

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

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

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**MOTION RECORD
(Returnable May 19, 2010)**

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**ONTARIO
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(COMMERCIAL LIST)**

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

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

MOTION RECORD

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**NOTICE OF MOTION
(Returnable May 19, 2010)**

Alvarez & Marsal Canada ULC, in its capacity as Court-appointed receiver and manager pursuant to section 101 of the *Courts of Justice Act* (Ontario) and trustee and receiver and manager under the *Construction Lien Act* (Ontario) (“**CLA**”), and Alvarez & Marsal Canada Inc., in its capacity as interim receiver pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (jointly and collectively, the “**Receiver**”), of the undertaking, property and assets of The Rosseau Resort Developments Inc. (“**RRDI**”), will make a motion to a Judge of the Commercial List at 10:00 a.m. on Wednesday the 19th day of May, 2010, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion will be heard orally.

THE MOTION IS FOR AN ORDER:

- (a) abridging the time for service of this Notice of Motion and Motion Record, if necessary, validating the service of the Notice of Motion and Motion Record, and dispensing with further service thereof;
- (b) authorizing and approving the continued suspension by the Receiver of the Institutional Sales Process (all capitalized terms not defined herein are defined in the Eleventh Report of the Receiver dated May 12, 2010, the "Eleventh Report"), pending further recommendations from the Receiver;
- (c) authorizing and directing the Receiver to continue to negotiate the terms of the Unit Owner Proposal with the Ad Hoc Committee and the Independent Directors;
- (d) authorizing the Receiver on behalf of RRDI to repudiate outstanding APSs with Existing Unit Purchasers;
- (e) approving the Eleventh Report and the conduct and activities described therein; and
- (f) such further and other relief as counsel may request and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- (a) The Hotel's operational and financial results have significantly improved over the previous year. Marriott Hotels is confident that the Hotel's operations will continue to stabilize and either meet or exceed its forecast during the busy, summer season in 2010. It is further expected that results will continue to improve through 2011. The Hotel has recently received excellent press and media exposure in a number of publications;
- (b) The long term prospects for the financial viability of the Hotel have been enhanced by the completion and execution of the New HMA and other New Marriott Hotel Agreements, which took place on January 21, 2010. The

execution of the New Marriott Agreements was a condition precedent to completing the One-Day Sale transactions. Upon fulfilling the condition, the Receiver subsequently closed retail sale transactions for 16 Units. Proceeds of such sales were remitted to WestLB in accordance with the Court's authorization on December 21, 2009;

- (c) In the meantime, the Institutional Sales Process formally commenced in early January 2010 in accordance with the Protocol approved by the Court on December 21, 2009. The Protocol called for the submission of non-binding indicative offers ("Offers") by March 31, 2010;
- (d) However, before any indicative offers had been received, in late March 2010, 63 Unit Owners delivered Notices of Dispute to the Receiver in respect of the interpretation of the New RPMA (the "RPMA Dispute"), which had been approved by the Court and which had come into effect upon the execution of the New Marriott Agreements. The interpretation advanced in the Notices of Dispute would have a significant negative impact to the Rental Pool Manager on the calculation of the Rental Pool management fee payable by Unit Owners, as well as reduce amounts to which RRDI would be entitled as owner of the commercial space, all resulting in a negative impact on the value of the residual interest in the Hotel. The Receiver believed that the RPMA Dispute would create a significant impediment to the Institutional Sales Process, and therefore concluded that Pre-Qualified Bidders would find it difficult to put forward their best Offer by the deadline of March 31, 2010;
- (e) Accordingly, on March 26, 2010, at the request of the Receiver, Colliers advised Pre-Qualified Bidders that the deadline for submission of Offers was extended to May 17, 2010, to allow more time for due diligence and allow the Receiver and its legal counsel time to consider and address the RPMA Dispute;
- (f) In early April 2010, the Independent Directors and the Ad Hoc Committee proposed to the Receiver a transaction whereby the Condominium Corporation would acquire the residual interest in the Hotel, thereby leaving RRDI to retain its

interest in 132 Unsold Units of the Hotel and the surrounding Development Lands. The potential transaction further contemplated that the terms of the New RPMA would be modified to simplify amounts available for distribution to Unit Owners and increase funds available for distribution. The Receiver believes that such Unit Owner Proposal has merit and warrants further investigation by the Receiver; however, it does not conform to the en bloc sale contemplated by the Protocol;

- (g) The RPMA Dispute, the emergence of the Unit Owner Proposal, and other unresolved issues discussed more fully in the Eleventh Report with respect to the Resort Association and Water and Sewage Infrastructure, have created uncertainty for Pre-Qualified Bidders to formulate an Offer, even by the extended deadline of May 17, 2010;
- (h) As a result of these matters, the Receiver concluded that the Institutional Sales Process should be suspended to (a) either complete the Unit Owner Proposal or resolve the RPMA Dispute through litigation or otherwise; and (b) provide additional time to address the Receiver's concerns in connection with the issues related to the Resort Association and the Water and Sewage Infrastructure;
- (i) The Receiver also seeks relief herein in respect of outstanding APSs with Existing Unit Purchasers. In its Eighth Report, the Receiver reported that it had advised legal counsel for certain Existing Unit Purchasers who had asserted a right to terminate their APSs and recover their deposits, that the Receiver would await the outcome of the Institutional Sales Process to determine if any potential purchasers were interested in pursuing the transactions with Existing Unit Purchasers before taking any steps. Notwithstanding the suspension of the Institutional Sales Process, the Receiver has determined that it is appropriate to obtain authorization from the Court to repudiate APSs with Existing Unit Purchasers, and has advised legal counsel for certain Existing Unit Purchasers to this effect. The Receiver therefore seeks such authorization on this motion;

- (j) Given the current status of matters outlined above, and as discussed in greater detail in the Eleventh Report, the Receiver believes that in order to preserve the integrity of the receivership proceedings, protect all stakeholders and ultimately maximize recoveries to the estate, the relief sought herein is necessary and appropriate. It will provide the Receiver the opportunity to settle the matters creating such uncertainty, assess the benefits of the Unit Owner Proposal and consider how best to ultimately maximize value from the Assets;
- (k) The grounds as set out in the Eleventh Report; and
- (l) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The pleadings and proceedings herein;
- (b) The Eleventh Report; and
- (c) such further and other material as counsel may advise and this Honourable Court permit.

Date: May 12, 2010

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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
WESTLB AG, TORONTO BRANCH
V.
THE ROSSEAU RESORT DEVELOPMENTS INC.

Applicant

Respondent

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST Proceeding commenced at Toronto	
NOTICE OF MOTION (Returnable May 19, 2010)	
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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

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

MAY 12, 2010

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1.0 Executive Summary¹

- 1.1 This Eleventh Report is filed to provide an update to the Court on the status of various matters since the Receiver's Eighth Report dated December 14, 2009, which was the Receiver's last comprehensive report, and is filed in support of a motion for an order (a) authorizing a suspension of the Institutional Sales Process; (b) authorizing the Receiver to engage in negotiations regarding a Unit Owner Proposal discussed herein; (c) authorizing the Receiver to repudiate existing APSs with Existing Unit Purchasers; and (d) approving the activities of the Receiver to date.
- 1.2 With respect to the ongoing business of the Hotel, the Hotel's operational and financial results have significantly improved over the previous year. Marriott Hotels is confident that the Hotel's operations will continue to stabilize and either meet or exceed its forecast during the busy, summer season in 2010. It is further expected that results will continue to improve through 2011. The Hotel has also recently received excellent press and media exposure in a number of publications.
- 1.3 The long term prospects for the financial viability of the Hotel have been enhanced by the completion and execution of the New HMA and other New Marriott Agreements, which took place on January 21, 2010. Just prior to executing these agreements, the Receiver and the RRMSI Receiver delivered a notice to Marriott Hotels repudiating the Current HMA and Other Current Marriott Agreements. The execution of the New Marriott Agreements and the repudiation of the Current HMA and Other Current Marriott Agreements was a condition precedent to completing the One-Day Sale transactions.

¹ Capitalized terms in this Executive Summary shall have the meanings ascribed to them in either the body of this Eleventh Report or in the Glossary of Defined Terms attached as Appendix "A".

Upon fulfilling the condition, the Receiver subsequently closed 16 retail sale transactions. Proceeds of such sales were remitted to WestLB in accordance with the Court's authorization on December 21, 2009.

- 1.4 In the meantime, the Institutional Sales Process formally commenced in early January 2010 in accordance with the Protocol approved by the Court on December 21, 2009. The Protocol called for the submission of Offers by March 31, 2010.
- 1.5 However, before any Offers had been received, in late March 2010, 63 Unit Owners delivered Notices of Dispute to the Receiver in respect of the Receiver's interpretation of the New RPMA, which had been approved by the Court and which had come into effect upon the execution of the New Marriott Agreements. The interpretation advanced in the Notices of Dispute would have a significant negative impact to the Rental Pool Manager on the calculation of the Rental Pool management fee payable by Unit Owners, as well as reduce amounts to which RRDI would be entitled as owner of the commercial space, all resulting in a negative impact on the value of the residual interest in the Hotel. The Receiver believed that the RPMA Dispute would create a significant impediment to the Institutional Sales Process, and therefore concluded that Pre-Qualified Bidders would find it difficult to put forward their best Offer by the deadline of March 31, 2010.
- 1.6 Accordingly, on March 26, 2010, at the request of the Receiver, Colliers advised Pre-Qualified Bidders that the deadline for submission of Offers was extended to May 17, 2010, to allow more time for due diligence and allow the Receiver and its legal counsel time to consider and address the RPMA Dispute.
- 1.7 In early April 2010, the Independent Directors and the Ad Hoc Committee proposed to the Receiver a transaction whereby the Condominium Corporation would acquire the

residual interest in the Hotel, thereby leaving RRDI to retain its interest in 132 Unsold Units of the Hotel and the surrounding Development Lands. The potential transaction further contemplated that the terms of the New RPMA would be modified to simplify amounts available for distribution to Unit Owners and increase funds available for distribution. The Receiver believes that the Unit Owner Proposal has merit and warrants further investigation by the Receiver; however, it does not conform to the en bloc sale contemplated by the Protocol.

- 1.8 The RPMA Dispute, the emergence of the Unit Owner Proposal, and other unresolved issues discussed more fully in this Report with respect to the Resort Association and Water and Sewage Infrastructure, have created uncertainty for Pre-Qualified Bidders to formulate an Offer, even by the extended deadline of May 17, 2010.
- 1.9 As a result of these matters, the Receiver concluded that the Institutional Sales Process should be suspended to (a) either complete the Unit Owner Proposal or resolve the RPMA Dispute through litigation or otherwise; and (b) provide additional time to address the Receiver's concerns in connection with the issues related to the Resort Association and the Water and Sewage Infrastructure.
- 1.10 The Receiver also seeks relief herein in respect of outstanding APSs with Existing Unit Purchasers. In its Eighth Report, the Receiver reported that it had advised legal counsel for certain Existing Unit Purchasers who had asserted a right to terminate their APSs and recover their deposits that the Receiver would await the outcome of the Institutional Sales Process to determine if any potential purchasers were interested in pursuing the transactions with Existing Unit Purchasers before taking any steps. Notwithstanding the suspension of the Institutional Sales Process, the Receiver has determined that it is

appropriate to obtain authorization from the Court to repudiate APSs with Existing Unit Purchasers, and has advised legal counsel for certain Existing Unit Purchasers to this effect. The Receiver therefore seeks such authorization on this motion.

