

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**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**

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

AUGUST 21, 2009

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1.0 Introduction

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. 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* (“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* (“CJA”) and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager are hereinafter collectively defined as the “Receiver”).¹

1.2. A&M, as proposed receiver, filed a report dated May 19, 2009 and a supplementary report dated May 20, 2009 (collectively the “A&M Report”) in these proceedings in support of the application brought before this Honourable Court by WestLB AG, Toronto Branch (“WestLB”), as agent for the Lender Syndicate of WestLB AG, Toronto Branch, CIT Financial Ltd. and which now includes Raiffeisen Zentralbank Osterreich AG (the “Syndicate”) for the

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

appointment of the Receiver. The A&M Report contains relevant background with respect to the Company.

1.3. The Interim Receiver filed its first report dated May 27, 2009 with this Honourable Court and filed a supplementary report to its first report dated May 29, 2009 (the first report and the supplementary report being collectively defined as the "First Report"). The First Report provided this Honourable Court with, among other things, an update on the Interim Receiver's activities from the date of its appointment as Interim Receiver to the date of the First Report.

1.4. The Receiver filed its second report dated July 3, 2009 with this Honourable Court (the "Second Report"). Among other things, the Second Report: (a) provided background information regarding the various agreements that RRDI is a party to and a summary of certain issues identified by the Receiver in respect of these agreements; and (b) described the Sales and Marketing Process.

1.5. The Receiver filed a supplementary report to its Second Report dated July 7, 2009 (the "Supplementary Second Report"), which among other things provided further information with respect to issues surrounding the Rental Pool Management Agreements. A copy of this Supplementary Second Report is attached as Appendix "B".

1.6. On July 8, 2009, this Honourable Court issued an order (the "Sales and Marketing Order"), which, among other things, authorized the Receiver to undertake the Sales and Marketing Process, including the sale and marketing of the 84 unsold condominium units at the Hotel, not currently subject to agreements of purchase and sale (the "Unsold Units"), together with the residual interest of RRDI in the Hotel and all other Assets.

1.7. The Sales and Marketing Order authorized the Receiver to commence the Sales and Marketing Process consisting of (a) the Retail Sales Program; and (b) the Institutional Sales Process (each of which are described in the Second Report) and to retain Baker Real Estate Incorporated (“Baker Real Estate”) and Colliers MaCaulay Nicolls (Ontario) Inc. as the brokers to conduct the Retail Sales Program and Institutional Sales Process, respectively.

1.8. The Receiver filed its third report dated July 21, 2009 (the “Third Report”) with this Honourable Court. The Third Report described to this Honourable Court the proposed marketing and promotional program (the “Retail Marketing Program”) planned by Baker Real Estate in respect of the Retail Sales Program as well as the proposed price list (the “Baker Price List”) that Baker Real Estate developed and intends to utilize in connection with the sale of the Unsold Units. On July 24, 2009, the Receiver sought and obtained this Honourable Court’s authorization to proceed with the Retail Marketing Program and to permit Baker Real Estate to utilize the Baker Price List.

1.9. The Receiver filed its fourth report dated August 12, 2009 (the “Fourth Report”) with this Honourable Court in support of a motion to repudiate the existing Hotel management and Rental Pool management arrangements and approve new arrangements which are necessary for the effective management of the Hotel and the sale of the Unsold Units and residual interest in the Hotel. It was necessary to have such new arrangements put in place in order for the Retail Sales Program to be successful for the reasons set out in detail in the Fourth Report.

1.10. The Receiver filed a Supplementary Report to the Fourth Report dated August 14, 2009 (the “Supplementary Fourth Report”) to, among other things, provide the Court with a copy of a

letter from RRMSI to the Receiver in respect of the relief requested by the Receiver in its Fourth Report. A copy of the Supplementary Fourth Report is attached as Appendix "C".

1.11. On August 18, 2009, the Court granted an order which was subsequently amended on August 20, 2009 (the "Amended August 18th Order") for the relief requested and described in the Fourth Report, other than this Honourable Court's approval of the Disclosure Documentation, which was adjourned to August 20, 2009. The Amended August 18th Order also included a comeback clause at paragraph 6a for any motion to vary or amend the provisions of paragraph 6 of the Amended August 18th Order. Paragraph 6 of the Amended August 18th Order provides that Current RPMAs with RRMSI may be terminated by Unit Owners and Existing Unit Purchasers on the basis that they cannot be performed and stays any actions against Unit Owners and Existing Unit Purchases relating thereto. A copy of the Amended August 18th Order and related endorsement of Madam Justice Pepall are attached as Appendix "D".

1.12. The Receiver filed a Second Supplementary Report to the Fourth Report dated August 19, 2009 in respect of the revised Disclosure Documentation and the Court approved the Disclosure Documentation on August 20, 2009.

1.13. The Receiver filed a fifth report dated August 19, 2009 (the "Fifth Report") in support of the Receiver's motion for an order approving and ratifying the retention of Miller Thomson LLP ("Miller Thomson") as representative counsel ("Representative Counsel") to represent those persons who have entered into Current RPMAs with RRMSI and are either existing Unit Owners or Existing Unit Purchasers unless such persons have advised Representative Counsel that they do not wish to be represented by Representative Counsel (the "Represented Unit Owners"). On August 20, 2009, the Court made an order appointing Representative Counsel (the

“Representative Counsel Order”). A copy of the Representative Counsel Order is attached as Appendix “E”.

1.14. On August 19, 2009, counsel to RRMSI served a Notice of Motion to appear before this Honourable Court and seek an order to amend paragraph 6 of the Amended August 18th Order (the “Variation Motion”).

1.15. On August 20, 2009, the Court set a timetable for hearing the Variation Motion and for the joint motion by the Receiver and Representative Counsel to seek the appointment of a receiver in respect of RRMSI (the “RRMSI Receivership Motion”).

1.16. The purpose of this report (the “Sixth Report”) is to:

(a) respond to the Variation Motion;

(b) provide the Court with pertinent background in respect of RRMSI and certain supplemental information regarding RRMSI and its relationship with RRDI; and

(c) recommend that this Honourable Court grant the relief sought in the RRMSI Receivership Motion.

2.0 Terms of Reference

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

3.0 Overview

3.1. The purpose of paragraph 6 of the Amended August 18th Order (which is the subject matter of the Variation Motion) and the RRMSI Receivership Motion is to protect the interests of the Unit Owners or prospective Unit Owners of Hotel Units who have executed a Current RPMA with RRMSI, in circumstances where it is clear that the Receiver has the right to repudiate agreements with Marriott Hotels and RRMSI thereby rendering Current RPMAs incapable of performance by RRMSI. Accordingly, the primary issue is a mechanism to facilitate the Unit Owners entering into viable rental pool contracts without the threat of litigation from RRMSI. Without such a mechanism a gap will be created, whereby Unit Owners and Existing Unit Purchasers would continue to be a party to their Current RPMAs while RRMSI is not in a position to perform. The time required to terminate the Current RPMAs under their terms would create an unworkable scenario in which there is an overlap of two rental pool regimes. This is a scenario that would also negatively impact the ability of Marriott Hotels to operate the Hotel.

3.2. The Amended August 18th Order authorized the Receiver to (a) repudiate the Current HMA and enter into a new bilateral agreement with Marriott Hotels, the New HMA; (b) repudiate RRMSI as Rental Pool Manager; and (c) enter into New RPMAs with Unit Owners, Existing Unit Purchasers and New Unit Purchasers in the form approved by the Court. Recognizing that 59 of the 73 Unit Owners on closing and 28 of the Existing Unit Purchasers on interim occupancy, had executed a Current RPMA with RRMSI, the Receiver asked for paragraph 6 of the Amended August 18th Order for their protection. Paragraph 6 provided as follows:

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.

3.3. Although RRMSI received notice of the motion returnable on August 17, 2009 for the relief in the Amended August 18th Order, including paragraph 6, it did not attend the hearing on August 17th and 18th. Although each Unit Owner and Existing Unit Purchaser was served with notice of the motion, by email, there was no formal representation for the group on August 17th and 18th. As a result, paragraph 6a of the Amended August 18th Order provided as follows:

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.

3.4. In connection with this relief, RRMSI has brought the Variation Motion, Representative Counsel has been appointed and the Receiver jointly with Representative Counsel seeks the appointment of a receiver of RRMSI with respect to its role as Rental Pool Manager, the Current HMA and Current RPMAs, which are all of RRMSI's contractual rights in respect of the Hotel that the Receiver is aware of. The Receiver is not aware of any other assets of RRMSI.

3.5. A receivership of RRMSI will permit the receiver of RRMSI to close the gap caused by the continued existence of the Current RPMAs that RRMSI will no longer be in a position to perform, by providing it with the authority to repudiate the Current HMA, repudiate the Current

RPMA's as well as any other related agreements and provide releases to counterparties to the Current RPMA's, namely the Unit Owners and Existing Unit Purchasers who have executed a Current RPMA.

4.0 Pertinent Background to the Sixth Report

4.1. In both the Second Report and the Fourth Report, the Receiver provided background information with respect to RRMSI, its role in the Current HMA, and the delegation of the role of Rental Pool Manager by RRDI to RRMSI. Below is a brief summary of the key points described in the Second Report and the Fourth Report. The Receiver intends to rely on the Second Report and the Fourth Report at the hearing of the Variation Motion and the RRMSI Receivership Motion.

Delegation of the Role of Rental Pool Manager

4.2. According to both the Affidavit of Ken Fowler sworn July 7, 2009 and the Affidavit of Peter Fowler sworn July 23, 2009, each of which were filed in these proceedings and are attached as Appendices “F”, and “G”, respectively, there was a verbal agreement between RRDI and RRMSI whereby RRDI delegated to RRMSI the ability to act as Rental Pool Manager.

4.3. Although the Receiver has the ability to repudiate such agreement in the Appointment Order, the Amended August 18th Order provides express authorization for such repudiation as the Court accepted that the appropriate steps for the Receiver to take were to disengage from the agreements with RRSMI for the reasons described in the Fourth Report.

4.4. The Receiver is unaware of any value being provided by RRMSI to RRDI as consideration for the delegation of the role of Rental Pool Manager.

Status of the Current Rental Pool Management Agreements (the "Current RPMAs")

4.5. The Current RPMA with RRMSI as Rental Pool Manager has been executed by 59 of the 73 Unit Owners and 28 of the Existing Unit Purchasers on interim occupancy. The remaining 14 Unit Owners and other Existing Unit Purchasers have not executed a Current RPMA.

4.6. The Current RPMA contemplates that property management agreements shall be entered into between the Resort Corporation and the Rental Pool Manager pursuant to which the Rental Pool Manager agrees to maintain and manage the Common Elements on behalf of the Resort Corporation. As well, the Current RPMA contemplates that a lease for the conference center portion of the Hotel be executed by RRDI and RRMSI. The Receiver is not aware of any evidence that such agreements have been put in place.

4.7. The Current RPMA requires that the Rental Pool Manager make distributions to Unit Owners pursuant to the provisions of the Current RPMA. The Rental Pool Manager's primary ability to fulfill this and its other obligations under the Current RPMAs arise from its receipt of distributions of Operating Profits from Marriott Hotels in accordance with the Current HMA.

4.8. Under the Current RPMA, the Rental Pool Manager undertakes the responsibility for maintaining the Units for Unit Owners and renting them out to guests of the Hotel. Under the terms of the Current HMA, the Rental Pool Manager has delegated all of these maintenance and rental responsibilities to Marriott Hotels. The Current HMA and the Current RPMA are interrelated. Excerpts of provisions of the Current HMA and the Current RPMA which show this interrelation are attached as Appendix "H".

4.9. Unit Owners have advised the Receiver that they believe that RRMSI is currently in breach of its obligations under the Current RPMA in that RRMSI has failed to make payments to Unit Owners as required under the terms of the Current RPMA.

4.10. Further, on the repudiation of the delegation of the role of Rental Pool Manager by RRDI to RRMSI and the termination by Marriott Hotels of the Current HMA (which Marriott Hotels has advised the Receiver that it will do upon repudiation of the Current HMA by the Receiver), there will be a further breach of the Current RPMAs in that RRMSI will not be able to delegate its responsibilities under the Current RPMAs to Marriott Hotels. A copy of a letter to the Receiver from Marriott Hotels advising of Marriott Hotels' intention to terminate the Current HMA and supporting the RRMSI Receivership Motion dated August 21, 2009 is attached as Appendix "I".

4.11. As described in the Fourth Report, the Receiver negotiated the terms of the Settlement Agreements with the Ad Hoc Committee of Unit Owners and Miller Thomson. A key component of the Settlement Agreements was a form of New RPMA to be entered into between RRDI, acting as the Rental Pool Manager, and each Unit Owner and Existing Unit Purchaser. As described in the Fifth Report, the Ad Hoc Committee has unanimously recommended to Unit Owners and Existing Unit Purchasers that they accept the terms of these Settlement Agreements, including the New RPMA. As at 5:00 p.m. on August 21, 2009, of the 73 Unit Owners, 57 have executed the Settlement Agreements with the Receiver. Of the 73 Unit Owners a subset of 59 have executed a Current RPMA. Of this subset, 47 have accepted the terms of the Settlement Agreement.

Status of the Current HMA

4.12. The Current HMA is structured with RRMSI as rental pool manager and RRDI as Hotel owner jointly identified as "Owner", with no indication as to which entity should receive distributions from Marriott Hotels under the Current HMA. In its dealing with RRDI and/or RRMSI under the Current HMA, Marriott Hotels is entitled to deal and interact with, and otherwise treat either of RRDI or RRMSI as the Owner. A copy of the Current HMA, which the Receiver is requesting to be sealed and treated as confidential for the reasons outlined in section 5 of this Sixth Report, is attached as Confidential Appendix "1".

4.13. Notwithstanding the joint obligation under the Current HMA as Owner, RRMSI has not participated in funding any of the Operating Losses, working capital deficiencies or pre-opening expenses that have been incurred by Marriott Hotels and are required to be funded by the Owner under the Current HMA. To the extent that payments have been made to Marriott Hotels (approximately \$3.5 million to date), these expenses have been borne solely by RRDI and the Receiver (including specific payments made by the Receiver, with the approval of this Honourable Court in the approximate amount of \$550,000). Accordingly, the Receiver believes that it has a claim against RRMSI for contribution for amounts paid by RRDI and the Receiver to Marriott Hotels, for the period of time prior to the Receiver's repudiation of the Current HMA.

4.14. As well, although Marriott Hotels may pay Operating Profit to either RRDI or RRMSI under the terms of the Current HMA, the Receiver has been advised by Marriott Hotels that it does not hold funds in trust for RRDI or for RRMSI and that it does not segregate commercial and residential revenues.

4.15. Under the Amended August 18th Order, the Receiver was specifically authorized to repudiate the Current HMA. The Receiver understands that it is Marriott Hotels' intention to also terminate the Current HMA in accordance with its terms upon repudiation of the Current HMA by the Receiver. Once the Current HMA is repudiated and terminated, RRMSI will no longer have the benefit of the Current HMA, nor will it have the ability to delegate its obligations under the Current RPMAs to Marriott Hotels.

Status of RRMSI

4.16. RRMSI is a shell corporation, except for its interest in the contracts at issue. RRMSI was characterized in condominium disclosure documents as (i) a newly incorporated entity that had no prior history of managing rentals or rental pools; and (ii) as a single purpose entity which had no assets and that its ability to fulfill its obligations to fund the ongoing operations of the Rental Pool may depend on its ability to arrange other sources of financing. Excerpts from the August 1, 2006 disclosure documentation provided by RRDI in connection with the sale of Hotel Units and which describes RRMSI is attached as Appendix "J". The references in the disclosure documentation to phases 3, 4 and 5 do not apply to the Hotel.

