

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

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

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

(Motion returnable August 17, 2009)

Date: August 12, 2009

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

**ONTARIO
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ACT, R.S.O. 1990, C. C. 43, AS AMENDED, AND SECTION 68 OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, C. C. 30, AS AMENDED**

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 - B. Second Report
 - C. Condominium Disclosure Documentation Excerpt
 - D. Letter dated August 5, 2009
 - E. Redacted Summary of Terms
 - F. New Rental Pool Management Agreement

- G. Condominium Corporation Declaration
- H. Unit Owner Settlement Agreement
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**ONTARIO
SUPERIOR COURT OF JUSTICE
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**FOURTH REPORT OF
ALVAREZ & MARSAL CANADA ULC,
AS RECEIVER AND MANAGER AND CONSTRUCTION LIEN ACT TRUSTEE AND
MCINTOSH & MORAWETZ INC., AS INTERIM RECEIVER
OF THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.**

AUGUST 12, 2009

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1.0 Introduction

- 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. 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
- 1.2 A&M, as proposed receiver, filed a report dated May 19, 2009 and a supplementary report dated May 20, 2009 (collectively the “A&M Report”) in these proceedings in support of the application brought before this Honourable Court by WestLB AG, Toronto Branch (“WestLB”), as agent for the Lender Syndicate (the “Syndicate”) for the appointment of the Receiver.

¹ Capitalized terms in this Fourth Report shall have the meanings ascribed to them in the Glossary of Defined Terms attached as Appendix “A”, unless otherwise defined herein.

- 1.3 The Interim Receiver filed its first report dated May 27, 2009 with this Honourable Court and filed a supplementary report dated May 29, 2009 to its first report (the first report and the supplementary report being collectively defined as the “First Report”). The First Report provided this Honourable Court with, among other things, an update on the Interim Receiver’s activities from the date of its appointment as Interim Receiver to the date of the First Report.
- 1.4 The Receiver filed its second report dated July 3, 2009 with this Honourable Court (the “Second Report”) in connection with a motion seeking approval of a Sales and Marketing Process as defined therein. Among other things, the Second Report: (a) provided background information regarding the various agreements that RRDI is a party to in connection with both the management of the Hotel and the Rental Pool; (b) provided a summary of certain issues identified by the Receiver in respect of these agreements which needed to be addressed; and (c) described the Sales and Marketing Process. A copy of the Second Report is attached as Appendix “B”.
- 1.5 On July 8, 2009, this Honourable Court issued an order (the “Sales and Marketing Order”), which among other things, authorized the Receiver to undertake the Sales and Marketing Process, including the sale and marketing of the 84 unsold condominium units at the Hotel (the “Unsold Units”) not currently subject to agreements of purchase and sale (“APS”), together with the residual interest of RRDI in the Hotel and all other Assets.
- 1.6 The Sales and Marketing Order authorized the Receiver to commence the Sales and Marketing Process consisting of: (a) the Retail Sales Program; and (b) the Institutional Sales Process (each of which are described in the Second Report) and to retain Baker

Real Estate Incorporated (“Baker Real Estate”) and Colliers MaCaulay Nicolls (Ontario) Inc. (“Colliers”) as the brokers to conduct the Retail Sales Program and Institutional Sales Process, respectively.

- 1.7 The Receiver filed its third report dated July 21, 2009 (the “Third Report”) with this Honourable Court in connection with a motion for approval of the proposed marketing and promotional program (the “Retail Marketing Program”) planned by Baker Real Estate in respect of the Retail Sales Program as well as the proposed price list (the “Baker Price List”) that Baker Real Estate developed for the Unsold Units. On July 24, 2009, the Receiver sought and obtained this Honourable Court’s authorization to proceed with the Retail Marketing Program and the Court approved the Baker Price List.
- 1.8 This Fourth Report is filed in connection with a motion to repudiate the existing Hotel management and Rental Pool management arrangements and approve new arrangements which are necessary for the effective management of the Hotel and the sale of the Unsold Units and residual interest in the Hotel, and which are necessary to have in place for the success of the Retail Sales Program.

2.0 Terms of Reference

2.1 In preparing this Fourth Report, the Receiver has relied on 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. 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 Fourth Report is based on management's 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 Fourth Report, or relied upon by the Receiver in preparing the Fourth Report. All references to dollar figures contained in the Fourth Report are in Canadian currency unless otherwise specified.

3.0 Executive Summary

3.1 As described in its previous reports and for the various reasons set out herein, the Receiver has continuously expressed concern, and has now concluded that: (a) the financial and legal structure underlying the Hotel's Rental Pool and the form of Rental Pool Management Agreements ("RPMA(s)") entered into between RRMSI (an affiliate of RRDI) and certain Unit Owners, are not viable in their current form; and (b) the Current HMA among RRDI, RRMSI and Marriott Hotels can neither be adopted nor assumed by the Receiver on behalf of RRDI. Accordingly, the Receiver has determined that it must implement a restructuring of the various agreements and arrangements that RRDI is a party to which relate to both the Hotel's Rental Pool and RRDI's relationship with Marriott Hotels.

3.2 Among other things, this Fourth Report describes:

- The steps that the Receiver proposes to take, including the entering into by RRDI of New RPMAs with Unit Owners, Existing Purchasers and New Unit Purchasers, to restructure the Rental Pool and enable it to be financially viable so that the Receiver can: (a) sell the Unsold Units to purchasers pursuant to the Retail Sales Program; and (b) ultimately sell the residual interest in the Hotel pursuant to the Institutional Sales Process;
- The terms on which the Receiver proposes to complete new bilateral arrangements with Marriott Hotels to continue to manage the Hotel during the receivership, subsequent to the repudiation of the Current HMA; and

- The successful outcome of negotiations with the Ad Hoc Committee of Unit Owners (the “Committee”) and the distribution to Unit Owners and Existing Unit Purchasers of Settlement Agreements whereby, subject to certain conditions, Unit Owners and Existing Unit Purchasers will see 50% of the various Purchaser Incentives agreed to by RRDI, honoured by the Receiver.

