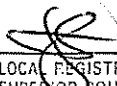


AMENDED HIS MODIFIÉE CE	<u>Aug 20, 2009</u>	PURSUANT TO CONFORMÈMENT A
<input checked="" type="checkbox"/> RULE/LA RÈGLE 26.02	<u>( C )</u>	
<input checked="" type="checkbox"/> THE ORDER OF L'ORDONNANCE DU	<u>PEPALL J</u>	
DATED/FAIT LE	<u>Aug 20, 2009</u>	
 <b>Joanne Nicoara</b> Registrar, Superior Court of Justice		
LOCAL REGISTRAR SUPERIOR COURT OF JUSTICE	GREFFIER LOCAL COUR SUPÉRIEURE DE JUSTICE	

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

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

THE HONOURABLE	)	TUESDAY, THE 18 <sup>TH</sup> DAY
	)	
MADAM JUSTICE PEPALL	)	OF AUGUST, 2009

**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

**AMENDED 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) (the "CJA") and trustee and receiver and manager under the *Construction Lien Act* (Ontario), and McIntosh & Morawetz Inc., in its capacity as interim receiver pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the "BIA"), (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 the Notice of Motion and the Motion Record herein and dispensing with further service thereof;
- (b) authorizing the Receiver, on behalf of RRDI, to repudiate the Amended and Restated Hotel Management Agreement between RRDI, The Rosseau Resort Management Services Inc. (“RRMSI”) and Marriott Hotels of Canada Ltd. (“Marriott”) dated October 6, 2006 (the “Current Hotel Management Agreement”), relating to the operation of the 221 unit condominium hotel located on property on Lake Rosseau, Muskoka, Ontario (the “Hotel”), such repudiation to be effective at 11:59 p.m. on Friday, September 18, 2009, to correspond with a 30 day notice of termination to be delivered by Marriott to RRDI and RRMSI pursuant to the Current Hotel Management Agreement (the “Effective Date”);
- (c) authorizing A&M, solely in its capacity as receiver and manager pursuant to the CJA, on behalf of RRDI, to enter into a new form of Hotel Management Agreement (the “New Hotel Management Agreement”) with Marriott on the principal terms and conditions of the Current Hotel Management Agreement, and a side letter to the New Hotel Management Agreement (the “Side Letter”) in a form to be filed with the Court prior to the hearing of this Motion, to be effective on the Effective Date. The principal terms of the New Hotel Management Agreement and Side Letter are as set out in a summary of terms (the “Summary of Terms”) attached in redacted form as an Appendix to the Fourth Report of the Receiver dated August 12, 2009 (the “Fourth Report”), and in a non-redacted form as a Confidential Appendix to the Fourth Report. The completion of a New Hotel Management Agreement and Side Letter is subject to definitive documentation based on the Summary of Terms in a form acceptable to A&M;
- (d) authorizing the Receiver, on behalf of RRDI, to repudiate effective as of the Effective Date an International Services Agreement between RRDI, RRMSI and International Hotel Licensing Company S.a.r.l, an affiliate of Marriott (“IHLC”)

dated October 6, 2006, a Royalty and Licensing Agreement between RRDI, RRMSI and IHLC dated October 6, 2006, and any other current agreements with Marriott or its affiliates that the Receiver deems necessary, and to enter into new such agreements as between RRDI and Marriott on such terms as the Receiver may agree and as are consistent with the terms of the New Hotel Management Agreement (the "Other New Marriott Agreements"), all as of the Effective Date;

