

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

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

**B E T W E E N:**

**WESTLB AG, TORONTO BRANCH**

Applicant

- and -

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Respondent

**MOTION RECORD**  
**(Returnable April 15, 2010)**

April 9, 2010

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# INDEX



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

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

**B E T W E E N:**

**WESTLB AG, TORONTO BRANCH**

Applicant

- and -

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Respondent

**I N D E X**

**TAB NO.**

1. Notice of Motion, returnable April 15, 2010
2. Ninth 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.
  - A. Glossary of Defined Terms
  - B. Letter to the Receiver dated April 6, 2010
3. Draft Order

# TAB 1

**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

**NOTICE OF MOTION  
(Returnable April 15, 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), and Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz 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 the 15th day of April, 2010, or as soon after that time as the Motion can be heard, at 330 University Avenue, Toronto, Ontario.

**THE MOTION IS FOR AN ORDER:**

- (a) amending the provisions of paragraphs 20, 21, and 25 of the Amended and Restated Appointment Order dated June 2, 2009 (the “**Appointment Order**”) as further amended by Order of Madame Justice Pepall dated December 21, 2009 (the “**December 21 Order**”), authorizing and empowering the Receiver to borrow from WestLB AG, Toronto Branch and/or the Lenders as defined in the Appointment Order, to provide that references therein to “WestLB” or “WestLB AG, Toronto Branch” be deleted and substituted with “WestLB and/or WestLB AG, Toronto Branch”, or “WestLB AG, Toronto Branch and/or WestLB AG, New York Branch”, as appropriate;
- (b) amending the provisions of paragraph 5 of the December 21 Order to provide that the reference to “WestLB AG, Toronto Branch” be deleted and substituted with “WestLB AG, Toronto Branch and/or WestLB AG, New York Branch”;
- (c) amending the provisions of the Institutional Sales Process Protocol attached as Schedule “A” to the December 21 Order at the paragraph relating to the Credit Bid (as defined therein) to provide that the references to “WestLB AG, Toronto Branch” and “WestLB AG” therein be deleted and substituted with “WestLB AG, Toronto Branch and/or WestLB AG, New York Branch”;
- (d) providing that WestLB, New York Branch shall be entitled to all rights and remedies granted to WestLB, Toronto Branch under all Receiver’s Certificates issued by the Receiver in accordance with the provisions of the Appointment Order, as amended; and
- (e) such further and other relief as counsel may request and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) Pursuant to paragraph 20 of the Appointment Order, the Court authorized and empowered the Receiver to borrow monies for the purpose of funding the exercise of powers and duties conferred upon the Receiver under the Appointment Order on the terms and conditions set out in a Term Sheet dated May 15, 2009 entered into by the Receiver and WestLB AG, Toronto Branch (the "**Term Sheet**") in its capacity as agent for certain lenders (the "**Lenders**"). By the December 21 Order, the Appointment Order was amended to authorize and empower the Receiver to borrow additional amounts pursuant to a Second Tranche Term Sheet dated February 1, 2010 (the "**Second Tranche Term Sheet**") entered into between the Receiver and WestLB, Toronto Branch, in its capacity as lender (together with the Term Sheet, the "**Term Sheets**");
- (b) The amounts borrowed by the Receiver pursuant to the Term Sheets are evidenced by Receiver's Certificates issued by the Receiver from time to time;
- (c) WestLB AG, as agent for the Lenders under the Term Sheet and as lender under the Second Tranche Term Sheet acting through its Toronto Branch, and the holder of the issued Receiver's Certificates for and on behalf of itself and/or the Lenders under the Term Sheets, is changing the booking and lending office for the Term Sheets from its Toronto Branch to its New York Branch, effective April 19, 2010;
- (d) By letter dated April 6, 2010, Blake Cassels & Graydon LLP, counsel to WestLB AG and counsel to the Receiver advised the Receiver of the change;
- (e) WestLB AG, Toronto Branch and WestLB AG, New York Branch are one and the same legal entity. This Order is sought in order to provide clarity and ensure consistency with the change of booking and lending office; and
- (f) 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 Ninth Report of the Receiver; and
- (c) such further and other material as counsel may advise and this Honourable Court permit.

Date: April 9, 2010

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Alvarez & Marsal Canada ULC, and Alvarez &  
Marsal Canada Inc., in their respective  
capacities as Court-appointed Receiver and  
Manager, Trustee, and Interim Receiver

**TO: SERVICE 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  
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 April 15, 2010)

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respective capacities as Court-appointed  
receiver and manager, interim receiver, and  
trustee

# 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**

**NINETH 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.**

**APRIL 9, 2010**

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## ***Listing of Appendices***

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| <b>Appendix A</b> | - | Glossary of Defined Terms                  |
| <b>Appendix B</b> | - | Letter to the Receiver dated April 6, 2010 |