3.3 The Receiver believes that the steps outlined in this Report are necessary in order to preserve the value of the Assets, maintain and continue the operations of the Hotel and successfully carry out the Sales and Marketing Process. In the absence of the proposed restructuring and the entering into of new agreements, the Receiver does not believe that it will be able to realize on the Assets for the benefit of all stakeholders and that the operations of the Hotel will be jeopardized.

3.4 The steps proposed in this Fourth Report must be implemented as soon as possible so that the Receiver can continue with and complete the Retail Sales Program, which contemplates a “One-Day Only Sale” on August 22, 2009. In order to undertake sales of Units to prospective New Unit Purchasers, the Receiver must have in place for the One-Day Only Sale the necessary arrangements with Marriott Hotels, an appropriate and workable form of RPMA and the requisite Disclosure Documentation to facilitate Unit sales pursuant to the Retail Sales Program.

4.0 Background

- 4.1 As discussed in the Receiver's earlier reports, the Hotel is structured as a condominium hotel. The Units are owned by individual Unit Owners who purchase the Units. The Units are required to be included in a Rental Pool by which Units are made available to guests at the Hotel. This requirement is essential to the operation of the Hotel. RRDI is obliged under the Current HMA to cause all Unit Owners to enter into a form of Rental Pool Management Agreement with RRMSI as the Rental Pool Manager (the "Current RPMA(s)"). Pursuant to the Current RPMA, all of the Units are required to be available for rent to the public except during periods of Unit Owner use. The Current RPMA has been executed by 59 of the 73 Unit Owners and 28 of Existing Unit Purchasers on interim occupancy. The remaining 14 Unit Owners did not execute a Current RPMA on closing or interim occupancy, and other Existing Unit Purchasers have not yet executed a Current RPMA.
- 4.2 The Current HMA and the Current RPMA are interrelated. The Current RPMA requires the payment of revenue by the Rental Pool Manager to Unit Owners. The Rental Pool Manager's primary ability to fulfill this obligation arises from the payment of Operating Profit by Marriott Hotels under the Current HMA ("Operating Profit", as that term is defined in the Current HMA). Under the Current RPMA, the Rental Pool Manager undertakes the responsibility for maintaining the Units for Unit Owners and renting them out to guests of the Hotel. In turn, under the terms of the Current HMA, the Rental Pool Manager has delegated all of these maintenance and rental responsibilities to Marriott Hotels.

4.3 Since the commencement of the receivership proceedings, the Receiver has undertaken a review of the Current HMA and the Current RPMAs. In its Second Report, the Receiver expressed concerns about the Current RPMAs and the Current HMA. Among other things, the Current HMA is structured with both RRMSI and RRDI as Owner, joint and several, with no indication as to which entity should receive distributions from Marriott Hotels. Further, the distribution of Operating Profit under the Current HMA does not match the expectation of distributable profit to Unit Owners under the Current RPMAs. The Second Report contains a detailed description of these agreements. This Fourth Report sets out the basis of the Receiver's concerns, and the solution proposed by the Receiver.

5.0 Current Hotel Management Agreement

- 5.1 The Current HMA is an agreement among Marriott Hotels, RRDI and RRMSI, both of whom are identified as “Owner” in that agreement. It has an initial term of 25 years after the year in which the Hotel opens, with automatic renewal terms for each of four successive periods of ten years, unless Marriott Hotels elects not to renew the initial term or any subsequent renewal term.
- 5.2 The Current HMA was described in detail in the Second Report. An important feature to note is that the obligations of RRDI and RRMSI under the Current HMA are joint and several. In its dealings with RRDI and/or RRMSI under the Current HMA, Marriott Hotels is entitled to deal and interact with, and otherwise treat either of RRDI or RRMSI as the Owner. The Current HMA does not specify which Owner (RRDI or RRMSI) is to receive payment of Operating Profit, if any, but permits Marriott Hotels to treat either Owner as the Owner for any purpose under the Current HMA.
- 5.3 To date, notwithstanding its joint obligation under the Current HMA as Owner, RRMSI has not participated in the funding of any Operating Losses, working capital deficiencies or pre-opening expenses that have been incurred by Marriott Hotels and are required to be funded by the Owner under the Current HMA. To the extent payments have been made to Marriott Hotels (approximately \$3.5 million to date), these expenses have been borne solely by RRDI and the Receiver. Pursuant to the Sales and Marketing Order, the Court granted an interim order requiring any payments by Marriott Hotels under the Current HMA to be paid to the Receiver, since the Current HMA does not specify which entity payments should be made to.

Lack of Viability of Current Hotel Management Agreement

5.4 The Receiver cannot adopt the Current HMA for the following reasons:

- The Current HMA does not distinguish as between RRMSI and RRDI with respect to who has the right to receive distributions of Operating Profit as an Owner, notwithstanding that RRMSI has no ownership interest in the Hotel. Marriott Hotels is not prepared to treat RRDI alone as Owner under the Current HMA, although the terms of the Current HMA arguably allow it to do so;
- The existence of RRMSI, a company over which the Receiver has no control, as a joint and several Owner under the Current HMA, makes it an agreement that the Receiver would find difficult, if not impossible, to assign to an institutional purchaser in connection with the purchase of the residual interest in the Hotel;
- The obligations of RRMSI as Rental Pool Manager are delegated to Marriott Hotels under the Current HMA. RRMSI will no longer be delegated the role of Rental Pool Manager upon the proposed repudiation by the Receiver of this delegation to RRMSI;
- The Current HMA provides for RRMSI as Rental Pool Manager, which the Receiver does not wish to continue; and
- If adopted, the Receiver would be bound by the terms of the Current HMA. There is no flexibility to terminate the Current HMA in the event that the Receiver wishes to sell the residual interest in the Hotel to an institutional purchaser who does not want to retain Marriott Hotels as operator.

5.5 Given these issues, the Receiver has consistently advised Marriott Hotels that it is not in a position to adopt or assume the Current HMA or the Other Current Marriott Agreements. Its position in respect of these agreements was reflected in the Sales and Marketing Order, which provides that:

“The Receiver has not and nothing in this Order shall deem the Receiver to have adopted the HMA or any agreements as between RRDI and RRMSI, and the rights of the Receiver to repudiate such contracts or agreements as permitted by the Amended and Restated Appointment Order dated June 2, 2009 are expressly reserved.”

