

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

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

NOVEMBER 5, 2010

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1.0 *Executive Summary*¹

- 1.1 This twelfth report of the Receiver (the “Twelfth Report”) is filed to provide an update to the Court on the status of various matters since the Receiver’s Eleventh Report dated May 12, 2010 (the “Eleventh Report”), which was the Receiver’s last comprehensive report, a copy of which is attached hereto as **Appendix “B”**. The purpose of the Twelfth Report is to update the Court with respect to the current status of the receivership, and support the Receiver’s motion for an order (a) approving additional Receiver’s Borrowings so as to provide continued financing for the receivership proceedings through to an expected transaction in the spring of 2011; (b) authorizing the distribution to WestLB AG, New York Branch of the sum of \$730,380.32 in repayment of the First Tranche of Receiver’s Borrowings; and (c) approving the activities of the Receiver to date.
- 1.2 As a result of various matters discussed in the Eleventh Report, including the RPMA Dispute, the emergence of the Unit Owner Proposal, and other unresolved issues with respect to matters including the Water and Sewage Infrastructure and the Resort Association, by Order dated May 19, 2010, the Receiver obtained the authorization of the Court to suspend the Institutional Sales Process. The Receiver had recommended such suspension in order to (a) either pursue the Unit Owner Proposal regarding the acquisition of the commercial assets of the Hotel by the Condominium Corporation, as more particularly described in the Eleventh Report, or resolve the RPMA Dispute with Unit Owners through litigation or otherwise; and (b) provide additional time to address

¹ Capitalized terms in this Executive Summary shall have the meanings ascribed to them in either the body of this Twelfth Report or in the Glossary of Defined Terms attached as Appendix “A”.

the Receiver's concerns in connection with the issues related to the Resort Association and the Water and Sewage Infrastructure, as well as other issues described in the Eleventh Report.

- 1.3 Since its Eleventh Report, the Receiver has continued the monitoring and oversight of the operations of the Hotel and the management of the receivership generally, including liaising with various stakeholders such as the Ad Hoc Committee of Unit Owners, Marriott Hotels, construction lien claimants, Travelers, legal counsel to certain Existing Unit Purchasers, the Resort Association, the Ministry of the Environment and neighbouring property owners, including KFE and KFE's legal counsel, in order to resolve various matters that were identified in the Eleventh Report. Specifically, these matters include:

- a) the Unit Owner Proposal;
- b) the Water and Sewage Infrastructure;
- c) the Resort Association;
- d) the Construction Lien Claims Process and other construction related matters;
- e) the repudiation of existing APS's with Existing Unit Purchasers and the refunds of their deposits by Travelers;
- f) the Commission Claims Process; and
- g) the Realty Tax Appeal.

- 1.4 Concurrent with addressing these issues, the Receiver has undertaken an analysis of the realization options with respect to the Hotel, to determine what option would best maximize return for stakeholders. The Receiver has been engaged in numerous discussions with WestLB, as the stakeholder with the primary and most significant economic interest, and as the party who continues to provide funding to the receivership, to assist WestLB in understanding the various strategies for recovery. It is anticipated that the Receiver will conclude on the most appropriate strategy, in consultation with WestLB, and will file a subsequent report with the Court by early December regarding the course of action recommended by the Receiver.
- 1.5 The emergence of the issues described above and discussed further in this Twelfth Report, many of which could not have been identified prior to the receivership, has caused significant delays and impediments to the Receiver's ability to realize on the Assets, and as a result, has caused significant additional expenses. Both the delays, and the cost of such delays, have been beyond the Receiver's control. Furthermore, the nature of the issues that have arisen are such that they must be satisfactorily resolved in order for the Receiver to effectively realize on the Assets, which resolution the Receiver has been diligently pursuing.
- 1.6 In the interim, due to the complexity of the assets and the length of time it has taken to address, negotiate and resolve certain of the various issues that have arisen during the course of the receivership, the Receiver has determined that it is necessary for it to borrow additional funds pursuant to a third tranche of Receiver's Borrowings (the "**Third Tranche Receiver's Borrowings**"). The Third Tranche Receiver's Borrowings are required to fund the costs and expenses of the Receivership so that the Receiver can

pursue and complete a sale transaction in respect of the Hotel, and continue to fund the operations of the Hotel in the meantime. The Receiver has discussed the additional funding needs with WestLB, and has obtained WestLB's agreement to provide the Third Tranche Receiver's Borrowings, to support a transaction which will enable the Hotel to exit the receivership.

