

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

THE HONOURABLE MADAM

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MONDAY, THE 21st DAY

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JUSTICE PEPALL

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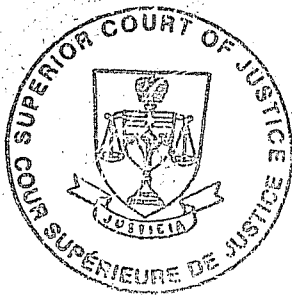
OF DECEMBER, 2009

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

ORDER

THIS MOTION, made by Alvarez & Marsal Canada ULC ("**A&M**"), 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. (formerly 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) validating service of the Notice of Motion and the Motion Record herein, and dispensing with further service thereof;
- (b) authorizing and approving an increase to the Receiver's Borrowings as contemplated by paragraph 20 of the Amended and Restated Appointment Order dated June 2, 2009 (the "**Appointment Order**") and section 78(7) of the CLA by way of a separate facility in the amount of \$7,500,000 to be provided by WestLB AG on the terms set out in a term sheet to be delivered (the "**Second Tranche Term Sheet**"), to be secured by the Receiver's Borrowings Charge (as defined in the Appointment Order);
- (c) providing that in accordance with paragraph 24 of the Appointment Order, all Receiver's Certificates issued by the Receiver in respect of the Second Tranche Term Sheet shall rank subordinate to all Receiver's Certificates issued by the Receiver in connection with the existing Receiver's Borrowings;
- (d) authorizing the Receiver to apply Proceeds as defined in the Eighth Report of the Receiver dated December 14, 2009, (the "**Eighth Report**"), to permanently reduce the amounts outstanding under the existing Receiver's Borrowings and the Term Sheet (as defined at paragraph 20 of the Appointment Order);
- (e) approving an Institutional Sales Process Protocol (the "**Protocol**") substantially in the form attached hereto as Schedule "A" that outlines the steps to be taken under the Institutional Sales Process authorized by the Court by Order dated July 8, 2009;
- (f) approving a proposed settlement between the Receiver and Unit Owners with respect to the allocation of entitlements of RRDI and the Unit Owners to certain funds held by McCarthy Tetrault LLP ("**McCarthys**") as proposed by the Receiver at section 10 of the Eighth Report (the "**Trust Allocation**"), and authorizing and directing McCarthys to pay the sum of \$1,640,355.85 to the Receiver to be held by the Receiver for distribution as provided for herein;
- (g) authorizing the Receiver to repudiate all trademark licence agreements or other arrangements for the use of the Red Leaves trademark, oral or otherwise, as may

be in effect as between RRDI and any other persons or entities, and authorizing the Receiver to enter into a trademark licence agreement terminable on 180 days' notice, with 1515511 Ontario Inc. (c.o.b. as The Rock), and such other affiliates of RRDI on such terms as the Receiver may determine appropriate;

- (h) authorizing and approving additional funding to pay the outstanding accounts of Miller Thomson LLP ("**Miller Thomson**") in its capacity as counsel for the Ad Hoc Committee of Unit Owners and representative counsel appointed by Order dated August 20, 2009 ("**Representative Counsel**") for Unit Owners and Existing Unit Purchasers (as defined therein) who are parties to an Existing Rental Pool Management Agreement (as defined therein);
- (i) amending the Appointment Order by amending Schedule "A" to the Appointment Order to add two additional parcels of real property that are owned by RRDI to the legal description of lands described therein;
- (j) providing that all references to McIntosh & Morawetz Inc. in all prior Court Orders, Reports, and other material filed with the Court shall be taken to be a reference to Alvarez & Marsal Canada Inc.;
- (k) approving the Eighth Report and the conduct and activities of the Receiver described therein;
- (l) sealing the Confidential Appendices to the Eighth Report pending further Order of this Court; and
- (m) such further and other relief as counsel may request and this Honourable Court deems just.

ON READING the Eighth Report, the affidavits of service filed, and on hearing the submissions of counsel for WestLB AG, Toronto Branch and the Receiver, independent counsel for the Receiver, counsel for CIT Financial Ltd., counsel for the Ad Hoc Committee of Unit Owners and Representative Counsel, counsel for Marriott Hotels of Canada, Ltd. ("**Marriott Hotels**"), no one appearing for The Rosseau Resort Management Services Inc., RRDI, Ken

Fowler Enterprises Limited, and Fortress Credit Corp., and no one appearing for any other person on the service list,

Service

1. THIS COURT ORDERS that the service of the Notice of Motion and the Motion Record in accordance with the Affidavits of Service of Wendy Robinson sworn December 17, 2009, and of Charlene Griffin sworn December 17, 2009 and December 18, 2009, filed, including the method and timing of notice, including to certain Unit Owners (as defined in the Eighth Report) by letter dated December 11, 2009 delivered by way of email and mail and/or courier, is hereby validated, and that service on any interested person other than those served is hereby dispensed with.