6.0 Current Rental Pool Management Agreement

- 6.1 In its Second Report, the Receiver provided a detailed description of the Current RPMA and the requirements and obligations of Unit Owners and RRMSI thereunder.
- 6.2 The Current RPMA outlines the duties and obligations of RRMSI as Rental Pool Manager, over a term which coincides with the term of the Current HMA, which includes the provision of cleaning, rental and management services to the Units, the accounting and distribution of proceeds to Unit Owners and other related services. These obligations have been delegated to Marriott Hotels under the terms of the Current HMA, other than periodic account statements prepared for Unit Owners and the making of distributions. The Receiver wishes to repudiate RRMSI as Rental Pool Manager and maintain the value of the Rental Pool for the stakeholders of RRDI.
- 6.3 In coming to this conclusion, the Receiver examined RRMSI and its role in the Hotel structure. RRMSI is a shell corporation. According to the condominium disclosure documents provided to each potential purchaser by RRDI on the sale of Units, RRDI “arranged” for RRMSI to act as the Rental Pool Manager. RRMSI was characterized in the condominium disclosure documents as a newly incorporated entity that had no prior history of managing rentals or rental pools. RRMSI was described as a single purpose entity which had no assets and that its ability to fulfill its obligations to fund the ongoing operations of the Rental Pool may depend on its ability to arrange other sources of financing. Attached as Appendix “C” is a copy of the excerpt from the condominium disclosure documents.

- 6.4 The Receiver made inquiries to determine the background regarding the inception of RRMSI as Rental Pool Manager. The Receiver learned from McCarthy Tetrault LLP, the lawyers for RRDI who acted on the original preparation of the Current RPMA, that early comments on the draft by Marriott Hotels in the spring of 2003 raised the suggestion of the use of a special purpose vehicle to be incorporated to act as Rental Pool Manager rather than RRDI.
- 6.5 At paragraph 10 of the Affidavit of Ken Fowler sworn July 7, 2009, filed in these proceedings, Mr. Fowler states that “there was a *verbal agreement* between RRDI and RRMSI that, in return for RRMSI’s agreement to act as Rental Pool Manager, such arrangement would be exclusive (which is not terminable at will by RRDI, if it ever was, now that RRMSI is acting as Rental Pool Manager)...” [emphasis added]
- 6.6 At paragraph 12 of the Affidavit of Peter Fowler sworn July 23 2009, filed in these proceedings, Mr. Fowler states that “RRMSI is the beneficiary of an exclusive agreement with RRDI to act as Rental Pool Manager. This agreement has not been terminated by the Receiver. Thus, if any units are to be sold, RRMSI should be the Rental Pool Manager. If the Receiver does not intend to continue the appointment of RRMSI, then RRMSI too will have a claim against the estate...”
- 6.7 Colin Yee, the former Chief Financial Officer of Fowler Resort Group, which oversaw certain operations of RRDI, has now been retained by the Receiver as a consultant. Mr. Yee has confirmed to the Receiver that prior to the Receivership, RRMSI had no employees of its own, and that all of the functions of RRMSI under the Current RPMA and the Current HMA were performed by employees of RRDI.

- 6.8 In summary, almost all obligations of RRMSI under the Current RPMAs are performed by Marriott Hotels. RRMSI does not have an ownership interest in the Hotel or an exclusive right to receive distributions from Marriott Hotels. The Current RPMA contains provisions whereby the Rental Pool Manager would receive a fee from Unit Owners (the "Rental Pool Management Fee") out of the Adjusted Gross Revenue available for distribution, calculated as a percentage of Adjusted Gross Revenue, ranging between 46% and 50%, depending on the number of summer occupancy weeks selected by a Unit Owner.
- 6.9 The corporate chart included in the A&M Report indicates that both RRDI and RRMSI are subsidiaries of the Red Leaves Resort Partnership. While there may have been some reason for RRDI to delegate the role of Rental Pool Manager to RRMSI as a special purpose vehicle and for having the Rental Pool Management Fee channeled through it, there is no reason for the Receiver to continue to maintain such a structure which diverts value away from RRDI and impairs the Receiver's ability to sell the residual interest in the Hotel.

Lack of Viability of RPMAs

- 6.10 In addition to the proposed repudiation of RRMSI as Rental Pool Manager, the Receiver has determined that it cannot continue the structure of the Current RPMA. Under the existing structure, the calculation of amounts owing to Unit Owners pursuant to the Current RPMA could result in there being an amount owing to Unit Owners even when the Operations of the Hotel incur an Operating Loss.

6.11 The Rental Pool structure appears to have been developed on the assumption by RRDI that it would have the financial resources to backstop the obligations of RRMSI to Unit Owners that may exist under the Current RPMA. The Receiver does not believe it is appropriate to continue in this manner with New Unit Purchasers. As well, the Receiver is seeking to maximize value in a sale of the residual interest in the Hotel and the Receiver believes that with the existing structure in place, a potential purchaser of the residual interest in the Hotel would reduce its valuation on account thereof.

7.0 Receiver's Proposed Solution

7.1 RRDI is the owner of the Hotel but for 73 Units which are owned by the Unit Owners. RRMSI has no interest, other than a verbal agreement to serve as Rental Pool Manager. In order to put in place those mechanisms required to maintain the value and operations of the Rental Pool, to facilitate the sale of the Units pursuant to the Retail Sales Program and to ensure that the operations of the Hotel are viable as a business so that RRDI's residual interest may be sold as a going concern pursuant to the Institutional Sales Process, the Receiver has concluded that it is necessary to:

- Repudiate the Current HMA and Other Current Marriott Agreements and enter into a New HMA and related agreements that can be terminated by the Receiver on 60 days notice, with certain compensation to Marriott Hotels in return for such termination rights; and
- Repudiate the existing arrangements between RRDI and RRMSI whereby RRMSI was delegated the role of Rental Pool Manager, and enter into a new form of RPMA with Unit Owners, Existing Unit Purchasers and New Unit Purchasers, appointing RRDI as Rental Pool Manager. The form of New RPMA contains a viable financial model that is appropriately connected to amounts payable by Marriott Hotels to RRDI under the Current HMA (and the proposed New HMA).

