As the summer season approaches, the Company is nearing its peak selling season. Apart from the other challenges facing the Company, in the absence of the implementation of a formal sales and marketing plan that is

sufficiently funded, there is little likelihood that the remaining Hotel units and the Rosseau Lands will be sold in the near future.

## ***7.0 The Receiver's Borrowings***

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- 7.1 Attached as **Appendix "B"** is a copy of the term sheet (the "Term Sheet") provided by the Syndicate to fund the proposed receivership borrowings (the "Receiver's Borrowings"). The Term Sheet contemplates that the Syndicate will provide a \$15 million senior secured debt facility, repayable on demand, which will rank in priority to all other obligations of the Company (except for obligations secured by the proposed charge in favour of the Receiver) and will be made available to the Receiver for the purpose of funding the costs and expenses of the receivership upon the issuance of certificates by the Receiver.
- 7.2 A&M believes that the terms of the Term Sheet and the proposed Receiver's Borrowings are commercially reasonable in the circumstances. While the fees to the Syndicate and the margin being charged is more expensive than those which are currently being charged by the Syndicate, the margin is consistent with the default margin applicable under the Syndicate Loan Facility. Based on A&M's experience, knowledge of the capital markets and current economic conditions, these fees and costs are consistent with borrowings in insolvency proceedings of this magnitude. A&M further understands that the Company and KFE have been attempting to identify and secure a third party source of fresh financing for the Company for a significant period of time. No such party has been identified which is able or willing to advance such required funds on the urgent basis necessary, and the Syndicate is not in a position to wait further for such a source of financing to be ultimately identified and secured. Accordingly, the proposed Term Sheet represents the only source of funding available in the current situation. The Syndicate has reviewed its security position and believes that the proceeds realized to date and those

forecast to be realized from all other Asset sales will be significantly less than the amounts outstanding under the Syndicate Loan Facility and the contemplated Receiver's Borrowings.

- 7.3 As described in the table below, it is estimated that the Receiver's Borrowings will be used to fund the following costs and expenses during the Receivership:

<b>Summary of Estimated Receivership Funding Requirements</b> <b>For the period ending December 31, 2010</b> <b>Unaudited</b>	
	<b>CAD\$000s</b>
<b>Estimated receivership funding requirements:</b>	
Forecast costs to complete construction (excluding interest)	4,263
Altus construction contingency	3,750
Red Leaves general overhead costs and estimated operating and marketing costs	2,750
Estimated professional fees	4,500
<b>Total estimated receivership funding requirements</b>	<b>15,263</b>

- 7.4 It is A&M's intention, if appointed Receiver, to utilize the proceeds from the Receiver's Borrowings to fund:

- The ongoing forecast costs associated with completing construction of the Hotel (currently estimated by the Company to be approximately \$4.3 million plus a general construction contingency amount of \$3.75 million as estimated by Altus);
- General overhead costs, including the costs of retaining certain key employees of Red Leaves who A&M believes are necessary to assist in maintaining the ongoing operations of the Company, and the costs associated with the Receiver executing on a sales and marketing program to realize on: (i) the unsold Hotel units (84 remain unsold); (ii) the Rosseau Lands; and (iii) the residual value, if any, of the Hotel; and



- The professional fees and costs in connection with these proceedings.

7.5 With respect to past due amounts owing to trade creditors, including holdback deficiency amounts, A&M, acting in a capacity as trustee under the *Construction Lien Act*, intends to undertake a claims administration process (the “Claims Process”) pursuant to the *Construction Lien Act*, whereby all construction trade creditors will have an opportunity to assert claims for amounts owing to them and be paid out of the proceeds of Asset sales, in accordance with their priority and lien rights, if any, as so determined. The Receiver’s Borrowings contemplate the paydown of advances from proceeds as otherwise received. The Receiver would intend to periodically, as appropriate, make an application to Court to make recommendations to this Honourable Court with respect to: (i) the priority status of lien claimants; and (ii) requesting approval to make interim distributions in accordance with creditors’ proven priorities.