4.17. Attached as Appendix "K" is a copy of the results of a search under the Personal Property Security Act registry against RRMSI with a file currency of August 17, 2009. The only registration is in favour of WestLB, which is in relation to the assignment of the Current HMA by RRMSI to WestLB.

4.18. Attached as Appendix "L", is a copy of the results of an execution search against RRMSI in both the Niagara North (St. Catharines) Registry Office and the Muskoka

(Bracebridge) Registry Office as at August 18, 2009. These execution searches show that no writs have been filed against RRMSI by any judgment creditors.

5.0 Proposed Receivership of RRMSI

5.1. The Receiver and Representative Counsel (the “Moving Parties”) are jointly seeking the appointment of A&M as receiver over certain assets of RRMSI, namely RRMSI’s rights in any contracts with Marriott Hotels and/or its affiliates which relate to the Hotel (including the Current HMA) and in any Current RPMAs (the “RRMSI Receiver”).

5.2. As noted in this Sixth Report and the Receiver’s prior Reports to Court, the affairs of RRDI and RRMSI are inextricably intertwined. Dealing with RRMSI’s role in the Hotel is necessary in order to properly administer the estate of RRDI and the interests of RRMSI’s stakeholders, being the counterparties to the Current RPMAs and Current HMA. The Receiver’s efforts to obtain RRMSI’s cooperation have been previously described to this Honourable Court in the Receiver’s prior Reports. To date, RRMSI has refused to agree to either assign its rights in the Current RPMAs to RRDI or consent to the termination of the Current RPMAs.

5.3. The receivership of RRMSI would provide a Court supervised and effective process to deal with the results of the repudiation of the role of rental pool manager and the repudiation and termination of the Current HMA, authorized by the Amended August 18th Order.

5.4. With the authorized repudiation of the delegation by RRDI to RRMSI of the role of Rental Pool Manager and the termination of the Current HMA, the Moving Parties do not believe that the Current RPMAs have any value, nor does RRMSI have any damage claim against Unit Owners. To the extent that there is value, the only creditors of RRMSI that the Receiver is aware of are (i) RRDI for contribution and indemnity as a joint owner under the Current HMA for amounts advanced by RRDI and the Receiver to Marriott Hotels; (ii) the Unit Owners and

Existing Unit Purchasers that are counterparties to the Current RPMAs; (iii) Marriott Hotels as a counterparty to the Current HMA and other Hotel related agreements; and (iv) WestLB which has an assignment from RRMSI of the Current HMA.

5.5. Given that all of those parties are supportive of the RRMSI Receivership Motion and the specific circumstances of the Current RPMAs being incapable of performance and frustrated in the near future as a result of the steps authorized by the Amended August 18th Order, the Receiver is of the view that it is just, convenient and equitable in the circumstances to appoint the RRMSI Receiver on the terms as set out in the draft receivership order requested by the Moving Parties.

6.0 Sealing of Confidential Appendices

6.1. The contents of Confidential Appendix “1”, being a copy of the Current HMA, contain sensitive information regarding the terms of arrangements with Marriott Hotels, which the Receiver and Marriott Hotels have agreed to maintain as confidential. Accordingly, the Receiver respectfully requests that this Appendix, which has been filed separately in a sealed envelope, remain sealed and only be opened and viewed by the Judge presiding over this Motion and be returned to the envelope and sealed after the hearing of this Motion and not form part of the permanent Court file.

7.0 Conclusions and Recommendations

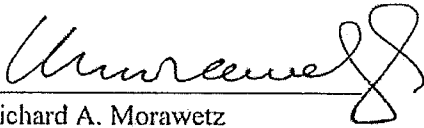
7.1. The Receiver respectfully requests that this Honourable Court dismiss the Variation Motion and grant the relief requested by the Receiver and Representative Counsel in the RRMSI Receivership Motion.

* * *

All of which is respectfully submitted, this 21st day of August, 2009

**ALVAREZ & MARSAL CANADA ULC &
McINTOSH & MORAWETZ 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"

Glossary of Defined Terms

| Term | Definition |
|---------------------------------|--|
| A&M | Alvarez & Marsal Canada ULC |
| A&M Report | collectively, the report of the proposed receiver dated May 19, 2009 and a supplementary report to that report dated May 20, 2009 |
| Appointment Order | Amended and Restated Appointment Order issued June 2, 2009 |
| APS | Agreements of purchase and sale |
| Assets | All the property, assets and undertakings The Rosseau Resort Developments Inc. |
| Baker Price List | 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 |
| Baker Real Estate | Baker Real Estate Incorporated |
| BIA | <i>Bankruptcy and Insolvency Act</i> (Canada) |
| CJA | <i>Courts of Justice Act</i> (Canada) |
| CLA | <i>Construction Lien Act</i> (Ontario) |
| Colliers | Colliers MaCaulay Nicolls (Ontario) Inc. |
| Committee | Ad Hoc Committee of Unit Owners |
| Company | The Rosseau Resort Developments Inc. |
| Court | Ontario Superior Court of Justice |
| Current HMA | Amended and Restated Hotel Management Agreement among RRDI, RRMSI and Marriott Hotels dated October 6, 2006 |
| Current RPMA(s) | The form of rental pool management agreement Unit Owners have entered into with RRMSI, as Rental Pool Manager |
| DAF | Dispute Analysis and Forensics group |
| Declaration | The Rosseau Resort Condominium Declaration, made pursuant to the <i>Condominium Act</i> , 1998 |
| Disclosure Documentation | Form of disclosure statement and related documentation |
| Effective Date | The proposed date of repudiation of the Current HMA to be effective at 11:59 pm on Friday, September 18, 2009, to 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 |
| Exemption Ruling | 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 |
| Existing Unit Purchasers | Existing purchasers who have not yet closed outstanding APS's with RRDI |
| First Report | collectively, the report of the interim receiver dated May 27, 2009 and a supplementary report to that report dated May 29, |

| | |
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| | 2009 |
| Fourth Report | This report dated August 12, 2009 |
| Fowler Related Releasees | RRMSI, Ken Fowler Enterprises Ltd., Red Leaves Partnership, Kenneth A. Fowler, and Peter Fowler as releases |
| Hotel | 221 unit condominium hotel complex located on the property owned by RRDI situated along the north-west end of Lake Rosseau in Muskoka, Ontario |
| IHLC | International Hotel Licensing Company S.a.r.l, an affiliate of Marriott Hotels |
| Indulgence Cards | 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 |
| Interim Receiver | Collectively, Alvarez & Marsal Canada ULC ("A&M") and McIntosh & Morawetz Inc. as trustee and interim receiver, respectively |
| KFE | Ken Fowler Enterprises Ltd. |
| Livia | Livia Capital Management Inc. |
| Marriott Hotels | Marriott Hotels of Canada, Ltd. |
| McCarthys | McCarthy Tetrault LLP |
| New HMA | A New Hotel Management Agreement that will be based on the template of the Current Hotel Management Agreement and as modified by the Side Letter, the financial terms and conditions of which are set out in the Summary of Terms, all subject to Court approval |
| New Marriott Agreements | Other New Marriott Agreements together with the New HMA |
| New RPMA | New forms of Rental Pool Management Agreements agreed upon by the Committee and RRDI, subject to Court approval |
| New Unit Purchasers | All potential new purchasers of Units |
| Operating Profit | 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)" |
| OSC | Ontario Securities Commission |
| Other Current Marriott Agreements | 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 |
| Priority Lien Claims | 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 |
| Purchaser Incentive Proposal | A draft proposal, made on a without prejudice basis, from the Receiver to address the Purchaser Incentives |
| Purchaser Incentives | Several types of incentives provided to Unit purchasers |
| Receiver | collectively, the Interim Receiver and the Receiver and Manager |
| Receiver and Manager | Alvarez & Marsal Canada ULC in its capacity as receiver and |

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| | manager |
| Release | 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 may include the Fowler Related Releasees |
| Rental Pool | The rental pool in which all Unit Owners are required to participate in |
| Rental Pool Covenant | 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 |
| RPMA(s) | Rental Pool Management Agreement(s) |
| Rental Pool Management Fee | Rental Pool Manager receives a fee from Unit Owners out of the Adjusted Gross Revenue available for distribution. |
| Rental Pool Manager | Rental pool manager |
| Retail Marketing Program | Proposed marketing and promotional program being undertaken in connection with the Retail Sales Program by Baker Real Estate |
| RRCI | Rock Ridge Contractors Inc. |
| RRDI | The Rosseau Resort Developments Inc. |
| RRMSI | The Rosseau Resort Management Services Inc. |
| Sales and Marketing Order | The Order issued by the Court on July 8, 2009 |
| Second Report | The Receiver's second report dated July 3, 2009 and a supplementary report to that report dated July 7, 2009. |
| Section 39 Memorandum | Independent legal counsel to the Receiver provided all lien claimants who had made Section 39 Requests with an information memorandum |
| Section 39 Requests | Requests for information made under S. 39 of the CLA |
| Settlement Agreements | 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 |
| Side Letter | 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 |
| Summary of Terms | A summary document setting out the principal financial terms and conditions in respect of the New HMA |
| Syndicate | Lender Syndicate |
| Tarion | Tarion Warranty Corporation |
| Third Report | The Receiver's third report dated July 21, 2009 |
| Travelers | Travelers Guarantee Company of Canada |
| Unit Owner Settlement Agreement | Settlement agreements with Unit Owners substantially on the terms as set out in the forms of Unit Owner Settlement Agreement, subject to Court approval |
| Unit Owners | Current owners of Units at the Hotel |

| | |
|--|--|
| Unit Owners' Charge | Charge granted on the Assets of RRDI in favour of the Unit Owners |
| Unit Purchaser Settlement Agreement | Settlement agreements with Existing Unit Purchasers substantially on the terms as set out in the forms of Unit Purchaser Settlement Agreement, subject to Court approval |
| Units | The 221 condominium units of the Hotel |
| Unsold Units | 84 unsold condominium units at the Hotel |
| WestLB | WestLB AG, Toronto Branch, as agent for the Lender Syndicate |

APPENDIX “B”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**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**

**SUPPLEMENTARY REPORT TO THE SECOND REPORT OF
ALVAREZ & MARSAL CANADA ULC,
AS RECEIVER AND MANAGER AND CONSTRUCTION LIEN ACT TRUSTEE AND
MCINTOSH & MORAWETZ INC., AS INTERIM RECEIVER
OF THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.**

JULY 7, 2009

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| 4.0 THE BAKER REAL ESTATE EXCLUSIVE LISTING AGREEMENT..... | 6 |
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1.0 Introduction

- 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., 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* (“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 order (the “Appointment Order”) appointing A&M as receiver and manager (the “Receiver and Manager”) pursuant to Section 101 of the *Courts of Justice Act* (“CJA”) and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager hereinafter collectively defined as the “Receiver”).
- 1.2 On July 3, 2009, the Receiver filed its second report (the “Second Report”) with this Honourable Court, which, among other things, described the Receiver’s proposed Sales and Marketing Process as defined therein.
- 1.3 Capitalized terms in this Supplementary Report to the Second Report shall have the meanings ascribed to them in either the A&M Reports or the First and Second Reports unless otherwise defined herein.
- 1.4 This purpose of this report (the “Supplementary Report to the Second Report”) is to:
- Outline to this Honourable Court the terms upon which the Receiver intends to enter into agreements with each of Colliers MacCaulay Nicolls (Ontario) Inc.

("Colliers") and Baker Real Estate Incorporated ("Baker Real Estate") for the implementation of the Institutional Sales Process and Retail Sales Program, respectively. Copies of the form of agreements that the Receiver intends to enter into upon receipt of Court approval are attached as Confidential Appendix "A" and Confidential Appendix "B", respectively; and

- Provide an update to this Honourable Court on the ongoing discussions between KFE's legal counsel, Stikeman Elliott LLP ("Stikemans") and the Receiver's legal counsel with respect to ongoing efforts to develop a solution for the effective management of the rental pool and to facilitate a transfer of the business and rental pool in connection with the Sales and Marketing Process.

1.5 Confidential Appendix "A" and Confidential Appendix "B" contain sensitive financial and competitive information which, if disclosed publicly, could potentially prejudice the position of the Receiver, Colliers and/or Baker Real Estate. Accordingly, the Receiver respectfully requests that these Appendices, which are filed separately in a sealed envelope, remain sealed and only be opened and viewed by the Judge presiding over this Application and be returned to the envelope and sealed after the hearing of this Application and not form part of the permanent Court file.

2.0 Terms of Reference

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

3.0 The Colliers Listing and Marketing Agreement

3.1 As described in Section 5.4 of the Second Report, the Receiver intends, upon Court approval, to retain Colliers, a brokerage house with international expertise in the marketing of hotel resort properties throughout the world, to undertake a sales and marketing process of all of the Assets on an en bloc basis (the "Institutional Sales Process").

3.2 Attached as Confidential Appendix "A" is a copy of the listing and marketing agreement (the "Colliers Listing & Marketing Agreement") that the Receiver intends to enter into with Colliers upon obtaining the approval of this Honourable Court. The key highlights of the Colliers Listing & Marketing Agreement are summarized below:

- The Colliers Listing & Marketing Agreement is for a term of ten months from the date of its execution.
- Colliers acknowledges that Baker Real Estate has been (or will be) engaged by the Receiver to execute the Retail Sale Program which will be undertaken concurrently with the Institutional Sales Process.
- Colliers' fee structure is comprised of a modest marketing fee, a work fee and a commission fee payable upon successful completion of a transaction. Both the marketing fee and work fee are to be deducted from any commissions ultimately earned by Colliers.
- The agreement includes a break-up fee (the "Break-Up Fee") payable to Colliers should the Receiver ultimately determine to proceed only with the Retail Sales

Program and terminate the Institutional Sales Process. The Receiver believes that the Break-Up Fee is reasonable in the circumstances given the inherent 'option value' it provides the Receiver and the work which will have been undertaken by Colliers to implement the Institutional Sales Process.

- 3.3 The Receiver believes that the fees, terms and conditions as set out in the Colliers Listing & Marketing Agreement reflect current market conditions and that the agreement is reasonable and appropriate in the circumstances.

4.0 The Baker Real Estate Exclusive Listing Agreement

- 4.1 As described in Section 5.8 of the Second Report, the Receiver intends, upon Court approval, to retain Baker Real Estate, a well-respected, Toronto based real estate brokerage firm to implement a retail sales and marketing program of the Company's unsold condominium units, as well as potentially the development lands surrounding the Hotel, on an individual unit or lot basis (the "Retail Sales Program").
- 4.2 Attached as Confidential Appendix "B" is a copy of the exclusive listing agreement (the "Baker Real Estate Listing Agreement") that the Receiver intends to enter into with Baker Real Estate upon obtaining approval of this Honourable Court.
- 4.3 The Baker Real Estate Listing Agreement sets out, among other things, the commission arrangements for Baker Real Estate as the listing broker, as well as the commission arrangements for other cooperating brokers who generate sales of condominium units. The agreement also sets out the work fee payable to Baker Real Estate as well as the terms upon which Baker Real Estate may earn certain incentive fees based on its performance.
- 4.4 The Receiver believes that the commission structure, fees, terms and conditions as set out in the Baker Real Estate Listing Agreement reflect current market conditions and that the agreement is reasonable and appropriate in the circumstances.