Steps to enter into the New HMA and the New RPMA

7.2 Originally, the Receiver had sought RRMSI's cooperation to put in place the new arrangements. By letter dated June 8, 2009, legal counsel to the Receiver wrote to legal counsel for RRMSI asking for RRMSI's agreement to assign the Current RPMAs to

RRDI, in order to assist with the effective administration of the estate. Subsequently, the Receiver and legal counsel for the Receiver met with legal counsel for RRDI, RRMSI and KFE to discuss the receivership. While RRDI, RRMSI and KFE was not prepared to agree to the assignment of the Current RPMAs, they did indicate their intention to cooperate with the Receiver. In addition, RRDI, RRMSI and KFE indicated that they would follow up with the Receiver with a number of suggestions and issues that could be addressed cooperatively. The Receiver did not hear anything further in this regard. As referenced above, the Sales and Marketing Order expressly reserved the Receiver's right to repudiate any agreements between RRDI and RRMSI.

- 7.3 The Receiver then embarked upon extensive negotiations with Marriott Hotels and the the Committee to establish an acceptable form of New HMA and New RPMA. Having substantially completed negotiations with Marriott Hotels and the Committee, by letter dated August 5, 2009 from legal counsel to the Receiver to legal counsel to RRMSI, the Receiver provided notice to RRMSI that it intended to seek the authorization of this Court to repudiate RRDI's arrangements with RRMSI to provide services as Rental Pool Manager and of its intention to enter into New Marriott Agreements. Attached as Appendix "D" is a copy of that letter.
- 7.4 On August 10, 2009, the Receiver, legal counsel to the Receiver and the Receiver's independent legal counsel met with legal counsel for RRMSI to discuss the intended course of action as outlined in the Receiver's letter of August 5, 2009. Legal counsel for RRMSI was provided with a copy of the form of Settlement Agreements and the proposed form of New RPMA. Legal counsel for RRMSI advised that RRMSI would be

opposing the steps proposed by the Receiver. The parties entered into brief without prejudice discussions with RRMSI, but these discussions were not successful.

- 7.5 In addition, legal counsel for the Receiver advised Marriott Hotels and their legal counsel of the Receiver's intention to repudiate the Current HMA and Other Current Marriott Agreements and of its intention to repudiate the arrangements that exist between RRDI and RRMSI which delegate the role of Rental Pool Manager to RRMSI.

8.0 New Hotel Management Agreement

- 8.1 In order to maintain the stability of the Hotel during the receivership and to maximize the potential recovery from the Retail Sales Program, the Receiver has determined that it is appropriate to continue to retain Marriott Hotels as the Hotel operator. In order to complete Unit sales, the Receiver must have an agreement in place with Marriott Hotels which delegates to it the Rental Pool management responsibilities of RRDI in accordance with the New RPMA to be offered to potential purchasers.
- 8.2 To this end, the Receiver has negotiated the terms of a proposed New HMA and Side Letter that provide for continued operations of the Hotel by Marriott Hotels during the receivership and which is capable of assignment to a purchaser of the Hotel. A redacted copy of the Summary of Terms for the New HMA and the Side Letter is attached to this as Appendix "E". A non-redacted copy of the Summary of Terms is filed as Confidential Appendix "1" to this Report.
- 8.3 In order to accommodate a potential sale to an institutional purchaser which does not wish to retain Marriott Hotels as operator, the Receiver has negotiated an early termination provision to the proposed New HMA which is, among other things, to be set out in the Side Letter. As set out in the Summary of Terms, the proposed New HMA and Side Letter also contain an agreement by the Receiver to seek a Court-Ordered charge on the assets of RRDI in the maximum amount of \$5 million, to secure the obligations of RRDI under the New HMA. The charge will rank subordinate only to the Receiver's Charge and the Receiver's Borrowings Charge each as provided for in the Appointment Order, the portion of construction trade lien claims which are determined to have priority over all mortgages registered on title to the real property of RRDI (the "Priority Lien

Claims”) and the proposed Unit Owners’ Charge, described below. It is expected that a copy of the Side Letter will be filed confidentially with this Court prior to the hearing of this motion, once finalized.

- 8.4 The New HMA is to be a bi-lateral agreement between RRDI and Marriott Hotels, as will be the other New Marriott Agreements. RRMSI will no longer be a party to these agreements.
- 8.5 The New HMA will be based on the basic terms and structure of the Current HMA, financial and otherwise, as modified by the Side Letter, and will be capable of an assignment (not including the Side Letter) to an institutional purchaser who wishes to retain Marriott Hotels as Hotel operator, with appropriate amendments to suspend the operation of certain provisions during the receivership.
- 8.6 The Receiver seeks Court approval of the Summary of Terms and the Side Letter, to be filed, and seeks authorization to enter into a definitive New HMA on the terms proposed in the Summary of Terms.
- 8.7 As noted, RRDI, RRMSI and Marriott Hotels (and/or its affiliates) are also parties to ancillary agreements to the Current HMA, which the Receiver also intends to repudiate on behalf of RRDI. The Receiver intends to negotiate and conclude new bi-lateral versions of these agreements as between RRDI and Marriott Hotels, based on the existing template for these agreements, but consistent with the terms of the proposed New HMA and the Side Letter. The Receiver seeks authorization of the Court for negotiating and concluding these other New Marriott Agreements with Marriott Hotels.