## ***1.0 Introduction and Summary of Proceedings to Date***

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- 1.1 On May 22, 2009, the Ontario Superior Court of Justice (the “Court”) issued an order appointing Alvarez & Marsal Canada ULC (“A&M”) and McIntosh & Morawetz Inc. (now Alvarez & Marsal Canada Inc.) as trustee and interim receiver, respectively (collectively the “Interim Receiver”), pursuant to Section 68 of the *Construction Lien Act* (Ontario) (“CLA”) and Section 47(1) of the *Bankruptcy and Insolvency Act* (Canada) (“BIA”) of all the property, assets and undertakings (the “Assets”) of The Rosseau Resort Developments Inc. (“RRDI” or the “Company”). On June 2, 2009, the Court issued an Amended and Restated Appointment Order (the “Appointment Order”) continuing the appointment of the Interim Receiver and appointing A&M as receiver and manager (the “Receiver and Manager”) pursuant to Section 101 of the *Courts of Justice Act* (Ontario) (“CJA”) and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager collectively defined as the “Receiver”).<sup>1</sup> McIntosh & Morawetz Inc. has, by Articles of Amendment dated September 17, 2009, changed its name to Alvarez & Marsal Canada Inc.
- 1.2 The purpose of this ninth report (the “Ninth Report”) is to request that this Honourable Court issue an order as follows:
- (a) amending the provisions of paragraphs 20, 21, and 25 of the Amended and Restated Appointment Order dated June 2, 2009 (the “Appointment Order”), as further amended by Order of Madame Justice Pepall dated December 21, 2009

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

(the "December 21 Order"), authorizing and empowering the Receiver to borrow from WestLB AG, Toronto Branch and/or the Lenders as defined in the Appointment Order, to provide that references therein to "WestLB" or "WestLB AG, Toronto Branch" be deleted and substituted with "WestLB and/or WestLB AG, New York Branch", or "WestLB AG, Toronto Branch and/or WestLB AG, New York Branch", as appropriate;

- (b) amending the provisions of paragraph 5 of the December 21 Order to provide that the reference to "WestLB AG, Toronto Branch" be deleted and substituted with "WestLB AG, Toronto Branch and/or WestLB AG, New York Branch";
- (c) amending the provisions of the Institutional Sales Process Protocol attached as Schedule "A" to the December 21 Order at the paragraph relating to the Credit Bid (as defined therein) to provide that the references to "WestLB AG, Toronto Branch" and "WestLB AG" therein be deleted and substituted with "WestLB AG, Toronto Branch and/or WestLB AG, New York Branch"; and
- (d) providing that WestLB, New York Branch shall be entitled to all rights and remedies granted to WestLB, Toronto Branch under all Receiver's Certificates issued by the Receiver in accordance with the provisions of the Appointment Order, as amended.

## ***2.0 The Need for the Relief Sought***

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- 2.1 Pursuant to Paragraph 20 of the Appointment Order, the Court authorized and empowered the Receiver to borrow monies for the purpose of funding the exercise of the powers and duties conferred upon the Receiver under the Appointment Order on the terms and conditions set out in a Term Sheet dated May 15, 2009 entered into between the Receiver and WestLB AG, Toronto Branch (the "Term Sheet") in its capacity as agent for certain lenders (the "Syndicate"). By the December 21 Order, the Appointment Order was further amended to authorize and empower the Receiver to borrow additional amounts pursuant to a second tranche term sheet dated February 1, 2010 (the "Second Tranche Term Sheet") entered into between the Receiver and WestLB AG, Toronto Branch, in its capacity as lender (the Term Sheet and the Second Tranche Term Sheet are collectively defined as the "Term Sheets").
- 2.2 The amounts borrowed by the Receiver pursuant to the Term Sheets are evidenced by Receiver's Certificates issued by the Receiver from time to time.
- 2.3 Pursuant to Paragraph 5 of the December 21 Order, the Court authorized and empowered the Receiver to remit certain proceeds of the receivership to WestLB AG, Toronto Branch to be applied to the amounts outstanding under the Receiver's Borrowings and the Term Sheet.
- 2.4 The Institutional Sales Process Protocol attached as Schedule "A" to the December 21 Order entitles WestLB AG, Toronto Branch to participate as a Pre-Qualified Bidder by offering to purchase some or all of the Assets in consideration of the satisfaction of some part of the obligations of RRDI or the Receiver (a "Credit Bid").

- 2.5 By letter dated April 6, 2010, Blakes Cassels & Graydon LLP, legal counsel to WestLB AG and legal counsel to the Receiver, advised the Receiver that WestLB AG, as agent under the Term Sheet and lender under the Second Tranche Term Sheet, acting through its Toronto Branch, and the holder of the issued Receiver's Certificates for and on behalf of itself and/or the Syndicate, is changing the booking and lending office for the Term Sheets from its Toronto Branch to its New York Branch, effective April 19, 2010. A copy of this letter is attached as Appendix "B".
- 2.7 The Toronto Branch and the New York Branch of WestLB AG are one and the same legal entity. The requested amendments are sought in order to provide clarity and consistency in respect of the Receiver's lending arrangements pursuant to the Term Sheets, and in respect of any Credit Bid in accordance with the Institutional Sales Process Protocol .