## ***8.0 Proposed Activities of the Receiver***

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8.1 If appointed Receiver by this Honourable Court, A&M intends to embark on the following activities to stabilize the operations of the Company and preserve the value of the Assets for all stakeholders:

- Meet with Marriott Hotels to secure its continuing support and maintain the Marriott Hotel Agreements such that the Hotel operations will continue uninterrupted;
- Communicate with employees, trade suppliers, construction contractors, and other critical stakeholders to establish and confirm arrangements for payment for ongoing services, and to obtain the support of contractors needed to complete construction of the Hotel;
- Communicate with all unit purchasers who have not yet closed their contracted sale transactions with the Company to confirm that such sales will continue to be completed in these receivership proceedings, the Hotel is expected to continue to operate in the normal course throughout these receivership proceedings and construction of the Hotel will be completed as planned;
- Communicate with all unit purchasers who have already completed their unit purchase transactions with the Company to confirm that it is planned that the Hotel will continue to operate in the normal course throughout these receivership proceedings, construction of the Hotel will be completed as planned, and that the expectation is that the remaining unsold units will be sold pursuant to a Court approved sale process;

- Engage Altus as the Receiver's construction advisor, to oversee completion of construction of the Hotel, authorize payments to the trades, and provide advice to the Receiver in matters relating to construction and real estate valuation, as required;
- Determine which employees and advisors of the Company are required to assist the Receiver in maintaining the ongoing operations of the Company and enter into appropriate arrangements with them;
- Establish trust bank accounts to receive proceeds from unit sale closings and Asset sales;
- Develop a sales and marketing program to realize on: (i) the unsold Hotel units; (ii) the Rosseau Lands; and (iii) the residual value, if any, of the Hotel (the "Sales and Marketing Program"), and return to Court to seek approval of the Sales and Marketing Program;
- Engage legal counsel to the Receiver to, *inter alia*, conduct a review of creditors' security (and Fortress', if necessary) and provide an opinion as to the validity and enforceability thereof;
- In accordance with its powers as trustee pursuant to the *Construction Lien Act*, administer the Claims Process as approved by the Court, and subsequently seek Court approval to make recommendations with respect to: (i) affirming the priority status of lien claimants; and (ii) approving distributions in accordance with creditors' proven priorities;
- Seek direction from this Honourable Court as and when required; and

- Seek approval and authorization from this Honourable Court to distribute unit sale proceeds and proceeds from Asset sales to the Syndicate, subject to prior repayment of the Receiver's Borrowings and the proven priorities of other creditors.

## ***9.0 Conclusions and Recommendations***

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- 9.1 The Company is insolvent and, to the knowledge of A&M and the Syndicate, does not have access to immediate funding from any source other than the proposed Receiver's Borrowings. In the absence of immediate funding, construction trade contractors will be in a position to assert their lien rights, construction of the Hotel will likely cease completely, causing unit sale closings to be deferred indefinitely, and the Marriott Hotel Agreements would be in jeopardy. In these circumstances, all unit purchasers may be unable to realize the benefits of their respective units. Furthermore, the Syndicate's security position will be expected to erode.
- 9.2 Several key financial and accounting employees have resigned over the course of the past several weeks, resulting in a management void and placing the efficient operations and financial control of the Company at risk. Without the stabilizing influence of a receivership and the availability of the Receiver's Borrowings, it is unlikely that any employees will continue in their positions.
- 9.3 There is currently no formal sales and marketing program in place which has been communicated to the Syndicate or A&M, that has sufficient funding to realize on the remaining unsold Hotel units and the Rosseau Lands.
- 9.3 A&M believes that, in the circumstances, these proceedings will result in the best outcome available for the stakeholders.
- 9.4 The estimated security position of the Syndicate is significantly impaired, and accordingly, it is highly unlikely that any creditors subordinate to the senior secured security interest of the Syndicate will obtain any proceeds from realizations. Attached

hereto as **Confidential Appendix "1"** is a copy of an assessment prepared by A&M of the estimated security position of the Syndicate as at May 19, 2009. As Confidential Appendix "1" contains sensitive financial information which, if disclosed publicly, could potentially prejudice the position of certain stakeholders, A&M respectfully requests that this Appendix, which is filed separately in a sealed envelope and marked by its Appendix number, remain sealed and only be opened and viewed by the Judge presiding over this Application, and be returned to its envelope and sealed after the hearing of this Application and not form part of the permanent Court file.