9.0 New Rental Pool Management Agreement

- 9.1 Upon the repudiation of RRDI's arrangements with RRMSI and upon the repudiation of the Current HMA, RRMSI will not be in a position, nor will it have the authority to: (a) continue to provide services as Rental Pool Manager under the Current RPMAs; or (b) enter into new RPMAs with Existing Unit Purchasers or New Unit Purchasers.
- 9.2 RRMSI will be unable to perform its obligations as Rental Pool Manager because RRMSI's ability to perform these obligations depends on: (a) the delegation of its service obligations to Marriott Hotels; and (b) the distribution of Operating Profit by Marriott Hotels to RRMSI (or the payment of Operating Profit over to RRMSI by RRDI), both of which are dependent on RRMSI's participation in the Current HMA which the Receiver intends to repudiate.
- 9.3 In order to facilitate the continued operation of the Rental Pool, the Receiver has negotiated the form of New RPMA with both representatives of the Committee and Marriott Hotels. It is contemplated that the New RPMA would be entered into by each existing Unit Owner, as well as each prospective Unit Owner and RRDI as Rental Pool Manager. A copy of the proposed New RPMA is attached as Appendix "F". The Receiver seeks the approval of the Court of the New RPMA substantially in the form of that which is attached at Appendix "F", and authorization of A&M to enter into the New RPMA on behalf of RRDI.
- 9.4 While there are limited examples of Rental Pool structures in North America and nearly all properties which operate under Rental Pool structures are unique in some respects, the Receiver is of the view that the quantum of the Rental Pool Management Fee of 46% to

50% contained in the Current RPMA is very high relative to "market" and continuing such a fee structure would impair the Retail Sales Program.

- 9.5 The Receiver has consulted with third parties who have expertise in the structuring of such arrangements and these parties concur with the Receiver's view that the existing Rental Pool Management Fee is high. In addition, the Hotel's cost structure is high, due largely to: (a) the operating characteristics of the Hotel; (b) the standards of its construction; (c) the cost of maintaining the high quality standards of Marriott Hotels; and (d) its geographic location in a rural location with the related costs of establishing and maintaining the needed infrastructure.
- 9.6 Condominium fees for maintenance and common expenses, payable by Unit Owners, were set for the first year of operations at approximately \$1.02 per square foot per month. These fees were calculated based on pre-opening forecasts. Having now had the benefit of operating the Hotel for several months, the Receiver has calculated that condominium fees will increase for the second year of operations (2010) to approximately \$1.51 per square foot per month (subject to review and approval by the Resort Corporation).
- 9.7 The Receiver considered the negative impact that the amount of the Rental Pool Management Fee under the current structure and the anticipated increase in condominium fees would have on the success of the Retail Sales Program.
- 9.8 In recognition of this and based on the factors above, the Receiver proposes in the New RPMA to reduce the Rental Pool Management Fee to a range between 26% and 30% (based on the same usage criteria as in the Current RPMA), a reduction of 40% in the aggregate. In the circumstances, the Receiver believes that this new Rental Pool

Management Fee is commercially reasonable and takes into account the escalation in condominium fees.

Ontario Securities Commission Approval

9.9 In connection with the planned sales of Units, the Receiver's legal counsel engaged in discussions with a representative of the Ontario Securities Commission ("OSC"). By ruling issued April 13, 2004, (the "Exemption Ruling"), the OSC had previously established certain procedural requirements for sales of the Hotel Units by RRDI in exempting them from prospectus and securities dealer registration requirements. The Receiver's legal counsel advised the OSC of the fact of the receivership and the proposed New RPMA. The OSC provided its indication that it did not see an issue with the applicability of the Exemption Ruling, on the understanding that all the conditions to the Exemption Ruling would continue to be met and that detailed information on the insolvency of RRDI, its impact and risk factors would be included in the Disclosure Documentation provided to purchasers.

RRDI as Rental Pool Manager

9.10 RRDI is the proposed Rental Pool Manager under the new RPMA for which Court approval is sought herein. Until such time as the residual interest in the Hotel is sold, the Receiver will operate RRDI and cause RRDI to perform its obligations as Rental Pool Manager, for which it will receive the reduced Rental Pool Management Fee from Unit Owners. It is expected that any purchaser of the residual interest in the Hotel will want control of the Rental Pool and take an assignment of the New RPMAs, thereby generating value for stakeholders.

Legal Requirements of Unit Owners to Enter Into Rental Pool Management Agreements

9.11 Unit Owners are required to participate in the Rental Pool. The Rental Pool Covenant registered against title to each unit and appended to the Second Report defines "Rental Pool Manager" as the person named as Rental Pool manager from time to time under the RPMAs whose responsibility it is to manage and operate the Hotel and the Rental Pool and includes any person to whom its responsibilities have been delegated in accordance with the RPMAs. The Rental Pool Covenant requires all Units Owners to participate in the Rental Pool, regardless of the identity of the Rental Pool Manager.

9.12 The Rosseau Resort Condominium Declaration, made pursuant to the *Condominium Act*, 1998 (the "Declaration"), requires all Unit Owners to be a party to a RPMA, as follows:

"11(d) Owners of Resort Units shall not, during the term of the RPMAs, directly or indirectly, market, advertise or charge rent or accept any form of consideration for the use of Resort Units except in accordance with the RPMAs;"

"20 (a) Every Owner of Resort Unit shall execute and at all times be party to a RPMA with respect to such Resort Unit and every Owner shall be bound by the terms and conditions contained in the RPMAs whether executed or assumed by such Owner. No Owner shall transfer or convey a Resort Unit unless the proposed purchaser has agreed to assume the RPMA and be bound by the terms and conditions of such agreement.

(b) No Owner of a Resort Unit may at any time occupy, use, or permit the occupation or use of his Resort Unit except in compliance with the RPMA for personal use and as part of the Rental Pool..."

9.13 Rental Pool Management Agreements is defined in the Declaration as "collectively, the Rental Pool Management Agreements to be entered into by Owners of the Resort Units with the Rental Pool Manager providing for participation of the Resort Units in the Rental Pool." The "Rental Pool Manager" is defined in the Declaration as "the manager

appointed from time to time pursuant to the Rental Pool Manager Agreements to manage the Rental Pool.” Attached as Appendix “G” is a copy of the Declaration.

Consequences with Respect to Existing Rental Pool Management Agreements

9.14 Subject to Court approval, each Unit Owner and Existing Unit Purchaser has been provided with a Settlement Agreement, described below, which requires as a condition, the execution of a New RPMA. It is the position of the Receiver that once the Current HMA is repudiated and the verbal arrangements or otherwise, between RRDI and RRMSI delegating the role of Rental Pool Manager to RRMSI is repudiated, RRMSI will not be in a position to perform the Current RPMAs executed by Unit Owners and Existing Purchasers. The Receiver seeks a declaration on this motion on behalf of Unit Owners and Existing Unit Purchasers that the Current RPMAs cannot be performed by RRMSI.