### **3.0 Conclusions and Recommendations**

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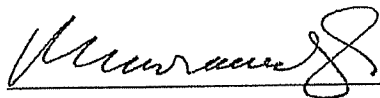
- 3.1 Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant the relief described in Section 1.2, above. The Receiver requests that this Honourable Court issue the order sought in the draft form filed.

\* \* \*

All of which is respectfully submitted, this 9th day of April, 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



# **APPENDIX “A”**

***Cumulative Glossary of Defined Terms for Receiver's Reports***

| <b><u>Term</u></b>                          | <b><u>Definition</u></b>  |
|---|---|
| <b>2006 Disclosure</b>                      | Disclosure statement dated August 1, 2006, provided to Unit Owners upon the purchase of their respective Units  |
| <b>2010 Budget</b>                          | A budget prepared by the Receiver for the six-month period ending May 31, 2010 being the period during which the Institutional Sales Process is contemplated to be conducted  |
| <b>A&amp;M</b>                              | Alvarez & Marsal Canada ULC   |
| <b>A&amp;M Report</b>                       | Collectively, the report of the proposed receiver dated May 19, 2009 and a supplementary report to that report dated May 20, 2009   |
| <b>Ad Hoc Committee</b>                     | The Ad Hoc Committee of Unit Owners, consisting of certain Unit Owners and Existing Unit Purchasers   |
| <b>Amended August 18<sup>th</sup> Order</b> | The Order of Madam Justice Pepall dated August 18, 2009, as amended August 20, 2009   |
| <b>Appointment Order</b>                    | Amended and Restated Appointment Order issued June 2, 2009  |
| <b>April 1 Letter Agreement</b>             | By an April 1, 2009 letter agreement among RRDI, the Syndicate and Marriott Hotels, the Syndicate funded \$1.95 million to pay what was expected to cover Net Operating Losses and working capital requirements owing under the Current HMA by RRDI to Marriott Hotels through May 31, 2009 |
| <b>APS</b>                                  | Agreement(s) of purchase and sale   |
| <b>Assets</b>                               | All the property, assets and undertakings of The Rosseau Resort Developments Inc.   |
| <b>Backup New Purchasers</b>                | 13 New Purchasers who agreed to enter into "Backup" APSs in respect of certain Units, in the event that primary APSs were rescinded   |
| <b>Baker Price List</b>                     | The price list developed by Baker Real Estate to be utilized in connection with the sale of the Unsold Units and as approved by the Court   |
| <b>Baker Real Estate</b>                    | Baker Real Estate Incorporated  |
| <b>BIA</b>                                  | <i>Bankruptcy and Insolvency Act</i> (Canada)   |
| <b>Building Consultants</b>                 | Designers, building architects, mechanical, structural, and electrical engineers  |
| <b>Cabana</b>                               | Building structure that forms part of the pool area for Paignton House  |
| <b>CCA</b>                                  | Canadian Construction Association Form 5  |

|                                       |   |
|---------------------------------------|---|
| <b>CJA</b>                            | <i>Courts of Justice Act</i> (Canada)   |
| <b>CLA</b>                            | <i>Construction Lien Act</i> (Ontario)  |
| <b>Claims Process Order</b>           | The Order of the Court dated July 24, 2009 establishing a claims process for construction lien claims   |
| <b>Colliers</b>                       | Colliers MaCaulay Nicolls (Ontario) Inc.  |
| <b>Commission Claims Process</b>      | A claims process for the determination of entitlements of real estate agents and brokers to amounts set aside by McCarthys and held in trust for real estate commissions  |
| <b>Committee</b>                      | Same as the Ad Hoc Committee  |
| <b>Company</b>                        | The Rosseau Resort Developments Inc.  |
| <b>Condominium Corporation</b>        | The Muskoka Standard Condominium Corporation No. 62   |
| <b>Confidential Financial Exhibit</b> | A confidential exhibit to the Information Memorandum containing certain financial information with respect to the Assets  |
| <b>Confidentiality Agreement</b>      | A form of confidentiality agreement for execution by prospective purchasers pursuant to the Institutional Sales Process   |
| <b>Construction Office</b>            | An office maintained by RRDI and RRCI during construction of the Hotel, situated in a converted residence located on the property of Wallace Marine Ltd.                  |
| <b>Cooling Off Period</b>             | The statutory 10 day rescission period under the Condominium Act (Ontario) in which New Purchasers have the ability to cancel their APS                                   |
| <b>Court</b>                          | Ontario Superior Court of Justice   |
| <b>Court Approved Sale</b>            | The One-Day Sale in respect of the Retail Sales Program at the Hotel  |
| <b>Current HMA</b>                    | Amended and Restated Hotel Management Agreement among RRDI, RRMSI and Marriott Hotels dated October 6, 2006   |
| <b>Current RPMA(s)</b>                | The form of rental pool management agreement Unit Owners have entered into with RRMSI, as Rental Pool Manager   |
| <b>DAF</b>                            | A&M's Dispute Analysis and Forensics group  |
| <b>Declaration</b>                    | The Rosseau Resort Condominium Declaration, made pursuant to the <i>Condominium Act</i> , 1998  |
| <b>Defendants</b>                     | WestLB, AG, Toronto Branch, CIT Financial Ltd., and Raiffeisen Zentral Bank Osterreich AG with respect to legal proceedings in the Supreme Court of the State of New York |
| <b>Development Lands</b>              | The undeveloped lands located adjacent to the Hotel on RRDI's property, principally along the waterfront and neighbouring The Rock Golf Course                            |
| <b>Disclosure Documentation</b>       | Form of disclosure statement and related documentation  |
| <b>Dyck Affidavit</b>                 | The Affidavit of Robert Dyck sworn May 19, 2009, filed in support of the application for the appointment of the Receiver  |
| <b>Effective Date</b>                 | The proposed date of repudiation of the Current HMA to be effective at 11:59 pm on Friday, September 18, 2009, to   |