- 1.7 In addition, the Receiver has been holding the sum of \$730,380.32, which, as a result of an analysis performed by FMC in respect of certain funds held in trust by McCarthys, and in accordance with the December 21 Order, was distributed to the Receiver as property of RRDI. In its Eighth Report, the Receiver advised the Court that these funds would be held by the Receiver for distribution to WestLB in repayment of the Receiver's Borrowings. The Receiver seeks authorization of the Court to distribute these funds to WestLB, once the Third Tranche Receiver's Borrowings are in place.

2.0 Introduction and Summary of Proceedings to Date

- 2.1 On May 22, 2009, the Ontario Superior Court of Justice (the "Court") issued an order appointing Alvarez & Marsal Canada ULC ("A&M") and McIntosh & Morawetz Inc. (now Alvarez & Marsal Canada Inc.) as trustee and interim receiver, respectively (collectively the "Interim Receiver"), pursuant to Section 68 of the *Construction Lien Act* (Ontario) ("CLA") and Section 47(1) of the *Bankruptcy and Insolvency Act* (Canada) ("BIA") of all the property, assets and undertakings (the "Assets") of The Rosseau Resort Developments Inc. ("RRDI" or the "Company"). On June 2, 2009, the Court issued an Amended and Restated Appointment Order (the "Appointment Order") continuing the appointment of the Interim Receiver and appointing A&M as receiver and manager (the "Receiver and Manager") pursuant to Section 101 of the *Courts of Justice Act* (Ontario) ("CJA") and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager collectively defined as the "Receiver").
- 2.2 All background materials in respect of these proceedings, including, among other things, the Receiver's past reports to Court and orders of the Court, can be found on the Receiver's website at www.alvarezandmarsal.com/rosseau.
- 2.3 To date, the Receiver has filed eleven reports with this Honourable Court. Most recently, the eighth report of the Receiver (the "Eighth Report") was filed with the Court on December 14, 2009. The purpose of the Eighth Report was to, among other things, request that this Honourable Court authorize the Second Tranche Receiver's Borrowings which the Receiver determined would be necessary to fund the ongoing costs of the receivership. As well, the Receiver sought approval of the Institutional Sales Process

Protocol (the "Protocol") and a timetable for the conduct of the Institutional Sales Process.

- 2.4 On December 21, 2009, the Court issued an order (the "December 21 Order") granting all the relief sought by the Receiver in the Eighth Report, including the authorization of the Second Tranche Receiver's Borrowings and the Protocol. On December 21, 2009, the Court also issued the Commission Claims Process Order establishing a process to permit the Receiver to determine entitlement to certain funds held by McCarthys in trust on account of real estate commissions, and issued an Authorization and Vesting Order in order to facilitate the closing of the sale of 18 retail units arising from the One Day Sale.
- 2.5 On April 15, 2010, on the basis of the Ninth Report dated April 9, 2010, the Court issued an Order amending certain provisions of the Appointment Order and the December 21 Order, and providing that WestLB AG, New York Branch was entitled to all rights and remedies granted to WestLB AG, Toronto Branch under all Receiver's Certificates issued by the Receiver, in order to reflect the fact that WestLB had closed its Toronto Branch, and had transferred the booking of the Receiver's Borrowings to its New York Branch.
- 2.6 On April 21, 2010, on the basis of the Tenth Report dated April 19, 2010, the Court issued an Order adding an issue for determination to the reference to be conducted by Master Short in respect of the Construction Lien Claims Process.
- 2.7 The Eleventh Report provided a substantial and comprehensive report to the Court on a number of issues that had arisen during the receivership proceedings, including issues relating to the RPMA Dispute, the Unit Owner Proposal, the Water and Sewage Infrastructure, the Resort Association, and various other matters. For the reasons

outlined in the Eleventh Report, the Receiver sought the Court's authorization to suspend the Institutional Sales Process, and sought the Court's direction to pursue discussions and negotiations with the Ad Hoc Committee regarding the Unit Owner Proposal.