- 1.11 In addition to these matters for resolution, the Receiver has continued to deal with construction related issues. During the latter part of 2009, the Receiver concluded that there were material deficiencies in the installation of the balcony handrails at Units in both Longview and Paignton House, which called into question the safety and integrity of the balcony railings. The Receiver retained professional Independent Engineers to assess the handrails and recommend remediation alternatives. The Independent Engineers concluded that the handrail systems were progressively failing over time as a result of incorrect design, fabrication and installation, and failed to meet Ontario Building Code requirements. The Receiver has notified certain parties involved in the design, fabrication and installation of the railings of the Receiver's intention to make a claim for the remediation costs. The Receiver has arranged for the necessary repairs to be made and this work has been substantially completed.
- 1.12 Since its Eighth Report, the Receiver has also been involved in considering the issues relating to the construction lien claims process pursuant to the Claims Process Order (the "Construction Lien Claims Process"), the Commission Claims Process, a realty tax appeal, zoning and permitting issues, and other matters ancillary to its administration of the receivership. Updates in respect of these matters are provided in this Eleventh Report.
- 1.13 Given the current status of matters outlined above, and as discussed in greater detail below, the Receiver believes that in order to preserve the integrity of the receivership

proceedings, protect all stakeholders and ultimately maximize recoveries to the estate, the relief sought herein is necessary and appropriate. It will provide the Receiver the opportunity to settle the matters creating such uncertainty, assess the benefits of the Unit Owner Proposal and consider how best to ultimately maximize value from the Assets.

2.0 Introduction and Summary of Proceedings to Date

- 2.1 On May 22, 2009, the Ontario Superior Court of Justice (the “Court”) issued an order appointing Alvarez & Marsal Canada ULC (“A&M”) and McIntosh & Morawetz Inc. (now Alvarez & Marsal Canada Inc.) as trustee and interim receiver, respectively (collectively the “Interim Receiver”), pursuant to Section 68 of the *Construction Lien Act* (Ontario) (“CLA”) and Section 47(1) of the *Bankruptcy and Insolvency Act* (Canada) (“BIA”) of all the property, assets and undertakings (the “Assets”) of The Rosseau Resort Developments Inc. (“RRDI” or the “Company”). On June 2, 2009, the Court issued an Amended and Restated Appointment Order (the “Appointment Order”) continuing the appointment of the Interim Receiver and appointing A&M as receiver and manager (the “Receiver and Manager”) pursuant to Section 101 of the *Courts of Justice Act* (Ontario) (“CJA”) and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager collectively defined as the “Receiver”).² McIntosh & Morawetz Inc. has, by Articles of Amendment dated September 17, 2009, changed its name to Alvarez & Marsal Canada Inc.
- 2.2 All background materials in respect of these proceedings, including, among other things, the Receiver’s past reports to Court and orders of the Court, can be found on the Receiver’s website at www.alvarezandmarsal.com/rosseau.
- 2.3 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

² Capitalized terms in this Eleventh Report shall have the meanings ascribed to them in the Glossary of Defined Terms attached as Appendix “A”, unless otherwise defined herein.

at the Hotel not currently subject to an agreement of purchase and sale (“APS”), together with the residual interest of RRDI in the Hotel and all other Assets.

- 2.4 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 defined in the Sales and Marketing Order and 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.
- 2.5 On August 18, 2009, the Court issued an order authorizing certain steps recommended by the Receiver (as subsequently amended on August 20, 2009, the “Amended August 18 Order”), which would have the effect of repudiating Rosseau Resort Management Services Inc. (“RRMSI”) (a related entity to RRDI) as Rental Pool Manager and putting in place bilateral agreements as between RRDI and Marriott Hotels and RRDI and Unit Owners to the exclusion of RRMSI. The Court authorized the distribution to the Unit Owners and Existing Unit Purchasers of Settlement Agreements, whereby the Receiver offered arrangements for payment of 50% of sale leaseback transactions and other incentives agreed to by RRDI, conditional on such Unit Owner and Existing Unit Purchaser executing a new Rental Pool management agreement (“New RPMA”), among other things.
- 2.6 Further, the Amended August 18 Order approved the form of New RPMA and authorized the Receiver to enter into New RPMAs with Unit Owners, Existing Unit Purchasers and New Unit Purchasers (as such terms are defined in both the Amended August 18 Order and the Glossary). Paragraph 6 of the Amended August 18 Order deemed the execution

of a New RPMA by a Unit Owner or Existing Unit Purchaser to be a termination by such Unit Owner or Existing Unit Purchaser of its current Rental Pool management agreement executed with RRMSI (the “Current RPMAs”) and stayed any action by RRMSI against such Unit Owner or Existing Unit Purchaser.

- 2.7 RRMSI did not oppose the Amended August 18 Order. Paragraph 6 of the Amended August 18 Order, which granted relief in respect of RRMSI and the Current RPMAs, was to be effective unless a motion to vary or amend was brought by August 20, 2009, to be heard at the same time as the intended motion for the appointment of a receiver of RRMSI and the appointment of representative counsel for Unit Owners and Existing Unit Purchasers. A Notice of Motion to vary and amend paragraph 6 of the Amended August 18 Order was served by RRMSI on August 19, 2009 (the “RRMSI Motion to Vary”).
- 2.8 Upon the recommendation of the Receiver (as set out in its Fifth Report), on August 20, 2009, the Court made an order appointing Representative Counsel (the “Representative Counsel Order”) and granting Representative Counsel the express authority to apply to the Court for the appointment of a receiver of RRMSI.
- 2.9 By order dated September 1, 2009, the Court appointed A&M as receiver (the “RRMSI Receiver”) without security, of certain rights, titles and interests relating to the contracts to which RRMSI was a party, including the Current HMA and the Current RPMAs (the “September 1 Order”). In the September 1 Order, the Court granted the RRMSI Receiver the express authority to repudiate the Current HMA and Current RPMAs to which RRMSI was a party, and which would be replaced by the new bilateral agreements with RRDI as approved by the Amended August 18 Order.

- 2.10 To date, the Receiver has filed ten reports with this Honourable Court. Notably, the eighth report of the Receiver (the “Eighth Report”) was filed with the Court on December 14, 2009. The purpose of the Eighth Report was to, among other things, (1) provide the Court with an update on (a) the status of a number of specific matters that had been before the Court on prior motions; (b) the progress of the receivership generally; and (c) the status of the Institutional Sales Process; and (2) to request that this Honourable Court authorize additional Receiver’s Borrowings which the Receiver determined would be necessary to fund the continuing costs of the receivership. As well, the Receiver sought approval of the Institutional Sales Process Protocol (the “Protocol”) and a timetable for the conduct of the Institutional Sales Process. Phase 1 of the Protocol contemplated the identification of Pre-Qualified Bidders (as defined in the Protocol) by the end of January 2010, due diligence throughout February and March 2010 and the submission of non-binding indicative offers (“Offers”) by March 31, 2010. A copy of the Eighth Report (without appendices) is attached as Appendix “B”.
- 2.11 On December 21, 2009, the Court issued an order (the “December 21 Order”) granting all the relief sought by the Receiver in the Eighth Report, including the authorization of the Second Tranche Receiver’s Borrowings and the Protocol.
- 2.12 The purpose of this eleventh report (the “Eleventh Report”) is to:
- Update the Court on the status of these receivership proceedings generally since the issuance of the Eighth Report³, including the status of the New Marriott Agreements, the closing of the retail sales of 16 Units, and other matters;

³ Note that the Receiver issued its ninth and tenth reports to the Court on April 9, 2010 and April 19, 2010 (respectively the “Ninth Report” and the “Tenth Report”). The purpose of the Ninth Report was to seek approval of certain administrative matters to effect the change of WestLB’s booking and lending office from the “Toronto

- Update the Court on the results of the stabilization of the Hotel during the receivership;
- Update the Court on certain construction deficiencies the Receiver identified in respect of the design, fabrication and installation of the balcony railings attached to the Units of the Hotel which were installed prior to the receivership, certain other pre-receivership construction-related deficiencies identified by the Receiver, and the Receiver's, now substantially completed, remediation program in respect of these deficiencies;
- Advise the Court of a dispute commenced by certain Unit Owners regarding the Receiver's interpretation of the New RPMA (the "RPMA Dispute"), which New RPMA the Receiver negotiated and settled with members of the Ad Hoc Committee of Unit Owners (the "Ad Hoc Committee") during July and August 2009, and which was approved by the Court and subsequently executed by substantially all Unit Owners and all New Unit Purchasers;
- Advise the Court of the general terms of a proposal presented to the Receiver by the Ad Hoc Committee and the independent directors (the "Independent Directors") of Muskoka Standard Condominium Corporation No. 62 (the "Condominium Corporation"), the condominium corporation created upon the registration of the declaration and description of the condominium that includes the resort Units of the Hotel. The proposal of the Ad Hoc Committee and the Independent Directors reflects a settlement of the RPMA Dispute by permitting the Condominium Corporation to acquire certain of the assets of RRDI,

Branch" to the "New York Branch". The purpose of the Tenth Report was limited to a request by the Receiver to expand the scope of the Reference in connection with matters relating to the Construction Lien Claims Process.

specifically the commercial property and operations of the Hotel and RRDI's interest in the New Marriott Agreements and New RPMAs, and a simplification of the Rental Pool structure (the "Unit Owner Proposal");

- Update the Court on issues relating to the Red Leaves Resort Association (the "Association"), and the recent discussions the Receiver and its legal counsel have had with the Association, which is controlled by Ken Fowler and related individuals and entities;
- Update the Court on a number of matters concerning water and sewage infrastructure (the "Water and Sewage Infrastructure") on or adjacent to RRDI's property and advise the Court on the difficulties that the Receiver has encountered in connection with settling such matters with the adjacent properties and businesses owned or controlled by Ken Fowler and/or related entities;
- Advise this Honourable Court, that in light of the issues faced by the Receiver, including the RPMA Dispute, the unresolved issues in connection with the Association and Water and Sewage Infrastructure, and the need for further consideration of the Unit Owner Proposal, the Receiver concluded that it was no longer able to maintain the integrity of the Institutional Sales Process, and therefore requests that this Honourable Court approve the Receiver's suspension of the Institutional Sales Process, allowing the Receiver the necessary time to resolve these issues in a manner satisfactory to the Receiver and to this Honourable Court; and
- Seek the Court's approval of all of the Receiver's activities since the date of the Eighth Report.