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|--|---|
|  | correspond with a 30 day notice of termination to be delivered by Marriott Hotels to RRDI and RRMSI, jointly as Owners pursuant to the Current HMA, as may be extended by agreement from time to time |
| <b>Eighth Report</b>                   | The Receiver's Eighth Report dated December 14, 2009  |
| <b>Exemption Ruling</b>                | A ruling made on April 13, 2004 by the OSC which authorized RRMSI to enter into the Current RPMA with Unit Owners and to permit RRDI to market for sale the Hotel Units                               |
| <b>Existing Unit Purchasers</b>        | Existing purchasers who have not yet closed outstanding APSs with RRDI  |
| <b>Expression of Interest</b>          | The form of expression of interest for potential purchasers to use pursuant to the Institutional Sales Process  |
| <b>FF&amp;E</b>                        | Furniture, fixtures & equipment   |
| <b>First Report</b>                    | Collectively, the report of the interim receiver dated May 27, 2009 and a supplementary report to that report dated May 29, 2009  |
| <b>Fifth Report</b>                    | The Receiver's Fifth Report dated August 19, 2009   |
| <b>FMC</b>                             | Fraser Milner Casgrain LLP  |
| <b>Fogler Rubinoff</b>                 | Fogler Rubinoff LLP   |
| <b>Fourth Report</b>                   | Collectively, the Receiver's Fourth Report dated August 12, 2009, a supplementary report dated August 14, 2009, and a second supplementary report dated August 19, 2009                               |
| <b>Fowler Related Releasees</b>        | RRMSI, Ken Fowler Enterprises Ltd., Red Leaves Partnership, Kenneth A. Fowler, and Peter Fowler as releases   |
| <b>Guarantee</b>                       | The Guarantee(s) of Ken Fowler Enterprises Limited to the Syndicate made in connection with the Loan Agreement between RRDI and the Syndicate   |
| <b>Hotel</b>                           | 221 unit condominium hotel complex located on the property owned by RRDI situated along the north-west end of Lake Rosseau in Muskoka, Ontario  |
| <b>IHLC</b>                            | International Hotel Licensing Company S.a.r.l, an affiliate of Marriott Hotels  |
| <b>Indulgence Cards</b>                | A certain form of Purchaser Incentive whereby certain Unit Purchasers received cards which could be used as a "currency" for use to pay for items and/or services at the Hotel                        |
| <b>Information Memorandum</b>          | A non-confidential document providing a detailed description of the Assets and operations of RRDI for use in the Institutional Sales Process  |
| <b>Initial Contracts</b>               | Initial CCA trade contracts executed between and among RRCI and certain of the trade contractors  |
| <b>Initial Pre-Receivership Budget</b> | The Receiver obtained approval for Receiver's Borrowings based on a general budget created prior to the commencement of the Receivership and set out in the A&M Report                                |
| <b>Institutional Sales Process</b>     | The sales and marketing process for all of the Assets of RRDI on an en bloc basis, as conducted by Colliers   |
| <b>Interim Receiver</b>                | Collectively, Alvarez & Marsal Canada ULC ("A&M") and   |