5.0 Issues in Respect of Rental Pool Management Agreements

- 5.1 Further to paragraph 7.3 of the Second Report, on July 6, 2009, the Receiver's legal counsel met with Stikemans, legal counsel for KFE, RRDI and RRMSI, as well as with Aird & Berlis LLP, legal counsel for Dev-Con International LLC, in an attempt to work out a solution for the effective management of the rental pool and to facilitate a transfer of the business and rental pool upon the sale of the Assets. Discussions remain ongoing.
- 5.2 In order to maintain all of its options and to put in place a workable arrangement, the Receiver's legal counsel advised during the meeting that the Receiver expressly reserves its rights to repudiate any and all of RRDI's arrangements with RRMSI relating to the Hotel and the rental pool.
- 5.3 Stikemans advised that some of the Operating Profits that may be payable by Marriott Hotels under the Hotel Management Agreement are subject to a trust in favour of the Unit Owners. The relevant agreements with Marriott Hotels and the rental pool arrangements outlined in the Second Report are complex and continue to be reviewed by the Receiver and its legal counsel. The Receiver is requesting direction from this Honourable Court to require Marriott Hotels to pay the Operating Profits, if any are payable under the Hotel Management Agreement, to the Receiver, subject to any claims that may exist to such funds, and not be disbursed to any other party or in any other manner, except upon further order of the Court. All rights are reserved.

* * *

All of which is respectfully submitted, this 7th day of July, 2009

**ALVAREZ & MARSAL CANADA ULC &
McINTOSH & MORAWETZ 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

V.

WESTLB AG, TORONTO BRANCH

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SUPPLEMENTARY REPORT
TO THE SECOND REPORT**

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Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

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

APPENDIX “C”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**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**

**SUPPLEMENTARY REPORT TO THE FOURTH REPORT OF
ALVAREZ & MARSAL CANADA ULC,
AS RECEIVER AND MANAGER AND CONSTRUCTION LIEN ACT TRUSTEE AND
MCINTOSH & MORAWETZ INC., AS INTERIM RECEIVER
OF THE ASSETS OF THE ROSSEAU RESORT DEVELOPMENTS INC.**

AUGUST 14, 2009

Listing of Appendices

Appendix A

- Letter from RRMSI dated August 13, 2009

Appendix B

- Letter from Independent Legal Counsel to the Receiver dated August 14, 2009 in Response to RRMSI's letter dated August 13, 2009

1.0 Additional information in respect of the Fourth Report

- 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. 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").¹
- 1.2 On August 12, 2009, the Receiver filed its Fourth Report, which, among other things, described: (a) the steps that the Receiver proposes to take to restructure the Rental Pool and put in place a new form of RPMA and enable it to be financially viable; (b) the terms on which the Receiver proposes to complete new bilateral arrangements with Marriott Hotels and (c) the Settlement Agreements proposed to Unit Owners and Existing Unit Purchasers.

¹ Capitalized terms in this Supplementary Report to the Fourth Report shall have the meanings ascribed to them in the Glossary of Defined Terms attached as Appendix "A" to the Fourth Report.

1.3 This report (the "Supplementary Report to the Fourth Report") is filed in order to:

- Provide the Court with a copy of a letter delivered by RRMSI to the Receiver and legal counsel to the Receiver, dated August 13, 2009 (the "RRMSI Letter"), registering RRMSI's position with respect to the relief being sought by the Receiver in connection with this motion. In accordance with RRMSI's request, the Receiver is providing a copy of the RRMSI Letter to this Honourable Court. Attached as Appendix "A" is a copy of the RRMSI Letter. On August 14, 2009, the Receiver's independent counsel responded to the RRMSI Letter, advising that the Receiver does not agree with the allegations contained in the RRMSI Letter, nor is it prepared to accept the settlement offer proposed by RRMSI in the RRMSI Letter, but confirming that the Receiver would bring the RRMSI Letter to the attention of the Court. Attached hereto as Appendix "B" is a copy of the Receiver's letter.
- Advise the Court that the letter agreement between RRDI, on behalf of the Receiver and Marriott Hotels (the "Side Letter"), which modifies the terms of the New HMA, specifically in respect of these receivership proceedings, has not yet been finalized. The Receiver is hopeful it will complete the finalization of the Side Letter with Marriott Hotels in advance of the hearing of the motion in respect of these matters, and will provide the Side Letter, along with a schedule describing those provisions of the New HMA which are modified by the Side Letter, to this Honourable Court at the hearing thereof.

- Advise the Court that the Disclosure Documentation, which is subject to Court approval, and is required to be provided to prospective New Unit Purchasers pursuant to the Exemption Ruling and the *Condominium Act, 1998* (Ontario), is still in preparation. The Disclosure Documentation will be finalized once the outcome of the motion in respect of these matters is determined. Approval of the Court will be sought thereafter, but in advance of the date of the One-Day Only Sale.

* * *

All of which is respectfully submitted, this 14th day of August, 2009

**ALVAREZ & MARSAL CANADA ULC &
McINTOSH & MORAWETZ 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

THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

Via E-mail

August 13, 2009

Richard Morawetz
Alvarez & Marsal Canada ULC, Receiver

and

Pam Huff
Blake Cassels & Graydon LLP

and

Jane Dietrich
Fraser Milner Casgrain LLP

Ladies and Gentlemen:

Re: Settlement Documentation regarding Rosseau Resort Developments Inc.

We are writing this letter in connection with your advice to The Rosseau Resort Management Services Inc. ("RRMSI") that the receiver intends to seek Court approval to:

- a) repudiate, on behalf of Rosseau Resort Developments Inc. ("RRDI"), which is in receivership, the Amended and Restated Hotel Management Agreement and other agreements with Marriott, and enter into a new hotel management agreement with Marriott;
- b) repudiate, on behalf of RRDI, the oral agreement between RRDI and RRMSI giving RRMSI the exclusive right to act as rental pool manager (which we note that the lenders and Marriott at all times had full knowledge of);
- c) enter into new rental pool management agreements with existing and new purchasers of condominium units (despite RRMSI's existing exclusive rental pool management agreements with current condominium owners); and
- d) enter into settlement agreements with existing and new purchasers of condominium units in respect of sale-leaseback and other incentive arrangements that they have entered into or agreed to enter into with RRDI.

You have subsequently provided us with copies of the proposed new rental pool management agreements, which you are proposing that RRDI would enter into with each existing and new condominium owner. We believe that, under the circumstances, the financial terms of these proposed new rental pool management agreements and incentive settlement agreements are reasonable. However, we believe that they would unfairly prejudice RRMSI and, without legal authority, terminate agreements between it and condominium owners to which RRDI is not a party. If permitted to occur, this would terminate rights that RRMSI values, over time, at many million dollars, without any

compensation, for the benefit of the lending syndicate that sought the appointment of the receiver, and to the detriment of RRMSI and its shareholders. From a legal perspective, there is in our view no basis for a receiver to obtain Court approval to purport to override agreements and arrangements to which the entity in receivership is not a party.

This might be possible to do were the banks to have obtained guarantees from RRMSI of RRDI's indebtedness to the lenders and collateral security over RRMSI's contractual rights with condominium owners, as the lenders could then have sought a receivership over RRMSI's assets as well. However, the lenders specifically did not obtain such guarantees and security, and RRMSI is not in receivership. Accordingly, this motion, which would see the Court being asked to bless the unauthorized taking of RRMSI's contractual rights, and the entry into new agreements by the receiver with condominium owners in violation of their existing exclusive commitments to RRMSI, should not be countenanced by the Court. In addition, even if RRDI terminates the Hotel Management Agreement with Marriott, the rights and obligations as between Marriott and RRMSI will remain. Were Marriott to seek to terminate them vis-à-vis RRMSI, and to succeed legally in doing so, it would then have no legal ability to arrange for the occupancy of such units in the ordinary course of the operation of the hotel, given RRMSI's exclusive rights thereto, unless it were to enter into an agreement in respect thereof with RRMSI.

It is for reasons such as this (and the complex web of arrangements that affect the whole development, including surrounding lands that are also not subject to the receivership) that RRDI and its affiliates originally sought a negotiated contractual solution rather than this receivership. That was not accepted by the lenders. The result, however, is that they are bound by the limitations applicable in a receivership situation.

RRMSI, however, has a solution to this conundrum, as we also wish to protect the investments of condominium owners and to maximize the value to stakeholders of the assets of RRDI in the receivership process, while protecting our own legal rights (which, as noted above, we believe to be worth many millions of dollars) as rental pool manager pursuant to existing and in force agreements with condominium owners. We also understand that you wish to market the right to act as rental pool manager, which belongs to RRMSI, as part of the institutional sales process, and we are prepared to cooperate in that process to seek to realize maximum value for all.

Accordingly, RRMSI advises that it is willing to:

- a) continue to act as the rental pool manager, on the new financial terms negotiated by the receiver with condominium owners (i.e. we will accept the financial terms of those arrangements, including the material 40%ish reduction in the revenue that the rental pool manager will as a result be entitled to, as part of the solution needed to get condominium owners to settle their sale-leaseback and incentive rights and sign appropriate releases of all involved parties);
- b) enter into a reasonable hotel management agreement with Marriott (or an acceptable successor hotelier) with respect to Marriott (or the successor) being able to continue to be or be (in the case of a successor) delegated the right to arrange for the occupancy of the condo

units (while we do not know what terms RRDI has negotiated, we expect that we will not have a problem with them as our interests in this regard would likely be reasonably well aligned);

c) in the event that, at the time of a new agreement as referred to under b) above, the existing Hotel Management Agreement is desired to be terminated, to waive any requirement for advance notice and agree to the termination thereof on reasonable terms (again, while we do not know what terms RRDI has negotiated, we expect that we will not have a problem with them as our interests in this regard would likely be reasonably well aligned); and

d) agree to cooperate reasonably in the institutional sales process with the receiver/RRDI on any joint sale of the rental pool rights and the other residual condo units and commercial space in the hotel, as well as in the retail sales process currently underway as recently approved by the Court.

If the receiver and/or the lenders refuse this proposal, in our view this is evidence that the lenders' real desire is to strip RRMSI of its contractual rights with third parties in order to enable such rights to be sold for millions of dollars to a third party for the benefit of the lenders.

We wish to cooperate in the receivership process, while respecting the legal rights and obligations between parties to agreements and arrangements not involving RRDI. In our view, the above (namely, respecting RRMSI's exclusive rights under agreements with the condominium owners to act as rental pool manager) is the only basis on which the Court should approve the receiver's requests. Otherwise, it would be being asked to authorize unlawful and improper interference with RRMSI's contractual rights with third parties, none of whom are in receivership.

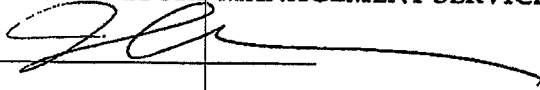
RRMSI is confident that it will be capable of carrying out its obligations under both the current or proposed amended rental pool management agreements, having regard to the terms thereof.

We believe that the above represents a fair and balanced solution to these issues. At this stage, RRMSI does not intend to file additional material or instruct counsel to attend to make additional submissions on the return of the motion provided that this letter is brought to the attention of the Court. The purpose of this letter is to register RRMSI's objection to the Order sought and that RRMSI does not consent to the Order. Please confirm that the

receiver will provide a copy of this letter to the Court.

Respectfully submitted,

THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

By: 

Ken Fowler, President

Appendix B

FMC

FRASER MILNER CASGRAIN LLP

Jane O. Dietrich
Direct Line: (416) 863-4467
jane.dietrich@fmc-law.com

August 14, 2009

VIA E-MAIL

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Attention: Simon Romano

Dear Mr. Romano:

Subject: The Rosseau Resort Management Services Inc. ("RRMSI")

This letter is in response to the letter of Ken Fowler, President of RRMSI, which you provided to Richard Morawetz, Pam Huff and myself yesterday, August 13, 2009 (the "RRMSI Letter").

Alvarez & Marsal Canada ULC, as court appointed receiver of The Rosseau Resort Developments Inc. (the "Receiver") does not agree with the allegations contained in your letter, nor is it prepared to accept the settlement offer proposed by RRMSI in the RRMSI Letter.

We confirm, on behalf of the Receiver, that a copy of the RRMSI Letter will be provided to the Court by supplemental report to the Court, which, the Receiver is currently preparing.

Yours truly,

FRASER MILNER CASGRAIN LLP



Jane Dietrich

JOD/sw


cc: Pamela Huff
Richard Morawetz

Letter to S Romano - August 14 2009 (2).DOC

1 First Canadian Place, 100 King Street West Toronto ON Canada M5X 1B2 Telephone (416) 863-4511 Fax (416) 863-4592 www.fmc-law.com

Montréal Ottawa Toronto Edmonton Calgary Vancouver

APPENDIX “D”

| | | |
|---|---------------------|-------------------------------|
| AMENDED / MIS MODIFIÉ / CE | <u>AUG 20, 2009</u> | PURSUANT TO CONFORMÉMENT À |
| <input checked="" type="checkbox"/> RULE/LA RÈGLE 26.02 | <u>(0)</u> | |
| <input checked="" type="checkbox"/> THE ORDER OF L'ORDONNANCE DU | <u>PEPALL J</u> | |
| DATED/FAIT LE | <u>AUG 26, 2009</u> | |
|  Joanne Nicoara 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 TH 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 RREDI 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.



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

Respondent

Proceeding commenced at Toronto

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

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

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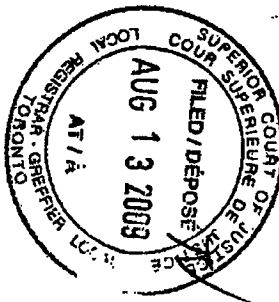
Lawyers for WestLB, AG, Toronto Branch, and Alvarez & Marsal Canada ULC and McIntosh Morawetz Inc., in their respective capacities as Court-appointed interim receiver, trustee, receiver and manager

Aug 18/09

12312893.1

order granted as amended by me.
The Marriott and the Ad Hoc Ctee. of
Unitholders consent + fortress is
unopposed as is Mr. Davies. Although
served, RRMSI did not attend at court
either today or yesterday even though
notice was provided to it. A future
endorsement will be forthcoming. I
incorporate the attached 3 paragraphs
of an endorsement agreed to by those
attending +/or having an interest in the
subject paragraphs.

Stefanell, J.



Applicant

Respondent

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.

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

17 Aug 2009

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

MOTION RECORD
(Returnable August 17, 2009)

BLAKE, CASSELL & GRAYDON LLP

Barristers & Solicitors
P.O. Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Pamela L.J. Huff - LSUC#: 27344V
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Katherine McEachern - LSUC#: 38345M
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Fax: 416-863-2653

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

FRASER MILNER CASGRAIN LLP

1 First Canadian Place, 39th Floor
100 King Street West
Toronto, Ontario M5X 1B2

Jane Dietrich - LSUC#: 49302U
Tel: (416) 863-4467
Fax: (416) 863-4592

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

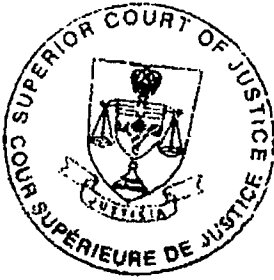
ENDORSEMENT

The granting of this Order is without prejudice to the rights and remedies of Unit Owners and Existing Unit Purchasers who do not execute a Unit Owner Settlement Agreement or Unit Purchaser Settlement Agreement, pursuant to their agreements of purchase and sale with RRDI and at law with respect to such agreements of purchase and sale.

