

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) WEDNESDAY, THE 13<sup>TH</sup> DAY  
MR. JUSTICE CAMPBELL ) OF APRIL, 2011

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) (the “**Receiver and Manager**”), and Alvarez & Marsal Canada Inc. in its capacity as interim receiver pursuant to Section 47(1) of the *Bankruptcy and Insolvency Act* (the “**Interim Receiver**”), (jointly and collectively, the “**Receiver**”), of the undertaking, property and assets (the “**Assets**”) of The Rosseau Resort Developments Inc. (“**RRDI**”) for an order:

- (a) abridging the time for service of this Notice of Motion and Motion Record, if necessary, validating service of the Notice of Motion and Motion Record, and dispensing with further service thereof;
- (b) declaring that all capitalized terms not otherwise defined in this Order shall have the same meaning as in the Seventeenth Report of the Receiver dated April 11, 2011 (the “**Seventeenth Report**”);
- (c) authorizing and directing the Receiver on behalf of RRDI to deliver a full and final release of any and all claims that RRDI may have or could have against WestLB AG, EAA, Raiffeisen Bank International AG (legal successor to Raiffeisen Zentralbank Österreich AG) (“**RZB**”) and all Secured Parties under the Credit Agreement and the Loan Documents, or otherwise, substantially in the form attached hereto as **Appendix “A”**;
- (d) authorizing and directing the Receiver on behalf of RRDI to consent to judgment against RRDI for the obligations under the Credit Agreement;
- (e) approving the Water Supply Agreement and the execution and delivery thereof by the Receiver on behalf of RRDI in the form attached as Appendix “C” to the Seventeenth Report; and
- (f) approving the Seventeenth Report and the activities of the Receiver as set out therein,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Seventeenth Report and on hearing the submissions of counsel for the Receiver and counsel for WestLB AG, New York Branch, (“**WestLB AG**”) and independent counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavits of Christina DeLuca sworn April 11, 2011, filed, (the “**Affidavits of Service**”):

1. THIS COURT ORDERS AND DECLARES that all capitalized terms not otherwise defined herein have the same meaning as in the Seventeenth Report.

2. THIS COURT ORDERS AND DECLARES that service of the Notice of Motion and the Motion Record in accordance with the Affidavits of Service, including the method and timing of notice, and service to the service list by way of email and courier, shall be and is hereby abridged and validated, 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.

**Release by RRDI**

3. THIS COURT ORDERS that the Receiver is hereby authorized and directed on behalf of RRDI to deliver a full and final release of any and all claims that RRDI may have or could have against WestLB AG, EAA, RZB and all Secured Parties under the Credit Agreement and the Loan Documents or otherwise, substantially in the form attached hereto as **Appendix "A"** (the **"Release"**).

4. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of RRDI and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of RRDI;

the Release shall be binding on any trustee in bankruptcy that may be appointed in respect of RRDI and shall not be void or voidable by creditors of RRDI, nor shall it constitute nor be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

**Consent to Judgment**

5. THIS COURT ORDERS that the Receiver is authorized and directed, *nunc pro tunc*, to consent to judgment against RRDI for the obligations under the Credit Agreement in the Complaint filed in the Supreme Court of the State of New York as Index No. 651913/2010.

**Water Supply Agreement**

6. THIS COURT ORDERS that the Water Supply Agreement in the form attached as **Appendix "C"** to the Seventeenth Report, and the execution and delivery thereof by the Receiver be and is hereby approved.

**Other Relief**

7. THIS COURT ORDERS that the Seventeenth Report and the activities of the Receiver as described therein be and are hereby approved.

8. THIS COURT ORDERS that pursuant to the BIA, section 195, this Order is subject to provisional execution notwithstanding any appeal therefrom.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

APR 13 2011

PER/PAR:





## APPENDIX "A"

### FULL AND FINAL RELEASE

TO: WestLB AG, New York Branch (formerly WestLB AG, Toronto Branch), as administrative agent (in such capacity, the "Agent"), on behalf of itself, CIT Financial Ltd. ("CIT"), Raiffeisen Bank International AG (legal successor to Raiffeisen Zentralbank Österreich AG) ("RZB"), and Erste Abwicklungsanstalt (collectively the "Creditors")

Full and final release ("**Full and Final Release**") effective as of the date hereof, granted by The Rosseau Resort Developments Inc. ("**RRDI**"), executed by Alvarez & Marsal Canada ULC for and on behalf of RRDI solely in its capacity as receiver and manager and trustee of the assets of RRDI (the "**Assets**") and not in its personal capacity, and executed by Alvarez & Marsal Canada Inc. for and on behalf of RRDI solely in its capacity as interim receiver of the assets of RRDI and not in its personal capacity (collectively, the "**Receiver**") in favour of the Agent and the other Creditors.