|  |   |
|--|---|
|  | Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz Inc.) as trustee and interim receiver, respectively  |
| <b>Investment Overview</b>               | A brief investment overview letter that describes the opportunity and sets out key aspects of the Protocol for use in the Institutional Sales Process   |
| <b>July 23<sup>rd</sup> Letter</b>       | A letter dated July 23, 2009 whereby the Receiver provided Lien Claimants with certain information that the Receiver concluded that the Lien Claimants were entitled to receive and which was requested by Lien Claimants pursuant to Section 39 of the CLA |
| <b>KFE</b>                               | Ken Fowler Enterprises Limited  |
| <b>Livia</b>                             | Livia Capital Management Inc.   |
| <b>Marriott Hotels</b>                   | Marriott Hotels of Canada, Ltd.   |
| <b>McCarthys</b>                         | McCarthy Tetrault LLP   |
| <b>Miller Thomson</b>                    | Miller Thomson LLP  |
| <b>Moving Parties</b>                    | The Receiver and Representative Counsel who jointly sought the appointment of A&M as receiver over certain assets of RRMSI  |
| <b>MPAC</b>                              | Municipal Property Assessment Corporation   |
| <b>New HMA</b>                           | A New Hotel Management Agreement that will be based on the template of the Current HMA and as modified by the Side Letter, the financial terms and conditions of which are set out in the Summary of Terms approved by the Court                            |
| <b>New Marriott Agreements</b>           | Other New Marriott Agreements together with the New HMA   |
| <b>New RPMA</b>                          | New forms of Rental Pool Management Agreements agreed upon by the Committee and RRDI, and approved by the Court   |
| <b>New Purchasers</b>                    | Those 76 purchasers who entered into APS's with the Receiver on August 22 and 23, 2009 to purchase unsold Units   |
| <b>New Unit Purchasers</b>               | New purchasers of unsold Units  |
| <b>One Day Sale</b>                      | The sales event which took place at the Hotel on August 22, 2009 and which was continued to August 23, 2009 for the sale of the Unsold Units  |
| <b>Operating Profit</b>                  | As is defined in the Current HMA - "with respect to any given period of time, the excess Gross Revenues over Deductions (each calculated in accordance with this Agreement and the Uniform System of Accounts)"   |
| <b>OSC</b>                               | Ontario Securities Commission   |
| <b>OSC Exemption Ruling</b>              | See Exemption Ruling  |
| <b>Other Current Marriott Agreements</b> | Royalty and Licensing Agreement between RRDI, RRMSI and IHLC dated October 6, 2006, and any other current agreements between RRDI, RRMSI, and Marriott Hotels or its affiliates   |
| <b>Plaintiffs</b>                        | Ken Fowler Enterprises Limited, Ken Fowler (N.Y.), Inc., Ken Folwer Columbus, Inc., Ken Folwer Texas, Inc., and Peter Fowler Enterprises Ltd. with respect to legal proceedings in the Supreme Court of the State of New York                               |

|                                     |  |
|-------------------------------------|--|
| <b>Post Opening Period</b>          | The period of time after the opening of Paignton House on July 31, 2009  |
| <b>Priority Lien Claims</b>         | The portion of construction trade lien claims which are determined to have priority over all mortgages registered on title to the real property of RRDI  |
| <b>Proceeds</b>                     | The Receiver expects to receive proceeds from the One Day Sale Units, from funds held by McCarthys and from a GST refund which is owing to RRDI, but is first subject to the completion of a review by the Canada Revenue Agency |
| <b>Project</b>                      | The development and construction of the Hotel and surrounding property, all of which is on the property owned by RRDI  |
| <b>Protocol</b>                     | The Receiver has prepared, in conjunction with its legal counsel and Colliers, an Institutional Sales Process Protocol   |
| <b>Purchaser Incentive Proposal</b> | A draft proposal, made on a without prejudice basis, from the Receiver to address the Purchaser Incentives   |
| <b>Purchaser Incentives</b>         | Several types of incentives provided to Unit Owners and Existing Unit Purchasers   |
| <b>R &amp; D</b>                    | The Receiver's statement of receipts and disbursements   |
| <b>Receiver</b>                     | Collectively, the Interim Receiver and the Receiver and Manager  |
| <b>Receiver's Borrowings</b>        | The monies borrowed by the Receiver from the Syndicate, on a priority basis, to fund the costs and expenses of the receivership in the principal amount of \$15,000,000  |
| <b>Receiver and Manager</b>         | Alvarez & Marsal Canada ULC in its capacity as receiver and manager  |
| <b>Red Leaves Act</b>               | The Resort Association was created in 2006 by an act of the Ontario Provincial Parliament  |
| <b>Release</b>                      | The full and final release proposed to be provided by each Unit Owner and Existing Unit Purchaser in favour of RRDI, the Syndicate, the Receiver and certain other parties which does not include the Fowler Related Releasees   |
| <b>Rental Pool</b>                  | The rental pool in which all Unit Owners are required to participate   |
| <b>Rental Pool Covenant</b>         | A Rental Pool covenant registered on title to all Units which covenant, among other things, requires that all Unit Owners place their Units in the Rental Pool   |
| <b>Rental Pool Management Fee</b>   | Rental Pool Manager receives a fee from Unit Owners out of the Adjusted Gross Revenue available for distribution.  |
| <b>Rental Pool Manager</b>          | Rental pool manager  |
| <b>Representative Counsel</b>       | Miller Thomson LLP who has been appointed by the Court to represent those persons (the Represented Unit Owners) who have entered into Current RPMAs with RRMSI and are either existing Unit Owners or Existing Unit Purchasers   |
| <b>Representative Counsel Order</b> | An Order of the Court dated August 20, 2009 appointing Miller Thomson as Representative Counsel  |