- (e) authorizing the Receiver on behalf of RRDI, to repudiate any and all agreements, verbal or otherwise, between RRDI and RRMSI whereby RRDI arranged to delegate the appointment of rental pool manager ("Rental Pool Manager") to RRMSI in respect of the rental pool in which all current owners (the "Unit Owners") of condominium units at the Hotel ("Units") are required to participate;
- (f) authorizing A&M, solely in its capacity as receiver and manager pursuant to the CJA, on behalf of RRDI, to enter into new forms of Rental Pool Management Agreements (the "New Rental Pool Management Agreements") with Unit Owners, existing purchasers of Units who have not yet closed outstanding agreements of purchase and sale with RRDI ("Existing Unit Purchasers"), and new purchasers of Units ("New Unit Purchasers"), substantially in the form set out in the draft New Rental Pool Management Agreement attached to the Fourth Report as an Appendix, effective on the Effective Date;
- (g) authorizing A&M, solely in its capacity as receiver and manager pursuant to the CJA, on behalf of RRDI, to enter into settlement agreements with Unit Owners and Existing Unit Purchasers substantially on the terms as set out in the forms of Unit Owner Settlement Agreement (the "Unit Owner Settlement Agreement") and Unit Purchaser Settlement Agreement (the "Unit Purchaser Settlement Agreement") attached as Appendices to the Fourth Report;
- (h) approving the form of release (the "Release") to be executed by Unit Owners and Existing Unit Purchasers in connection Unit Owner Settlement Agreements and Unit Purchaser Settlement Agreements in the form attached as an Appendix to the Fourth Report, provided that the form of the Release shall not include RRMSI,

Ken Fowler Enterprises Ltd., Red Leaves Partnership, Kenneth A. Fowler, and Peter Fowler (the “RRMSI Parties”), as requested by RRMSI, in the event that the relief requested at paragraph (i) below is opposed by RRMSI;

- (i) declaring that upon the termination of the Current Hotel Management Agreement by Marriott and upon the repudiation of any and all agreements, verbal or otherwise, between RRDI and RRMSI delegating the appointment of Rental Pool Manager to RRMSI, the existing Rental Pool Management Agreements (the “Existing Rental Pool Management Agreements”) between RRMSI and Unit Owners and Existing Unit Purchasers are frustrated and cannot be performed by RRMSI; that Unit Owners and Existing Unit Purchasers are entitled to terminate their Existing Rental Pool Management Agreements; and that the execution by Unit Owners and Existing Unit Purchasers of the New Rental Pool Management Agreements shall be deemed to be notice of the termination by the Unit Owners and Existing Unit Purchasers of their Existing Rental Pool Management Agreements;
- (j) declaring that in the event the relief sought at paragraph (i) above is opposed by RRMSI, any action against a Unit Owner or Existing Unit Purchaser by RRMSI by reason of the execution of a New Rental Pool Management Agreement by a Unit Owner or Existing Unit Purchaser is stayed pending further Order of this Court;
- (k) approving the form of disclosure statement and related documentation (“Disclosure Documentation”) to be distributed to potential New Unit Purchasers in respect of the Retail Sales Program approved and authorized by Order of this Court dated July 8, 2009, substantially in the form to be filed with the Court, subject to such clarifying amendments that the Receiver may make in the process of finalizing the Disclosure Documentation, and any amendments that may need to be made in connection with the outcome of this Motion;
- (l) authorizing the Receiver to execute the certificate required on the Disclosure Documentation, following the necessary amendments as described in paragraph

- (k) above, in lieu of, and on behalf of the chief executive officer and chief financial officer of RRDI, regardless of whether such officers are currently appointed for RRDI, without any personal liability on their part or on the part of the Receiver or its directors or officers;
- (m) in connection with the Unit Owner Settlement Agreements, granting charges on the Assets of RRDI in favour of the Unit Owners, as follows (the “Unit Owners’ Charges”):
- (i) in an amount sufficient to secure the total aggregate obligation of RRDI to pay rent under New Leases (as they are defined in the Unit Owner Settlement Agreements) entered into with all Unit Owners pursuant Unit Owner Settlement Agreements, not to exceed \$1.6 million; and
  - (ii) in an amount sufficient to secure the total aggregate obligation of RRDI to honour the Indulgence Cards and Other Incentives (as they are defined in the Unit Owner Settlement Agreements) in respect of all Unit Owner Settlement Agreements, not to exceed \$3.7 million;

such Charges to rank *pari passu* with each other and subordinate only to the Receiver’s Charge and the Receiver’s Borrowings Charge each as provided for in the Amended and Restated Appointment Order dated June 2, 2009 (the “Appointment Order”), and that portion of the construction trade lien claims which are determined to have priority over all mortgages registered on title to the real property of RRDI (the “Priority Lien Claims”);