9.5 Based on the above, A&M respectfully recommends that this Honourable Court issue an order:


- Appointing A&M as Receiver;
- Approving the proposed activities of A&M as set out in this Report; and
- Sealing the contents of **Confidential Appendix "1"** until the completion of these receivership proceedings.

\* \* \*

All of which is respectfully submitted, this 19<sup>th</sup> day of May, 2009

**ALVAREZ & MARSAL CANADA ULC AS PROPOSED  
RECEIVER AND MANAGER AND TRUSTEE OF  
THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.**

Per:

  
Richard A. Morawetz

# TAB A

**ADVENTURE CENTER**  
 100,000 sq. ft.  
 100,000 sq. ft.  
 100,000 sq. ft.

**MOUNTAIN TOP SPA**  
 100,000 sq. ft.  
 100,000 sq. ft.  
 100,000 sq. ft.

**CONFERENCE CENTER & DINETTE**  
 100,000 sq. ft.  
 100,000 sq. ft.  
 100,000 sq. ft.

**THE ROCK COTTAGES**  
 100,000 sq. ft.  
 100,000 sq. ft.  
 100,000 sq. ft.

**MARINA CLUB**  
 100,000 sq. ft.  
 100,000 sq. ft.  
 100,000 sq. ft.

**52.53**  
 100,000 sq. ft.  
 100,000 sq. ft.

**51**  
 100,000 sq. ft.  
 100,000 sq. ft.

**51.01, 51.02**  
 100,000 sq. ft.  
 100,000 sq. ft.

**51.03, 51.04**  
 100,000 sq. ft.  
 100,000 sq. ft.

**51.05**  
 100,000 sq. ft.  
 100,000 sq. ft.

**52**  
 100,000 sq. ft.  
 100,000 sq. ft.

**52.01, 52.02**  
 100,000 sq. ft.  
 100,000 sq. ft.

**52.03, 52.04**  
 100,000 sq. ft.  
 100,000 sq. ft.

**52.05, 52.06**  
 100,000 sq. ft.  
 100,000 sq. ft.



**41.01, 41.02, 41.03, 41.04**  
 100,000 sq. ft.  
 100,000 sq. ft.

**THE MEADOW (HAWK)**  
 100,000 sq. ft.  
 100,000 sq. ft.

**J.W. MARRIOTT LONGVIEW**  
 100,000 sq. ft.  
 100,000 sq. ft.

**LAVENDER PH 2**  
 100,000 sq. ft.  
 100,000 sq. ft.

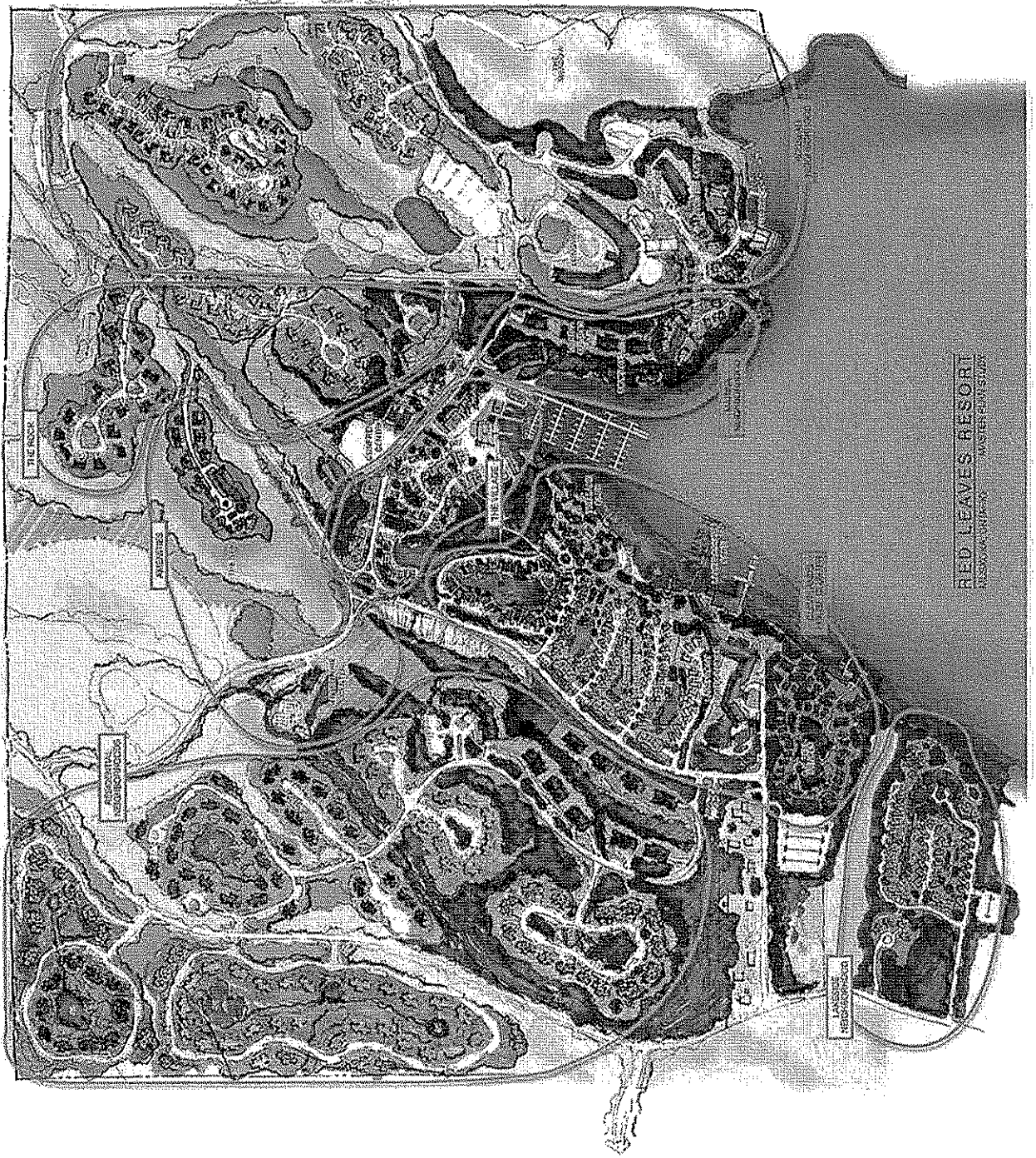
**PAGETON HOUSE**  
 100,000 sq. ft.  
 100,000 sq. ft.