3.0 Terms of Reference

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

4.0 The RPMA Dispute, the Unit Owner Proposal and the Suspension of the Institutional Sales Process

- 4.1 In its Second Report, the Receiver provided an overview of the original Rental Pool management structure and the Rental Pool Manager's role in the operations and management of the Hotel. In its Fourth Report, the Receiver provided this Honourable Court with a detailed analysis of the Rental Pool management structure and set out the reasons why the Rental Pool arrangements in respect of the Hotel needed to be restructured. As detailed in the Fourth Report, the Receiver advised that it had negotiated the terms of the New RPMA with members of the Ad Hoc Committee. The Amended August 18 Order approved the form of the New RPMA and authorized the Receiver, on behalf of RRDI, to enter into the New RPMAs with Unit Owners, Existing Unit Purchasers and New Unit Purchasers. The Receiver subsequently entered into the New RPMAs with substantially all Unit Owners and all New Unit Purchasers.
- 4.2 Effective as of 11:59 p.m. on January 22, 2010, pursuant to the September 1 Order, A&M in its capacity as the RRMSI Receiver, repudiated the Current RPMAs to which RRMSI was a party and the Receiver, on behalf of RRDI, confirmed the satisfaction or waiver of the conditions of the Unit Owner Settlement Agreements and the release from escrow of the New RPMAs, giving effect to the New RPMAs as of 11:59 p.m. on January 22, 2010.
- 4.3 Early in March 2010, certain Unit Owners advised the Receiver of a contrary interpretation of the New RPMA, which emerged in the context of the budgeting for the Condominium Corporation.
- 4.4 Commencing on March 25, 2010, and notwithstanding the stay of all rights and remedies against RRDI that has been imposed pursuant to Paragraph 9 of the Appointment Order, 63 Unit Owners (the "Disputing Unit Owners") commenced delivering notices of dispute

(the "Notices of Dispute") to the Receiver, all of which were in virtually the same form. A copy of one such Notice of Dispute is attached as Appendix "C".

- 4.5 The interpretation of the New RPMA advanced in the Notices of Dispute would have a significant negative impact to the Rental Pool Manager on the calculation of the Rental Pool Management Fee which is payable by Unit Owners to the Rental Pool Manager, as well as reduce amounts to which RRDI would be entitled as owner of the commercial space. Consequently, the interpretation of the New RPMA by the Disputing Unit Owners would negatively impact the value of the residual interest in the Hotel, which interest is a significant component of the Assets offered for sale pursuant to the Institutional Sales Process. However, while reducing the value of the residual interest of the Hotel, the Disputing Unit Owners' interpretation would divert a greater proportion of net rental room revenue to Unit Owners, thereby conceivably enhancing the value of individual Units, including the Units owned by RRDI.
- 4.6 It is the Receiver's opinion that the Notices of Dispute issued by the Disputing Unit Owners have been issued contrary to the stay of proceedings imposed by the Appointment Order. These Notices of Dispute were delivered to the Receiver, notwithstanding that the Receiver advised the Ad Hoc Committee that service of any such Notice of Dispute was stayed pursuant to the Appointment Order. Furthermore, the Receiver asserts that the language contained in the New RPMA, with which the Disputing Unit Owners have taken issue, is clear and unambiguous. In a letter delivered to each Disputing Unit Owner on April 6, 2010 (the "Receiver's Responding Letter"), the Receiver advised the Disputing Unit Owners of its position and further advised the Disputing Unit Owners that the Receiver intended to bring a motion before this

Honourable Court to seek the Court's assistance in interpreting the disputed provisions of the New RPMA. As indicated in the Receiver's Responding Letter, the Receiver advised that a resolution was required as soon as possible, given that the Institutional Sales Process was under way. A copy of the Receiver's Responding Letter is attached as Appendix "D".

- 4.7 Subsequent to receiving the Notices of Dispute, the Receiver initiated a meeting with certain of the Disputing Unit Owners and their legal counsel in an attempt to address the issues raised in the Notices of Dispute. The Receiver believed that the RPMA Dispute would create a significant impediment to the Institutional Sales Process, as it would inhibit Pre-Qualified Bidders from being able to adequately evaluate the forecast cash flow stream that would be acquired by a purchaser of the Assets of RRDI. The Receiver concluded that, in the circumstances, Pre-Qualified Bidders would find it difficult to put forward their best Offers by the March 31, 2010 deadline set out in the Protocol.
- 4.8 As well, the RPMA Dispute impeded the ability of the Condominium Corporation to settle its 2010 budget and issue invoices to Unit Owners for common expenses, which was a concern to many Pre-Qualified Bidders.
- 4.9 The Receiver posted copies of a form of the Notice of Dispute, along with the Receiver's Responding Letter, in the Electronic Data Room made available to all Pre-Qualified Bidders pursuant to the Protocol. In addition, the Receiver, over a short period of time, met or held discussions with many Pre-Qualified Bidders to discuss the potential impact that the Notices of Dispute could have on the Pre-Qualified Bidders' interest in the Assets.

- 4.10 On March 26, 2010, on the Receiver's direction, Colliers advised Pre-Qualified Bidders that the deadline for submission of Offers was extended to May 17, 2010, to allow more time for due diligence and for consideration of the RPMA Dispute.
- 4.11 In early April, Fasken Martineau DuMoulin LLP, the new legal counsel to the Independent Directors and the Ad Hoc Committee, contacted the Receiver to discuss the general terms of the Unit Owner Proposal. The Unit Owner Proposal contemplates that the Condominium Corporation (and/or a wholly owned subsidiary of the Condominium Corporation) would acquire the residual interest in the Hotel, including, among other things, RRDI's interest in the New Marriott Agreements and the New RPMAs. As a result, subsequent to the completion of the proposed transaction, RRDI would retain its interest in the 132 unsold (or sold and unclosed) resort Units of the Hotel (the "Unsold Units") and the development lands owned by RRDI situated around the Hotel (the "Development Lands"), as well as a majority interest in the Condominium Corporation. The Condominium Corporation (or its wholly owned subsidiary) would modify the terms of the New RPMAs (with requisite Unit Owner approval) and other governing agreements and arrangements in such a manner as to, among other things, (a) revise, reduce or eliminate the Rental Pool Management Fee charged by the Rental Pool Manager; (b) significantly simplify the calculation of amounts available for distribution to Unit Owners (as it would no longer be necessary to allocate revenues and expenses between resort Units and commercial components of the Hotel); and (c) reduce common area expenses payable by Unit Owners to the Condominium Corporation to directly address the matter raised by the Notices of Dispute.

- 4.12 On and after April 13, 2010, the Receiver and its legal counsel have met with the Independent Directors, the Ad Hoc Committee and/or their legal counsel on several occasions to discuss the Unit Owner Proposal. The Receiver believes that there is some merit to the Unit Owner Proposal as, among other things, the simplified structure and reduced expense burden on Unit Owners could result in an increase in the value of the Hotel and the Unsold Units, generally. The Receiver discussed the merits of the Unit Owner Proposal with Colliers, and Colliers concurs with the Receiver's assessment.
- 4.13 On April 27, 2010, each of the members of the Ad Hoc Committee, as individuals, executed a confidentiality agreement with the Receiver to facilitate the Ad Hoc Committee's review of certain due diligence information necessary to formalize the Unit Owner Proposal.
- 4.14 While the Unit Owner Proposal has merit and could enhance the value of RRDI's Assets for all stakeholders, it requires further investigation by the Receiver. The proposed acquisition of the commercial aspects of the Hotel by the Condominium Corporation has some complexities, and does not conform to the en bloc sale contemplated by the Protocol. Furthermore, the RPMA Dispute and unresolved issues with respect to the Association and Water and Sewage Infrastructure created uncertainty in the ability of Pre-Qualified Bidders to formulate an Offer, even by the extended deadline of May 17, 2010. Given these new developments, the Receiver determined that it was not able to maintain the integrity of the Institutional Sales Process, preserve a level playing field for all prospective purchasers and facilitate Pre-Qualified Bidders' ability to assess the value of the Assets on an informed basis without significant uncertainty.

- 4.15 The Receiver has therefore suspended the Institutional Sales Process to either (a) reach agreement on the terms of the Unit Owner Proposal and seek Court approval thereof; or (b) resolve the RPMA Dispute through litigation or otherwise. As well, the suspension of the Institutional Sales Process provides additional time to resolve or alternatively seek Court directions in respect of the additional issues relating to the Association and the Water and Sewage Infrastructure that have arisen with respect to RRDI and its relationships and arrangements with other entities and/or parties that are either controlled or directed by Ken Fowler. In the Receiver's view, these issues further undermine the Receiver's ability to continue the Institutional Sales Process.
- 4.16 A summary of the status and key highlights in respect of the Institutional Sales Process immediately prior to the suspension thereof is provided, commencing at Section 9.26, of this Eleventh Report.
- 4.17 On April 30, 2010, the Receiver delivered a letter to each Pre-Qualified Bidder advising of the Receiver's intention to (a) suspend the Institutional Sales Process; and (b) attend at Court to seek advice and directions with respect to the suspension of the Institutional Sales Process and the resolution of those other issues that would permit a sales process to continue in the future. A copy of this letter is attached as Appendix "E".
- 4.18 Notwithstanding the suspension of the Institutional Sales Process, the Receiver respectfully requests that this Honourable Court authorize it to continue to negotiate the terms of the Unit Owner Proposal with the Ad Hoc Committee and the Independent Directors. The objective of these negotiations would be to seek arrangements that the Receiver may recommend to the Court for approval and/or, in the alternative, negotiate the terms of a settlement in respect of the RPMA Dispute, failing which there will be no

alternative but for the Receiver to proceed with litigation of the RPMA Dispute. The Receiver believes that these matters must be addressed prior to recommencement of a sales process. The Receiver plans to return to Court in due course to advise the Court on the status of these negotiations and its recommendations with respect to the Unit Owner Proposal.

5.0 Update on Hotel Operations

- 5.1 As described in Section 9 of this Eleventh Report, in early 2010, the Receiver entered into the New HMA and other New Marriott Agreements with Marriott Hotels. This was an important step in stabilizing the operations of the Hotel and bringing confidence to the Unit Owners of the Hotel, as well as the Hotel's corporate and leisure guests.
- 5.2 Thus far, relative to 2009, the Hotel's operational and financial results have been, and are forecast to continue to be, significantly improved. Marriott Hotels is confident that the Hotel's operations will continue to stabilize and either meet or exceed its forecast during the busy, summer season in 2010. Furthermore, as the economy begins to improve and as continued marketing efforts positively impact the Hotel, it is expected that in 2011 Hotel results and performance will continue to improve.
- 5.3 Revenues for the first four periods of 2010 (corresponding with the period from January to April) were approximately 25% higher than during the same period in 2009. The winter months are traditionally slow revenue generating months in the Muskoka region. Accordingly, the Receiver is encouraged by the extent of the improvement, particularly as the Hotel heads into its summer season. Marriott Hotels has advised the Receiver that, as at the end of March 2010, it had nearly doubled the amount of Hotel rooms booked for the balance of the fiscal year in the conference and group business category than it had at the same time last year, and that it had already confirmed nearly the same number of wedding bookings for 2010 than it had actually hosted during all of 2009.
- 5.4 Furthermore, the Hotel is anticipating significant revenues in June 2010 as a result of the G8 Conference of World Leaders that is being held in Muskoka. Marriott Hotels has

advised that in connection with this conference, the Hotel is entirely sold out for a prolonged period of time.

- 5.5 The Hotel has also recently received excellent press and media exposure as a result of, among other things, being featured in Air Canada's EnRoute Magazine, The Toronto Star, The Globe and Mail and a number of other publications. Notably, in late 2009, *Where Magazine* named Teca, the Hotel's feature Italian restaurant, as one of the ten best new restaurants in Canada for 2009, a significant achievement for the Hotel. Attached as Appendix "F" is a copy of the article in *Where Magazine* wherein it described the restaurant and the honour afforded to it.