- (n) granting charges on the Assets of RRDI in order to secure the obligations of RRDI to Marriott under the New Hotel Management Agreement and Other New Marriott Agreements, as follows:
- (i) a charge in the maximum amount of \$5 million to be secured by RRDI’s right, title and interest in and to the real and personal property comprising the Hotel (the “Primary Marriott Charge”); and

- (ii) a charge in the maximum amount of \$2 million secured by RRDI's right, title and interest in and to its real property other than the Hotel (the "Secondary Marriott Charge");

such charges to rank subordinate only to the Receiver's Charge and the Receiver's Borrowings Charge each as provided for in the Appointment Order, the Priority Lien Claims, and the Unit Owners' Charge, provided that the total amount secured by the Primary Marriott Charge and the Secondary Marriott Charge shall not exceed \$5 million, with access to the Secondary Marriott Charge only if there are not sufficient Assets available for distribution under the Primary Marriott Charge;

- (o) approving and authorizing the Receiver to pay the reasonable legal fees and disbursements, inclusive of GST, of the Ad Hoc Committee of Unit-Owners represented by Miller Thomson LLP:
  - (i) in an amount to a maximum of \$75,000 in respect the matters relating to the Unit Owner Settlement Agreements and the Unit Purchaser Settlement Agreements and the other matters raised herein; and
  - (ii) in an amount to a maximum of \$25,000 in respect of a trust claim that may be raised by Unit Owners relating to funds held by McCarthy Tetrault LLP, in the event that the issue of entitlement to such funds is brought forward to the Court for determination;
- (p) approving the Fourth Report and the conduct and activities of the Receiver described therein;
- (q) sealing the Confidential Appendices to the Fourth Report pending further Order of this Court; and
- (r) such further and other relief as counsel may request and this Honourable Court deems just.

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

ON READING the Second Report of the Receiver dated July 3, 2009, the Fourth Report, the Supplementary Report to the Fourth Report of the Receiver dated August 14, 2009 (the "Supplementary Report"), the affidavits of service of Wendy Robinson dated August 13, 2009, Katherine McEachern dated August 14, 2009 and David Munro dated August 14, 2009 (the "Affidavits of Service"), and on being advised of the service of the Notice of Motion on all Unit Owners and Existing Unit Purchasers who entered into an Existing Rental Pool Management Agreement with RRMSI, and on noting the correspondence in the Supplementary Report from RRMSI advising that it would not attend on the return of this motion despite notice of the relief that would be sought in connection with the Existing Rental Pool Management Agreements, on reading the letter dated August 6, 2009 from the Receiver to the Unit Owners and Existing Unit Purchasers, filed, and the email exchange between counsel for the Receiver and RRMSI dated August 12 and 13, 2009 and August 17, 2009, filed, and on hearing the submissions of independent counsel for the Receiver, counsel for WestLB AG, Toronto Branch, and the Receiver, counsel for the Ad Hoc Committee of Unit Owners, and counsel for Marriott, counsel for certain Existing Unit Purchasers, and counsel for Fortress Credit Corp. not opposing, no one appearing for any other person on the service list:

### **Service**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof, and the service of the Notice of Motion and the Motion Record in accordance with the Affidavits of Service is hereby validated.

### **Hotel Management Agreement and Other Hotel Agreements**

2. THIS COURT ORDERS that the Receiver be and is hereby authorized to repudiate the Current Hotel Management Agreement and enter into and execute the New Hotel Management Agreement and Side Letter substantially on the terms and conditions as set out in the Summary of Terms filed as Confidential Appendix "1" to the Fourth Report, and as set out substantially in the form of Side Letter filed confidentially with the Court, which shall be subject only to such non-material amendments to which the Receiver and Marriott may agree, together with such further terms and conditions to the New Hotel Management Agreement as the parties may agree to in

order carry into effect the New Hotel Management Agreement, to be effective on the Effective Date (or such other date as the Receiver and Marriott may agree).