#### RECITALS:

- a) Pursuant to a credit agreement dated as of February 1, 2007 among, *inter alia*, RRDI, as Borrower, the Agent, various financial institutions, as the Lenders, CIT, as Syndication Agent and RZB, as Documentation Agent (as amended, supplemented or modified from time to time up to the date hereof, the "**Credit Agreement**"), the Lenders made certain Credit Extensions (as defined therein) to RRDI.
- b) The Receiver, on behalf of RRDI, has been authorized and directed by the Order of the Honourable Justice Campbell of the Ontario Superior Court of Justice dated April 13, 2011 to execute and deliver this Full and Final Release on behalf of RRDI, and not in its personal capacity, to evidence the releases and discharges hereinafter referred to in connection with the Credit Agreement.

**NOW THEREFORE**, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), RRDI hereby agrees as follows:

#### 1. Defined Terms.

Capitalized terms used in this Full and Final Release and not otherwise defined shall have the meanings specified in the Credit Agreement except that (and for greater certainty) the term "**Loan Documents**" shall be deemed to include the documents listed in Schedule "A".

#### 2. RRDI's Release of Agent and other Creditors.

- 2.1. RRDI, by its Receiver, on its own behalf and on behalf of its successors and assigns, absolutely, unconditionally and irrevocably releases, remises and forever discharges the Agent and each of the other Creditors, and each of their present and former shareholders, partners, affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, employees, agents and other representatives, and their successors and

assigns (the Agent, each of the other Creditors and such other persons being hereinafter referred to collectively as the "**Creditor Releasees**" and individually as a "**Creditor Releasee**"), of and from all demands, actions, causes of action, applications, suits, covenants, contracts, complaints, controversies, agreements, promises, sums of money, accounts, bills, bonds, indebtedness, reckonings, obligations, duties, breaches of contract, breaches of duty or any relationship, acts, omissions, compensations, promises, costs, losses, expenses, claims for interest or disbursements, damages, remedies for losses, choses in action, entitlements, rights of indemnity, and any and all other claims, counterclaims, defences, demands and liabilities (individually, a "**Claim**" and collectively, "**Claims**") known or unknown, both at law and in equity, which RRDI or any of its successors and assigns, may now or later have or claim against any of the Creditor Releasees including, but not limited to, on account of, or in relation to, or in any way in connection with the Credit Extensions, the Obligations, the Credit Agreement or any of the other Loan Documents (including, but without limitation, all the documents listed in Schedule "A" hereto), and the receivership of RRDI and The Rosseau Resort Management Services Inc., and including for greater certainty and not restricting the foregoing, any and all claims which were raised, or which could have been raised in Complaint No. 602807/09 commenced in the Supreme Court in the State of New York, or in Complaint No. 651913/10 commenced in the Supreme Court of the State of New York.

- 2.2. RRDI, by its Receiver, understands, acknowledges and agrees that the releases set out in Section 2.1 may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such releases.
- 2.3. RRDI, by its Receiver, agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the releases set out in Section 2.1.
- 2.4. RRDI, by its Receiver, on its own behalf and on behalf of its successors and assigns, absolutely, unconditionally and irrevocably covenants and agrees with and in favour of each Creditor Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Creditor Releasee on the basis of any Claim released under Section 2.1 above.
3. **Miscellaneous**
  - 3.1. RRDI, by its Receiver, hereby undertakes and agrees not to assert any Claim or take any proceedings in furtherance of such Claim against any person, partnership, corporation, or other such entity which might be entitled to claim contribution, indemnity, or other relief over against any Creditor Releasee on account of such Claim under the provisions of any statute or otherwise, including the *Negligence Act*, R.S.O. 1990, c.N.1 and any amendments and successor legislation thereto, with respect to any of the matters to which this release applies.

- 3.2. In addition to Section 2.4 above, in the event that RRDI should hereafter commence any proceedings involving any Claims relating to the matters dealt with in this release against any of the Creditor Releasees, this document may be raised as an estoppel to any such Claims in the proceedings, and RRDI shall be liable to the Creditor Releasees for the costs of such proceedings.
- 3.3. RRDI, by its Receiver, hereby represents and warrants that it has not assigned or transferred, or purported to assign or transfer, to any person, partnership, corporation, or other such entity any of the Claims released above, nor any of the matters about which they agree herein not to make any claim or take any proceedings.
- 3.4. RRDI, by its Receiver, represents and warrants that no consent, approval, waiver or other intervention or involvement of any kind by any other party is required for the effective release of the Claims or the effective execution of this release.
- 3.5. And it is hereby understood by RRDI, by its Receiver, and agreed that the aforesaid consideration is deemed to be no admission whatsoever of liability on the part of the Creditor Releasees and that such liability is denied.
- 3.6. And for the aforesaid consideration RRDI, by its Receiver, hereby acknowledges, declares and agrees that it is satisfied with the information provided and has no outstanding requests for information, that it has had sufficient time and opportunity to seek independent legal and other professional advice with respect to the terms of this release, that it has been represented by independent counsel in connection with the negotiation and execution of this Full and Final Release and has had a full and adequate opportunity to consider this Full and Final Release and consult with independent counsel in connection with same, that it has read this Full and Final Release in its entirety, and it has been explained to it by its independent counsel, that it understands the terms of this release and voluntarily accepts the consideration referred to above for the purpose of making full and final compromise, adjustment and settlement of all Claims as aforesaid, and represents and warrants that it has not been induced to enter into this release by reason of any representation or warranty of any kind whatsoever, that no threat or suggestion or promise has been made to RRDI to influence it to sign the Full and Final Release, other than the statements set forth herein, that in signing this Full and Final Release it has not been subjected to any coercion, undue influence, or duress, and that there is no condition, express or implied, or collateral agreement affecting the said release.