The granting of this Order is without prejudice to the position of Traveler's that the Unit Owners' Charges and the Primary Marriott Charge and the Secondary Marriott Charge do not apply or should not apply to the subject matter of the deposit trust agreements between RRDI, Travelers and an escrow agent, or should be subordinated to the interests of Traveler's in the subject matter of those deposit trust agreements.

For reasons of confidentiality, a copy of the Current HMA has not been filed with the Court. However, the Receiver acknowledges that the receivership of RRDI is an event of default thereunder and has agreed to the lifting of the stay effective on written notice by the Receiver to Marriott, to permit Marriott Hotels to issue a 30 notice of termination.

APPENDIX “E”



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

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

THE HONOURABLE MADAM
JUSTICE PEPALL

) THURSDAY, THE 20TH
) DAY 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

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 of The Rosseau Resort Developments Inc. ("RRDI") for an Order: (i) approving and ratifying the retention of Miller Thomson LLP as representative counsel ("Representative Counsel") to represent those persons (the "Represented Unit Owners") who have entered into a rental pool management agreement with The Rosseau Resort Management Services Inc. ("RRMSI") and are either current owners (the "Unit Owners") of the condominium units at the Hotel or existing purchasers of Units who have not closed outstanding

agreements of purchase of sale with RRDI (the "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 in these proceedings and (ii), an Order abridging the time for bringing this motion and dispensing with any further service of this Motion Record; was heard this day, at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver dated August 19, 2009 containing the Fifth Report to Court of the Receiver dated August 19, 2009, the Second Report to Court of the Receiver dated July 3, 2009 and the Fourth Report to Court of the Receiver dated August 12, 2009 ("Fourth Report"), 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, counsel for Marriott Hotels of Canada Ltd., and counsel for Fortress Credit Corp. not opposing, no one appearing for any other person on the service list,

1. **THIS COURT ORDERS** that the timing and method of service of the motion record is hereby abridged and validated such that service on effected on the parties served with notice of this motion shall be good and sufficient notice of this motion record.

2. **THIS COURT ORDERS** that Miller Thomson LLP ("Representative Counsel") is appointed in these proceedings to represent the Represented Unit Owners, unless and until written notice is provided by a particular Represented Unit Owner to Representative Counsel that such Represented Unit Owner does not wish to be a Represented Unit Owner, and that, subject to further order of the Court, the mandate of Representative Counsel pursuant to this Order shall be limited to (i) responding to the motion brought by RRMSI to vary or amend paragraph 6 of the Order of the Honourable Madam Justice Pepall made in these proceedings on August 18, 2009; and (ii) to bring or participate in a motion to be brought to appoint a receiver over certain assets of RRMSI. For greater certainty and without limitation, Representative Counsel shall not be charged with the responsibility for dealing with any individual Unit Owner or Existing Unit Purchaser's purchase of or agreement to purchase a unit or units in the Hotel (as defined in the Fourth Report).

3. **THIS COURT ORDERS** that the Receiver of RRDl shall provide the last known e-mail addresses for each Represented Unit Owner to Representative Counsel who shall then provide to all Represented Unit Owners, within seven (7) days of the date of this Order, a copy of this Order, and that no further notice is required to be sent to the Represented Unit Owners in respect of the granting of this Order and the appointment of Representative Counsel.

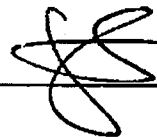
4. **THIS COURT ORDERS** that the fees and disbursements of Representative Counsel are not to exceed \$50,000, absent further order of this Court approving additional fees and disbursements.

5. **THIS COURT ORDERS** that Representative Counsel shall be paid its reasonable fees and disbursements by the Receiver out of the RRDl assets in a timely manner for fulfilling its mandate in accordance with this Order, on the provision of invoices by the Representative Counsel, to the Receiver. Representative Counsel shall have the benefit of the Receiver's Charge, established pursuant to the Amended and Restated Appointment Order of the Honourable Madam Justice Pepall dated June 2, 2009 in these proceedings in respect of its fees and disbursements. Upon the request of the Receiver, or any other party, Representative Counsel shall seek the approval of its fees and disbursements by this Honourable Court.

6. **THIS COURT ORDERS** that the Representative Counsel may from time to time apply to this Court for advice and directions in respect of its appointment or the fulfilment of its duties in carrying out the provisions of this Order or variation of the powers and duties of Representative Counsel, upon notice to the Receiver and to other interested parties, unless otherwise ordered by the Court.

7. **THIS COURT ORDERS** that, the Representative Counsel shall not be liable for any act or omission in respect of its appointment or the fulfilment of its duties in carrying out the provisions of this Order and that no action or other proceedings shall be commenced against Representative Counsel relating to its acting as such, except with prior leave of this Court, on at least seven (7) day's notice to the Representative Counsel and upon further order in respect of security for costs, on a substantial indemnity basis, of Representative Counsel in connection with any such action or proceeding.

8. **THIS COURT ORDERS** that the Representative Counsel shall be given notice of all motions relating to the matters identified in paragraph 2, to which Unit Owners or Existing Unit Purchasers are entitled in these proceedings and that Representative Counsel shall be entitled to represent those on whose behalf it is hereby appointed in all such proceedings.



Joanne Nicoara
Registrar, Superior Court of Justice

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

AUG 20 2009

PER / PAR: 

WESTLB AG, TORONTO BRANCH
Applicant

V.

Court File No. CV-09-8201-00CL
THE ROSSEAU RESORT DEVELOPMENTS INC.
Respondent

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

ORDER

(August 20, 2009)

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

Lawyer: R. Shayne Kukulowicz / Jane Dietrich
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Email: shayne.kukulowicz@fmc-law.com /
jane.dietrich@fmc-law.com
Telephone: 416 863-4740 / 416-863-4467
Facsimile: 416 863-4592

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

APPENDIX “F”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

- and -

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**APPLICATION UNDER 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**

**AFFIDAVIT OF KEN FOWLER
(sworn July 7, 2009)**

**I, Ken Fowler, of the City of St. Catharines, in the Province of Ontario, MAKE
OATH AND SAY:**

1. I am an officer of The Rosseau Resort Management Services Inc. ("RRMSI"). As such, I have knowledge of the matters to which I hereinafter depose, except where the information is based upon information I have received from others, in which case I have stated the source of that information and verily believe it to be true.

2. This affidavit is sworn in connection with the motion by Alvarez & Marsal Canada ULC as receiver and manager and trustee (in such capacities, jointly, the "Receiver") for an order requiring that payments of operating profits or revenue, if any, distributable under the Amended and Restated Hotel Management Agreement between RRMSI, The Rosseau Resort Developments Inc. ("RRDI") and Marriott Hotels of Canada Ltd. ("Marriott") dated as of October 6, 2006 (the "Hotel Management Agreement") are to be paid to the Receiver.

3. I have reviewed the Second Report of the Receiver (the "**Second Report**"). Any terms not otherwise defined in my affidavit shall have the meanings ascribed to them in the Second Report.

4. The Hotel units are required to be included in a rental pool, by which the units are to be made available for rent by guests at the Hotel. All Unit Owners are required to or have entered into a Rental Pool Management Agreement (a copy of the form of which is attached as Appendix C to the Second Report) pursuant to which RRMSI was engaged on an exclusive basis by RRDI as a rental pool manager to manage the rental of the Hotel units.

5. Pursuant to the Rental Pool Management Agreements, all funds collected by RRMSI (or its assignee) are to be held in a segregated separate trust account for the persons entitled thereto, namely persons owed certain expenses (as set out in Section 3.2(2) of the Rental Pool Management Agreement), Unit Owners and RRMSI. Section 3.1 of the Rental Pool Management Agreement provides that all funds collected from the rental of the Hotel units and other revenue streams are to be deposited into a trust account (the "**Operating Account**") to be maintained by RRMSI (or its assignee) and states as follows:

Operating Account. Subject to section 10.11, *the Rental Pool Manager will maintain a trust account or accounts in respect of the Rental Pool* in a financial institution in Ontario qualified to engage in the banking or trust business in Ontario which shall be under the exclusive control of the Rental Pool Manager and for which the Rental Pool Manager or any one or more directors, officers or employees of the Rental Pool Manager as designated by it will have sole signing authority. The Owner acknowledges and agrees that the Operating Account may contain funds in respect of the revenues derived from the Commercial Condominium and from the rental of other Resort Units in the Rental Pool and that the Owner's funds may be commingled with the funds of the other Owners and the Commercial Owners, provided that the Operating Account will be separate from the Rental Pool Manager's personal accounts. Except as may be required in connection with Hotel Operator's centralized accounting services (which include accounts receivable, accounts payable and billings) as may be

provided from time to time to Hotel System hotels in Canada, the Rental Pool Manager will deposit all Gross Rental Pool Revenue in the Operating Account. All funds held in the Operating Account for the benefit of the Owners, as set out herein will be expended by the Rental Pool Manager (or deducted) in the following order of priority:

- (a) firstly, in satisfaction of the amounts referred to in subsection 3.2(2) by deduction from Gross Rental Pool Revenue;
- (b) secondly, to the Rental Pool Manager in satisfaction of the Rental Pool Management Fee and in respect of any other amount owing to the Rental Pool Manager pursuant to this Agreement and the Rental Pool; and
- (c) thirdly, to the Owner in respect of the Owner's Net Rental Revenue as set out in section 3.7 and to the other Owners in accordance with the Rental Pool.

The Rental Pool Manager will hold and disburse or deduct all amounts in the Operating Account in accordance with this Agreement and the Rental Pool, provided that the obligation of the Rental Pool Manager to disburse or deduct funds and carry out its obligations imposed by this Agreement is conditional upon sufficient funds being available in the Operating Account from the Gross Rental Pool Revenue or from the Owner's resources.

[Emphasis added]

6. Section 10.11 of the Rental Pool Management Agreement provides as follows:

Trust Funds. *Wherever in this Agreement, the Rental Pool Manager is authorized or required to hold funds in trust for the Owner (including, without limitation, under sections 3.1 and 3.3), the Owner agrees that such funds may be held in trust by the Hotel Operator in accordance with the terms hereof.* For such purpose, a trust account or accounts may be under the exclusive control of the Hotel Operator and for which the Hotel Operator or any one or more of its directors, officers or employees as designated by it will have sole signing authority but otherwise subject to the requirements set forth in sections 3.1 and 3.5 (with the necessary and appropriate amendments).

[Emphasis added]

7. RRMSI, in its capacity as Rental Pool Manager under the Rental Pool Management Agreement, is entitled to a fee in exercising its duties thereunder (the "**Rental Pool Management Fee**") which is calculated as a percentage of the Net Rental Revenue (as defined in the Rental Pool Management Agreement).

8. Pursuant to the Hotel Management Agreement, the operation of the Hotel is placed under the exclusive supervision and control of Marriott. Under the Hotel Management Agreement, RRMSI also delegated to Marriott many of its obligations under the Rental Pool Management Agreements, including collection of all hotel rental payments, paying expenses, and accounting functions, except the obligation to provide periodic financial statements to Unit Owners and to make distributions to Unit Owners, if and when available. Marriott thus voluntarily stepped into and assumed these trust fund obligations under the Rental Pool Management Agreement.

9. In fulfilling its obligations under the Hotel Management Agreement, Marriott collects all revenue of the Hotel and is responsible for applying it and distributing it in accordance with the Hotel Management Agreement. Generally, Marriott is entitled to deduct all of the costs and expenses properly incurred in connection with the operation and management of the Hotel as a deduction from gross revenues. Any remaining amounts constitute operating profit (the "**Operating Profit**"), which is to be distributed to the "**Owner**", which is defined in the Hotel Management Agreement as RRDI and RRMSI to be, *inter alia*, distributed to the Unit Owners.

10. To the extent that deductions exceed gross revenues, the Hotel incurs an operating loss which, pursuant to the Hotel Management Agreement, must be funded by the Owner. Section 11.30 of the Hotel Management Agreement provides that the obligations of RRDI and RRMSI are joint and several; however, the allocation between them is not expressly outlined and there is no right of reimbursement between them in the Hotel Management Agreement. Since RRDI, as the developer and titled owner of the Hotel, was to benefit the most from its construction, there was a verbal agreement between RRDI and RRMSI that, in return for RRMSI's agreement to act as rental pool manager, such arrangement would be exclusive (which is not terminable at will by

RRDI, if it ever was, now that RRMSI is acting as rental pool manager), and furthermore that RRDI would fund all amounts required to be funded by the Hotel Management Agreement.

11. Each of RRDI and RRMSI have assigned their rights to any payments which may be owing to them under the Hotel Management Agreement to WestLB. However, RRMSI explicitly did not assign its interest in the Rental Pool Management Agreement or the Rental Pool Management Fee payable thereunder to either WestLB or Fortress as security for the obligations of RRDI or otherwise. Furthermore, pursuant to the Rental Pool Management Agreement, the monies collected by RRMSI or Marriott for the benefit of the Unit Owners and others under the trust account are a separate stream of funds to be held in trust for such Unit Owners and other persons, and are thereby not capable of being assigned without the Unit Owners' and other entitled persons' consent. RRMSI has not consented to the assignment of its rights to these trust fund revenues (but only to its rights under the Hotel Management Agreement), nor to its knowledge have any Unit Owners or other entitled persons.

12. RRMSI's status as a separate company with limited obligations helps to ensure the integrity of these trust arrangements.

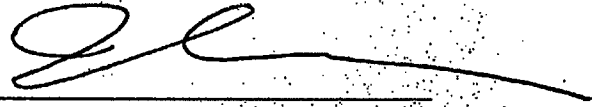
13. Accordingly, neither WestLB nor the Receiver is entitled to take possession of the monies payable to the Unit Owners or RRMSI or others under the Rental Pool Management Agreement, and the Operating Profits ought to be paid to RRMSI for distribution to the Unit Owners and others in accordance with such agreement. No order ought to be made as sought by the receiver that would or could result in a violation of the trust arrangements. RRMSI believes that the funds should be provided to it by Marriott as and when required so that it may ensure

that the Unit Owners and others get their appropriate entitlements thereto as contemplated in the Rental Pool Management Agreements.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
July 4, 2009.

Commissioner for Taking Affidavits

LSUC 52880V



Ken Fowler

WESTLB AG, TORONTO BRANCH

and
THE ROSSEAU RESORT
DEVELOPMENTS INC.

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

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF KEN FOWLER
(SWORN JULY 7, 2009)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Peter F.C. Howard LSUC#: 22056F
Tel: (416) 869-5613

Maria Konyukhova LSUC# 52880V
Tel: (416) 869-5230

Fax: (416) 947-0866

Counsel for The Rosseau Resort Management
Services Inc.

APPENDIX "G"

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

- and -

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

**APPLICATION UNDER 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**

**AFFIDAVIT OF PETER FOWLER
(sworn JULY 23, 2009)**

**I, Peter Fowler, of the City of St. Catharine's, in the Province of Ontario, MAKE
OATH AND SAY:**

1. I am the President of Three Oaks Holdings Limited which is a partner of the partnership which owns the shares of The Rosseau Resort Developments Inc. ("RRDI"). As such, I have knowledge of the matters to which I hereinafter depose, except where the information is based upon information I have received from others, in which case I have stated the source of that information and verily believe it to be true.

2. This affidavit is sworn in connection with the motion by Alvarez & Marsal Canada ULC as receiver and manager and trustee (in such capacities, jointly, the "Receiver") for an order approving the proposed marketing and promotional program planned by Baker Real Estate and the proposed price list developed by Baker Real Estate.

3. I have reviewed the Third Report of the Receiver. Any terms not otherwise defined in my affidavit shall have the meanings ascribed to them in the Third Report.