3. THIS COURT ORDERS that the Receiver be and is hereby authorized to repudiate any other current agreements with Marriott or its affiliates that the Receiver deems necessary and enter into and execute such Other New Hotel Agreements that the Receiver deems necessary, on such terms as the Receiver may agree with Marriott and or its affiliates, and as are consistent with the terms of the New Hotel Management Agreement, to be effective on the Effective Date (or such other date as the Receiver and Marriott may agree).

#### **Repudiation of Arrangements with RRMSI**

4. THIS COURT ORDERS that the Receiver be and is hereby authorized to repudiate any and all agreements, verbal or otherwise, between RRDI and RRMSI whereby RRDI arranged to delegate the appointment of Rental Pool Manager to RRMSI, with such repudiation to be effective upon written notice to counsel for RRMSI who filed a Notice of Appearance in these proceedings, and such repudiation to be effective on the date and time as set out in such written notice.

#### **Rental Pool Management Agreements**

5. THIS COURT ORDERS that the Receiver be and is hereby authorized to enter into New Rental Pool Management Agreements with Unit Owners, Existing Unit Purchasers, and New Unit Purchasers, substantially in the form set out in the draft New Rental Pool Management Agreement attached to the Fourth Report as Appendix "F", with such non-material amendments as may be agreed to by the Receiver.

6. THIS COURT ORDERS AND DECLARES that as a result of the repudiation by the Receiver and termination by Marriott of the Current Hotel Management Agreement, and the repudiation by the Receiver on behalf of RRDI of any agreements, verbal or otherwise, between RRDI and RRMSI delegating the appointment of Rental Pool Manager to RRMSI, the Existing Rental Pool Management Agreements between RRMSI and Unit Owners and Existing Unit Purchasers are not capable of performance and may be terminated by Unit Owners and Existing Unit Purchasers. The execution by a Unit Owner or Existing Unit Purchaser of the New Rental



Pool Management Agreement shall be deemed to be notice of the termination by the Unit Owner or Existing Unit Purchaser of their Existing Rental Pool Management Agreement; provided further that any action against a Unit Owner or Existing Unit Purchaser by RRMSI by reason of the execution of a New Rental Pool Management Agreement by a Unit Owner or Existing Unit Purchaser is stayed pending further Order of this Court.

6a. THIS COURT ORDERS that the relief granted in paragraph 6 shall be subject to any motion to vary or amend returnable on August 20, 2009, to be heard at the same time as the intended motion or application for the appointment of a receiver of RRMSI and representative counsel for Unit Owners and Existing Unit Purchasers.

#### **Settlement Agreements**

7. THIS COURT ORDERS that the Receiver be and is hereby authorized to enter into settlement agreements with Unit Owners and Existing Unit Purchasers substantially on the terms as set out in the forms of Unit Owner Settlement Agreement and Unit Purchaser Settlement Agreement attached as Appendices "H" and "I", respectively, to the Fourth Report.

8. THIS COURT ORDERS that the form of Release to be executed by Unit Owners and Existing Unit Purchasers in connection with Unit Owner Settlement Agreements and Unit Purchaser Settlement Agreements attached as Appendix "J" to the Fourth Report, as amended in the form as filed with the Court to add Fortress Credit Funding (Europe) I Limited and FCCO Limited, and to delete Ken Fowler Enterprises Ltd., Red Leaves Partnership, Kenneth A. Fowler, Peter Fowler, and RRMSI as Releasees under the Release, be and is hereby approved.

#### **Disclosure Documentation**

9. THIS COURT ORDERS that the relief sought on this motion in respect of the Disclosure Documentation is hereby adjourned to August 20, 2009.