#### **4. Further Assurances.**

RRDI shall execute and deliver to the Agent such further assurances as may reasonably be required to give effect to this Full and Final Release.



**5. Governing Law.**

This Full and Final Release is governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein and RRDI submits to the exclusive jurisdiction of the courts of Ontario in connection with any dispute or interpretation regarding this Full and Final Release provided that the Creditor Releasees may bring such proceedings in the Supreme Court of the State of New York as may be appropriate to enforce this Full and Final Release.

**6. Successors and Assigns.**

This Full and Final Release shall be binding upon and shall enure to the benefit of RRDI and each of its respective successors, assigns, and/or legal representatives.

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Full and Final Release, has been executed as of the \_\_\_\_\_ day of April, 2011.

**THE ROSSEAU RESORT  
DEVELOPMENTS INC.**, by Alvarez &  
Marsal Canada ULC, solely in its capacity as  
receiver and manager and trustee of the  
Assets of RRDI and without any effect on its  
personal capacity, and by Alvarez & Marsal  
Canada Inc., solely in its capacity as interim  
receiver of the Assets of RRDI and without  
any effect on its personal capacity

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

**SCHEDULE "A"**  
**CERTAIN LOAN DOCUMENTS**

**Loan Documents**

- (1) The Credit Agreement.
- (2) Pledge Agreement dated as of April 20, 2007, granted by Red Leaves Resort Partnership ("Red Leaves") in favour of the Agent.
- (3) Environmental Indemnity Agreement dated as April 20, 2007, granted by Ken Fowler Enterprises Limited ("KFE") for the benefit of the Agent.
- (4) Subordination Agreement dated as of April 20, 2007, between Kenneth A. Fowler, KFE and the Agent.
- (5) Intercreditor Agreement dated as June 6, 2007, as between Fortress Credit Corp., the Borrower, KFE and the Agent.
- (6) General Security Agreement dated as of April 9, 2009, granted by KFE in favour of the Agent.
- (7) General Security Agreement dated as of April 9, 2009, granted by Ken Fowler (N.Y.), Inc. ("KF NY") in favour of the Agent.
- (8) General Security Agreement dated as of April 9, 2009, granted by Ken Fowler, Columbus, Inc. ("KF Columbus") in favour of the Agent.
- (9) General Security Agreement dated as of April 9, 2009, granted by Ken Fowler Texas, Inc. ("KF Texas") in favour of the Agent.
- (10) Securities Pledge Agreement dated as of April 9, 2009, granted by KFE in favour of the Agent.
- (11) Negative Pledge Agreement dated as of April 9, 2009, granted by Peter Fowler Enterprises Ltd. ("PFEL") in favour of the Agent.
- (12) Subordination and Postponement Agreement dated as April 9, 2009, between Meridian Credit Union Limited, TD Capital Mezzanine Partners Management Ltd., the Agent, KFE, KF NY, KF Columbus, KF Texas and PFEL.
- (13) *Personal Property Security Act* (Ontario) and *Uniform Commercial Code* financing statements filed or made in respect of the Loan Documents.
- (14) Payment Guaranty dated as of April 20, 2007, granted by KFE for the benefit of the Agent.
- (15) Guaranty of Completion and Performance dated as of April 20, 2007, granted by KFE for the benefit of the Agent.

- (16) Non-Recourse Carve Out Guaranty dated as April 20, 2007, granted by KFE for the benefit of the Agent.
- (17) Limited Guaranty and Postponement of Debts and Claims dated as April 9, 2009, granted by KFE, KF NY, KF Columbus and KF Texas for the benefit of the Agent.
- (18) Non-Recourse Pledge Guaranty dated as of April 20, 2007, granted by Red Leaves in favour the Agent.

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**

**BLAKE, CASSELS & GRAYDON LLP**  
P.O. Box 25, Commerce Court West  
199 Bay Street, Suite 2800  
Toronto, Ontario M5L 1A9

Pamela L.J. Huff - LSUC#: 27344V  
Tel: 416-863-2958  
Fax: 416-863-2653

Katherine McEachern - LSUC#: 38345M  
Tel: 416-863-2566  
Fax: 416-863-2653  
Lawyers for WestLB AG, and Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Inc. in their respective capacities as Court-appointed Receiver and Manager, Trustee, and Interim Receiver

**FRASER MILNER CASGRAIN LLP**  
1 First Canadian Place  
39th Floor, 100 King Street West  
Toronto, Ontario M5X 1B2

R. Shayne Kukulowicz LSUC#: 30729S  
Jane Dietrich LSUC # 49302U  
Tel: 416-863 4467  
Fax: 416-863 4592

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