2.8 On May 19, 2010, the court issued an order (the "May 19 Order"):

- Approving the continued suspension of the Institutional Sales Process, pending further recommendations from the Receiver;
- Authorizing and directing the Receiver to pursue negotiations regarding the Unit Owner Proposal;
- Authorizing the Receiver to repudiate existing APSs with Existing Unit Purchasers; and
- Approving the activities of the Receiver to the date of the Eleventh Report.

3.0 Terms of Reference

- 3.1 In preparing this Twelfth Report, the Receiver has relied on unaudited financial information prepared by the Company and the Company's consultants and advisors, the Company's books and records and discussions with certain remaining employees of the Company. 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 Twelfth Report is based on 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 Twelfth Report, or relied upon by the Receiver in preparing the Twelfth Report. All references to dollar figures contained in the Twelfth Report are in Canadian currency unless otherwise specified.

4.0 Update on Status of Receivership Proceedings Since May 19, 2010

- 4.1 The Eleventh Report provided the Court with details concerning several matters that the Receiver was addressing. The following is an update of the various matters discussed in the Eleventh Report.

The Unit Owner Proposal

- 4.2 As outlined in the Eleventh Report, commencing in March, 2010, approximately 64 Unit Owners delivered to the Receiver Notices of Dispute under the New RPMA regarding their interpretation of the New RPMA, giving rise to the RPMA Dispute. Following discussions with the Ad Hoc Committee regarding the RPMA Dispute, legal counsel to the Ad Hoc Committee approached the Receiver with the Unit Owner Proposal. In general terms, the Unit Owner Proposal proposes that the Condominium Corporation, and/or a wholly owned subsidiary of the Condominium Corporation acquire the commercial business of the Hotel. Such a transaction would resolve the RPMA Dispute, and would streamline the structure of the Hotel. For this and other substantial reasons as more fully described in the Eleventh Report, the Receiver obtained the authorization of the Court to suspend the Institutional Sales Process, and to enter into discussions with the Ad Hoc Committee and the Independent Directors of the Condominium Corporation with respect to the Unit Owner Proposal.
- 4.3 Since obtaining that authorization and direction, the Receiver has pursued discussions with the Ad Hoc Committee and the Independent Directors, which have included, on a without prejudice and confidential basis, the negotiation of basic terms that would form the basis for a proposed acquisition, the drafting of a form of asset purchase agreement,

the consideration of financing options for the Condominium Corporation, discussions regarding the request of the Ad Hoc Committee that the Receiver directly fund a portion of the legal fees incurred by the Condominium Corporation in pursuing the transaction (approximately 60% of Units are held by RRDI, and therefore represent a 60% interest in the Condominium Corporation), the consideration of legal issues relating to the capacity of the Condominium Corporation to undertake the proposed transaction, and other related issues that have arisen in the course of these discussions. During the course of these discussions, the Receiver has continued to consider and assess the attributes of the Unit Owner Proposal, given the issues that have arisen, as well as other potential recovery strategies.

Sewage Treatment Plant

- 4.4 As noted in the Eleventh Report, RRDI owns the water treatment plant that is situated on RRDI's property (the "WTP") and, based on the Receiver's review of available records, also appears to own certain water taking infrastructure, including pumps, pumping equipment, and piping (the "RRDI Infrastructure"). The WTP and the RRDI Infrastructure are used by RRDI to provide drinking water to guests of the Hotel. In addition, RRDI is the owner and operator of a sewage treatment plant (the "STP") that is situated on adjacent leased lands owned by Wallace Marine Limited ("Wallace Marine").
- 4.5 The WTP operates pursuant to Ontario Regulation 319/08 governing small water drinking systems for non-residential use. The STP operates pursuant to a Certificate of Approval, No. 2176-74DPM9 (the "COA"), issued by the Ministry of the Environment (the "MOE") on July 20, 2007.