**RED-HOOK 2**  
 100,000 sq. ft.  
 100,000 sq. ft.

**LAVENDER COTTAGES**  
 100,000 sq. ft.  
 100,000 sq. ft.

**MARINA COUCHMANIA**  
 100,000 sq. ft.  
 100,000 sq. ft.





RED LEAVES RESORT  
NEW & IMPROVED MASTER PLAN 2000

# TAB B

## Term Sheet

<b>BORROWER:</b>	Alvarez & Marsal Canada ULC, in its capacity as receiver and manager and trustee (in such capacity, the " <u>Receiver</u> ") of all of the assets, properties and undertaking (the " <u>Assets</u> ") of The Rosseau Resort Developments Inc. (" <u>RRDI</u> ") appointed by Order of the Ontario Superior Court of Justice dated May •, 2009 (the " <u>Appointment Order</u> ").
<b>LENDER:</b>	WestLB AG, Toronto Branch, as Agent for certain lenders from time to time (the " <u>Lender</u> ").
<b>CREDIT FACILITY:</b>	Senior secured loan facility (the " <u>Facility</u> ") in the total principal amount of \$15,000,000 (the " <u>Commitment</u> "), repayable on demand. Amounts repaid by the Receiver following demand by the Lender and applied against the Facility cannot be reborrowed.
<b>DRAWDOWN:</b>	As required by delivery by the Receiver of drawdown notice (" <u>Drawdown Notice</u> ") from time to time in form and substance satisfactory to the Lender.
<b>USE OF FUNDS:</b>	General receivership purposes including but not limited to the funding of (i) future costs for the continued development and construction of The Rosseau Hotel located in Muskoka, Ontario; (ii) obligations of RRDI to Marriott Hotels of Canada Ltd. (" <u>Marriott</u> ") under the Amended and Restated Management Agreement dated October 6, 2006 and related agreements, or on such other terms as may be agreed to by the Receiver and Marriott from and after the date of this Term Sheet; (iii) obligations of RRDI in order to facilitate the closing of agreements of purchase and sale entered into by RRDI and certain purchasers of condominium units; (iv) the sales process to be conducted by the Receiver with respect to the assets and business of RRDI; (v) operational expenses of RRDI; (v) professional costs of the Receiver, its counsel and advisors; and (v) all other activities of the Receiver.
<b>REPAYMENT:</b>	Immediately upon demand, provided that the Facility shall be repayable in full on December 31, 2010, or such later date as the Lender may agree to in writing.
<b>INTEREST RATE:</b>	The Prime rate of interest per annum established and reported by the Lender from time to time as the reference rate of interest it charges to customers for Canadian Dollar denominated commercial loans made by the Lender in Canada, plus 6.5%, such interest to be calculated monthly.
<b>CONDITIONS PRECEDENT TO FUNDING:</b>	The obligation of the Lender to make the Commitment available to the Receiver is subject to the following conditions precedent, which shall be satisfied on or before _____, 2009:
	(a) the Receiver shall have obtained the Appointment Order in form and substance satisfactory to the Lender and its counsel (i) appointing the Receiver as receiver and

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Toronto Branch  
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200 Bay Street  
Toronto, Ontario M5J 2J1

Tel: (416) 216-5000  
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**Managing Board:**  
Hubert Beckmann (Vice Chairman),  
Dietrich Voigtländer (Vice Chairman),  
Klemens Breuer, Thomas Groß,  
Dr. Hans-Jürgen Niehaus, Werner Taiber

**Head of the Supervisory Board:**  
Michael Breuer

**Reg. Amtsgerichte**  
Düsseldorf, HRB 42975  
Münster, HRB 6400  
**Registered Office:**  
Düsseldorf/ Münster

	<p>manager and trustee of the Assets; (ii) authorizing the Receiver to execute and deliver this Term Sheet and authorizing the Receiver to borrow funds from the Lender on the terms and conditions hereunder; (iii) authorizing the Receiver to secure its obligations hereunder by the issuance, from time to time, of Receiver's Certificates as defined in the Appointment Order ; (iv) granting a first-priority charge in favour of the Lender, in priority to all other present and future liens, charges, construction liens, security and encumbrances, whether legal or equitable, on the assets, properties and undertaking of RRDl subject only to the Receiver's Charge (as defined by the Appointment Order), to secure all obligations owing by the Receiver to the Lender hereunder (the "<u>Lender's Charge</u>"); (v) authorizing and directing the Receiver to execute and deliver such other documents as may be required by the Lender from time to time and such other security documents as the Lender may require; (vi) authorizing the Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the Lender's Charge; (vii); authorizing the Receiver to receive funds on behalf of RRDl and apply same to satisfy its obligations owing to the Lender hereunder; and (viii) authorizing the Receiver to use the funds borrowed for the purposes set out herein under the heading "Use of Funds";</p>
	<p>(b) the Lender shall be satisfied that (i) there are no mortgages, pledges, charges, security interests or other encumbrances ranking ahead of the Lender's Charge, including any such mortgages, pledges, charges, security interests or other encumbrances as provided for by the Court, except as have been disclosed to and hereafter expressly accepted by the Lender; and</p>
	<p>(c) the Lender shall be satisfied that there have been no material adverse changes, individually or in the aggregate, in the business, activities, financial condition or other condition of RRDl, except for the appointment of the Receiver or as otherwise disclosed to the Lender on or before the date hereof.</p>
COVENANTS:	<p>(a) The Receiver shall not incur financial liabilities on behalf of RRDl other than as set out herein except in accordance with its operation of the business of RRDl in the ordinary course of business and its activities described under "Use of Funds" or in the Appointment Order;</p> <p>(b) The Receiver shall not enter into any arrangements (or amend any existing arrangements) with Marriott or any other material creditor without the written consent of the Lender;</p> <p>(c) The Receiver shall obtain the Lender's prior written consent to any sale, lease or other disposition of assets, properties and undertaking of RRDl (a "<u>Sale</u>");</p> <p>(d) The Receiver shall provide weekly reports on RRDl's cash flow and working capital, and shall promptly notify the</p>