Second Tranche Receiver's Borrowings

2. THIS COURT ORDERS that the Appointment Order is amended by deleting paragraph 20 and replacing it with the following:

“20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby authorized and empowered to borrow from the Lenders, such monies from time to time as it may consider necessary or desirable, in the amount and on the terms as set out in the Term Sheet provided to the Receiver by WestLB dated May 15, 2009, substantially in the form attached as Exhibit “S” to the Dyck Affidavit, and is authorized and empowered to borrow from WestLB AG, Toronto Branch such monies from time to time as it may consider necessary or desirable, in the principal amount of \$7,500,000, on the terms as set out in a term sheet to be delivered, which will provide for a commitment fee of 4% and the same Prime rate of interest as in the Term Sheet plus 7% (the “Second Tranche Term Sheet”), provided that the aggregate principal amount drawn pursuant to the Term Sheet and Second Tranche Term Sheet does not exceed \$22,500,000.00 (or such greater amount as this Court may by further Order authorize), at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures

(collectively, the "Receiver's Borrowings"). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, construction liens, charges and encumbrances, statutory or otherwise in favour of any Person, but subordinate in priority to the Receiver's Charge. The Receiver is hereby authorized to execute and deliver such other commitment letters, fee letters, credit agreements, mortgages, charges, hypothecs and security documents as the Lenders and/or West LB AG, Toronto Branch may require from time to time to carry into effect the terms of the Term Sheet and/ or the Second Tranche Term Sheet."

3. THIS COURT ORDERS that paragraphs 21 and 25 of the Appointment Order are amended such that "and WestLB AG, Toronto Branch" is added after each reference to "Lenders" therein and ", the Second Tranche Term Sheet" is added after "Term Sheet" in paragraph 25.

4. THIS COURT ORDERS that all Receiver's Certificates issued by the Receiver in respect of the Second Tranche Term Sheet shall rank *pari passu* as among themselves, but shall rank subordinate to all Receiver's Certificates issued by the Receiver in connection with the Term Sheet.

5. THIS COURT ORDERS that the Receiver is authorized to remit the Proceeds to WestLB AG, Toronto Branch, as Agent for the Lenders, to be applied to the amounts outstanding under the Receiver's Borrowings and the Term Sheet.

Institutional Sales Process Protocol

6. THIS COURT ORDERS that the Protocol in the form attached hereto as Schedule "A" outlining the process by which the Institutional Sales Process is to be conducted, be and is hereby approved, and the Receiver is authorized to take such steps as are considered necessary or desirable in carrying out the Protocol. The Receiver may seek advice and directions from the Court in respect of any aspect of the Protocol.

Trust Allocation

7. THIS COURT ORDERS that the Trust Allocation between RRDI and Unit Owners be and is hereby approved.

8. THIS COURT ORDERS and directs McCarthys to pay the sum of \$ 1,640,355.85 from those funds held by it in respect of RRDI to the Receiver, and to deliver to the Receiver a certified cheque issued by one Unit Owner in the amount of \$17,391.84 payable to Muskoka Standard Condominium Corporation No. 62 (the “**Cheque**”) with respect to common area expenses for that Unit Owner’s Unit currently held in escrow by McCarthys, to be held by the Receiver and distributed in accordance with the Trust Allocation and in fulfillment of the trust obligations of RRDI to Unit Owners as follows:

- (a) \$413,079.74 with respect to common area expenses for 22 Units, which, together with the Cheque is to be remitted to Muskoka Standard Condominium Corporation No. 62 for payment of common area expenses on behalf of certain Unit Owners, to be applied against the accounts of the relevant Unit Owners;
- (b) \$210,000.00 to be retained by the Receiver to honour certain Indulgence Cards (as defined in the Eighth Report) for relevant Unit Owners, in accordance with their respective entitlements;
- (c) \$211,880.32 to be remitted to Miller Thomson in trust, for payment of realty taxes on behalf of Unit Owners in accordance with their respective entitlements;
- (d) in respect of two Units that are subject to certain modified sale/leaseback transactions, as described in the memo of Fraser Milner Casgrain LLP attached at Appendix “K” to the Eighth Report:
 - (i) \$37,751.32 on account of common area expenses;
 - (ii) \$20,813.62 on account of realty taxes;
 - (iii) \$5,670.00 on account of telecommunications services; and
 - (iv) \$2,812.95 on account of entry fees to the Red Leaves Resort Association;

to be remitted by the Receiver in accordance with the provisions of the sale/leaseback transactions in respect of those two Units (other than entry fees to the Red Leaves Resort Association, which shall be held by the Receiver pending further direction of the Court);