9.15 The form of New RPMA is intended for execution by each existing Unit Owner and any Existing Unit Purchaser who completes their purchase transaction with the Receiver on behalf of RRDI. The execution of the New RPMA is a term of the Settlement Agreements, for which Court approval is sought and as described in Section 10, below. It is also required of Unit Owners and Existing Unit Purchasers pursuant to their obligations under the Rental Pool Covenant and the Declaration to enter into a RPMA with the Rental Pool Manager from time to time.

9.16 The Receiver has been advised by the Committee that it has unanimously recommended that Unit Owners and Existing Purchasers enter into the New RPMA. The Receiver has been further advised that the Syndicate is in support of the form of New RPMA and that

Fortress is not opposed to it. The form of New RPMA has also been approved by Marriott Hotels. Accordingly, the Receiver recommends that this Court authorize it to cause RRDI to enter into the New RPMA with all existing Unit Owners and Existing Unit Purchasers and to cause RRDI to enter into the New RPMA with all required prospective Unit Owners who purchase units pursuant to the Retail Sales Program.

10.0 Settlement Agreements

- 10.1 As noted in the Second Report, during the course of its pre-construction sale of condominium units, RRDI provided prospective Unit purchasers with several types of incentives and benefits to entice Unit purchasers to enter into an APS with RRDI. Several types of incentives (the “Purchaser Incentives”) were provided to Unit purchasers, including the Sale Leaseback Program (described in detail in the Second Report), RRDI’s agreement to pay Unit purchasers’ condominium fees and expenses, and the issuance of certain Indulgence Cards which provide holders with a “currency” for use at the Hotel to pay for discretionary expenses. RRDI’s total obligation for the Purchaser Incentives was approximately \$10.6 million.
- 10.2 The Second Report advised that the Receiver, in consultation with the Syndicate and Fortress, had commenced discussions with the Committee and its legal counsel in an attempt to formulate a draft proposal from the Receiver to address the Purchaser Incentives (the “Purchaser Incentive Proposal”).
- 10.3 As a result of those discussions, by memorandum dated July 8, 2009, a without prejudice settlement proposal to honour 50% of the Purchaser Incentives was put forward to all Unit Owners and Existing Unit Purchasers for their consideration, with the recommendation for acceptance by the Committee.
- 10.4 On July 15, 2009, the Receiver attended a meeting of Unit Owners and Existing Unit Purchasers at the offices of Miller Thomson LLP, hosted by the Committee. The Receiver and the Committee explained the terms of the Purchaser Incentive Proposal and answered questions regarding it. Follow up questions for clarification purposes were

provided by the Committee to the Receiver in writing, which were responded to by the Receiver in writing on July 21, 2009.

- 10.5 The Receiver requested a preliminary response to the Purchaser Incentive Proposal by July 23, 2009, so that the Receiver could determine whether there was sufficient support for the Purchaser Incentive Proposal to proceed with the preparation of definitive settlement documentation for execution by Unit Owners and Existing Unit Purchasers, subject to approval by the Court. The Receiver had a condition to the Purchaser Incentive Proposal that if it did not receive 100% support from Unit Owners with Purchaser Incentives and 85% support from Existing Unit Purchasers with Purchaser Incentives, it could terminate the Purchaser Incentive Proposal in its discretion.
- 10.6 Upon learning of the preliminary response, while the Receiver did not attain the required thresholds, the Receiver determined that it had sufficient indication of support to proceed with definitive documentation, and therefore proceeded with the negotiation and preparation of documents for delivery to Unit Owners and Existing Unit Purchasers for consideration and execution. Accordingly, on August 11, 2009, the Receiver's legal counsel commenced delivery by email and courier to Unit Owners and Existing Unit Purchasers of a package of settlement documents containing either a Unit Owner Settlement Agreement or a Unit Purchaser Settlement Agreement, as applicable, in the forms attached to this Report as Appendix "H" and "I", respectively for consideration and execution by each.
- 10.7 The basic terms of the Settlement Agreements are as follows:

- Existing Unit Purchasers agree to close their outstanding APS;

- RRDI will honour the Sale Leaseback Transactions with Unit Owners and Existing Unit Purchasers who have such arrangements, provided that Unit Owners and Existing Unit Purchasers agree to execute new leases with RRDI which provide for payment of rent in an amount that is equal to 50% of the amount payable under their existing leases;
- RRDI will honour Indulgence Cards and other Purchaser Incentives for Unit Owners and Existing Unit Purchasers who have such incentives, in an amount equal to 50% of such incentives;
- Unit Owners and Existing Unit Purchasers agree to enter into the New RPMA; and
- Unit Owners and Existing Unit Purchasers agree to execute full and final releases in favour of RRDI and other parties substantially in the form attached to this Report as Appendix "J" (the "Release").

10.8 The Settlement Agreements attach the generic form of New Lease relevant to that Unit Owner or Existing Unit Purchaser and the form of Release to be executed.

10.9 The form of Release to be executed as currently contemplated by the Settlement Agreements includes as releasees, RRMSI, and as requested by RRMSI, Ken Fowler Enterprises Ltd., Red Leaves Partnership, Kenneth A. Fowler, and Peter Fowler (the "Fowler Related Releasees"). However, in the event that there is not a global resolution and RRMSI opposes a declaration by this Court that the Current RPMAs are frustrated, the Receiver will not seek such a release from Unit Owners and Existing Unit Purchasers as a condition to the Settlement Agreements. Rather, the Receiver will seek a provision

in the Court Order that the Release shall be deemed not to include any Fowler Related Releasees.