6.0 The Water and Sewage Infrastructure

- 6.1 RRDI owns the water treatment plant that is situated on RRDI's property (the "WTP") and, based on the Receiver's review of available records, also appears to own certain water taking infrastructure, including pumps, pumping equipment, and piping (the "RRDI Infrastructure"). The WTP and the RRDI Infrastructure are used by RRDI to provide drinking water to guests of the Hotel. In addition, RRDI is the owner and operator of a sewage treatment plant (the "STP") that is situated on adjacent lands owned by Wallace Marine Limited ("Wallace Marine"). The Receiver understands that Wallace Marine is indirectly controlled by Ken Fowler. The lands on which the STP is situated are the subject of a lease agreement dated February 13, 2009, between RRDI, as tenant and Wallace Marine, as landlord, for a term of 21 years less a day (the "STP Lease"). A copy of the STP Lease is attached as Appendix "G".
- 6.2 The initial development concept envisaged by Ken Fowler in respect of the Red Leaves Resort area was described in the Red Leaves Master Plan (the "Red Leaves Master Plan"). Pursuant to the Red Leaves Master Plan and the Developer's Responsibility Agreement, a copy of which is attached as Appendix "H", the WTP and STP were intended to only serve as "temporary" facilities. Notwithstanding this intention, the Receiver understands that there is nothing which precludes the WTP and STP from being classified as "permanent" facilities⁴. The District of Muskoka did however specify that the further development of lands adjacent to RRDI pursuant to the Red Leaves Master Plan could only proceed on the condition that the 'developer' constructed and commissioned much larger 'permanent' municipal water and sewage treatment facilities

⁴ Other than capacity constraints. The Receiver understands that the WTP, RRDI Infrastructure and STP have been designed to have sufficient capacity to support all existing and future development on RRDI's land.

to service not only the development on RRDI's land, but also on that of the adjacent land, all of which the Receiver understands is controlled directly or indirectly by Ken Fowler.

- 6.3 The Receiver understands that construction of permanent water and sewage treatment facilities has been deferred indefinitely. The Receiver further understands that construction of larger permanent facilities could cost in excess of \$15 million.
- 6.4 The WTP operates pursuant to Ontario Regulation 319/08 governing small water drinking systems for non-residential use. The STP operates pursuant to a Certificate of Approval, No. 2176-74DPM9, (the "COA") issued by the Ministry of the Environment (the "MOE") on July 20, 2007.
- 6.5 RRDI, as supplier of water and sewage treatment services, entered into a water/sewage treatment services agreement with the Condominium Corporation pursuant to which RRDI provides such services to the Condominium Corporation on behalf of the resort condominium, and under which RRDI also provides such services for the commercial premises of the Hotel.
- 6.6 In December 2009, the Receiver engaged Conestoga-Rovers & Associates ("CRA"), an independent environmental engineering firm with expertise in matters relating to the Water and Sewage Infrastructure, to provide the Receiver with an independent evaluation of the Water and Sewage Infrastructure in accordance with the requirements to do so pursuant to the Developer's Responsibility Agreement.
- 6.7 CRA identified certain non-critical deficiencies in respect of the WTP and the Receiver is continuing to work with CRA to address them.
- 6.8 In respect of the STP, CRA reported to the Receiver a number of minor deficiencies. In addition, CRA determined that the STP, as currently designed, will be unable to meet

certain requirements pursuant to the COA, namely the requirement to maintain total phosphorus levels ("TPL") of less than 0.35mg/l, when the Hotel is operating at or about maximum capacity. The Receiver, with the assistance of CRA and the Receiver's legal counsel, has liaised with the MOE in respect of a proposed plan to remediate the STP. The estimated cost to remedy these deficiencies could be up to \$500,000 and could take up to eight months to implement. The Receiver is in the process of seeking a control order from the MOE pursuant to the Ontario *Water Resources Act*, to allow RRDI to continue to operate the STP until remediation is complete.

- 6.9 CRA has advised that the COA requirements were in place at the time of the design, construction and commissioning of the STP (all of which were prior to the receivership). However, notwithstanding the fact that these requirements were in place, CRA has advised the Receiver that the STP was designed and constructed in a manner such that it would be unable to meet the requirements established by the MOE pursuant to the COA. The Receiver also recently determined that the operator of the STP, Team Aquatic Management (Operations) Ltd., which was engaged by RRDI prior to the receivership, notified RRDI management in June 2008 of its concerns with respect to the ability of the STP to meet the TPL requirements, but no remediation was undertaken.
- 6.10 Since the STP is located on non-RRDI lands and could require up to \$500,000 in remediation costs, the Receiver and CRA have considered the feasibility of constructing a new STP on RRDI's property, which would not be the subject of any third-party lease. CRA estimates that the cost to construct such a facility could be as much as \$2.5 million.

The STP Lease and Related Easements

- 6.11 The STP Lease is for a term that commenced on February 13, 2009 and ends on the earlier of (a) 21 years less a day from the commencement date; and (b) the date that a permanent sewage treatment plant is operational.
- 6.12 Pursuant to Section 15.01 of the STP Lease, RRDI cannot assign the STP Lease without the prior written consent of Wallace Marine, which consent may not be unreasonably or arbitrarily withheld.
- 6.13 Pursuant to Section 16.04 of the STP Lease, Wallace Marine agrees to not terminate or cancel the STP Lease without the prior written consent of the Leasehold Mortgagee, namely each of WestLB, Fortress and the Condominium Corporation. In addition, pursuant to a Leasehold Mortgagee Agreement dated March 9, 2009, among Wallace Marine, and each of the Leasehold Mortgagees, Wallace Marine agrees that the STP Lease may be assigned by a Leasehold Mortgagee without Wallace Marine's consent, upon undertaking a foreclosure or sale pursuant to a power of sale.
- 6.14 In addition to the STP Lease, Wallace Marine has granted an easement in perpetuity in favour of RRDI to operate, inspect, alter, remove, replace or reconstruct a sewage treatment plant and related facilities on the leased lands. To the extent that infrastructure or access routes related to, or required for the operation of the STP, were located on other lands controlled by KFE (other than Wallace Marine), the applicable KFE entity also granted an easement in perpetuity in favour of RRDI over such lands. The Receiver understands from RRDI's former real estate legal counsel that the District of Muskoka required that such perpetual easements be put in place in conjunction with the finalization of the Developer's Responsibility Agreement. In addition, pursuant to Section 3.02 of

the STP Lease, Wallace Marine has granted a right of way and easement over its lands along and through certain access and effluent areas.

- 6.15 The operation of the STP (other than the TPL issue) and the flow of effluent therefrom is also consistent with the COA, which approved the STP, including the discharge of treated effluent from the sewage works to an existing pond on neighbouring lands owned by 1515511 Ontario Inc. o/a The Rock Golf Club (“The Rock”), its overflow to an adjacent wetland on Wallace Marine lands, and ultimately its discharge into Lake Rosseau.
- 6.16 Notwithstanding the above covenants and easements, the Receiver has been advised that Wallace Marine takes the position that the STP Lease is in default, that the 21 year term of the STP Lease is inconsistent with the perpetual easements, and that somehow the STP Lease is at risk. The Receiver has sought to resolve these allegations at the same time as it resolves the Water Taking Permit, described in more detail below.

The RRDI Infrastructure and the ‘Water Taking Permit’

- 6.17 The RRDI Infrastructure provides water to the WTP and in turn to the Hotel. It also provides water to The Rock for golf course irrigation purposes. The Receiver understands that The Rock is indirectly controlled by Ken Fowler. The right of RRDI to take water is governed by the Ontario *Water Resources Act*, Permit Number 0465-5ZTL4C, which provides RRDI with the authority to take water primarily from Lake Rosseau for supply to the Hotel and The Rock (the “Water Taking Permit”). The Water Taking Permit expired in August 2009; however, RRDI has applied to the MOE to renew the permit and is allowed to continue to draw water from Lake Rosseau as if the Water Taking Permit was still in effect, until such time as a new water taking permit is issued.

- 6.18 The Water Taking Permit cancelled and replaced Permit Number 01-P-1137, issued on September 21, 2001 (the “Initial Water Taking Permit”). Both the Water Taking Permit and the Initial Water Taking Permit were issued to 1108827 Ontario Inc., the predecessor entity to RRDI. The Receiver is not aware of the existence of any prior written agreement between RRDI and The Rock which governs the supply of water to The Rock by RRDI pursuant to either the Water Taking Permit or the Initial Water Taking Permit.
- 6.19 The Receiver, with the assistance of its legal counsel and CRA, is in the process of renewing the Water Taking Permit. The MOE has confirmed to the Receiver that it does not intend to issue separate water taking permits to each of RRDI and The Rock. Rather, the MOE will only issue one water taking permit to RRDI, as the sole source of the water drawn from Lake Rosseau is by a pipe running off of RRDI land. The water is pumped through a pipe by a pump house which is also on RRDI land. The pipe splits and diverts water to The Rock, just before the WTP for the Hotel water supply.
- 6.20 A draft of the new water taking permit has been issued by the MOE for RRDI’s review and comment. The Receiver has held discussions with representatives of The Rock and their various legal counsel, for the purpose of developing a mutually acceptable water supply agreement, whereby RRDI would continue to supply The Rock with water for irrigation purposes (the “Water Supply Agreement”). The Receiver wishes to cooperate with The Rock to ensure that it has continued supply of water for golf course irrigation purposes, but reasonable, commercial arrangements must be in place for the maintenance of the RRDI Infrastructure and the continued supply of water by RRDI to The Rock.
- 6.21 The Receiver’s legal counsel prepared a draft Water Supply Agreement and the Receiver has sought to settle such agreement with The Rock and its legal counsel on reasonable

business terms. The Water Supply Agreement has not yet been finalized, but progress is being made. The current draft of the Water Supply Agreement provides for a term that expires when the new water taking permit expires, and contemplates that RRDI shall provide up to a maximum of 2,400,000 litres of water per day (or 60% of the maximum permissible amount pursuant to the new water taking permit) to The Rock in return for payment by The Rock of 60% of the annual operational and maintenance costs of the water-taking infrastructure. In addition, The Rock agrees to be responsible for 60% of the capital expenses in respect of the RRDI Infrastructure. Either party also has the right to terminate the Water Supply Agreement prior to its expiry on not less than 12 months' notice. If RRDI terminates early, RRDI agrees to reimburse The Rock for past financial contributions towards the RRDI Infrastructure up to an amount to be agreed upon. If The Rock terminates early, it is not entitled to any reimbursement or compensation. In exchange for the supply of water on these terms, The Rock will quitclaim any ownership interest it may have in the RRDI Infrastructure to, and in favour of, RRDI.