|                                    |   |
|------------------------------------|---|
| <b>Represented Unit Owners</b>     | Those persons who have entered into Current RPMAs with RRMSI and are either existing Unit Owners or Existing Unit Purchasers, unless a Represented Unit Owner provides written notice to Representative Counsel that they do not wish to be included as a Represented Unit Owner.   |
| <b>Reserve New Unit Purchasers</b> | The Receiver entered into APSs with an additional 13 Unit Purchasers who agreed to enter into a reserve APS in respect of certain Units   |
| <b>Resort Association</b>          | The Red Leaves Resort Association   |
| <b>Retail Marketing Program</b>    | Proposed marketing and promotional program being undertaken in connection with the Retail Sales Program by Baker Real Estate  |
| <b>Retail Sales Program</b>        | The retail marketing program for the sale of the Unsold Units as well as potentially the development lands surrounding the Hotel, on an individual unit or lot basis, as conducted by Baker Real Estate   |
| <b>Revised Contracts</b>           | Certain trade contracts that RRDI revised in or about January or February 2009, to change the contracting party from RRCI to RRDI, with RRCI identified as Construction Manager   |
| <b>RPMA(s)</b>                     | Rental Pool Management Agreement(s)   |
| <b>RRCI</b>                        | Rock Ridge Contractors Inc.   |
| <b>RRCI/RRDI Reference</b>         | The reference to a Master of the Ontario Superior Court to determine the preliminary issue of whether RRCI is a general contractor or a construction manager for RRDI   |
| <b>RRDI</b>                        | The Rosseau Resort Developments Inc.  |
| <b>RRDI/RRCI Contract</b>          | The contract between RRDI and RRCI  |
| <b>RRMSI</b>                       | The Rosseau Resort Management Services Inc.   |
| <b>RRMSI Letter</b>                | A letter delivered by RRMSI to the Receiver and legal counsel to the Receiver, dated August 13, 2009  |
| <b>RRMSI Motion to Vary</b>        | A notice of motion brought by RRMSI to appear before the Court and seek an order to amend paragraph 6 of the Amended August 18 <sup>th</sup> Order  |
| <b>RRMSI Receiver</b>              | A&M as receiver over certain assets of RRMSI, namely RRMSI's rights in any contracts with Marriott Hotels and/or affiliates which relate to the Hotel (including the Current HMA) and in any Current RPMAs  |
| <b>RRMSI Receivership Motion</b>   | On August 20, 2009, the Court set a timetable for hearing the RRMSI Motion to Vary and for the joint motion by the Receiver and Representative Counsel to seek the appointment of a receiver in respect of RRMSI  |
| <b>Sale Leaseback Program</b>      | The arrangements entered into between RRDI and certain Unit Owners and Existing Unit Purchasers in connection with a form of Purchaser Incentive whereby a Unit would be purchased by a Unit Owner or Existing Unit Purchaser and leased back to RRDI for continued use in the Rental Pool in exchange for a certain financial return over a period of time |

|   |  |
|---|--|
| <b>Sales and Marketing Order</b>            | The Order issued by the Court on July 8, 2009  |
| <b>Sales and Marketing Process</b>          | Generally, the process the Receiver intends to run in respect of selling the Assets of the Company approved by the Sales and Marketing Order   |
| <b>Second Tranche Receiver's Borrowings</b> | A second tranche of Receiver's Borrowings in the principal amount of \$7.5 million to be provided by WestLB  |
| <b>Second Report</b>                        | Collectively, the Receiver's Second Report dated July 3, 2009 and a supplementary report to that report dated July 7, 2009.  |
| <b>Section 39 Memorandum</b>                | Independent legal counsel to the Receiver provided all lien claimants who had made Section 39 Requests with an information memorandum.   |
| <b>Section 39 Requests</b>                  | Requests for information made under S. 39 of the CLA   |
| <b>September 1 Order</b>                    | The Order of Madam Justice Pepall dated September 1, 2009, appointing the RRMSI Receiver   |
| <b>Service List</b>                         | List of all interested parties who are entitled to receive copies of all documents filed with the Court and have either served a Notice of Appearance or requested to be added to the Service List   |
| <b>Settlement Agreements</b>                | A package of settlement documents delivered to all Unit Owners and Existing Unit Purchasers containing either a Unit Owner Settlement Agreement or a Unit Purchaser Settlement Agreement, among other things   |
| <b>Seventh Report</b>                       | The Receiver's Seventh Report dated October 7, 2009.   |
| <b>Side Letter</b>                          | A certain letter agreement between RRDI, by its Receiver and Marriott Hotels, which modifies the terms of the New HMA, specifically in respect of these receivership proceedings   |
| <b>Sixth Report</b>                         | Collectively, the Receiver's Sixth Report dated August 21, 2009 and a supplementary report dated August 25, 2009   |
| <b>Standstill Agreements</b>                | Those agreement pursuant to which prior to the Receivership two additional Existing Unit Purchasers had each independently agreed to enter into agreements whereby RRDI agreed to attempt to sell each of the respective Units at minimum prices agreed upon between RRDI and the respective Existing Unit Purchaser |
| <b>Summary of Terms</b>                     | A summary document setting out the principal financial terms and conditions in respect of the New HMA  |
| <b>Syndicate</b>                            | Lender Syndicate   |
| <b>Tarion</b>                               | Tarion Warranty Corporation  |
| <b>Third Report</b>                         | The Receiver's Third Report dated July 21, 2009  |
| <b>Travelers</b>                            | Travelers Guarantee Company of Canada  |
| <b>U.S. Complaint</b>                       | Legal proceedings commenced September 10, 2009 by the Plaintiffs against the Defendants  |
| <b>Unit Owner Settlement Agreement</b>      | Settlement agreements with Unit Owners substantially on the terms as set out in the forms of Unit Owner Settlement Agreement, approved by the Court  |