4. I was also provided with copies of the confidential appendices to the Third Report the contents of which I undertook not to reveal. I agree that the contents of the confidential appendices should stay sealed as the release of the information contained therein may result in substantial losses of value for KFEL and the current unit holders.

5. By Order dated July 8, 2009, the Receiver received Court approval to engage in a two track retail and institutional sale process to seek to maximize the value of the unsold units.

6. In support of its motion for such approval, the Receiver prepared and filed the Second Report wherein the Receiver stated that a major retail product launch was planned to be held on August 13-15, 2009. The Receiver also indicated that it did not plan to undertake a liquidation sale of the unsold units, and that sales would be conducted "in an orderly manner, recognizing current market conditions". This is important to (i) Ken Fowler Enterprises Limited ("KFEL") given its over \$50 million investment into the project and given that it has previously executed guarantees in favour of West LB and Fortress, and (ii) the current hotel unit owners and purchasers, who do not want to see the value of their units diminished by a "fire sale".

7. On or about July 16, 2009, I learned that a massive sell-off of the unsold units was being considered by the Receiver. The starting prices for the condo units proposed by the Receiver at that time were at significant discounts. KFEL objected, and indicated that this had not been approved by the Court.

8. Sales on the proposed terms will serve to devastate the value of current condo units (as it represents a huge discount to them), and will very adversely effect KFEL .

9. In addition, the Receiver's proposed sale strategy is flawed, as it is based on a marketing style letter from Baker Real Estate, which may not be impartial in these circumstances. Firstly, if the institutional sale process were to come to fruition, Baker would receive little or no retail commissions. Secondly, it is in Baker's interests to sell as many units as it can as quickly as it can, thereby reducing its costs and generating quick commissions. In addition, the analysis presented by Baker in support of the Baker Price List is flawed as it is based on incorrect information and assumptions, and Baker does not to our knowledge have any experience selling resort properties in insolvency situations.

10. Accordingly, the Receiver should not rely on Baker's advice in deciding what is best for RRDI's creditors as a whole.

11. The Receiver should engage an independent, fixed fee-based (to avoid the selling commission, cost pressure and sales process biases to which Baker is subject) expert to get advice as to how to maximize value for creditors as a whole. The Receiver should also engage in meaningful consultations with KFEL and current condo unit owners regarding the conduct of the sale process, as they are the stakeholders that will be very materially adversely affected by it.

12. Furthermore, the proposed terms of sale are unstated. As discussed in Ken Fowler's affidavit of July 6, 2009, RRMSI is the beneficiary of an exclusive agreement with RRDI to act as rental pool manager. This agreement has not been terminated by the Receiver. Thus, if any units are to be sold, RRMSI should be the rental pool manager. If the Receiver does not intend to continue the appointment of RRMSI, then RRMSI too will have a claim against the estate and

should be consulted with by the Receiver on the proposed sales prices. Also, no new proposed condominium disclosure statement has been provided describing the proposed sale terms.

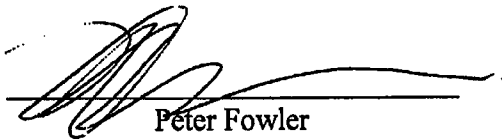
13. Accordingly, the interests of West LB and Fortress may differ materially from those of other creditors and stakeholders, including KFEL, RRMSI and condominium unit owners who will likely be very adversely affected by the proposed sale process and have not been consulted with meaningfully by the Receiver.

14. I therefore submit that the sale process and pricing list proposed by the Receiver, which is based on the conflicted recommendations and erroneous assumptions of Baker and which is diametrically opposed to what the Receiver indicated to the Court it would do as part of the retail sales process only two weeks ago, should not be approved by the Court.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
July 23, 2009.

Commissioner for Taking Affidavits

LSUC 52320V



Peter Fowler

WESTLB AG, TORONTO BRANCH

THE ROSSEAU RESORT
and
DEVELOPMENTS INC.

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

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF PETER FOWLER
(SWORN JUNE 1, 2009)**

STIKEMAN ELLIOTT LLP
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5300 Commerce Court West
199 Bay Street
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Sean F. Dunphy LSUC#: 24941J
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Fax: (416) 947-0866

Counsel for the Respondent

APPENDIX “H”



2425 Matheson Blvd. East, Suite 100, Mississauga, ON L4W 5K4
905/366-5200, fax 905/366-5220

August 21, 2009

Alvarez & Marsal Canada ULC
In Its Capacity as the Court-Appointed
Receiver and Manager of The Rosseau
Resort Developments Inc.
P.O. Box 22, Suite 2000
Royal Bank Plaza, South Tower
200 Bay Street
Toronto, ON M5J 2J1

Attention: Richard Morawetz

Re: The Rosseau, A JW Marriott Resort & Spa

We refer to the fourth report of Alvarez & Marsal Canada ULC in its capacity as the court-appointed receiver and manager of The Rosseau Resort Developments Inc. (the "Receiver") dated August 12, 2009 (the "Fourth Report"). We also refer to the amended order of the Ontario Superior Court of Justice (the "Court") dated August 18, 2009 (the "August 18 Order"). Unless otherwise specified, capitalized terms used herein have the meanings ascribed thereto in the Fourth Report.

We refer to the motion returnable on August 28, 2009 pursuant to which the Receiver and Miller Thomson LLP in its capacity as representative counsel ("Representative Counsel") will seek the appointment by the Court of a receiver of The Rosseau Resort Management Services Inc. ("RRMSI"). Representative Counsel was appointed by the Court on August 20, 2009 to represent those persons who have entered into a rental pool management agreement with RRMSI ("Existing Rental Pool Management Agreements") and are either current owners (the "Unit Owners") of condominium units at the Hotel or existing purchasers of Units who have not closed outstanding agreements of purchase and sale with RRDI (the "Existing Unit Purchasers"). As described in more detail below, Marriott Hotels of Canada Ltd. and International Hotel Licensing Company S.a.r.l. (together, "Marriott") support the relief sought by the Receiver and Representative Counsel since appointment of a receiver of RRMSI will resolve a number of legal issues affecting the Hotel and Marriott's ability to operate the Hotel in a manner that maximizes value for all stakeholders.

Pursuant to the August 18 Order, the Receiver was authorized by the Court to repudiate the Current Hotel Management Agreement ("Current HMA"), pursuant to which RRDI as the Hotel owner and RRMSI as the rental pool manager are jointly identified as the Owner, as well as certain other agreements between RRDI, RRMSI and Marriott which govern the operation of the Hotel by Marriott. Also pursuant to the August 18 Order, the Receiver was authorized by the Court to repudiate any agreements between RRDI and RRMSI whereby RRDI arranged to delegate the appointment of Rental Pool Manager to RRMSI.

We have previously confirmed to you that it is Marriott's intention to terminate the Current HMA upon the repudiation of the Current HMA by the Receiver. Since the repudiation of the Current HMA by the Receiver will result in RRDI, the owner of the Hotel, no longer being a party to the Current HMA, the Receiver and Marriott are currently negotiating the form of a replacement hotel management agreement (the "New Hotel Management Agreement"). The parties have previously settled, and the Court approved pursuant to the August 18 Order, the terms of a side letter to the New Hotel Management Agreement governing certain of the terms thereof.

Prior to entering in to the New Hotel Management Agreement, however, the issue of Marriott's right to rent the rooms at the Hotel subject to the Existing Rental Pool Management Agreements between RRMSI and Unit Owners and Existing Unit Purchasers must be resolved. By letter dated August 17, 2009, RRMSI advised Marriott that it does not believe that Marriott is entitled to terminate the Current HMA as it pertains to RRMSI and that even if Marriott purported to terminate the Current HMA, Marriott would not be entitled to rent the hotel rooms that are subject to Existing Rental Pool Management Agreements with RRMSI (and perhaps other rooms) as RRMSI has exclusive rights in respect thereof. A copy of the foregoing letter is attached for your information.

Absent certainty that paragraph 6 of the August 18 Order is operative, RRMSI may attempt to prevent Marriott from renting the rooms at the Hotel subject to the Existing Rental Pool Management Agreements and may challenge Marriott's right to terminate the Current HMA as it pertains to RRMSI. Marriott strongly disagrees with RRMSI's position on both of these points. However, if Marriott's right to rent those Hotel rooms subject to Existing Rental Pool Management Agreements is dependent upon the continuation of the Current HMA, then Marriott would be precluded from terminating the Current HMA. That is clearly not a feasible solution since the Receiver has already obtained the necessary authority to repudiate the Current HMA. Marriott is not prepared to remain a party to the Current HMA with only RRMSI as Owner. As set out in the Fourth Report, RRMSI is a shell corporation. Marriott requires certainty that the party fulfilling the obligations of the Owner under any hotel management agreement has the necessary funds and resources to satisfy all of the Owner obligations thereunder. That issue has been resolved under the New Hotel Management Agreement through the provision of charges in favour of Marriott upon the property of RRDI.

Given RRMSI's position as described above, Marriott supports the Receiver's motion for the appointment of a receiver of RRMSI. It is critical for the viable operation of the Hotel that all rooms be available for rental by Marriott. The appointment of a receiver of RRMSI will ensure

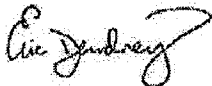
August 21, 2009

Page 3 of 3

that the Hotel will continue to operate without interruption, ensure that Hotel rooms subject to Existing Rental Pool Management Agreements with RRMSI will continue to be available for rental by Marriott to Hotel guests and protect the interests of all present and future owners of Units at the Hotel.

Sincerely yours,

Marriott Hotels of Canada, Ltd.

A handwritten signature in cursive script, appearing to read "Eric Deudney".

By: Eric Deudney
Regional Director Finance

Encl.

THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

August 17, 2009

Marriott Hotels of Canada
Attn: Regional Vice President, Operations
Fax: 905-366-5220

and

Marriott International Inc.
Attn: Law Dept 52/923 - Hotel Operations
Fax: 301-380-6727

and

Marriott International, Inc.
Attn: Lodging Financial Analysis Dept. 911.10
Fax: 301-380-1074

and

Marriott International, Inc.
Attn: John Kennedy, VP, Development Asset Management Dept. 51/911.38
Fax: (301) 644-7876

and

Marriott Hotels and Resorts Canada
Attn: Michael Beckley, Sr. VP Development
Fax: (416) 366-5220

Ladies and Gentlemen:

Re: Rosseau Resort Developments Inc. and Rosseau Resort Management Services Inc.

We are writing this letter in connection with your potential termination of the Amended and Restated Hotel Management Agreement dated October 6, 2006 (the "Agreement"). We do not believe that you are entitled to terminate this agreement as it pertains to The Rosseau Resort Management Services Inc. ("RRMSI"). We also remind you that we believe that you hold trust funds for the benefit of existing condo owners and RRMSI. We further request that you promptly provide copies of all information that has been provided to Rosseau Resort Developments Inc. ("RRDI") and/or its receiver since the date of the receivership, and that may be provided to them in the future.

Lastly, in the event that the Agreement is purported to be terminated, correctly or not, we do not believe that Marriott would be entitled to rent the rooms that are under contract with RRMSI, and perhaps other rooms, as we have exclusive rights in respect thereof.

We would be happy to discuss these matters with a view to seeking to resolve them on a basis that is fair and reasonable to all parties, as contemplated in our recent letter to the receiver which it has filed with the Court. We reserve all of our rights.

Yours truly,

THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

By: 

Ken Fowler, President

APPENDIX “I”

MHRS
MUSKOKA, ONTARIO, CANADA

AMENDED AND RESTATED
HOTEL MANAGEMENT AGREEMENT

by and between

MARRIOTT HOTELS OF CANADA, LTD.
(as "OPERATOR")

and

THE ROSSEAU RESORT DEVELOPMENTS INC.
and
THE ROSSEAU RESORT MANAGEMENT SERVICES INC.
(individually and collectively, as "OWNER")

Dated as of October ²⁰9, 2006

**AMENDED AND RESTATED
HOTEL MANAGEMENT AGREEMENT**

THIS AMENDED AND RESTATED HOTEL MANAGEMENT AGREEMENT ("Agreement") is executed as of the 14th day of October, 2006 ("Amendment Date"), by THE ROSSEAU RESORT DEVELOPMENTS INC. ("Hotel Owner") and THE ROSSEAU RESORT MANAGEMENT SERVICES INC. ("Rental Pool Manager"), each an Ontario corporation with a mailing address at c/o Ken Fowler Enterprises Limited, P.O. Box 24091, 110 Hanover Drive, Suite 203B, St. Catharines, Ontario, Canada L2R 7P7, as parties of the first part (Hotel Owner and Rental Pool Manager are herein individually and collectively referred to as "Owner"), and MARRIOTT HOTELS OF CANADA, LTD. ("Operator"), a Canadian corporation, with a mailing address at 2425 Matheson Boulevard East, Suite 100, Mississauga, Ontario, Canada L4W 5K4, as party of the second part.

RECITALS

ARTICLE I

MANAGEMENT OF THE HOTEL

1.02 Management Responsibilities

A. Upon completion of the construction, furnishing and equipping of the Improvements in Phase I in accordance with the Technical Services Agreement and the Pre-Commencement Addendum, and upon satisfaction of all conditions precedent to the occurrence of the Opening Date (including satisfaction of the requirements set forth in the Pre-Commencement Addendum), Operator shall, and Owner hereby authorizes and engages Operator to, supervise, direct and control the management and operation of the Hotel in accordance with the terms and conditions of this Agreement.

B. Operator shall manage the Hotel and perform each of the following functions (the costs and expenses of which shall be Deductions) with respect to the Hotel:

1. Recruit, employ, supervise, direct and discharge the employees at the Hotel.
2. Establish prices, rates and charges for services provided in the Hotel, including Guest Room rates.
3. Establish and revise, as necessary, administrative policies and procedures, including policies and procedures for the control of revenue and expenditures, for the purchasing of supplies and services, for the control of credit, and for the scheduling of maintenance, and verify that the foregoing procedures are operating in a sound manner.
4. Make payments on accounts payable and handle collections of accounts receivable.

5. Arrange for and supervise public relations and advertising and prepare marketing plans. Participate in the funding of programs sponsored by hotel-motel associations designed to support or promote the hotel industry.

6. Procure all Inventories and replacement Fixed Asset Supplies.

7. Prepare and deliver interim accountings, annual accountings, Annual Operating Statements, Building Estimates, FF&E Estimates, and such other information as is required by this Agreement, including the allocations provided in Section 4.03.E, and be available at reasonable times to discuss generally with Owner the above-listed items as well as the operations at the Hotel.

8. Plan, execute and supervise repairs, maintenance, and FF&E purchases at the Hotel.

9. Provide, or cause to be provided, risk management services relating to the types of insurance required to be obtained or provided by Operator under this Agreement.

10. Except as provided in the Pre-Commencement Addendum, obtain and keep in full force and effect, either in Operator's name or in Owner's name, as may be required by applicable law, any and all licenses and permits to the extent same is within the control of Operator (or, if same is not within the control of Operator, Operator shall use due diligence and reasonable efforts to obtain and keep same in full force and effect).

11. Make available the Hotel Residential Units for use by the respective individual owners thereof in accordance with the terms and conditions of the Rental Pool Management Agreements.

C. By executing this Agreement and the other Marriott Agreements, Rental Pool Manager hereby delegates to Operator and IHLC such of its duties and responsibilities under the Rental Pool Management Agreements as are set forth in this Agreement and the other Marriott Agreements. Operator hereby assumes and shall cause IHLC and its Affiliates to assume such duties and responsibilities as are set forth in this Agreement and the other Marriott Agreements, respectively.

rules, regulations, and policies for the use of the Hotel's facilities and the provision of Hotel services, the right to collect amounts due to the Hotel, and any other rights that it may have thereunder, either directly or as third party beneficiary.