- 6.22 In order to normalize Hotel operations and prepare for the sale of the Hotel, the Receiver has pursued both a Water Supply Agreement and resolution of any allegations in respect of the assignment of the STP Lease to a Pre-Qualified Bidder. The Receiver met with legal counsel and advisors to Wallace Marine on February 18, 2010. The first draft of the Water Supply Agreement was sent by email dated March 12, 2010. Legal counsel for the Receiver expressly stated therein that the Receiver would like to address the STP Lease at the same time as the parties attempt to settle the Water Supply Agreement. Attached as Appendix "I" is a redacted copy of an email dated March 12, 2010 from the Receiver's

legal counsel to legal counsel to certain KFE-related entities (including The Rock and Wallace Marine).

- 6.23 In discussions between the Receiver's legal counsel and legal counsel to such KFE-related entities, legal counsel to such KFE-related entities advised the Receiver's legal counsel that if the Receiver did not agree to the terms being put forth by The Rock (some of which have been considered to be unreasonable by the Receiver) in respect of the Water Supply Agreement, then it would cause Wallace Marine to "make things difficult for the Receiver" in respect of the STP and the STP Lease. Accordingly, the Receiver has reiterated to representatives of The Rock, Wallace Marine and KFE, that prior to the Receiver agreeing to the terms of a Water Supply Agreement, it will first require satisfactory documentation from Wallace Marine waiving any alleged defaults pursuant to the STP Lease and affirming the Receiver's right to assign the STP Lease without the consent of Wallace Marine upon a Court-approved sale of the Assets of RRD. In an email dated April 28, 2010, forwarding a further draft of the Water Supply Agreement, legal counsel for the Receiver stated to legal counsel for the KFE-related entities:

Also, as Katherine McEachern touched on in her March 12, 2010 email to Simon [*Romano, legal counsel to the KFE-related entities*], before the Receiver will sign this agreement, we will require documentation with Wallace Marine satisfactory to the Receiver whereby no consent will be required for the assignment of the lease of the sewage treatment plant to an assignee of RRD approved by the court. In addition, the Receiver will require from Wallace Marine an acknowledgement that the lease is in good standing and/or a waiver of any alleged defaults, and confirmation to any lender to a purchaser of the Hotel, that such lender enjoys the same lender protections contained in the lease. We indicated at the outset of our discussions with respect to the water supply agreement that we would require co-operation in this regard. Furthermore, Mr. White has now raised in our recent discussions the prospect of your client causing the Receiver difficulty with respect to the sewage treatment plant, if we do not reach consensus. Obviously, we must reach resolution on both the water permit and the sewage treatment plant lease.

6.24 These outstanding issues with The Rock and Wallace Marine have interfered with the Receiver's ability to conduct the Court-authorized Institutional Sales Process. The Receiver needs to be able to provide certainty to the ultimate purchaser of RRDI's Assets that such purchaser will have the use and enjoyment of the Water and Sewage Infrastructure, which is necessary to continue the operations of the Hotel, and that a purchaser will only be responsible for water supply to The Rock on reasonable commercial terms which have been put in place. Accordingly, it may be necessary for the Receiver to seek assistance from this Honourable Court should these matters not be resolved in the short term.

7.0 Construction Related Matters

Matters Pertaining to Balcony Handrails

- 7.1 In late summer 2009, the Receiver engaged Davroc & Associates Ltd. (“Davroc”) to conduct certain load tests on the balcony handrails situated at Paignton House⁵. The tests indicated that the handrail system withstood the three, horizontal, vertical and panel design load requirements pursuant to the 2006 Ontario Building Code (the “OBC”); however, concerns were raised solely relating to certain inward direction tests. The Receiver, together with Altus, began to consider the manner by which it was best to address this issue.
- 7.2 In the fall of 2009, while conducting certain repairs of balcony decking materials, RRDI contractors noted several apparent material deficiencies in the installation of the balcony handrails at both Longview and Paignton House. Unlike the Davroc issue, the deficiencies identified clearly called into question the safety and integrity of the balcony railings. Upon examination by the Receiver and Marriott Hotels’ engineering department, the concerns identified caused the Receiver to instruct Marriott Hotels to immediately close all balconies in the Hotel pending further investigation.
- 7.3 The Receiver, through its legal counsel, engaged two engineering firms, Morrison Hershfield Limited (“Morrison Hershfield”) and Trow Associates Inc. (“Trow”, and collectively, Morrison Hershfield and Trow are defined as the “Independent Engineers”) to provide opinions as to the current status of the balcony handrails and the remediation alternatives.

⁵ Paignton House is the smaller of the two buildings that comprise the Hotel. Paignton House consists of 43 rooms, of which 21 Units have balconies.

- 7.4 Both Morrison Hershfield and Trow concluded that it was most likely that, as a result of incorrect design, fabrication and installation, the balcony handrail systems at the Hotel were progressively failing over time, and hence failed to meet OBC requirements.
- 7.5 Accordingly, on January 21, 2010, the Receiver's legal counsel notified several parties involved in the design and installation of the balcony railings of the Receiver's intention to make a claim against such parties for the costs associated with the remediation of the balcony handrails and the lost revenues incurred, and to be incurred, by Marriott Hotels as a result of an inability to provide access to the balconies (the "Noticed Parties").
- 7.6 On February 16, 2010, the Receiver invited each of the Noticed Parties, together with their own respective experts and insurers, to attend at the Hotel and inspect the balcony handrails. Since the Receiver did not intend to delay the commencement of remediation efforts, the Noticed Parties were advised that the opportunity being afforded to them to attend at the Hotel, may be the only opportunity provided to view the handrail system in its existing, deficient state.
- 7.7 The parties that attended at the site visit arranged by the Receiver included representatives of (a) Parry Sound Glass Limited o/a Ross Windows ("Ross Windows"); (b) CR Laurence Co. Inc. ("CR Laurence"); and (c) Valentin Engineering Ltd. ("Valentin").
- 7.8 Ross Windows had been engaged to supply and install all of the balcony handrails at the Hotel. CR Laurence is the manufacturer of the balcony handrail system which was purchased and installed by Ross Windows. Valentin is the independent engineering firm that was engaged by CR Laurence to prepare a limited scope report on the type of handrail system to be installed at the Hotel; however, this report was not prepared

specifically in respect of the Hotel, but rather was general in nature on handrail installations.

- 7.9 The Receiver received remediation options from both Morrison Hershfield and Trow. Morrison Hershfield initially suggested that the balcony handrails be entirely replaced. The Receiver, with the assistance of Morrison Hershfield, undertook a contract tendering process for the replacement work to be performed in respect of the balcony handrails. Five separate firms, each capable and qualified to undertake the work, were asked to tender. The results of the tendering process revealed that the cost to entirely replace all of the balcony handrails at the Hotel would be in excess of \$1.6 million, excluding legal fees, consulting fees and losses incurred by Marriott Hotels (the “MH Option”). Trow proposed a solution whereby the existing balcony handrails could be repaired and modified (the “Trow Option”). The Receiver confirmed with Trow that such repairs and modifications would comply with OBC requirements. The cost of the Trow Option was estimated to be in excess of \$400,000 excluding legal fees, consulting fees and losses incurred by Marriott Hotels. In conjunction with its legal counsel, the Receiver concluded it most appropriate in the circumstances to proceed with the Trow Option. The Receiver and its legal counsel reached this conclusion for the following reasons:

- a) **Timing:** The completion schedules proposed by the parties participating in the tendering process in respect of the MH Option did not provide for the replacement work to be substantially completed until the end of May 2010, at the earliest. The Trow Option provided for substantial completion by April 30, 2010. Marriott Hotels had advised the Receiver that the Hotel was expecting high occupancy levels throughout May, as the Hotel enters its peak occupancy period and accordingly, it

was critical, in the view of Marriott Hotels and the Receiver, that all necessary construction work be completed by the beginning of May.

- b) ***Hotel Disruption:*** All of the parties participating in the tendering process in respect of the MH Option believed that in order to replace the balcony railings, it would be necessary to erect significant scaffolding around the majority of the Hotel. The Trow Option was not premised on the need to do so. The Receiver believed that the erection of scaffolding around the majority of the Hotel would disrupt the Hotel's operations, increasing Marriott Hotels' claim for loss and, on its own, add significantly to the cost of the replacement effort. Furthermore, the longer the delay and the greater the level of disruption, the greater, the Receiver and Marriott Hotels believed, would be the negative impact associated with poor publicity and cancelled conference and group business.
- c) ***Safety & Cost/Benefit:*** The Trow Option would comply with all of the requirements of the OBC and meet all of the other aesthetic requirements that were relevant in the decision process. Accordingly, the Receiver and its legal counsel concluded that it was not necessary to incur the significant costs associated with the MH Option, given that the Trow Option would fully address and meet all safety concerns.

7.10 On April 6, 2010, the Receiver entered into a contract with Trow to complete the repair of all of the balcony handrails at the Hotel, including removal of existing handrails, documentation of the deficiencies encountered, installation of enhanced components and the provision of an engineering report, stating that all balcony handrails at the Hotel meet the requirements of the OBC and, most importantly, are safe for guest access. During the

remediation process, which necessitated the complete removal and re-installation of the balcony handrails, Trow, the Receiver and their respective contractors and advisors noted countless material deficiencies with the workmanship of the balcony handrails.

- 7.11 Legal counsel to the Receiver is continuing to work with Trow to document the numerous deficiencies noted in the design, fabrication and installation of the balcony handrails. The Receiver expects to pursue the recovery of all costs incurred in connection with the remediation, including Marriott Hotels' lost revenues, from the Noticed Parties.

Other Construction Related Matters

- 7.12 In June 2009, the Receiver engaged Trow to complete certain reporting requirements pursuant to the Tarion New Home Warranty Program (the "Bulletin 19 Reporting Requirements"). As part of the Bulletin 19 Reporting Requirements, Trow was required to perform leak pressure testing on the windows of the Units. Upon completion of the testing work performed by Trow, Trow advised the Receiver that the windows and exterior balcony doors of the Units (the "Window and Door Systems") failed to meet the testing requirements. The Window and Door Systems were supplied by Ross Windows. Prior to the receivership, Ross Windows was contracted to supply, and in some cases, install the Window and Door Systems. However, the Receiver understands that the majority of the installation work was performed by RRCI personnel.
- 7.13 Since the completion of the initial testing, Trow has suggested numerous remediation options to Ross Windows and Ross Windows has attempted to remediate certain Units multiple times. Notwithstanding its efforts, Ross Windows was unable to remediate the Window and Door Systems such that they would meet the testing requirements. As a

result, Trow has had to make several unanticipated visits to the Hotel, significantly increasing the costs of the Bulletin 19 Reporting Requirements.

7.14 Trow noted failures in the manufacture of certain components of the Window and Door Systems, as well as deficiencies in the installation thereof. As a result of Ross Windows' inability to correct the deficiencies in the product that they supplied, and in some cases, installed, the Receiver requested that Trow develop a remediation work plan and provide the plan to the Receiver along with names of capable contractors to complete the work. Such remediation is now in process and is expected to cost more than \$80,000, excluding the costs associated with the additional Bulletin 19 Reporting Requirements. The Receiver expects to pursue the recovery of all additional costs incurred by the Receiver from the responsible parties.

7.15 In addition, pursuant to the *Condominium Act*, and as well, to comply with the requirements of Tarion, the Receiver, on behalf of the Condominium Corporation and in consultation with the Independent Directors, engaged Trow to undertake both a Common Element Performance Audit (the "Performance Audit") and a Comprehensive Reserve Fund Study (the "Reserve Fund Study") in connection with the common element areas of the resort Condominium.