- 4.6 In December 2009, the Receiver engaged Conestoga-Rovers & Associates ("CRA"), an independent environmental engineering firm with expertise in matters relating to the Water and Sewage Infrastructure, to provide the Receiver with an independent evaluation of the Water and Sewage Infrastructure. In July 2010, in consultation with CRA, the Receiver completed the correction of certain minor deficiencies identified by CRA with respect to the WTP.
- 4.7 As described in the Eleventh Report, CRA reported that, among other minor deficiencies, the STP as currently designed would be unable to meet certain requirements pursuant to the COA when the Hotel is operating at or about maximum capacity. Testing during the period of high occupancy of the Hotel in the summer of 2010 showed instances in which the STP exceeded the allowances provided by the COA. Between May and September 2010, the Receiver, with the assistance of CRA and the Receiver's legal counsel, worked with the MOE to develop a plan to remediate the STP (the "Remediation Plan"). As a result of the Remediation Plan, a consensual Provincial Officer's Order was issued by the MOE on September 29, 2010 (the "Provincial Officer's Order"), requiring RRDI to complete the Remediation Plan by January 31, 2011. The cost to complete the Remediation Plan and comply with the Provincial Officer's Order is estimated to be approximately \$400,000.
- 4.8 The Receiver has also communicated with the District of Muskoka regarding the Remediation Plan, and the District has advised that they require nothing further at this time, but have advised that once the work has been completed on the STP, changes will have to be made to the record of "as constructed" conditions of the STP and to the operation and maintenance manuals, copies of which will be required by the District.

The RRDI Infrastructure and the Water Taking Permit

- 4.9 As noted in the Eleventh Report, the RRDI Infrastructure provides water to the WTP, and in turn to the Hotel. It also provides water to The Rock, for golf course irrigation purposes. The right of RRDI to take water is governed by the Water Taking Permit, which provides RRDI with the authority to take water primarily from Lake Rosseau for supply to the Hotel and The Rock. The Water Taking Permit expired in August 2009; however, RRDI applied to the MOE to renew the permit and is allowed to continue to draw water from Lake Rosseau as if the Water Taking Permit was still in effect, until such time as a new water taking permit is issued.
- 4.10 A draft of the new water taking permit has been issued by the MOE for RRDI's review and comment. However, the MOE refrained from finalizing the issuance of the permit for a period of time pending discussions between the Receiver and representatives of The Rock and their various legal counsel, to settle a Water Supply Agreement, pursuant to which RRDI would continue to supply The Rock with water for irrigation purposes.
- 4.11 The Receiver has always intended to cooperate with The Rock to ensure that the latter has continued supply of water for golf course irrigation purposes, and has sought to implement reasonable, commercial arrangements to deal with the maintenance of the RRDI Infrastructure and the continued supply of water by RRDI to The Rock. Drafts of a Water Supply Agreement have been exchanged between the Receiver's legal counsel, and The Rock and its legal counsel.
- 4.12 Earlier this year, representatives of Wallace Marine, a company related to The Rock, indicated to the Receiver that it considered the lease in respect of the STP to be in default.

As a result, in discussions with The Rock and Wallace Marine, the Receiver sought to resolve any such allegations of default by negotiating a form of estoppel agreement and a consent to the assignment of the STP Lease to any prospective purchaser of the Hotel, in conjunction with settling the Water Supply Agreement. Discussions with respect to the form of estoppel agreement and the final form of Water Supply Agreement have been protracted.

The Red Leaves Resort Association

- 4.13 The Eleventh Report provided background information regarding the Resort Association and a chronology of the attempts by the Receiver to obtain details regarding the operation and funding of the Resort Association, of which RRDI, Unit Owners, and other property owners such as Cleavelands House and The Rock are members. The Receiver advised the Court that it was of the view that a suspension of the operations of the Resort Association was appropriate until the Resort was more fully developed and interested parties were in a better position to assess its utility and value.
- 4.14 The Receiver reported that as of May 5, 2010, after several attempts to obtain information and engage on the issue of the Resort Association, it had attended a without prejudice meeting with a representative of KFE and Bob Comish, to discuss a proposal to reduce the scope of operation of the Resort Association for a period of time.
- 4.15 Since that meeting, several discussions and meetings have taken place with Mr. Comish and representatives of KFE regarding an agreement to modify the scope of operation of the Resort Association for a period of three years pending the stabilization of the Hotel. A form of agreement has been drafted and numerous iterations have been exchanged

between the parties. Discussions continue with respect to this draft agreement, and it appears to the Receiver that an agreement in principal regarding the Resort Association may soon be settled as between the Receiver and KFE representatives. Once an agreement in principal has been achieved, such arrangements will be presented to the Ad Hoc Committee and other members of the Resort Association for their consideration and approval.