ARTICLE IX

DEFAULTS

9.01 Events of Default

Each of the following shall constitute a "Default" under this Agreement.

C. The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating either party as bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee, or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree's continuing unstayed and in effect for an aggregate of sixty (60) days (whether or not consecutive). Upon the occurrence of any Default by either party as described under this Section 9.01.C., said Default shall be deemed an "Event of Default" under this Agreement.

9.02 Remedies

Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to pursue any one or more of the following courses of action: (1) if the Event of Default has a material adverse impact on the non-defaulting party, to terminate this Agreement by written notice to the defaulting party, which termination shall be effective as of the effective date which is set forth in said notice, provided that said effective date shall be at least thirty (30) days after the date of said notice; (2) to institute forthwith any and all proceedings permitted by law or equity including, without limitation (but subject to the provisions of Section 11.22 hereof), actions for specific performance and/or damages; and/or (3) to avail itself of the remedies described in Section 9.03. The thirty (30) day period provided in clause (1) above may be extended for an additional period of up to ninety (90) days at the request of the defaulting party, provided that such extension will not be granted if it would have a material adverse impact on the non-defaulting party and the non-defaulting party gives the defaulting party a written statement of the reason(s) it would have such material adverse impact.

11.30 Status of Owner and its Affiliates

A. The obligations of Hotel Owner and Rental Pool Manager as the Owner party under this Agreement shall be joint and several. The rights of Hotel Owner and Rental

Pool Manager as the Owner party under this Agreement may be exercised by either of Hotel Owner or Rental Pool Manager, and any act or failure to act (including a Default or Event of Default) by or with respect to either of Hotel Owner or Rental Pool Manager shall be an act or failure to act by or with respect to each of such parties and of Owner hereunder. In its dealings with Hotel Owner and/or Rental Pool Manager under this Agreement, Operator shall be entitled to deal and interact with and otherwise treat either such party as the Owner hereunder.

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THE ROSSEAU
- a JW Marriott Resort
RENTAL POOL MANAGEMENT AGREEMENT

This Agreement dated as of December _____, 2008.

BETWEEN the Owner and the Rental Pool Manager

"Owner": _____

"Rental Pool Manager": **The Rosseau Resort Management Services Inc.**
P.O. Box 30
1112 Juddhaven Road
Minett, ON P0B 1G0

"Unit": Suite No. _____, being proposed Unit _____, in the proposed Resort
Condominium

The Owner hereby certifies that the Owner [is/is not] a resident of Canada for the purposes of the *Income Tax Act* (Canada) and agrees to inform the Rental Pool Manager of any change of residency.

The Purchaser's GST Registration Number is: _____

WHEREAS:

- A. The Owner is the purchaser of the Unit and, as such, will become a member of the Resort Corporation;
- B. The Owner has the full right, title, power and authority to rent the Unit and desires to appoint the Rental Pool Manager to manage the rental of the Unit upon the terms and conditions hereinafter set forth; and
- C. The Rental Pool Manager has agreed to manage the rental of the Unit on the terms and conditions contained in this Agreement.

THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 2
MANAGEMENT, USE, TERM AND TERMINATION

2.1 Management of Rental Pool. The Rental Pool Manager shall serve as the exclusive Rental Pool Manager to manage the rental of the Unit in accordance with, and subject to, the terms and conditions set out in this Agreement and the Rental Pool Covenant.

2.2 Appointment of Hotel Operator. The Rental Pool Manager shall appoint the Hotel Operator pursuant to the Hotel Management Agreement and for a term coextensive with this Agreement to perform a substantial portion of the obligations of the Rental Pool Manager hereunder. The Hotel Operator shall be an independent contractor and not an agent of the Rental Pool Manager or the Owners. The Owner acknowledges that the Hotel Operator has no liability to the Owner hereunder and that any action or claim the Owner may have for non-performance of the obligations of the Rental Pool Manager hereunder or otherwise at contract or in tort may be commenced or made solely against the Rental Pool Manager. The Owner shall not have any right of set-off against any amounts payable to the Rental Pool Manager hereunder. The Owner acknowledges and agrees that the Rental Pool Manager may delegate to the Hotel Operator any or all of its obligations, rights and privileges under this Agreement as the Rental Pool Manager shall determine from time to time and that all references to the Rental Pool Manager in this Agreement relating to such delegated obligations, rights and privileges shall be deemed to include a reference to the Hotel Operator.

2.3 Rental Pool. The Rental Pool Manager will manage the rental of the Unit and the other Resort Units in accordance with this Agreement, the Rental Pool and the Rental Pool Covenant. For greater certainty, the Rental Pool Manager is hereby granted the right to use and enjoy, and to allow guests to use and enjoy, all rights of the Owner with respect to the use and enjoyment of the Common Elements. The Owner hereby irrevocably covenants and agrees to be bound by the rental bookings of the Unit made by the Rental Pool Manager in accordance with this Agreement and the Rental Pool. The Owner will indemnify and save the Rental Pool Manager and its Affiliates and the Hotel Operator and its Affiliates and any of their respective directors, officers, employees, consultants, agents and representatives harmless from all claims, damages and costs in connection with any failure of the Owner, or anyone claiming under or on behalf of the Owner to comply with such rental bookings.

2.4 Use. The Unit will be used only as a condominium hotel unit and only in accordance with this Agreement, the Rental Pool Covenant and the Rental Pool and will not be used for any other purpose without the prior written consent of the Owner. Any use of the Unit, the Unit FF&E and the Common Elements must comply with the Rental Pool Covenant and all applicable laws and the bylaws and rules and regulations of the Resort Corporation from time to time.

2.5 Complimentary Use. The Rental Pool Manager will have the right to provide room rentals on a complimentary or rent-reduced basis:

- (1) to employees of the Rental Pool Manager and the Hotel Operator or any of their respective Affiliates and personnel of hotels and resorts under management of or franchised by the Rental Pool Manager or the Hotel Operator or any of their respective Affiliates in accordance with the employee benefits policy of the Rental Pool Manager or the Hotel Operator and their respective Affiliates and normal practice in other comparable hotels where such use would not displace paying guests (unless the Hotel Operator determines there is a reasonable business purpose for doing so);

- (b) to allow the Unit to participate in the Rental Pool, provided however, that the Owner's Net Rental Revenue earned in respect of the Unit, as the case may be, shall be applied by the Rental Pool Manager to set-off any outstanding sums owing by the Owner pursuant to this Agreement.

Such suspension from participation in the Rental Pool or set-off of outstanding sums owing by the Owner against the Owner's Net Rental Revenue earned in respect of the Unit, as the case may be, shall be terminated only when said Event of Default has been remedied to the Rental Pool Manager's satisfaction.

2.9 Termination by the Owner. The Owner may terminate this Agreement, without compensation to the Rental Pool Manager (other than amounts due and payable to the Rental Pool Manager under this Agreement up to the date of termination), if:

- (1) the Rental Pool Manager fails to keep, observe, or perform any material covenant, agreement, term or provision to be kept, observed, or performed by the Rental Pool Manager hereunder which materially adversely affects the Owner, and such default continues for a period of 45 days after the Rental Pool Manager's receipt of written notice from the Owner requesting the cure of such default, or if such default is of such a nature that it cannot be cured by the Rental Pool Manager within such 45 day period if the Rental Pool Manager fails to commence to cure such default within 14 days after receipt of such notice or thereafter to proceed diligently and continuously to cure such default;
- (2) the Rental Pool Manager makes an assignment in bankruptcy, files any proposal for reorganization or for an arrangement under any bankruptcy or insolvency laws, or if any petition under any such law is filed by any third party against the Rental Pool Manager and not dismissed within 90 days; or
- (3) the Rental Pool Manager makes any assignment of all or substantially all of its property for the benefit of the Rental Pool Manager's creditors.

and if, in any such event, more than three-quarters of the Owners have, at a meeting of the Resort Corporation in accordance with the bylaws of the Resort Corporation, approved such termination and, in such event, this Agreement and all such rental pool management agreements in the Rental Pool will terminate except as otherwise provided herein, provided that the Rental Pool Manager will be given not less than 120 days prior written notice of such termination specifying the date of termination.

The Owner shall, simultaneously with any notice to the Rental Pool Manager under this section 2.9, give a copy of such notice to the Hotel Operator who shall be entitled to cure the default of the Rental Pool Manager on the same basis as if it were the Rental Pool Manager.

Notwithstanding the foregoing, if notice of termination of this Agreement is given as a result of or in connection with any of the events described in this section 2.9, the Owner agrees that it will, at the request of the Hotel Operator made prior to the date of termination specified in the notice enter into a new rental pool management agreement with the Hotel Operator or a person designated by the Hotel Operator on the terms and conditions of and substantially in the same form as this Agreement, provided that the Hotel Operator requires all of the Owners to enter into rental pool management agreements with the same person. Subject to the rights of the Hotel Operator herein, the Owners may, with the approval of at least three-quarters of the Owners, designate a person to act as the new rental pool manager and the Owner

agrees to enter into a new rental pool management agreement with such person on the terms and conditions and substantially in the same form as this Agreement.

Until the new rental management agreement is entered into as provided herein,

- (a) the Owner shall not enter into any management agreement with any third party;
and
- (b) this Agreement will continue in full force and effect.

Upon termination and appointment of a replacement rental pool manager, all monies then held by the Rental Pool Manager on behalf of the Owners shall be forthwith transferred to the replacement rental pool manager under the new rental management agreements and otherwise shall be paid to the Owners.

2.10 Events upon Termination.

- (1) The Rental Pool Manager will not make any rental bookings of the Unit for any day after the expiry of the Term (including any possible renewals thereof). If this Agreement is terminated prior to the expiry of the Term pursuant to section 2.8 or section 2.9:
 - (a) the Rental Pool Manager will not make any further rental bookings of the Unit after such termination;
 - (b) the Owner will continue to be bound by the rental bookings made by the Rental Pool Manager in accordance with this Agreement including those which extend beyond the date of the termination of this Agreement and will indemnify and hold harmless the Rental Pool Manager and its Affiliates and any of their respective directors, officers, employees, consultants, agents and representatives in respect thereof.
- (2) Following the expiry or termination of this Agreement, the money collected on behalf of the Owner in the Operating Account and held by the Rental Pool Manager will continue to be held for a period of 120 days after termination and during this period the Rental Pool Manager may make withdrawals and payments from the Operating Account with respect to amounts the Rental Pool Manager is authorized or required to pay pursuant to this Agreement, including the Rental Pool Management Fee and any other amount payable to the Rental Pool Manager hereunder, and the Owner will reimburse the Rental Pool Manager for such amounts to the extent that funds held in the Operating Account on behalf of the Owner are insufficient for this purpose. If at any time after the expiry or termination of this Agreement the Rental Pool Manager receives any funds on behalf of the Owner, such funds will be received by the Rental Pool Manager in trust for the Owner and disbursed by the Rental Pool Manager in accordance with this Agreement.
- (3) If this Agreement is terminated for any reason other than the default of the Rental Pool Manager, reserves shall be established from Gross Rental Pool Revenue to reimburse the Rental Pool Manager for all costs and expenses incurred by it in terminating any employees engaged in connection with the Rental Pool, such as severance pay, seniority payments, unemployment compensation, employment relocation and other employee liability costs arising out of the transfer or termination of employment of such employees. If the Gross Rental Pool Revenue is insufficient to meet the requirements of such reserve,

| <u>Option Selected</u> | <u>Applicable Percentage</u> |
|------------------------|------------------------------|
| Option 1 (7 Days) | 46% |
| Option 2 (14 Days) | 48% |
| Option 3 (21 Days) | 50% |

The Rental Pool Management Fee will be paid on the 30th day following the end of each Accounting Period, in respect of the Unit Revenue Share for the immediately preceding Accounting Period. The Owner hereby authorizes the Rental Pool Manager to withdraw such fees from the Operating Account at any time and from time to time when such fees are due.

ARTICLE 5

RENTAL POOL MANAGER'S RESPONSIBILITIES

5.1 **Rental Pool Manager's Responsibilities.** The Rental Pool Manager will during the Term, subject to the performance and compliance by the Owner of and with all of its obligations under this Agreement and to the extent the Owner funds all amounts required to be funded by the Owner pursuant to this Agreement:

- (1) until Marriott is replaced or this Agreement is assigned to a Qualified Operator that is not Marriott, in either case in accordance with section 2.11:
 - (a) ensure that the Hotel Operator retains the right to the use of the name "JW Marriott" and its related logos;
 - (b) ensure that the Hotel Operator retains the right to the use of the Marriott worldwide reservation/booking system;
- (2) ensure that the Rental Pool Manager or the Hotel Operator owns, leases or otherwise has the exclusive right to occupy the Hotel Management Unit and all administrative, management and other space required in order for the Rental Pool Manager or the Hotel Operator to carry out its obligations under this Agreement;
- (3) not terminate the Hotel Management Agreement unless the Rental Pool Manager has complied with the terms of section 2.11 in respect of a proposed assignment of its interest under this Agreement;
- (4) comply with the Rental Pool Manager's obligations under the Hotel Management Agreement, maintain the Hotel Management Agreement in good standing and renew the Hotel Management Agreement;
- (5) use commercially reasonable efforts to rent the Resort Units during the Term in accordance with, and subject to, this Agreement, the Rental Pool and the Rental Pool Covenant;
- (6) determine the rates for rental of the Resort Units, having regard to the seasonal uses of the Resort Units and the market for the rental of hotel/condominium units which are consistent with the Hotel Standards;

- (7) use commercially reasonable efforts to collect all rents, fees and other amounts payable in connection with the rental of the Resort Units, give receipts and acknowledgements therefor, and to the extent that such actions are commercially reasonable to maximize the Owner's Net Rental Revenue over the Term, make abatements and allowances in respect thereof (including providing complimentary accommodation), and deposit such amounts into the Operating Account;
- (8) determine the charges, if any, for all long distance telephone calls and internet use made from the Resort Units and collect same;
- (9) give to guests of the Resort Units such notices and statements as may be required from time to time;
- (10) operate, supervise, manage, clean and maintain, control and rent the Unit and the Unit FF&E in a manner consistent with the Hotel Standards, it being the intention of the parties that the Rental Pool Manager will have the right to determine all operating policies with respect to reasonable standards of operations, quality of services and any other matters affecting the rental of the Unit and the Unit FF&E within the Unit;
- (11) keep or cause to be kept full and adequate books of account and such other reasonable records reflecting the Operating Account, the Gross Rental Pool Revenue, the Adjusted Gross Revenue, the Unit Revenue Share, the Gross Unit Revenue, the Rental Pool Management Fee and the Owner's Net Rental Revenue and the Rental Pool Manager will permit the Owner and its agents the right during normal business hours and on reasonable prior notice to examine or make extracts of such books and records located at the Rental Pool Manager's office, but such examination will be done at the cost of the Owner and with as little disruption as possible to the day to day operations of the Rental Pool Manager and the Hotel;
- (12) subject to execution of a confidentiality agreement in a form approved by the Hotel Operator, permit the Owner and his agents to examine the Hotel Management Agreement, the International Services Agreement and the Licence and Royalty Agreement (including review by a representative of the Resort Corporation of the physical and design standards of the Hotel Operator forming the basis for the Hotel Standards respecting such matter) at the Hotel Management Unit during normal business hours with reasonable prior notice to the Hotel Operator, but such examination will be done at the cost of the Owner and with as little disruption as possible to the day to day operations of the Hotel and the Rental Pool;
- (13) to the extent not already authorized hereunder, using commercially reasonable efforts to warn off and prohibit and proceed against any person who trespasses upon the Unit or the Common Elements by due process of law as the Rental Pool Manager may deem appropriate either before or after such warning off or prohibition;
- (14) use reasonable efforts to ensure that the Unit and the Unit FF&E and the use and occupancy thereof comply with all fire and safety codes, rules and requirements of all governmental or regulatory authorities, including the bylaws and applicable rules and regulations of the Resort Corporation, the non-compliance with which would materially and adversely affect the Unit or the Unit FF&E, subject at all times to the duties of the