- (e) \$3,263.58 for payment of entry fees to the Red Leaves Resort Association on behalf of certain Unit Owners, to be held by the Receiver pending further direction of the Court;
- (f) \$4,704.00 to be remitted to Marriott Hotels for payment of Marriott Gold membership fees on behalf of certain Unit Owners; and
- (g) the balance of \$730,380.32 to be paid to the Receiver as property of RRDI.

9. THIS COURT ORDERS that the amounts to be distributed by the Receiver in accordance with paragraph 8 above shall only be distributed by the Receiver for and on behalf of each Unit Owner (the “**Unit Owner Distribution**”) upon execution and delivery to the Receiver by that Unit Owner of a receipt document, in a form satisfactory to the Receiver, acknowledging payment of the Unit Owner Distribution, and acknowledging satisfaction of those obligations of RRDI under the relevant Unit Owner Settlement Agreement (defined in the Eighth Report) that are satisfied as a result of the Unit Owner Distribution, and to the extent such obligations are satisfied thereby, agreeing that there shall be no further obligation of RRDI or the Receiver in respect of such obligation under the relevant Unit Owner Settlement Agreement. To the extent that a Unit Owner Distribution satisfies an obligation of RRDI under the relevant Unit Owner Settlement Agreement, such Unit Owner shall have no claim in respect of that obligation under either of the Unit Owner Charges provided for in paragraph 8 of the Unit Owner Settlement Agreements and paragraph 10 of the Amended Order of this Court dated August 18, 2009, and the relevant Unit Owner Charge is correspondingly reduced.

Red Leaves Trademark

10. THIS COURT ORDERS that the Receiver be and is hereby authorized to repudiate any and all trademark licence agreements or arrangements for the use of the Red Leaves trademark, oral or otherwise, as may be in effect as between RRDI and any other persons or entities.

11. THIS COURT ORDERS that the Receiver be and is hereby authorized to enter into a trademark licence agreement, terminable on 180 days notice, with 1515511 Ontario Inc. and such other affiliates of RRDI as the Receiver may agree, on such terms as the Receiver may deem appropriate.

Fees and Disbursements of Miller Thomson

12. THIS COURT ORDERS that the Receiver be and is hereby authorized to pay the outstanding accounts of Miller Thomson as approved by the Receiver in respect of services provided in its capacity as Representative Counsel and in its capacity as counsel for the Ad Hoc Committee of Unit Owners.

McCarthy's Fees

13. THIS COURT ORDERS that paragraph 11 of the Order of Mr. Justice Cumming dated July 8, 2009, be and is hereby amended to delete the reference to the amount of \$220,183.13, and substitute the amount of \$242,985.09.

Additional Parcels of Land

14. THIS COURT ORDERS that the Appointment Order be and is hereby amended by amending Schedule "A" to the Appointment Order, to add the legal description of two additional parcels of real property as follows:

Signage Lands

PIN 48142-0383(LT)

PART OF LOT 25, CONCESSION 11, MEDORA, BEING PART 7 ON PLAN 35R3373; S/T EASEMENT IN FAVOUR OF MUSKOKA CONDOMINIUM PLAN NO. 62 AS IN MT63413; MUSKOKA LAKES; THE DISTRICT MUNICIPALITY OF MUSKOKA.

Additional Lands Located on the E/S of Paignton House Road

PIN 48142-0384(LT)

PART OF LOT 25, CONCESSION 11, MEDORA, BEING PART 8 ON PLAN 35R3373, PART OF THE ROAD ALLOWANCE BETWEEN LOTS 25 AND 26, CONCESSION 11, MEDORA (CLOSED BY BY-LAW 72-34, REGISTERED AS INSTRUMENT NO. DM105704), BEING PARTS 6 AND 7 ON PLAN RD1906; MUSKOKA LAKES, THE DISTRICT MUNICIPALITY OF MUSKOKA.

Name Change

15. THIS COURT ORDERS that all references to McIntosh & Morawetz Inc. in all prior Court Orders, Reports, and other material filed with the Court shall be taken to be a reference to Alvarez & Marsal Canada Inc.