7.16 Pursuant to Section 44 of the *Condominium Act*, the Board of Directors of a condominium corporation must retain a professional engineer or architect or firm to conduct a Performance Audit on the common elements on behalf of the condominium corporation. The purpose of the Performance Audit is to determine whether there are any deficiencies in the performance of the common elements after construction has been completed that, among other things, may give rise to a claim for payment by Tarion. The

Performance Audit must be conducted within the first year of the registration of a condominium corporation. The Performance Audit addressed to the Board of Directors of the Condominium Corporation is dated March 8, 2010.

- 7.17 The Receiver is continuing to work with the Board of the Condominium Corporation and Trow to consider the action plan arising from the Performance Audit. While the Performance Audit identified many deficiencies in respect of the common elements, the vast majority of these items are either minor or already known to the Receiver. The Receiver does not consider any of the items that are included in the Performance Audit to be of significant concern, other than those items (such as the balcony railings and the Window and Door Systems) which the Receiver has described in this Eleventh Report or other items that the Receiver is aware of, and is either in the process of addressing or has already addressed, since the issuance of the Performance Audit.
- 7.18 Pursuant to the *Condominium Act*, condominium corporations are required to establish and maintain a Reserve Fund to accommodate major capital expenditures necessary for repair and/or replacement of the common elements. The *Condominium Act* further requires that condominium corporations regularly engage a qualified individual to conduct a Reserve Fund Study to determine the Reserve Fund's adequacy.
- 7.19 The Receiver and the Board of Directors of the Condominium Corporation are continuing to assess the findings of Trow in the Reserve Fund Study. However, the Receiver does not believe that Trow's findings will have any adverse impact on the value of the Hotel or the anticipated condominium fees.

8.0 The Red Leaves Resort Association

- 8.1 As described at paragraph 4.20 of the Eighth Report, the Association is a non-profit corporation incorporated pursuant to a private act of the Ontario Legislature, *The Red Leaves Resort Association Act, 2006* (the “Act”). The Act establishes the Association for the purposes of providing community services and events for all residents and guests of the property comprising the Red Leaves Resort complex (the “Resort”), of which RRDI’s property is a part. All owners of property within the area of the Resort are required by the Act to be members of the Association. The Association is modeled on other established resort associations, such as those at Blue Mountain Village at Collingwood, Ontario, and the Mont Tremblant Village in Quebec.
- 8.2 The Association was established at the initiative of KFE, in connection with the initial plan to develop Red Leaves as a village-type destination incorporating a number of properties within the Resort, including the Hotel, The Rock, Wallace Marine, Cleavelands House, as well as other properties and recreational businesses. The intention was that, as the Resort grew and developed, new businesses and property owners would become members of the Association.
- 8.3 The Association’s constating documents were drafted and its initial operations were managed by Robert Comish, who had, at the request of KFE, established the Association in accordance with a model that he had established at other resorts, including Blue Mountain. At the time of the Receiver’s appointment, Mr. Comish was the President of the Association.
- 8.4 The membership of the Association currently includes RRDI in its capacities as owner of the remaining Units, owner of the commercial operations of the Hotel, and Rental Pool

Manager. Other members include Cleavelands House, The Rock, Wallace Marine, other KFE related entities which own lands located within the Resort, and each Unit Owner. The Association has registered a notice on title to all property that is designated as Resort lands and thus subject to the Act.

- 8.5 The costs of the Association are to be financed by fees chargeable to its members pursuant to the Association's By-laws dated April 2008 (the "By-laws"). The By-laws establish the Association's governance and set out the basis on which fees are calculated and assessed. Votes in respect of the Association are allocated to members, based on the fees that they pay.
- 8.6 The main source of funding for the Association is currently certain royalty fees chargeable under the By-laws to Unit Owners and to RRDI in its capacity as Rental Pool Manager, which fees are calculated as a percentage of gross room rental revenue. The royalty fee charged to Unit Owners is 1% of gross room rental revenue, and the royalty fee charged to RRDI as Rental Pool Manager is 1.7% of gross room rental revenue. These fees are the responsibility of Unit Owners and RRDI. However, through arrangements with Marriott Hotels, these fees are collected on behalf of RRDI and Unit Owners from guests of the Hotel as a surcharge of 2.7% on the room rental rates charged by the Hotel. Based on the current fee structure, and the fact that the only operating business within the Resort with substantial revenue is the Hotel, RRDI and the Unit Owners are by far the largest contributors to the Association.
- 8.7 The By-laws also permit the Association to charge a basic fee to members based on a rate per square foot of space and establish other percentage charges to members based on sales revenue and other factors.

- 8.8 The Act grants to the Association a lien for unpaid fees, which may be secured by registration on title to the property owned by the defaulting member. The Act provides that the lien may be enforced as a mortgage under the *Mortgages Act*.
- 8.9 Subsequent to its appointment, it became apparent to the Receiver that there were issues and concerns with the Association, including the scope of its intended services and the fees payable to it.
- 8.10 The Association provides certain guest services for the benefit of Hotel guests, including nature walks and cross-country skiing facilities, which have been provided to the Association by three independent contractors. However, it was apparent that the Association was not yet in a position to provide all of the services that were originally contemplated and that in any event, many of the intended programs and services were not yet needed for the Resort and would only be needed if and when the Resort was developed as envisaged. The substantial fee obligation imposed on RRDI and Unit Owners under the By-laws appeared to be disproportionate to the limited role the Association was in a position to play and given the lack of apparent participation by other members.
- 8.11 The Receiver was concerned that there was a statutory obligation regarding membership and fees relating to the Association, as well as a statutory lien to secure such fees; however, the Association had no clear governance, budget, purpose or mandate, given the stalled development of the Resort. As well, the Receiver wanted to ensure that the role and purpose of the Association, and any obligations related thereto, were clarified for potential purchasers pursuant to the Institutional Sales Process.

- 8.12 As a result, and as reported in the Eighth Report, the Receiver commenced preliminary discussions with representatives of the Unit Owners and with other stakeholders to obtain information concerning the existing structure of the Association, and consider the suspension of the Association's operations. Both the Ad Hoc Committee and the Receiver agreed that, until the project stabilized, there appeared to be little point to operating the Association.
- 8.13 By email dated October 1, 2009 to the Receiver, the Ad Hoc Committee, and a representative of KFE, Mr. Comish agreed, on behalf of the Association, that the best course of action for the Association was to wind it down as soon as possible. However, on October 2, 2009, Mr. Comish advised that he could no longer continue to provide services to the Association, and resigned as President of the Association. With his departure, the Association had no effective management.
- 8.14 After further discussions with the Ad Hoc Committee subsequent to the departure of Mr. Comish, the Receiver determined that it would continue to pursue the suspension of the Association until the Resort was more fully developed and interested parties were in a better position to assess its utility and value. This would assist any considerations that Pre-Qualified Bidders would make in respect of the Association, its benefits and costs.
- 8.15 Pending the outcome of discussions with stakeholders and a determination of the associated costs and fee structure of the suspended Association, the Receiver determined that it would be prudent to withhold payment to the Association of the royalty fees that were collected by the Hotel from its guests during the period of the receivership. The Receiver had not been able to confirm what fees were being paid by others, whether the fees charged to RRDI were appropriate, or should continue at all. These royalty fees,

which currently are in the amount of approximately \$70,000, are being held by Marriott Hotels pending a resolution.

- 8.16 Commencing in December 2009, the Receiver pursued information with respect to reaching an agreement for the suspension of the Association, through numerous meetings and subsequent correspondence with legal counsel for KFE. A detailed chronology of those efforts is set out in Schedule "A".
- 8.17 Finally in response to the various requests by the Receiver and the numerous exchanges of emails and letters, by email to the Receiver dated May 4, 2010, a written proposal regarding the Association was delivered by a representative of KFE in respect of a revised fee structure for the Association and a proposed reduced scale of operations.
- 8.18 On May 5, 2010, the Receiver attended a without prejudice meeting with a representative of KFE and Mr. Comish. The Receiver was advised that Mr. Comish had been retained to assist the parties in coming to a resolution of issues regarding the Association. At the meeting, the parties discussed the Receiver's concerns regarding the Association's current status and the draft proposal put forward.
- 8.19 Despite the difficulties that the Receiver has had in reaching the point of having substantive discussions regarding the Association, the Receiver is encouraged by the results of the discussions of May 5, 2010 and is prepared to continue such discussions in an effort to resolve the matters relating to the Association. The parties concluded the meeting by agreeing to move forward and continue discussions. In the event that an agreement as to the Association's status cannot be reached, the Receiver will advise the Court and seek such advice and directions as it may deem necessary. As noted in the chronology attached as Schedule "A", in the course of correspondence, legal counsel for

KFE (Stikemans) had asserted the right of the Association to register a lien against title to the property of RRDI in respect of outstanding arrears of fees. The Receiver had advised the Association that in its view, the registration of such a lien is stayed pursuant to paragraph 9 of the Appointment Order, and may not be registered without consent of the Receiver or leave of the Court. The Association and the Receiver continue to disagree as to the effect of the stay provision, but for purposes of moving forward, the Association has agreed not to register any lien against title to the property of RRDI pending the completion of negotiations regarding the Association. The Association has also agreed that if such negotiations fail, the Association will give the Receiver 20 days notice of its intention to lien the property, to permit the Receiver time to obtain directions from the Court regarding the effect of the stay provisions. The Receiver is agreeable with this compromise, subject to receiving certain confirmations.

9.0 Other Matters

- 9.1 Attached as Appendix “J” is the Receiver’s statement of Receipts and Disbursements for the period from May 22, 2009 to April 30, 2010 (the “R&D”). As at April 30, 2010, the Receiver had cash on hand of approximately \$5.5 million.

Marriott Hotels and the Marriott Hotels Agreements

- 9.2 As described in the Eighth Report, the Receiver and Marriott Hotels had substantially settled and come to terms on outstanding matters with respect to the New HMA and other New Marriott Agreements. Effective as of 11:59 p.m. on January 22, 2010, the Receiver and Marriott Hotels entered into the New HMA and other New Marriott Agreements, which agreements are substantially in the same form as those approved by the Court. On January 21, 2010, the Receiver and the RRMSI Receiver delivered a notice to Marriott Hotels and its affiliates repudiating the Current HMA and the Other Current Marriott Agreements, effective as of 11:59 p.m. on January 22, 2010.
- 9.3 Execution of the New Marriott Agreements and the repudiation of the Current HMA was a condition precedent to the closing of the Unit sale transactions entered into pursuant to the One-Day Sale.
- 9.4 Since the execution of the New Marriott Agreements, the Receiver has continued to work with Marriott Hotels and monitor its performance in respect of the operations of the Hotel. As is typical with all new hotels of this nature, the Hotel continues to stabilize and the results from its operations continue to improve. Marriott Hotels has advised the Receiver that it is expecting to have a strong and profitable summer season as a result of strong conference, wedding and transient business already booked and being forecast. As a result, Marriott Hotels is forecasting it will incur a modest loss in 2010 relative to that

which was incurred in 2009, which loss is primarily attributable to weak operating performance principally during the winter and late fall months.