Owner as the owner of the Unit and provided that the Rental Pool Manager will not be obligated to advance or utilize any of its own funds in respect of the foregoing;

- (15) take out and maintain at all times during the Term the following insurance, at a minimum, pertaining to the Rental Pool Manager's activities hereunder:
 - (a) comprehensive public liability insurance in an amount of U.S.\$10,000,000 per occurrence (or such greater amount as the Hotel Operator may from time to time deem advisable) for claims for personal injury, death, or property damage arising out of any one occurrence; and
 - (b) business interruption insurance including extra expense with policy terms deemed appropriate by the Hotel Operator; and
 - (c) such other insurance as may be deemed appropriate by the Hotel Operator, acting reasonably.
- (16) use commercially reasonable efforts to arrange, on behalf of the Owner, the following insurance in respect of the Unit and the Unit FF&E within the Unit with insurers and on terms and with deductible amounts as are determined by the Hotel Operator from time to time (and to collect the proceeds of all such insurance):
 - (a) property damage insurance for the standard Unit FF&E within the Unit to their full replacement value (but not any other personal property of the Owner which shall be the Owner's sole responsibility);
 - (b) comprehensive public liability insurance in the amount of \$10,000,000 per occurrence (or such greater amount as the Hotel Operator may from time to time deem advisable) for claims for personal injury, death or property damage arising out of and in connection with the operation of the Rental Pool; and
 - (c) such other insurance as may be deemed appropriate by the Hotel Operator, acting reasonably,

and if the same is combined with insurance coverage taken out on behalf of the Resort Corporation, then the cost of the foregoing insurance will be a common expense of the Resort Corporation, but otherwise the Rental Pool Manager is authorized to deduct the cost from the Owner's Net Rental Revenue and the Owner will reimburse the Rental Pool Manager for such cost that is not so deducted forthwith upon receipt by the Owner of the Rental Pool Manager's invoice therefor;

- (17) faithfully perform its duties and responsibilities hereunder and otherwise use its best efforts to supervise and direct the rental of the Unit in an efficient and profitable manner consistent with the Hotel Standards, it being the intention of the parties that the Rental Pool Manager will have the control for all customary purposes and the right to determine all operating policies with respect to reasonable standards of operations, quality of services and any other matters affecting the rental of the Unit;
- (18) procure and maintain all such licenses and permits as are necessary in connection with the performance by the Rental Pool Manager of its obligations under this Agreement;

- (19) provide and train such general administrative, supervisory, management and other staff, as employees or contractors of the Rental Pool Manager and not of the Owner, and keep in stock such cleaning and other supplies as may from time to time be required to carry out the obligations of the Rental Pool Manager under this Agreement;
- (20) ensure that food and beverage facilities are operated within the Hotel consistent with the Hotel Standards subject always to section 5.9;
- (21) provide concierge services if required by the Hotel Standards;
- (22) monitor compliance with zoning by-laws and provide reports to the local municipality as required under municipal agreements;
- (23) cooperate with any third party operator appointed by the developer of the Resort Condominium or the Resort Corporation to provide services to the Units and other units within the Resort Condominium or the Resort Corporation; and
- (24) provide the Owners with an annual statement certified to be correct by the chief accounting officer or a vice-president of the Hotel Operator for the prior Fiscal Year and setting forth (i) the total cost paid by the Rental Pool for the Reservation Fees and the Marketing Fee; and (ii) the methodologies for determining such costs charged to the Rental Pool. The Rental Pool Manager and the Owner hereby acknowledge that the intent of the Reservation Fees, the Marketing Fee and Other Corporate Charges is to permit the recovery by the Hotel Operator and its Affiliates of their cost of providing services covered thereby. It is not intended that the Hotel Operator or any of its Affiliates realize a profit or loss on such services. Accordingly, at the time of delivery of the annual statement, if the amount of the Reservation Fees, Marketing Fee and Other Corporate Charges paid by the Owners exceeds their share of expenses (determined on a reasonable basis) incurred by the Hotel Operator and its Affiliates for the prior Fiscal Year in question, the Hotel Operator will promptly refund the excess and deposit it to the Operating Account.

The Rental Pool Manager may engage one or more Persons to perform the services contemplated in this Agreement in connection with the management of the Unit and the Unit FF&E and each Person engaged by the Rental Pool Manager to perform such services, including any agent or employee of the Rental Pool Manager shall be acting solely as agent of Owner, subject always to section 2.2. Notwithstanding the foregoing, however, the Rental Pool Manager shall not be entitled to delegate to any Person (other than any Affiliate of Rental Pool Manager or a Qualified Operator in accordance with section 2.11) any services in connection with the management of the Unit and the Unit FF&E which are to be performed by Rental Pool Manager in accordance with this Agreement and which are, as at the date of this Agreement, generally performed by the Hotel Operator or any of its Affiliates in respect of the hotels and resorts operated and managed by the Hotel Operator or any Affiliate thereof under the name "JW Marriott". Notwithstanding that the Rental Pool Manager may engage one or more Persons to perform the services contemplated by this Agreement, the Rental Pool Manager shall not be released from its responsibilities under this Agreement or any liabilities which may result therefrom nor shall such responsibilities or liabilities be diminished.

5.2 Annual FF&E Estimate. The Rental Pool Manager shall deliver to the Board on or before December 15 in each year for its review and comment the annual estimate (the "FF&E Estimate") prepared by the Hotel Operator of the expenditures necessary for replacements, renewals and additions to

the Unit FF&E of the Hotel during the ensuing Fiscal Year. The Rental Pool Manager will transmit all comments and suggestions of the Resort Corporation to the Hotel Operator who will prepare a revised FF&E Estimate taking into account such comments and suggestions by the Board as well as the Rental Pool Manager, provided that the Hotel Operator will not be under any obligation to consider any comments which could adversely affect the Hotel meeting Hotel Standards. The FF&E Estimate will indicate the time schedule for making such replacements, renewals, and additions. The Rental Pool Manager shall (endeavouring in good faith to comply with applicable FF&E Estimate, unless there has been a change in circumstances) from time to time such replacements, renewals and additions to the Unit FF&E of the Hotel as the Hotel Operator deems necessary, up to the balance in the Unit FF&E Reserve Fund. No expenditures will be made in excess of said balance without the approval of the Resort Corporation.

5.3 Damage to Unit by Guests. In the case of any damage (other than that due to normal wear and tear) to the Unit and the Unit FF&E or the Common Elements caused by any guest of the Unit pursuant to the Rental Pool, the Rental Pool Manager may, either in its own name or in the name of the Owner, commence and pursue legal action against such guest of the Unit to recover all costs and expenses for any repairs of any such damage, and the Owner hereby agrees to cooperate with the Rental Pool Manager in connection with any such legal action as the Rental Pool Manager may reasonably require.

5.4 Carrying Out of Work. The Owner hereby authorizes the Rental Pool Manager to cause the work contemplated or in respect of which an amount is included in an Annual FF&E Estimate to be carried out diligently, expeditiously and in a manner consistent with the Hotel Standards. The Owner acknowledges that the FF&E Estimate is an estimate only and that, due to unforeseen circumstances, the expenditures required may exceed the FF&E Estimate.

5.5 Emergency Repairs, etc. Notwithstanding that the work may not be covered by an Annual FF&E Estimate, the Owner hereby authorizes the Rental Pool Manager to make or cause to be made, any repairs, capital improvements and such other alterations, additions or improvements to the Unit and the Unit FF&E from time to time as are necessary, in the opinion of the Rental Pool Manager, acting reasonably, in case of emergency threatening the Hotel or the life or property of its guests, invitees or employees or to comply with applicable laws. The Owner hereby authorizes the Rental Pool Manager, in its sole discretion, to apply any unexpended amounts in the Unit FF&E Reserve Fund to fund the same. To the extent that such unexpended amounts in the Unit FF&E Reserve Fund are insufficient or unavailable to fund such emergency repairs or replacements, or the Rental Pool Manager, in its sole discretion, elects not to apply them for such purpose, the Owner hereby authorizes the Rental Pool Manager to deduct the Owner's Share of such costs from the Owner's Net Rental Revenue, provided that the Owner shall always remain responsible to and shall promptly pay upon the request of the Rental Pool Manager the amount by which the Owner's Net Rental Revenue is insufficient.

5.6 Telecommunications Systems. The Rental Pool Manager will arrange for the provision of telephone, satellite television and internet service to the Hotel and the Unit and shall have the right to arrange for the provision of in-suite pay-per-view movie, video game and other video, audio and data services to the Hotel and the Unit. The Owner hereby authorizes the Rental Pool Manager to operate, maintain and replace as reasonably necessary the telephone and switchboard system, including in-suite telephone sets, pay-per-view movie, video game, cablevision or satellite television systems, internet access units, video game consoles, pay-per-view movie consoles and other systems required for services in the Hotel and the Resort Units for the Owner and the other Owners. The Owner agrees and acknowledges that the Rental Pool Manager will be entitled to deduct from Owner's Net Rental Revenue the amount required monthly to pay for the provision, operation, maintenance and replacement of basic telephone service, satellite television and internet access (but not for the other services). The Owner will

not receive a bill from local service providers for telephone, satellite television and internet access service to the Unit. There will be no charge to the Owner by the Rental Pool Manager for the pay-per-view equipment and systems other than ordinary charges for use of the service.

5.7 Maintenance and Housekeeping.

- (1) The Rental Pool Manager shall provide daily housekeeping service for all rental guests of the Unit as described in detail in Schedule D attached, commensurate with the Hotel Standards. After the Owner has personally used (or the Owner's non-rental guest has used) the Unit, the Owner shall remove all personal effects from the Unit or place them in the Owner storage area in the Unit. The Owner agrees not to store perishable items in the Owner storage area. Upon the Owner's check-out, the Rental Pool Manager shall be responsible for Departure Cleaning (as described in Schedule D) of the Unit and returning it to a condition ready for short-term occupancy operation consistent with the Hotel Standards. The Owner shall pay any and all fees attributable to Departure Cleaning, as well as daily housekeeping and cleaning services in connection with the use of the Resort Unit by the Unit Owner (as such term is defined in section 7.1(1)). The Owner or Owner's non-rental guest may order more extensive cleaning and housekeeping services and shall pay any and all fees attributed thereto as set forth in Schedule D or as are in effect from time to time.
- (2) In addition to the housekeeping services provided pursuant to section 5.7(1), the Rental Pool Manager shall arrange and undertake a scheduled annual Deep Cleaning as defined in Schedule D of the Unit. Schedule D outlines services including, but not limited to, carpet and upholstery steam cleaning, floor waxing, internal window washing and other cleaning services as necessary to maintain the Unit in a quality, occupiable condition suitable for rental consistent with the Hotel Standards. The Owner shall pay for the costs of such services. The initial Annual Deep Cleaning rates are set forth in section 7.4 and may change from time to time.
- (3) The Rental Pool Manager agrees to perform such routine maintenance services which are, in the sole discretion of the Rental Pool Manager, necessary to keep the Unit in compliance with the Hotel Standards. The types of routine maintenance services that the Rental Pool Manager will perform are listed in Part II of Schedule D. The Owner authorizes the Rental Pool Manager, its agents, independent contractors and employees to enter the Unit to perform such routine maintenance services.

5.8 Deduction of Costs. The cost of all cleaning that is the Owner's responsibility under section 5.7 and further detailed in Schedule D and section 7.4(4) shall be deducted from the Owner's Net Rental Revenue to the extent such costs have not been paid upon check-out by the Owner from the Hotel in accordance with section 7.4.

5.9 Standard of Performance. Neither the Rental Pool Manager nor the Hotel Operator (including their respective officers, directors, independent contractors and employees) shall, in the performance of the Rental Pool Manager's duties and obligations under this Agreement, be liable to the Owner or any other person for any act or omission of the Rental Pool Manager or the Hotel Operator or any of their respective subcontractors, directors, officers, employees, consultants, agents, independent contractors or representatives, except, only in the case of the Rental Pool Manager to the extent such liabilities, obligations, claims, costs and expenses arise out of or caused by the wilful misconduct or gross negligence of the Rental Pool Manager or its subcontractors, directors, officers, employees, consultants,

agents or representatives. In no event shall the Hotel Operator or its officers, directors or its employees be liable to the Owner whose sole recourse, if any, shall be against the Rental Pool Manager.

5.10 **Seasonal Closures.** The Rental Pool Manager may from time to time close portions of the Hotel as may be commercially reasonable during periods of lower occupancy provided that the Owner shall always be entitled to the use of his Unit in accordance with and subject to Article 7 hereof.

5.11 **Working Capital.** The Rental Pool Manager agrees that it will initially and subsequently maintain working capital as required for the Hotel in accordance with the Hotel Management Agreement. The Owner acknowledges and agrees that such working capital will belong to the Rental Pool Manager at all times during the Term.

5.12 **Rental Pool Manager Guarantee.** If, in any Fiscal Year, the costs described in subsection 3.2(2) exceed the Gross Rental Pool Revenue for such Fiscal Year, the Rental Pool Manager agrees that it will be responsible for and will pay such costs to the extent of such deficiency.

ARTICLE 6

OWNER'S RESPONSIBILITIES AND AUTHORIZATIONS

6.1 **Owner's Responsibilities.** The Owner will:

- (1) strictly comply with the terms and conditions of the Rental Pool Covenant and this Agreement;
- (2) to the extent not already authorized hereunder, authorize the Rental Pool Manager to control the secured access, in accordance with up to date hotel security standards, for the Hotel, the Unit, the Common Elements, any parking facility or storage area and the entrance to the building in which the Unit is located and any other locked facility in the Unit to which the renters of the Unit pursuant to the Rental Pool will be permitted access;
- (3) to the extent not already required hereunder, ensure that the Rental Pool Manager, the Rental Pool Manager's agents, independent contractors and representatives and the renters of the Unit have full, free and uninterrupted access to the Unit and all parking spaces and storage areas (other than the owner's locker in the Unit which is for the use of the Owner only) and other Hotel facilities as contemplated by this Agreement;
- (4) subject to sections 5.2, 5.3, 5.4 and 5.5, keep the Unit furnished and keep the Unit and the Unit FF&E in a good state of maintenance and repair, all in a manner consistent with the Hotel Standards;
- (5) not smoke or permit smoking in the Unit at any time other than at times when the Unit is being used by the Unit Owner in accordance with section 7.1. If smoking occurs in the Unit during any period that the Unit is used by the Unit Owner pursuant to section 7.1, the Owner may be required to have the Unit and the Unit FF&E located therein cleaned to remove all smoke odours, the cost of which may be deducted by the Rental Pool Manager from the Owner's Net Rental Revenue;
- (6) not permit any lien, charge or encumbrance to be filed against title to the Unit or the Unit FF&E located therein except in connection with the Owner's financing thereof and, in

APPENDIX “J”

7.02 The Offering and the Rental Pool

The Declarant has arranged for The Rosseau Resort Management Services Inc. to act as Rental Pool Manager with the exclusive right to manage the rental of the Resort Units as part of the Rental Pool in the Hotel. The Rental Pool Manager has appointed the Hotel Operator pursuant to the Hotel Management Agreement to perform a substantial portion of the obligations of the Rental Pool Manager under the Rental Pool Management Agreements. The Hotel Operator will generally be responsible for managing the rental of the Resort Units in accordance with the requirements of the Rental Pool Agreements and will hire all staff necessary for the management and operation of the Hotel.