Eighth Report

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

Sealing Order

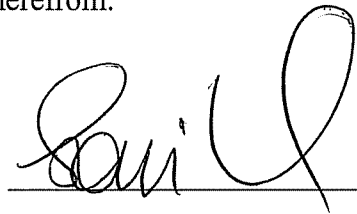
17. THIS COURT ORDERS that Confidential Appendices 1 and 2 filed with the Eighth Report be and are hereby sealed and shall remain sealed until further Order of this Court.

Aid and Recognition

18. 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.

Provisional Execution

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



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

DEC 2 1 2009

PER / PAR: 

SCHEDULE "A"

INSTITUTIONAL SALES PROCESS PROTOCOL

Background to the Receivership

On May 22, 2009, on the Application of WestLB AG, Toronto Branch ("WestLB") in its capacity as agent for a syndicate of senior secured lenders (the "Syndicate"), the Ontario Superior Court of Justice (the "Court") issued an order appointing Alvarez & Marsal Canada ULC ("A&M") and Alvarez & Marsal Canada Inc. (formerly McIntosh & Morawetz Inc.) as trustee and interim receiver, respectively (the "Trustee" and 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) of all the property, assets and undertakings (the "Assets") of The Rosseau Resort Developments Inc. ("RRDI"). On June 2, 2009, the Court issued an Amended and Restated Appointment Order continuing the appointment of the Trustee and Interim Receiver and appointing A&M as receiver and manager of the Assets of RRDI (the "Receiver and Manager") pursuant to Section 101 of the *Courts of Justice Act* (Ontario) and pursuant to the CLA (the Trustee, Interim Receiver and the Receiver and Manager collectively defined as the "Receiver").

Background to the Institutional Sales Process

By Order dated July 8, 2009 (the "July 8 Order"), the Court approved the process proposed by the Receiver for the marketing and sale of the Assets of RRDI, consisting of both a retail sales program for individual condominium units (the "Retail Sales Program"), and an institutional sales process for the sale of the remaining Assets on an en bloc basis (the "Institutional Sales Process").

In connection with the Institutional Sales Process, the Receiver was authorized by the July 8 Order to retain Colliers MaCaulay Nicolls (Ontario) Inc. ("Colliers") as broker to conduct the Institutional Sales Process. The Receiver advised the Court and stakeholders in its Second Report to the Court dated July 3, 2009 that Colliers would work to identify parties interested in purchasing the Assets through its network and database of contacts, and develop an international advertising program for the sale of the Assets.

Colliers, with the assistance of the Receiver, has conducted its due diligence with respect to the Assets, and has assembled a preliminary list of prospective purchasers through its industry knowledge and independent research. Colliers and/or the Receiver have also been contacted by a number of parties who have identified themselves as prospective purchasers. Colliers intends to expand this preliminary list through further marketing efforts, including the issuance of press releases identifying the opportunity, and distributing an investment overview to its international network of offices and affiliates, and any other parties identified as having a potential interest.

The Receiver has worked with Colliers to develop and prepare all relevant sales and marketing materials and to establish a data room for due diligence by prospective purchasers. The Receiver has, with the assistance of its counsel, prepared the forms of relevant documents for use in the Institutional Sales Process.

Supervision and Reporting

- The Institutional Sales Process will be undertaken by the Receiver, with the assistance of Colliers, and subject to the Court's overriding supervision.
- The Receiver will report to the Court on the outcome of the Institutional Sales Process and seek Court approval of any final sale agreement or agreements arising out of the Institutional Sales Process.

Outline of the Protocol

- The Institutional Sales Process will be conducted under this Institutional Sales Process Protocol (the "**Protocol**") in three phases, with the consecutive steps of (i) obtaining expressions of interest from potential purchasers and pre-qualifying bidders for the next phase; (ii) inviting pre-qualified bidders to conduct due diligence and submit non-binding indicative offers; and (iii) identifying a short list of bidders with which to negotiate a final agreement or agreements.

(i) Phase I – Identification of Prospective Purchasers and Pre-Qualification of Bidders

- The Receiver, with the assistance of Colliers, is finalizing (a) a brief investment overview letter (the "**Investment Overview**") that will describe the opportunity and set out key aspects of the Protocol; (b) a form of confidentiality agreement (the "**Confidentiality Agreement**"); (c) a form of expression of interest to be submitted by prospective purchasers in order to be pre-qualified for Phase II (the "**Expression of Interest**"); (d) an information memorandum providing a detailed description of the Assets and the operations of RRDI (the "**Information Memorandum**") (e) a confidential exhibit to the Information Memorandum containing certain financial information with respect to the Assets (the "**Confidential Financial Exhibit**"); (f) an electronic data room for due diligence purposes; and (g) other relevant marketing materials.
- Colliers will continue to develop its list of prospects by advertising the opportunity by way of press releases and through the distribution of the Investment Overview to its international network of offices and affiliates.
- Commencing upon Court approval of this Protocol, potential purchasers identified by Colliers and/or the Receiver will be contacted and provided with a copy of the Investment Overview, the Information Memorandum (without the Confidential Financial Exhibit) and the form of Confidentiality Agreement.