Sale of Retail Units

- 9.5 In late January and early February 2010, the Receiver closed 15 retail sale transactions with New Unit Purchasers in respect of the Units sold during the One-Day Sale. Three other New Unit Purchasers failed to close their retail sale transactions. The total gross proceeds collected by the Receiver from the sale of the 15 Units was approximately \$4.3 million. Accordingly, on March 7, 2010, the Receiver made a distribution to WestLB, as Agent for the Syndicate pursuant to the Receiver's Borrowings, of approximately \$4.2 million, representing the net proceeds from the sale of the Units, after deductions for commissions and other miscellaneous fees.
- 9.6 On March 26, 2010, the Receiver closed one additional retail sale transaction with an Existing Unit Purchaser. The net proceeds collected by the Receiver from the sale of this Unit were approximately \$220,000.
- 9.7 As a result of the aforementioned Unit sale transactions, of the 221 Units at the Hotel, 89 have been sold and closed; 69 Units remain unsold; 2 Units remain subject to APSs with New Unit Purchasers; and 61 Units remain subject to APSs with Existing Unit Purchasers.

Agreements of Purchase and Sale ("APSs") with Existing Unit Purchasers

- 9.8 As detailed in the Eighth Report, the Receiver advised Fogler Rubinoﬀ, the common legal counsel retained by approximately 40 Existing Unit Purchasers, that it did not intend to take any action in respect of the APSs entered into by Existing Unit Purchasers, either by way of commencing litigation to close such transactions, or by repudiating the

respective APSs. The Receiver further recommended to the Court that any further consideration of the Existing Unit Purchasers' APSs be deferred until the Receiver understood the nature and identity of those parties interested in the acquisition of the Hotel and had an opportunity to assess whether such potential purchasers would be interested in completing the APSs with the Existing Unit Purchasers, or would prefer that the Receiver seek authority from the Court to repudiate them.

- 9.9 Notwithstanding that the Receiver, in this Eleventh Report, is requesting that the Court approve the suspension of the Institutional Sales Process, the Receiver has now had an opportunity to assess the parties most likely interested in acquiring the Hotel, and has determined that it is unlikely that any of these parties would want to attempt to close on the APSs with Existing Unit Purchasers. Accordingly, the Receiver respectfully requests that this Honourable Court authorize the Receiver to repudiate the APSs with Existing Unit Purchasers. Attached as Appendix "K" is a copy of a letter dated May 6, 2010 from legal counsel for the Receiver to Fogler Rubinoﬀ, advising of the Receiver's intention to seek such relief.

Realty Tax Appeal

- 9.10 As described in the Eighth Report, in November 2009, the Municipal Property Assessment Corporation ("MPAC") provided RRDI and each existing Unit Owner with a revised property tax assessment notice for all of their respective Units. On February 4, 2010, the Receiver, in consultation with the Ad Hoc Committee, engaged Altus Group Tax Consulting Paralegal Professional Corporation (the "Altus Tax Group") to file realty tax appeals with MPAC in an effort to reduce the overall realty tax liability in connection with RRDI's property for the benefit of all stakeholders. On or about March 11, 2010,

Altus Tax Group filed 216 realty tax appeals with MPAC on behalf of 82 of the 88 Unit Owners and the 134 unsold (or sold and unclosed) Units (including the Hotel Management Unit) which, at that time, were in the possession of the Receiver.

- 9.11 Altus Tax Group has reported that on March 26, 2010, the District Municipality of Muskoka Corporate and Emergency Services Department (the “District”) carried a motion to support Altus’ submission to the Ontario Ministry of Finance to have the tax classification of resort condominiums changed in Ontario from a commercial tax class (“CT”) to a resort condominium property tax class (“RCPC”), which would result in a lower realty tax rate. Altus Tax Group has advised that obtaining the District’s support to change the tax class was an important and positive first step in the process of reducing the overall tax liability of every Unit in the Hotel. Altus Tax Group is now continuing its appeal efforts with the Ontario Ministry of Finance and MPAC, and has advised the Receiver and other Unit Owners that it will provide an update on developments as they occur.

Colliers’ Listing Agreement

- 9.12 Pursuant to the Sales and Marketing Order, the Receiver retained Colliers as broker to conduct the Institutional Sales Process substantially on the terms and conditions as set out in the form of the Exclusive Authority to Sell Agreement, which was attached as Confidential Appendix “A” to the Supplementary Report to the Second Report of the Receiver.
- 9.13 Most recently, the Receiver was advised by those individuals at Colliers who were directly responsible for carrying out the mandate described in the Exclusive Authority to Sell Agreement between the Receiver and Colliers (the “Colliers Deal Team”), that

effective May 3, 2010, the Colliers Deal Team would be leaving Colliers and joining the Canadian Hotel Practice of CB Richard Ellis Ltd. (“CBRE”).

9.14 Given the intimate knowledge possessed by the Colliers Deal Team in respect of RRDI’s Assets, their resort hospitality industry expertise and the work that it has performed to date, the Receiver did not believe that, in the absence of the Colliers Deal Team, it would be appropriate for Colliers to continue to provide the advice and assistance required by the Receiver in respect of the Institutional Sales Process. Accordingly, by letter dated May 5, 2010, the Receiver requested that Colliers and the Receiver mutually agree to terminate the Exclusive Authority to Sell Agreement. By letter dated May 11, 2010, Colliers agreed to the termination of the Exclusive Authority to Sell Agreement. A copy of the letter from the Receiver to Colliers, along with a copy of Colliers’ response to the Receiver’s letter, are each attached as Appendix “L”.

9.15 Notwithstanding the Receiver’s current suspension of the Institutional Sales Process, the Receiver intends, if deemed desirable, to negotiate the terms of, and enter into, a new exclusive authority to sell arrangement with CBRE at a time determined to be appropriate by the Receiver. It is the Receiver’s intention that the terms, if any, to be agreed upon, would be substantially the same as those contained in the Exclusive Authority to Sell Agreement between the Receiver and Colliers, and that the Receiver would seek Court approval at the appropriate time.

Commissions Claim Process

Notice to Commission Creditors

9.16 The Sales and Marketing Order dated July 8, 2009, authorized the Receiver to pay real estate agents the commissions owed to them from funds set aside on the closing of Unit

sale transactions by McCarthys (the “Commission Funds”), on receipt of satisfactory proof that such claims were valid, and provided that all claims to payment of commissions had been ascertained, and that there were sufficient funds available to satisfy all proven claims. The Receiver determined that it was unable to ascertain all commission claims from the records of RRDI, and as a result, by order dated December 21, 2009, the Receiver was authorized to conduct a commission claims process to assist it with ascertaining such claims (the “Commission Claims Process Order”). As provided for in the Commission Claims Process Order, on January 12, 2010, the Receiver posted on its website, www.alvarezandmarsal.com/rosseau, copies of the Commission Claims Process Order, Notice and Instruction Letter to Commission Creditors and a Proof of Commission Claim Form (the “Commission Claim Materials”).

- 9.17 As provided for in the Commission Claims Process Order, on January 14, 2010, the Receiver caused the Notice and Instruction Letter to Commission Creditors to be published in *The Globe and Mail (National Edition)*. A copy of the published Notice and Instruction Letter to Commission Creditors is attached as Appendix “M”.
- 9.18 As provided for in the Commission Claims Process Order, on January 12, 2010, the Receiver sent, by email and ordinary mail, copies of the Commission Claims Materials to all Known Commission Creditors. In a further attempt to ensure all retail sales agents were notified of the Commission Claims Process, the Receiver sent, by email and regular mail, copies of the Commission Claims Materials to all real estate brokerages that were known to have had agents sell, or attempt to sell, Units at the Hotel.

Claims filed

- 9.19 Claimants were required to submit their Proof of Commission Claim Form to the Receiver on or before March 1, 2010 (the “Commission Claims Bar Date”). The Receiver is in receipt of 19 claims representing 181 units (many commission claimants have claims for multiple units, some of which had closed and others which had not, and in some cases, multiple claimants made claims for the same units) and in the aggregate amount of approximately \$505,000.
- 9.20 The Receiver has reviewed the claims and has either (a) accepted the amount set out in the Proof of Commission Claim Form in its entirety; (b) revised the amount of the claim as set out in the Proof of Commission Claim Form; or (c) rejected the amount of the claim as set out in the Proof of Commission Claim Form.
- 9.21 On May 11, 2010, the Receiver sent Notices of Revision or Disallowance to 12 claimants. Any claimant who intends to dispute the amount as set out in the Notices of Revision or Disallowance is required to deliver a Notice of Dispute to the Receiver by no later than May 26, 2010.
- 9.22 The Commission Claims Process Order provides that the Receiver is entitled to the payment of its fees and disbursements for administering the Commission Claims Process out of the Commission Funds.
- 9.23 Notwithstanding that the Commission Claims Process is still underway, based on the quantum of claims received prior to the Commission Claims Bar Date and the amount of funds being held by the Receiver to be paid in respect of proven Commission Claims, the Receiver believes that there are sufficient funds available to pay all such valid, proven claims, together with the related Receiver’s fees and disbursements in administering the

Commission Claims Process. As a result, the Receiver intends, in accordance with the Sales and Marketing Order, to commence distributions in satisfaction of proven Commission Claims, and will continue to issue payments as any disputed claims, pursuant to the Commission Claims Process, are resolved and determined to be proven.

- 9.24 By the Sales and Marketing Order, the Court authorized the Receiver to approve the release of certain funds held in trust by McCarthys, in respect of McCarthys' fees once the Receiver had determined whether there were sufficient funds to pay Commission Claims. As the Receiver has been able to confirm this, by email dated April 8, 2010, legal counsel for the Receiver advised McCarthys that these funds could be released to them.

Zoning and Permitting Matters in Respect of RRDI's Property

- 9.25 As noted in the Eighth Report, the Receiver identified certain ambiguities with respect to zoning and permitting entitlements, which RRDI management had not disclosed to the Receiver prior to the receivership. In particular, the gross floor area ("GFA") available for future development, after taking into account the total developed area of the Hotel, was uncertain, and significantly less than thought by the Syndicate prior to the receivership. With the assistance of its legal counsel and certain other advisors, the Receiver was able to clarify this matter with the Township of Muskoka Lakes (the "Township"). Attached as Appendix "N", is a copy of the letter dated January 25, 2010 that the Receiver sent to the Township, together with the response provided by the Township to the Receiver dated January 28, 2010, clarifying the remaining development potential of the Project, and stating that the remaining GFA which can be constructed in the CICA1 and CICA2 development zones is 40,121 square feet. Attached as Appendix

“O” is an overview of RRDI’s property containing the identification of the CICA1 and CICA2 development zones.