|  |  |
|--|--|
| <b>Unit Owners</b>                         | Current owners of Units at the Hotel   |
| <b>Unit Owners' Charge</b>                 | Charge granted on the Assets of RRDI in favour of the Unit Owners in connection with the Unit Owner Settlement Agreements  |
| <b>Unit Purchaser Settlement Agreement</b> | Settlement agreements with Existing Unit Purchasers substantially on the terms as set out in the forms of Unit Purchaser Settlement Agreement, approved by the Court |
| <b>Units</b>                               | The 221 condominium units of the Hotel   |
| <b>Unsold Units</b>                        | 84 unsold condominium units of the Hotel   |
| <b>Wallace Marine</b>                      | Wallace Marine Ltd.  |
| <b>WestLB</b>                              | WestLB AG, Toronto Branch  |

# APPENDIX “B”



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

Pamela L. J. Huff  
Dir: 416-863-2958  
pamela.huff@blakes.com

April 6, 2010

VIA E-MAIL

Reference: 00071416/000003

Mr. Richard A. Morawetz  
Managing Director  
Alvarez & Marsal Canada ULC  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto, ON M5J 2J1

Re: Transfer of Receivership Loans from WestLB AG, Toronto Branch to WestLB AG, New York Branch

Dear Rick:

Reference is made to the Amended and Restated Appointment Order dated June 2, 2009, amending and restating the Appointment Order dated May 22, 2009 (collectively, the "Appointment Order"), pursuant to which, among other things, the Ontario Superior Court of Justice (the "Court") appointed Alvarez & Marsal Canada ULC and Alvarez & Marsal Inc. (formerly McIntosh & Morawetz Inc.) as interim receiver and trustee and receiver and manager, respectively (collectively, in such capacities, the "Receiver"), of The Rosseau Resort Developments Inc. ("RRDI"). Pursuant to paragraph 20 of the Appointment Order, the Court authorized and empowered the Receiver to borrow monies for the purpose of funding the exercise of powers and duties conferred upon the Receiver under the Appointment Order on the terms and conditions set out in the Term Sheet dated May 15, 2009 entered into by the Receiver and WestLB AG, Toronto Branch (the "Term Sheet") in its capacity as agent for certain lenders (the "Lenders"). By order dated December 21, 2010, the Appointment Order was further amended to authorize and empower the Receiver to borrow additional amounts pursuant to the Second Tranche Term Sheet dated February 1, 2010 entered into between the Receiver and WestLB, Toronto Branch, in its capacity as lender (together with the Term Sheet, the "Term Sheets"). The amounts borrowed by the Receiver pursuant to the Term Sheets are evidenced by Receiver's Certificates issued by the Receiver from time to time.

We understand that WestLB AG, as agent and lender under the Term Sheets acting through its Toronto Branch, and the holder of the issued Receiver's Certificates for and on behalf of itself and/or the Lenders under the Term Sheets is changing the booking and lending office for the Term Sheets from its Toronto Branch to its New York Branch, effective April 19, 2010. As Toronto Branch and New York Branch are part of one and the same legal entity, any security granted to WestLB AG and the Lenders or other rights and remedies, including pursuant to the Receiver's Certificates, will continue to benefit WestLB AG and the Lenders notwithstanding the change of booking and lending office.

Notwithstanding, we have recommended that the Receiver seek an order from the Court declaring, for greater certainty, that any order granted in the receivership proceedings commenced with respect to RRDI

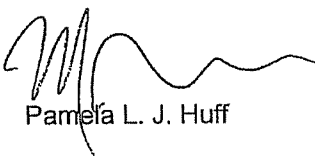
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(the "Proceedings") which make reference to WestLB AG, Toronto Branch, including the provisions of the Appointment Order as further amended authorizing and empowering the Receiver to borrow from WestLB AG, Toronto Branch and/or the Lenders pursuant to the Term Sheets, be amended to replace any reference to "WestLB AG, Toronto Branch" with "WestLB AG, New York Branch", and confirming that WestLB AG, New York Branch shall be entitled to all rights and remedies granted to WestLB AG, Toronto Branch under the Receiver's Certificates or any order granted by the Court in the Proceedings.