#### **Charges**

10. THIS COURT ORDERS that in connection with the Unit Owner Settlement Agreements, the Unit Owners shall be entitled to the benefit of and are hereby granted charges on the Assets of RRDI in favour of the Unit Owners (the “Unit Owners’ Charges”), as follows:

- (a) in an amount sufficient to secure the total aggregate obligation of RRDI to pay rent under New Leases entered into with all Unit Owners pursuant Unit Owner Settlement Agreements, not to exceed \$1.6 million; and
- (b) in an amount sufficient to secure the total aggregate obligation of RRDI to honour the Indulgence Cards and Other Incentives as provided by all Unit Owner Settlement Agreements, not to exceed \$3.7 million; provided that the maximum amount of \$3.7 million shall be reduced dollar for dollar by (i) each dollar recovered by a Unit Owner on account of 50% of such Unit Owner's claim against RRDI for Indulgence Cards and Other Incentives from the Funds (all such terms as defined in the Unit Owner Settlement Agreement); and (ii) each dollar required to be held back by the Receiver from a closing with an Existing Unit Purchaser on account of the obligations of the Receiver to such Existing Unit Purchaser under the Unit Purchaser Settlement Agreement;

such Charges to rank *pari passu* with each other and subordinate only to the Receiver’s Charge and the Receiver’s Borrowings Charge each as provided for in the Appointment Order (as same may be amended from time to time), and the Priority Lien Claims.

11. THIS COURT ORDERS that Marriott and IHLC shall be entitled to the benefit of and are hereby granted charges on the Assets of RRDI in order to secure the obligations of RRDI to Marriott and IHLC under the New Hotel Management Agreement, the Side Letter, and Other New Marriott Agreements (the “Marriott Obligations”), as follows:

- (a) a charge in the maximum amount of \$5 million to be secured by RRDI’s right, title and interest in and to the real and personal property comprising the Hotel (the “Primary Marriott Charge”); and

- (b) a charge in the maximum amount of \$2 million secured by RRDI's right, title and interest in and to its real and personal property other than the Hotel (the "Secondary Marriott Charge"),

such charges to rank subordinate only to the Receiver's Charge and the Receiver's Borrowings Charge each as provided for in the Appointment Order (as same may be amended from time to time), the Priority Lien Claims, and the Unit Owners' Charge, provided that the maximum amount which Marriott or IHLC may recover under the Primary Marriott Charge and the Secondary Marriott Charge is limited to \$5 Million and that, to the extent that Marriott or IHLC recovers less than \$5 Million (the "Deficiency") under the Primary Marriott Charge, Marriott or IHLC may recover the lesser of (i) the Deficiency and (ii) \$2 Million under the Secondary Marriott Charge. For greater certainty, any claim by Marriott or IHLC against RRDI or the Receiver in respect of the Marriott Obligations in excess of \$5 million shall be an unsecured claim against RRDI.

12. THIS COURT ORDERS that the Receiver be and is hereby authorized to pay the reasonable legal fees and disbursements, inclusive of GST, of the Ad Hoc Committee of Unit-Owners represented by Miller Thomson LLP:

- (a) in an amount to a maximum of \$75,000 in respect the matters relating to the Unit Owner Settlement Agreements and the Unit Purchaser Settlement Agreements and the other matters raised herein; and
- (b) in an amount to a maximum of \$25,000 in respect of a trust claim that may be raised by Unit Owners relating to funds held by McCarthy Tetrault LLP, in the event that the issue of entitlement to such funds is brought forward to the Court for determination.

#### **Fourth Report**

13. THIS COURT ORDERS that the Fourth Report, and the activities and conduct of the Receiver described therein, be and are hereby approved.


#### **Sealing Order**

14. THIS COURT ORDERS that Confidential Appendices 1 and 2 filed with the Fourth Report, and the form of Side Letter filed confidentially with the Court, be and are hereby sealed and shall remain sealed until further Order of this Court.

**Aid and Recognition**

15. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

A handwritten signature in cursive script, appearing to read "Repall J.", is written over a horizontal line.

WESTLB AG, TORONTO BRANCH

V.

THE ROSSEAU RESORT DEVELOPMENTS INC.

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

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED ORDER**

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Lawyers for WestLB, AG, Toronto Branch,  
and Alvarez & Marsal Canada ULC and McIntosh  
Morawetz Inc., in their respective  
capacities as Court-appointed interim  
receiver, trustee, receiver and manager