- 10.10 In order to secure the obligations of RRDI under the Unit Owner Settlement Agreements in respect of the New Leases and the Purchaser Incentives to a maximum of \$5.3 million, the Receiver has agreed to seek Court-ordered charges on the Assets of RRDI, in the priority as set out in the Unit Owner Settlement Agreement.
- 10.11 The Receiver's obligation to complete the Settlement Agreements and perform thereunder is conditional upon the foregoing obligations of Unit Owners and Existing Unit Purchasers being completed within the timeframes set out in the Settlement Agreements and on obtaining the thresholds for acceptance required by the Receiver.
- 10.12 The Settlement Agreements are open for acceptance by Unit Owners and Existing Unit Purchasers until August 21, 2009, unless extended, and subject to the approval of the Court.
- 10.13 The Settlement Agreements have been reviewed and commented on by the Committee and its legal counsel and the Committee has advised it is supportive of the Settlement Agreements.
- 10.14 The terms of the Settlement Agreements and the proposed Court-ordered charges, have the support of the Syndicate and Fortress. The Receiver is of the view that the Settlement Agreements represent a fair and equitable resolution of the issues relating to Purchaser Incentives and recommends to the Court the approval of the Settlement Agreements, substantially in the forms attached as Appendices "H" and "I", to this Report.

10.15 The Receiver does not intend to offer any Purchaser Incentives to New Unit Purchasers in connection with the Retail Sales Program now being undertaken.

11.0 Disclosure Documentation

- 11.1 In order for the Retail Sales Program to be undertaken in the absence of a prospectus, the Receiver must, pursuant to requirements under the Exemption Ruling and the *Condominium Act, 1998* (Ontario), have a disclosure statement available for prospective purchasers, which contains, in addition to the specific requirements stipulated by the applicable statute or rules, the form of RPMA and the form of APS that the prospective New Unit Purchaser will be required to execute.
- 11.2 The Receiver is in the process of preparing the Disclosure Documentation, which consists of a form of disclosure statement and related schedules. This Disclosure Documentation reflects the new circumstances of the receivership. The Disclosure Documentation discloses to potential New Unit Purchasers the as-registered and as-built state of construction completion, the current status of the receivership proceedings, the intended arrangements with Marriott Hotels, the intended form of New RPMA, the obligations and risks associated with the purchase of a Unit in the Hotel, required financial disclosure related thereto and other related issues. The Receiver is still in the process of finalizing the Disclosure Documentation, however, it is expected to be filed with the Court prior to the hearing of this Motion. The Receiver seeks, on this motion, approval of the Disclosure Documentation for dissemination to potential New Unit Purchasers in connection with the Retail Sales Program, subject to such clarifying amendments that the Receiver may make in the process of finalizing the Disclosure Documentation, and any amendments that may need to be made in connection with the outcome of this Motion.

11.3 The Disclosure Documentation contains a requirement for a certificate to be executed by the chief financial officer and chief executive officer of the declarant, RRDI. Regardless of whether such officers are currently appointed for RRDI, the Receiver has been advised that there are none, the Receiver proposes that it execute the required certificate on their behalf without any personal liability on their part or on the part of the Receiver or its directors and officers. The OSC was advised in the discussions referred to in section 9.9 above that an order would be sought from the Court permitting this.

12.0 Status of Construction and Related Matters

- 12.1 As described in the Second Report, the Receiver and Altus estimated that construction at the Hotel would be substantially complete by July 31, 2009 and that the Hotel would be fully operational by Marriott Hotels at that time. This timeline has been met. On August 1, 2009, Marriott Hotel guests occupied the Paignton House building (43 Hotel suites) and shortly thereafter, the other recreational amenities with respect to Paignton House, such as the pools and cabana, commenced operations.
- 12.2 While the major construction aspects of the Hotel have now been substantially completed, limited construction activities are continuing with respect to the correction of outstanding deficiencies and remediation of other matters. Certain other limited construction activities have been intentionally delayed until September and October 2009 which, in the view of Marriott Hotels and Altus, are best completed subsequent to the busy summer occupancy season.
- 12.3 The Receiver has been advised by Altus that construction works have been completed within the budget as approved by this Court. While all construction related amounts have not yet been paid to construction trades, the Receiver intends to complete payment of outstanding amounts to construction trades upon: (a) completion of all outstanding items per the contracts between RRDI and the construction trades; (b) correction of any outstanding deficiencies; and (c) in accordance with the statutory requirements pursuant to the CLA with respect to the release of holdback amounts.

Construction Lien Claim Process

- 12.4 On July 24, 2009, the Construction Lien Claims Process Order was granted, which provides a process by which construction lien claims are addressed. Should a construction lien claimant not comply with the Construction Lien Claims Process Order, its Claim (as defined therein) is, pursuant to that Order, forever barred.
- 12.5 On August 4 and 5, 2009, the Receiver's independent counsel caused notices to be sent to all lien claimants' counsel who had registered a lien asserting a Claim on title to the Property (as those terms are defined in the Construction Lien Claims Process Order), providing specific notice of the Construction Lien Claims Process Order and important dates in the process.
- 12.6 The Receiver, with the assistance of Altus and its independent counsel, continues to work with the construction lien claimants to satisfy certain requests for information made under S. 39 of the CLA ("Section 39 Requests"). On July 23, 2009, independent legal counsel to the Receiver provided all lien claimants who had made Section 39 Requests with an information memorandum (the "Section 39 Memorandum") which included, among other things: (a) certain details regarding the state of accounts between WestLB and RRDI; (b) a summary of the state of accounts between RRDI and its construction manager, Rock Ridge Contractors Inc. ("RRCI"); and (c) details regarding the construction management agreement between RRDI and RRCI.
- 12.7 Upon receiving the Section 39 Memorandum, legal counsel to certain of the lien claimants followed up with additional information requests regarding the determination of the holdback deficiency quantification and priority positions. The Receiver recognizes

that this is an important issue and has been corresponding with lien claimants to schedule a 9:30 appointment with the Court in order to set a schedule for the hearing of a motion to determine the quantum and priority of holdback deficiencies, including the exchange of information that would be relevant to such motion.