Except as described in Article 7.03, it will be mandatory for all purchasers of Resort Units to use the services of the Rental Pool Manager in accordance with the requirements of the Rental Pool Agreements. Every purchaser of a Resort Unit will be required to enter into a Rental Pool Management Agreement prior to or concurrently with the purchase of the Resort Unit. Each Rental Pool Management Agreement will be substantially in the form attached hereto as Exhibit L.

The Hotel Management Unit will include the front desk and administrative offices, and the Exclusive Use Common Elements appurtenant to the Hotel Management Unit will include the Parking Facilities and other facilities described in paragraph 3.10 as well as any other areas of the Hotel required or desirable for management of the Rental Pool.

The Hotel Operator will lease the Hotel Management Unit during the term of the Rental Pool Management Agreements, including renewals. The Rental Pool Manager will lease the Conference Centre for an initial term of 25 years together with rights of renewal for a further 25 years.

7.03 Optional Participation

As described in Article 3.15, the Declarant has applied for amendments to the Official Plans of the District and the Township and intends to apply for an amendment to the Township's zoning by-law to permit some or all of the residential units in Phases 3, 4 and 5 to be used for residential purposes. Subject to those amendments being approved and coming into force and subject to the approval of the Hotel Operator, if any of Phases 3, 4 and 5 are included in the Residential Condominium, a purchaser of a Resort Unit in those phases (whether such purchase is from the Declarant or from a subsequent owner of the Resort Unit) may be permitted at the time of purchase to elect to withdraw the Resort Unit from the Rental Pool on a "first come, first serve" basis, provided that, at all times, a specified percentage or minimum number of Resort Units (to be determined) remain in the Rental Pool. In that case, appropriate amendments will be made to the form of the Rental Pool Management Agreements for the Resort Units in those Phases.

Notwithstanding that a purchaser has elected to withdraw a Resort Unit from the Rental Pool, that purchaser will still be required to sign or assume a Rental Pool Management Agreement for such Resort Unit.

If the Resort Unit has been withdrawn from the Rental Pool, it will remain withdrawn therefrom except that a subsequent purchaser may elect to have the Resort Unit re-join

The Rental Pool Agreements will impose an irrevocable obligation on the owner of a Resort Unit to provide the Rental Pool Manager with reasonable notice of any proposed sale of the Resort Unit and to also provide any subsequent prospective purchaser of the Resort Unit with notice of his or her right to obtain the financial information and disclosure documentation that is described in paragraph 7.06(f)(x). The Rental Pool Management Agreements will also impose an irrevocable obligation on the Rental Pool Manager to either provide, or cause the Declarant to provide, to a subsequent prospective purchaser of a Resort Unit the financial information and disclosure documentation that is described in paragraph 7.06(f)(x) after receiving reasonable notice of the intended sale of the Resort Unit to the subsequent prospective purchaser. The financial information and disclosure documentation must be provided to the subsequent prospective purchaser before an agreement of purchase and sale is entered into.

Resort Units have not been qualified for distribution or resale in any jurisdiction other than Ontario. The resale of Resort Units in any other jurisdiction may therefore be subject to registration requirements, prospectus requirements and resale restrictions imposed by the relevant jurisdiction and may therefore have to be made in reliance upon exemptions, if any, from registration and/or prospectus requirements imposed by applicable securities laws. Purchasers of Resort Units should therefore consult with their legal advisors to obtain an assessment of the restrictions that may apply in respect of any resale of Resort Units and to determine the possibility of utilizing any statutory exemption or obtaining a discretionary exemption order. The Declarant makes no representations in respect of, nor assumes any liability for, the availability of any such exemptions.

7.09 Experience of the Rental Pool Manager

The Rental Pool Manager is a newly incorporated entity and therefore does not have any prior history of managing rentals or rental pools. However, under the Hotel Management Agreement, a substantial portion of the rights and obligations of the Rental Pool Manager have been delegated to Marriott as the Hotel Operator.

Marriott International Inc. is a leading worldwide hospitality company with nearly 2800 lodging properties in the United States and 69 other countries and territories. Marriott has been in the business of managing and franchising hotels in Canada since 1986. At the end of 2005, Marriott had 48 properties in Canada operating and franchised under the Marriott, The Ritz Carlton, Renaissance, Residence Inn, Courtyard, Fairfield Inn and Springhill Suites brand names.

7.10 Risk Factors

The following factors should be considered carefully before purchasing a Resort Unit:

- (a) a Resort Unit evidences an interest in both real estate and a security, each of which is, by its nature, a speculative investment. Accordingly, if a purchaser is purchasing a Resort Unit as an investment, the purchaser should be aware that this investment has not only the usual risks associated with a purchase of real estate, but also those risks that are associated with an investment in securities;

- (b) the Resort Units are being sold by the Declarant in reliance upon exemptions from the dealer registration and prospectus requirements of the Ontario Act, the Resort Units are therefore subject to resale restrictions that may, or may not, be possible to address and there can be no assurance that there will be a market for the resale of Resort Units;
- (c) real estate developments are generally subject to varying degrees of risk including changes in general economic conditions, local supply and demand conditions, the attractiveness of the property to potential owners or guests, competition from others and the degree of liquidity of real estate;
- (d) there can be no assurance that an owner of a Resort Unit will receive any income from the Rental Pool;
- (e) the success or failure of the Rental Pool will depend in part on the abilities of the Rental Pool Manager and the Hotel Operator. The Rental Pool Manager does not have prior experience in the hotel and hospitality industry and has appointed Marriott, as Hotel Operator, to manage the Hotel and assist in its design;
- (f) the ongoing interests of the Declarant and its affiliates in the Hotel provide a potential for conflict between their interests and the interests of the owners of the Resort Units as described in Article 9.02;
- (g) the Hotel and the Rental Pool itself must be regarded as a new venture which has no prior record of achieving its business objectives;
- (h) the success or failure of the Rental Pool will depend in part on the successful development of the Hotel and of Red Leaves as a four-seasons destination resort;
- (i) the ability of the Declarant to complete the construction of the Hotel depends upon its ability to arrange adequate financing to construct the Hotel;
- (j) the Rental Pool Manager is a single purpose entity which has no assets. Therefore its ability to fulfill its obligations to fund the ongoing operations of the Rental Pool may depend on its ability to arrange other sources of financing;
- (k) if the subsequent Phases on the balance of the Resort Lands are not developed or if any developments on the balance of the Resort Lands are not included in the Residential Condominium, the commercial viability of the Hotel and the Rental Pool may be negatively impacted;
- (l) the business of operating a Rental Pool is competitive and there can be no assurance that the Rental Pool will be able to generate any specific levels of revenue;
- (m) the rights of owners of Resort Units to participate in the management of the business of the Rental Pool and to terminate the Rental Pool Manager will be considerably restricted in order to maintain the integrity of the Rental Pool;

APPENDIX “K”

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
SEARCH RESULTS

Date Search Conducted: 8/18/2009
File Currency Date : 08/17/2009
Family(ies) : 1
Page(s) : 3

SEARCH : Business Debtor : THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

The attached report has been created based on the data received by Cyberbahn Inc. from the Companies and Personal Property Security Branch, Ministry of Consumer and Business Services, Government of Ontario. No liability is assumed by Cyberbahn regarding its correctness, timeliness, completeness or the interpretation and use of the report. Use of the Cyberbahn service, including this report is subject to the terms and conditions of Cyberbahn's subscription agreement.

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
SEARCH RESULTS

Date Search Conducted: 8/18/2009
File Currency Date : 08/17/2009
Family(ies) : 1
Page(s) : 3

SEARCH : Business Debtor : THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

FAMILY : 1 OF 1 ENQUIRY PAGE : 1 OF 3
SEARCH : BD : THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

00 FILE NUMBER : 654553836 EXPIRY DATE : 30JUN 2015 STATUS :
01 CAUTION FILING : PAGE : 001 OF 002 MV SCHEDULE ATTACHED :
REG NUM : 20090630 0925 1862 0326 REG TYP: P PPSA REG PERIOD: 6
02 IND DOB : IND NAME:
03 BUS NAME: THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

OCN :

04 ADDRESS : C/O KEN FOWLER ENTERPRISES LIMITED, P.O.
CITY : ST. CATHARINES PROV: ON POSTAL CODE: L2R 7P7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :

07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

WESTLB AG, TORONTO BRANCH, AS ADMINISTRATIVE AGENT FOR THE SECURED

09 ADDRESS : SUITE 2301, BOX 41, ROYAL BANK PLAZA,
CITY : TORONTO PROV: ON POSTAL CODE: M5J 2J1
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X
YEAR MAKE MODEL V.I.N.

11

12

GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT: BLAKE, CASSELS & GRAYDON LLP (D.KOFMAN/MRO)

17 ADDRESS : BOX 25, COMMERCE COURT WEST
CITY : TORONTO PROV: ON POSTAL CODE: M5L 1A9

FAMILY : 1 OF 1 ENQUIRY PAGE : 2 OF 3
SEARCH : BD : THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

00 FILE NUMBER : 654553836 EXPIRY DATE : 30JUN 2015 STATUS :
01 CAUTION FILING : PAGE : 002 OF 002 MV SCHEDULE ATTACHED :
REG NUM : 20090630 0925 1862 0326 REG TYP: REG PERIOD:

02 IND DOB : IND NAME:

03 BUS NAME:

OCN :

04 ADDRESS : BOX 24091, 110 HANNOVER DR., SUITE 203B
CITY : PROV: POSTAL CODE:

05 IND DOB : IND NAME:

06 BUS NAME:

OCN :

07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
PARTIES

09 ADDRESS : NORTH TOWER, 200 BAY STREET
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 YEAR MAKE MODEL V.I.N.

11

12

GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT:

17 ADDRESS :
CITY : PROV: POSTAL CODE:

FAMILY : 1 OF 1 ENQUIRY PAGE : 3 OF 3
SEARCH : BD : THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

FILE NUMBER 654553836
PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 001 OF 001 MV SCHED: 20090703 1636 1862 0631
21 REFERENCE FILE NUMBER : 654553836
22 AMEND PAGE: NO PAGE: X CHANGE: A AMNDMNT REN YEARS: CORR PER:
23 REFERENCE DEBTOR/ IND NAME:
24 TRANSFEROR: BUS NAME: THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

25 OTHER CHANGE:
26 REASON: TO CORRECT COLLATERAL CLASSIFICATIONS SET OUT ON LINE 10 OF
27 /DESCR: REGISTRATION NO. 20090630 0925 1862 0326
28 :
02/05 IND/TRANSFEE:
03/06 BUS NAME/TRFEE:

OCN:
04/07 ADDRESS:
CITY: PROV: POSTAL CODE:
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :
CITY : PROV : POSTAL CODE :
CONS. MV DATE OF NO FIXED
GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME : BLAKE, CASSELS & GRAYDON LLP (DKO/JMX)

17 ADDRESS : BOX 25, COMMERCE COURT WEST
CITY : TORONTO PROV : ON POSTAL CODE : M5L 1A9

APPENDIX “L”

CERTIFICATE #:
NO DE CERTIFICAT:
11387267-6313502B

CLEAR CERTIFICATE / CERTIFICAT LIBRE

SHERIFF OF /

SHERIF DE: REGIONAL MUNICIPALITY OF NIAGARA - NORTH (ST. CATHARINES)

DATE OF CERTIFICATE /

DATE DU CERTIFICAT : 2009-08-18

THIS CERTIFIES THAT THERE ARE NO WRITS OF EXECUTION, EXTENT OR
CERTIFICATES OF LIEN IN MY HANDS AT THE TIME OF SEARCHING AGAINST
THE REAL AND PERSONAL PROPERTY OF:

JE CERTIFIE, PAR LA PRESENTE, NE PAS AVOIR DE BREF D'EXECUTION,
NI DE CERTIFICAT DE PRIVILEGE, NI D'ORDONNANCE EN MA POSSESSION
AU MOMENT DE LA RECHERCHE VISANT LES BIENS MEUBLES OU IMMEUBLES DE:

SURNAME / NOM GIVEN NAME(S) / PRENOM(S)

=====

(COMPANY/SOCIETE) THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

CAUTION TO PARTY REQUESTING SEARCH:

ENSURE THAT THE ABOVE INDICATED NAME IS THE SAME AS THE NAME SEARCHED.
THIS NAME WILL REMAIN CLEAR UNTIL THE CLOSE OF BUSINESS THIS DATE.

AVERTISSEMENT A LA PARTIE QUI DEMANDE LA RECHERCHE:

ASSUREZ-VOUS QUE LE NOM INDIQUE CI-DESSUS EST LE MEME QUE CELUI QUI
EST RECHERCHE. CET ETAT DEMEURE VALIDE JUSQU'A LA FIN DE LA JOURNEE
DE TRAVAIL.

CHARGE FOR THIS CERTIFICATE /

FRAIS POUR CE CERTIFICAT : \$11.00

SEARCHER REFERENCE /

REFERENCE CONCERNANT L'AUTEUR DE LA DEMANDE: 75334/2

CERTIFICATE #:
NO DE CERTIFICAT:
11387308-4771686B

CLEAR CERTIFICATE / CERTIFICAT LIBRE

SHERIFF OF /
SHERIF DE: COUNTY OF MUSKOKA (BRACEBRIDGE)

DATE OF CERTIFICATE /
DATE DU CERTIFICAT : 2009-08-18

THIS CERTIFIES THAT THERE ARE NO WRITS OF EXECUTION, EXTENT OR
CERTIFICATES OF LIEN IN MY HANDS AT THE TIME OF SEARCHING AGAINST
THE REAL AND PERSONAL PROPERTY OF:

JE CERTIFIE, PAR LA PRESENTE, NE PAS AVOIR DE BREF D'EXECUTION,
NI DE CERTIFICAT DE PRIVILEGE, NI D'ORDONNANCE EN MA POSSESSION
AU MOMENT DE LA RECHERCHE VISANT LES BIENS MEUBLES OU IMMEUBLES DE:

SURNAME / NOM GIVEN NAME(S) / PRENOM(S)

=====

(COMPANY/SOCIETE) THE ROSSEAU RESORT MANAGEMENT SERVICES INC.

CAUTION TO PARTY REQUESTING SEARCH:
ENSURE THAT THE ABOVE INDICATED NAME IS THE SAME AS THE NAME SEARCHED.
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AVERTISSEMENT A LA PARTIE QUI DEMANDE LA RECHERCHE:
ASSUREZ-VOUS QUE LE NOM INDIQUE CI-DESSUS EST LE MEME QUE CELUI QUI
EST RECHERCHE. CET ETAT DEMEURE VALIDE JUSQU'A LA FIN DE LA JOURNEE
DE TRAVAIL.

CHARGE FOR THIS CERTIFICATE /
FRAIS POUR CE CERTIFICAT : \$11.00

SEARCHER REFERENCE /
REFERENCE CONCERNANT L'AUTEUR DE LA DEMANDE: 75334/2

Confidential Appendix 1

To be provided to the Court under seal.