	<p>Lender of any material adverse change in the business, activities, financial condition or other condition of RRDI;</p> <p>(e) All amounts received by the Receiver from the Sale shall, subject to obtaining approval of the Court, be applied to permanently reduce the obligations owing by the Receiver to the Lender hereunder; and</p> <p>(f) There shall be no change or amendment to the form of Appointment Order without the consent of the Lender.</p>
SECURITY:	<p>Security shall include the following, in form and substance satisfactory to the Lender:</p> <p>(a) The Appointment Order containing the Receiver's Charge registered against title to all real property of RRDI; and</p> <p>(b) Receiver's Certificates issued by the Receiver to the Lender to secure each drawdown in the amount set forth in each Drawdown Notice.</p>
EVENTS OF DEFAULT:	<p>Usual events of default to apply and to include:</p> <p>(a) Any order amending, supplementing, staying, vacating or otherwise modifying the Appointment Order or terminating the Receiver's appointment, without the Lender's consent;</p> <p>(b) Failure by the Receiver to pay any principal amount outstanding hereunder when the same shall become due and payable hereunder (including when demanded); and</p> <p>(c) Failure by the Receiver to pay when demanded any interest accrued on the Facility or any expenses, including reasonable fees and disbursements (including legal and other professional fees) incurred by the Lender in the preparation and negotiation of this Term Sheet and any enforcement of the Lender's rights hereunder or pursuant to the Lender's Charge;</p>
NO A&M LIABILITY:	<p>Alvarez &amp; Marsal Canada ULC shall not have any personal liability to repay any principal amount or any interest, fee or other amount owing hereunder and the Lender's recourse with respect thereto shall be limited to the Assets.</p>
FEES:	<p>3% of the Commitment.</p>

ACCEPTANCE

The foregoing term sheet is hereby accepted and agreed to.

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

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

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

Date: \_\_\_\_\_

**WESTLB AG, TORONTO BRANCH**  
**In its capacity as Agent for the Lenders**

By: 

Name: **Robert L. Dyck**  
**Executive Director**

Date: May 19, 2009

  
**NEAL MEGANNETY**  
**Director**

# **TAB 1**

**Confidential Appendix “1”**

**ASSESSMENT OF THE SYNDICATE’S ESTIMATED  
SECURITY POSITION**

**THE DOCUMENTS IN THIS APPENDIX ARE SUBJECT TO A  
SEALING ORDER REQUEST AND ARE TO BE KEPT  
STRICTLY CONFIDENTIAL AND ARE NOT TO BE  
DISCLOSED TO ANYONE EXCEPT THE JUDGE HEARING  
THE APPLICATION.**

THE ROSSEAU RESORT DEVELOPMENT INC.

V.

WESTLB AG, TORONTO BRANCH

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPLICATION RECORD  
VOLUME II OF II**

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