Status and Key Highlights of the Institutional Sales Process

- 9.26 In accordance with the Protocol, Colliers commenced the marketing of the Assets in respect of the Institutional Sales Process in early January 2010. Colliers, with the assistance of the Receiver, assembled a proprietary and confidential list of prospective purchasers (the “Prospect List”). On January 6, 2010, Colliers sent an email “blast” to all parties on the Prospect List, approximately 875 companies or approximately 1,350 individuals, inviting the parties included on the Prospect List to take part in the Institutional Sales Process. Colliers expanded the Prospect List, with the aid of the Receiver, as Colliers and/or the Receiver became aware of other parties with an expressed or perceived interest.
- 9.27 In total, 23 parties executed the Confidentiality Agreement and submitted a non-binding expression of interest (“EOI”) for consideration by the Receiver pursuant to the Protocol. All but one of the parties to submit a Confidentiality Agreement and EOI pursuant to the Protocol were pre-qualified to proceed in the Institutional Sales Process (the “Pre-Qualified Bidders”). Pre-Qualified Bidders were notified of their acceptance as such on February 5, 2010. Upon execution of the Data Room Protocol (as provided for pursuant to the Protocol), Pre-Qualified Bidders were provided access to Colliers data room (the “CDR”). In addition to the Pre-Qualified Bidders, ten other parties signed a Confidentiality Agreement, but ultimately did not submit an EOI to the Receiver. Two Pre-Qualified Bidders advised Colliers of their intention to withdraw from the Institutional Sales Process soon after being qualified as Pre-Qualified Bidders.

9.28 Pre-Qualified Bidders were given the opportunity to tour the Hotel with Colliers and undertake financial, legal and operational due diligence with the intention that Offers would be submitted by March 31, 2010. Of the 23 Pre-Qualified Bidders, the majority demonstrated medium to high levels of activity in the CDR and a number of parties attended at tours of the Hotel with representatives of Colliers. Several Pre-Qualified Bidders expressed to Colliers and/or the Receiver that they were having difficulty understanding the Rental Pool management structure. Accordingly, on March 5, 2010, the Receiver, its legal counsel and Colliers, held two conference calls (attended by the majority of Pre-Qualified Bidders) to present the Rental Pool structure and financial implications for Pre-Qualified Bidders. The Receiver understands that these conference calls were well received by Pre-Qualified Bidders and provided significant assistance in respect of understanding the Rental Pool structure and financial implications thereof. However, as described in Section 4 of this Eleventh Report, the interpretation of the New RPMA is now the subject of the RPMA Dispute.

The Construction Lien Claims Process

9.29 The Construction Lien Claims Process is continuing with an exchange of documents between various legal counsel for the lien claimants, the Receiver and WestLB in reference to the timetables established by the Court. With the suspension of the Institutional Sales Process, the Receiver recognized that there could be a lengthy delay before any recoveries could be realized by lien claimants, to the extent their claims are established through the Construction Lien Claims Process. In light of the revised estimated timing for recoveries to lien claimants, the Receiver believes that settlement discussions between WestLB and the lien claimants could have merit.

10.0 Conclusions and Recommendations

- 10.1 While Hotel operations have been stabilized, and occupancy and revenues have improved and begun to either meet or exceed forecast, the Receiver has been faced with numerous, complex challenges which have interfered with its ability to pursue an en bloc sale in the Institutional Sales Process. Furthermore, notwithstanding that representatives of the Ad Hoc Committee negotiated the New RPMA with the Receiver in July and August of 2009, the Disputing Unit Owners commenced the RPMA Dispute in the midst of the Institutional Sales Process. Subsequent to the issuance of the Notices of Dispute in respect of the RPMA Dispute, the Ad Hoc Committee and the Independent Directors of the Condominium Corporation have brought forward the Unit Owner Proposal as a means to settle the RPMA Dispute. The Receiver believes that the Unit Owner Proposal, while complicated, may result in a significantly simplified Rental Pool structure and potentially, ultimately enhance the value of the Hotel and the Units for the stakeholders.
- 10.2 These matters and events described in this Eleventh Report have caused significant uncertainty in respect of the potential value of the Assets being offered for sale by the Receiver, and may require further direction and assistance from the Court. In order to preserve the integrity of the receivership proceedings, protect all stakeholders and ultimately maximize recoveries to the estate, the Receiver suspended the Institutional Sales Process on April 30, 2010, and does not intend to recommence a sales process until such time as the Receiver is able to settle the matters creating such uncertainty, and determine how best to maximize value from the Assets.

10.3 At this time, the Receiver respectfully requests that this Honourable Court:

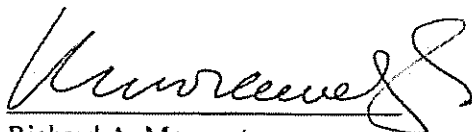
- Approve the continued suspension of the Institutional Sales Process, pending further recommendations from the Receiver;
- Direct the Receiver to pursue the Unit Owner Proposal;
- Authorize the Receiver to repudiate the existing APSs with Existing Unit Purchasers; and
- Grant all of the relief sought by the Receiver in the form of order filed with the Motion Record and as described in this Eleventh Report, including the approval of all of the activities of the Receiver since the date of the Eighth Report.

* * *

All of which is respectfully submitted, this 12th day of May, 2010

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

Per:



Richard A. Morawetz

SCHEDULE "A"**Chronology of the Receiver's Efforts to Engage in Discussions and Obtain Information in Respect of the Resort Association**

- (a) On December 10, 2009, the Receiver and its legal counsel met with Ken Fowler and KFE's legal counsel, Stikeman Elliott LLP ("Stikemans"), during which the Receiver raised the status of the Association and confirmed to Mr. Fowler and his legal counsel the Receiver's view, as supported by the Ad Hoc Committee, that the operations of the Association ought to be suspended. The Receiver requested that the Board of Directors of the Association (the "Board") call a Board meeting as soon as possible in order to call a meeting of members to pass a resolution suspending its operations. The Receiver was advised that KFE did not know the current composition of the Board. Despite this request, no confirmation was forthcoming that a meeting of the Board would be called.
- (b) By letter dated February 8, 2010, legal counsel to the Receiver, Blake, Cassels & Graydon LLP ("Blakes") forwarded to Stikemans, draft corporate documents for purposes of calling the proposed members meeting and passing the proposed resolution suspending the Association. In order to assist with the Receiver's understanding of the current circumstances of the Association, and an analysis of its structure and governance, Blakes requested copies of the Association's current directors' and members' registers and requested the opportunity to review the minute book of the Association. Blakes also asked Stikemans to advise by February 19, 2010, whether a meeting would be undertaken by the Board to suspend the Association's operations.
- (c) At a meeting on February 18, 2010 between the Receiver, Blakes, a representative of KFE and Stikemans, the Receiver again requested copies of the registers and the

opportunity to review the minute book of the Association. The Receiver also requested a response to the proposal to call a meeting of the Board. The Receiver was advised that the documents would be made available and that a response would be forthcoming.

- (d) By letter dated March 3, 2010 to Stikemans, Blakes reiterated the request for copies of the requested documents and advised that if the documents were not forthcoming, relief would be sought under the Corporations Act. Blakes also requested evidence of the fees paid to the Association by other members.
- (e) By email dated March 11, 2010, Stikemans forwarded to Blakes copies of resolutions from the minute book of the Association. The most recent resolution dated from 2008 and did not disclose an up-to-date list of directors of the Association. Blakes was advised that no registers of members or directors was available. By separate email, Stikemans also delivered copies of certain invoices rendered to two members of the Association for fees and information regarding the fees paid by two other members, but such information was incomplete.
- (f) By email dated March 12, 2010 to Stikemans, Blakes followed up with further questions regarding the fees charged by the Association and requested a list of current directors and members. Blakes again requested a response to the proposal put forward by the Receiver to suspend the operations of the Association.
- (g) By email dated March 23, 2010, Stikemans advised Blakes that a list of members and directors would be provided. Stikemans also advised for the first time that in KFE's view, it was not appropriate to suspend all operations of the Association and the payment of all fees to the Association. Instead, Stikemans advised that the directors of the

Association had discussed a reduction in the scale and scope of the Association's operations in the "medium term", suggesting that if the operations were fully suspended, "it would likely, among other things, result in the neighbouring landowners immediately refusing hotel guests, unit owners and others further access to or use of their properties, trails, etc...". In addition, Stikemans communicated a concern in the draft documents delivered in February. Stikemans advised that the directors would be prepared to consider a reduction in operations if the fees that had been withheld to date were paid.

- (h) By letter dated March 29, 2010, Blakes confirmed again the request for a list of directors and members and sought answers to various questions regarding the fees charged to other members which were affiliates of KFE, with a goal to better understanding the structure of the Association. Blakes requested a copy of the current budget of the Association and advised that the Receiver needed to understand the voting structure, the fees paid by all members and the votes allocated to all members. In order to obtain these details, Blakes requested that the Association deliver status certificates in respect of the properties owned by RRDI, as the Association is mandated to provide under the Act. The Act prescribes the information that must be provided to members in a status certificate, including the identity of directors, and details regarding the voting structure of the Association.
- (i) In respect of the proposal to reduce the scope of the Association's operations, Blakes on behalf of the Receiver, sought details of the proposal, and outlined a number of questions in respect thereof. Blakes advised that the royalty fees outstanding to the Association would be remitted to the Association in connection with a global solution for the Association.

- (j) By email dated April 5, 2010, Stikemans advised that, with respect to the other matters referred to in the letter of March 29, 2010, responses were being prepared, and that Robert Comish would be in touch with the Receiver to set up a without prejudice meeting to discuss the Association.
- (k) Efforts were made to set up a meeting regarding the Association during the week of April 5, 2010, but were not successful.
- (l) By email dated April 21, 2010, Stikemans delivered to Blakes the requested status certificates. Those certificates gave rise to further questions regarding the governance of the Association. For the first time, for example, it was disclosed that the Board was comprised solely of Ken Fowler, Peter Fowler, and Doug Fowler. Not disclosed was the basis on which these individuals had been appointed or elected to the Board, as the most recent resolution of 2008 delivered to Blakes had disclosed a different Board composition.
- (m) By email dated April 23, 2010, without having yet delivered its proposal in respect of reduced operations of the Association, Stikemans advised Blakes that the Association was objecting to the non-payment of amounts owing to the Association and advised that if arrears were not paid, the Association would be registering liens against the property of RRDI. No responses to the requests from Blakes were provided in this email.
- (n) By email dated April 26, 2010, Stikemans asserted certain further charges owing by RRDI to the Association and suggested that a meeting with a representative of KFE and the Receiver be arranged to discuss the issues between them.

- (o) By email dated April 27, 2010, Blakes pointed out the stay of proceedings at paragraph 9 of the Appointment Order and reminded Stikemans that the Receiver had been waiting for a substantive response to the questions asked and requests made in its letter of March 29, 2010. Blakes confirmed again that the payment of the fees outstanding to date would be made in connection with a global resolution of the issues regarding the Association. Blakes confirmed that the Receiver was open to scheduling a meeting with KFE regarding the Association.
- (p) By email dated April 27, 2010, Stikemans advised that in its view, the Association's lien could be filed as an exception to the stay at paragraph 9 of the Appointment Order.
- (q) By email to Stikemans dated April 29, 2010, Blakes advised that the Receiver would be obtaining the advice and direction of the Court regarding the proposed lien. Blakes requested confirmation that no steps would be taken to register any lien pending a determination by the Court of that issue. Blakes also confirmed that a meeting had been scheduled with Mr. Comish and a representative of KFE on May 5, 2010.
- (r) By email dated April 29, 2010, Stikemans delivered certain further responses to the questions raised by Blakes in various earlier correspondence and confirmed the scheduled meeting. Stikemans continued to assert the ability of the Association to register a lien against the property to RRDI.