We recommend that the Receiver prepare a report for service in the Proceedings explaining the relief sought. Please let us know if you require further information.

Yours truly,

for   
Pamela L. J. Huff

PLJH:fly

c: Shayne Kukulowicz, Fraser Milner Casgrain LLP

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# TAB 3

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

THE HONOURABLE  
JUSTICE

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THURSDAY, THE 15<sup>TH</sup> DAY  
OF APRIL, 2010

**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

**ORDER**

THIS MOTION, made by Alvarez & Marsal Canada ULC, in its capacity as Court-appointed receiver and manager pursuant to section 101 of the *Courts of Justice Act* (Ontario) and trustee and receiver and manager under the *Construction Lien Act* (Ontario), and Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz 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 (the “Assets”) of The Rosseau Resort Developments Inc. (“RRDI”), for an Order:

- \_\_\_\_\_
- (a) amending the provisions of paragraphs 20, 21, and 25 of the Amended and Restated Appointment Order dated June 2, 2009 (the “**Appointment Order**”), as further amended by Order of Madame Justice Pepall dated December 21, 2009 (the “**December 21 Order**”), authorizing and empowering the Receiver to borrow from WestLB AG, Toronto Branch and/or the Lenders as defined in the Appointment Order, to provide that references therein to “WestLB” or “WestLB AG, Toronto Branch” be deleted and substituted with “WestLB and/or WestLB AG, New York Branch”, or “WestLB AG, Toronto Branch and/or WestLB AG, New York Branch”, as appropriate;
  - (b) amending the provisions of paragraph 5 of the December 21 Order to provide that the reference to “WestLB AG, Toronto Branch” be deleted and substituted with “WestLB AG, Toronto Branch and/or WestLB AG, New York Branch”;
  - (c) amending the provisions of the Institutional Sales Process Protocol attached as Schedule “A” to the December 21 Order at the paragraph relating to the Credit Bid (as defined therein) to provide that the references to “WestLB AG, Toronto Branch” and “WestLB AG” therein be deleted and substituted with “WestLB AG, Toronto Branch and/or WestLB AG, New York Branch”;
  - (d) providing that WestLB, New York Branch shall be entitled to all rights and remedies granted to WestLB, Toronto Branch under all Receiver’s Certificates issued by the Receiver in accordance with the provisions of the Appointment Order, as amended; and
  - (e) such further and other relief as counsel may request and this Honourable Court deems just,

was heard this day.

ON READING the Ninth Report of the Receiver, the affidavits of service filed, and on hearing the submissions of counsel for WestLB AG and the Receiver, and independent counsel for the Receiver, no one else appearing,

1. THIS COURT ORDERS that service of the Notice of Motion and the Motion Record shall be and is hereby abridged and validated, if necessary, so that this Motion is properly returnable today and any further service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

2. THIS COURT ORDERS that paragraph 20 of the Appointment Order, as amended by the December 21 Order, is amended such that all references to "WestLB" are deleted and replaced with "WestLB and/or WestLB AG, New York Branch" and all references to "WestLB AG, Toronto Branch" are deleted and replaced with "WestLB AG, Toronto Branch and/or WestLB AG, New York Branch".

3. THIS COURT ORDERS that paragraphs 21 and 25 of the Appointment Order, as amended by the December 21 Order, are amended such that the references therein to "WestLB AG, Toronto Branch" are deleted and replaced with "WestLB AG, Toronto Branch and/or WestLB AG, New York Branch".

4. THIS COURT ORDERS that paragraph 5 of the December 21 Order is amended such that the reference therein to "WestLB AG, Toronto Branch" is deleted and replaced with "WestLB AG, Toronto Branch and/or WestLB AG, New York Branch".

5. THIS COURT ORDERS that the Institutional Sales Process Protocol attached as Schedule "A" to the December 21 Order is amended at the paragraph relating to a Credit Bid (as defined therein) such that the references therein to "WestLB AG, Toronto Branch" and "WestLB", are deleted and replaced with "WestLB AG, Toronto Branch and/or WestLB AG, New York Branch".

6. THIS COURT ORDERS that WestLB, New York Branch shall be entitled to all rights and remedies granted to WestLB, Toronto Branch under all Receiver's Certificates issued by the Receiver in accordance with the provisions of the Appointment Order, as amended.



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

**ORDER**

(Returnable April 15, 2010)

**BLAKE, CASSELS & GRAYDON LLP**

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and Alvarez & Marsal Canada LLC and  
Alvarez & Marsal Canada Inc., in their  
respective capacities as Court-appointed  
receiver and manager, interim receiver, and  
trustee

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

**MOTION RECORD  
(Returnable April 15, 2010)**

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Lawyers for WestLB, AG, Toronto Branch,  
and Alvarez & Marsal Canada ULC and  
Alvarez & Marsal Canada Inc., in their  
respective capacities as Court-appointed Receiver  
and Manager, Interim Receiver, and Trustee