13.0 The Retail Sales Program

- 13.1 The Second Report described the Sales and Marketing Process with respect to the Assets. The Sales and Marketing Process is a “twin track process” comprised of two elements: (a) the Retail Sales Program which is being conducted by Baker Real Estate and; (b) the Institutional Sales Process which is being conducted by Colliers. The Receiver sought and obtained this Court’s authorization to proceed with the Sales and Marketing Process.
- 13.2 Subsequent to obtaining Court approval, the Receiver and Baker Real Estate commenced with preparations for the Retail Sales Program. Attached as Appendix “K” to this Report is a schedule setting out in detail the various aspects of the Retail Sales Program to date. In order to maximize the success of the Retail Sales Program, the Receiver has spent or has committed to spend in excess of \$700,000 in respect of the Retail Marketing Program.
- 13.3 The One-Day Only Sale, as described in the Third Report, is scheduled to take place at the Hotel on August 22, 2009. Baker Real Estate has advised the Receiver that it has had a very strong initial response from parties interested in attending the One-Day Only Sale and/or purchasing an Unsold Unit, either by way of registering at the www.redleavessale.com website or by way of phone registration. Baker Real Estate is in the process of communicating with those individuals who have registered for the One-Day Only Sale to schedule appointments with them for the day of the sale and to answer questions and address concerns.

14.0 Other Activities of the Receiver

14.1 In addition to the activities of the Receiver as set out in this Fourth Report, the following is a summary of other activities that the Receiver has engaged in since the date of the Second Report.

- As described in the Second Report, the Receiver completed negotiations and entered into the New Marketing License Agreement with Marriott Hotels, substantially in the form of that which was described in the Second Report.
- Prior to Colliers commencing the marketing of the Assets in earnest pursuant to the Institutional Sales Process, the Receiver is seeking to determine the success of the Retail Sales Program and the One-Day Only Sale. Notwithstanding this, the Receiver has arranged for, and participated in meetings with Marriott Hotels and Colliers to assist Colliers in conducting its due diligence and in the preparation of its marketing materials in respect of the Institutional Sales Process.
- The Receiver has also attended meetings and/or telephone conference calls with Colliers and certain prospective institutional purchasers that have expressed an interest in acquiring the Assets in accordance with the Institutional Sales Process. The Receiver has generally advised such parties that, until the outcome of the Retail Sales Program is known, and until Colliers has completed the preparation of its marketing materials, it would be premature for those potential purchasers to commence due diligence or submit any form of non-binding expression of interest or letter of intent. The Receiver is not prepared to consider any parties who wish to submit an offer to

acquire the Assets in a manner that would potentially undermine, limit or restrict the intended Sales and Marketing Process.

- The Receiver and Colliers recently met with representatives from Livia Capital Management Inc. (“Livia”), at Livia’s request. The Receiver understands that Livia has been engaged by Ken Fowler Enterprises Ltd. (“KFE”) to, among other things, assist KFE in determining the short and long term strategic direction of its investments, including its investments in the other properties forming part of the resort at Red Leaves. At Livia’s request, the nature of the discussions between the Receiver and Livia are to be treated as confidential and accordingly, filed as Confidential Appendix “2” to this Report, is a copy of the presentation provided to the Receiver by Livia.
- The Receiver, along with the Receiver’s independent legal counsel, has continued to have ongoing discussions with both Tarion Warranty Corporation (“Tarion”) and Travelers Guarantee Company of Canada (“Travelers”) with respect to issues concerning the ongoing Tarion warranty coverage and the ultimate release of deposit funds being held by Travelers. By letter dated June 24, 2009, Tarion withdrew its notice of proposal to withdraw Tarion registration. In discussions with Tarion’s management, Tarion has confirmed to the Receiver that it does intend to continue to provide warranty coverage in respect of all Units which were sold (regardless of whether such transactions have closed) prior to the date of the Appointment Order. Tarion has also confirmed, however, that in accordance with its standard policies, those Unsold Units, which are not currently subject to an APS, upon occupancy by Marriott Hotels, will not be eligible for Tarion warranty coverage. As a result, the

Units sold pursuant to the Retail Sales Program will be sold without Tarion unit warranty coverage. With respect to the release of deposit monies being held by Travelers to secure the warranty obligations, Travelers has advised the Receiver that it is not yet in a position to release any of the deposit funds in its possession.

- On the consent of the Syndicate and Fortress, the Receiver engaged the assistance of members of the A&M Dispute Analysis and Forensics group (“DAF”) with expertise in construction related matters, to assist the Receiver in preliminarily considering whether any prior events or activities may give rise to possible opportunities for the Receiver to seek to recover damages or otherwise from various parties involved with, or that provided services to, RRDI prior to the Appointment Order. A&M’s DAF team is continuing its preliminary review in respect of RRDI and upon its completion, the Receiver intends to consider whether it believes there is merit to continuing to pursue this review further.
- The Receiver has also continued to meet with and/or correspond with various other stakeholders that have an interest in the Company and/or the Hotel and has continued to respond appropriately to all relevant inquiries.

15.0 Sealing of Confidential Appendices

15.1 The contents of Confidential Appendices “1” contain sensitive information regarding the terms of arrangements with Marriott Hotels, which the Receiver and Marriott Hotels have agreed to maintain as confidential. The contents of Confidential Appendix “2” contain sensitive and confidential information with respect to Livia’s strategic direction for KFE’s assets, which information was provided to the Receiver on a “Private and Confidential” basis. Accordingly, the Receiver respectfully requests that these Appendices, which are filed separately in a sealed envelope, remain sealed and only be opened and viewed by the Judge presiding over this Motion and be returned to the envelope and sealed after the hearing of this Motion and not form part of the permanent Court file.

16.0 Conclusions and Recommendations

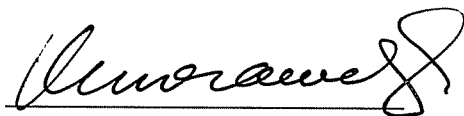
- 16.1 Attached as Appendix "L" is the Receiver's statement of Receipts and Disbursements for the period ended August 12, 2009.
- 16.2 The Receiver respectfully requests that this Honourable Court grant the Relief sought by the Receiver and as described in this Fourth Report.

* * *

All of which is respectfully submitted, this 12th day of August, 2009

**ALVAREZ & MARSAL CANADA ULC &
McINTOSH & MORAWETZ 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