- In order to be pre-qualified by the Receiver as a bidder and to obtain access to the Confidential Financial Exhibit and the electronic data room, potential bidders will be required to execute the Confidentiality Agreement and to submit a completed Expression of Interest to the Receiver on or before 5:00 p.m. EST on January 22, 2010 that describes: (a) the potential bidder and its business and industry expertise; (b) the potential bidder's financial wherewithal or ability to obtain financing in order to complete the transaction being contemplated; and (c) whether the potential bidder contemplates any third party equity participation or any form of joint acquisition, and if so, to provide a description of such third party. Expressions of interest may not be made by a person acting as agent for an undisclosed principal.
- Upon a review of the Expressions of Interest submitted to the Receiver, the Receiver will identify those who have demonstrated an interest and ability to consummate a transaction, based on the information submitted by the potential bidders and such other selection criteria as the Receiver may develop, in its discretion, who will be invited to participate in the next phase of due diligence and the submission of non-binding indicative offers ("**Pre-Qualified Bidders**"). The Receiver will provide invitations to such Pre-Qualified Bidders to participate in the next phase on or about January 29, 2010.

(ii) Phase II – Completion of Due Diligence and Submission of Non-Binding Offers

- Pre-Qualified Bidders will be provided with the Confidential Financial Exhibit and access to the electronic data room for due diligence purposes, together with the form of agreement of purchase and sale that the Receiver will require. The Receiver will arrange site visits and make presentations, along with Colliers, to the Pre-Qualified Bidders regarding the opportunity as determined to be appropriate by the Receiver.
- The submission of non binding indicative offers from Pre-Qualified Bidders will be required by 5:00 p.m. EST on March 31, 2010.
- WestLB AG, Toronto Branch, as agent for the Lenders under the Credit Agreement dated February 1, 2007, as amended, and/or as agent for the Lenders under the Term Sheet dated May 19, 2009 for the Receiver's Borrowings, approved by the Amended and Restated Appointment Order of June 2, 2009, and/or WestLB AG as Lender in respect of any additional Receiver's Borrowings approved by the Court and/or any Lender or participant in respect of such facilities, individually or collectively if so determined, shall be entitled to participate as a Pre-Qualified Bidder by offering to purchase some or all of the Assets in consideration of the satisfaction of some or part of the obligations of RRDI or the Receiver (a "**Credit Bid**"), and subject to Court approval, the Receiver may accept a Credit Bid.

(iii) Phase III – Negotiation of Final Agreement of Purchase and Sale

- From the non-binding indicative offers, the Receiver will identify a short list of Pre-Qualified Bidders with whom it will enter into negotiations in order to complete a binding agreement or agreements of purchase and sale, with an approximate target for completion of May 2010.

Miscellaneous

- The Receiver reserves the right to reject any or all of the offers received and to extend or abridge any of the timelines described herein. The Receiver will be entitled to seek advice and directions from the Court in respect of this Protocol and any steps taken hereunder.
- Court approval will be required in respect of any offer accepted and/or any proposed agreement or agreements completed. The Receiver shall not be required to accept the highest and best bid in respect of the Assets, but shall be entitled to recommend to the Court a transaction that maximizes value for all stakeholders and minimizes closing risk.

Institutional Sales Process Protocol Outline and Timelines

Following are the phases and timelines for the process described above.

Phase I	
Activity	Date
<i>Identification of Prospective Purchasers and Pre-Qualification of Bidders</i>	On or before 5:00 p.m. EST January 22, 2010 (Expressions of Interest due) On or about January 29, 2010 (invitations to Pre-Qualified Bidders to participate in Phase II)
Phase II	
Activity	Date
<i>Completion of Due Diligence and Submissions of Non-Binding Offers</i>	On or before 5:00 p.m. EST March 31, 2010
Phase III	
Activity	Date
<i>Negotiation of Final Agreement of Purchase and Sale</i>	May 2010 - approximate target for court approval and completion of transaction

V.

WESTLB AG, TORONTO BRANCH

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

BLAKE, CASSELS & GRAYDON LLP
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Pamela Huff LSUC#: 27344V
Tel: (416) 863-2958

Katherine McEachern LSUC#: 38345M
Tel: (416) 863-2566
Fax: (416) 863-2653

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