The Construction Lien Claims Process

- 4.16 The Receiver reported in its Eleventh Report that with the suspension of the Institutional Sales Process, it anticipated that there could be a lengthy delay before any recoveries could be realized by construction lien claimants on their construction liens, to the extent their claims were established through the Construction Lien Claims Process. In light of the revised estimated timing for recoveries to lien claimants, and the extensive costs that were anticipated to be incurred in respect of the RRCI/RRDI Reference before Master Short to determine certain preliminary legal issues, an opportunity arose for the interested parties in the Construction Lien Claims Process to explore the possibility of settlement. The Receiver, in its capacity as trustee under the CLA, had undertaken a preliminary analysis of the value and issues surrounding the individual lien claims and was in a position to provide this analysis to WestLB and the lien claimants. The Receiver, its independent legal counsel, and legal counsel for WestLB commenced exploring the possibility of settlement with legal counsel for various lien claimants. Lien claimants were receptive to the idea, and WestLB instructed its legal counsel to enter into discussions with legal counsel for the lien claimants with the assistance and facilitation of the Receiver. These discussions have been ongoing since May, 2010. The RRCI/RRDI

Reference, which had been scheduled for hearing in August, 2010, was postponed on consent of the lien claimants, and with the concurrence of Master Short, in order to permit settlement discussions to continue.

- 4.17 WestLB's instructions to conduct settlement discussions were provided subject to its need to obtain approval from its credit committee to fund such settlements. Legal counsel for WestLB and a majority of the lien claimants have been able to reach settlements in principal subject to such approval being obtained by WestLB. Legal counsel to the Receiver, the lien claimants and WestLB all participated in a conference call with Master Short on September 27, 2010, wherein legal counsel were advised that WestLB would be seeking approval for such settlement during the month of October, 2010, and that negotiations would continue in the meantime. A further case conference was scheduled for November 5, 2010 to update the Master as to the status of matters.
- 4.18 The Receiver has now been advised by WestLB that it has obtained approval from its credit committee to fund the settlements with the lien claimants. This has been communicated to legal counsel for the lien claimants and Master Short. It is anticipated that such settlements can be implemented by the end of November, subject to completing and implementing the terms of such settlements. One such term will require that the lien claimants assign their lien claims to WestLB, and that those lien claims be resolved by the Receiver in accordance with the Construction Lien Claims Process and approved by the Court. It is anticipated that a motion for such approval will be brought in the month of November in respect of those lien claims that are settled. Master Short has been notified of the settlements, and a request has been made to reschedule the case conference scheduled for November 5, 2010, to a later date for further update.

Other Construction Related Matters

Matters Pertaining to Balcony Handrails

- 4.19 Section 7 of the Eleventh Report advised the Court that the Receiver had found it necessary to undertake substantial repairs to the Hotel balconies, as a result of serious deficiencies in the construction of those balconies. The balcony handrails had been supplied and installed by Parry Sound Glass Limited o/a Ross Windows and Doors ("Ross Windows").
- 4.20 On April 6, 2010, the Receiver entered into a contract with Trow Associates Inc. ("Trow") to complete the repair of all of the balcony handrails at the Hotel, including removal of existing handrails, documentation of the deficiencies encountered, installation of enhanced components and the provision of an engineering report, stating that all balcony handrails at the Hotel met the requirements of the OBC and, most importantly, were safe for guest access. The remediation of the balcony handrails was completed in May 2010, at a cost in excess of \$570,000. This cost does not include amounts incurred for the Receiver's time, lost revenue as a result of necessary discounts given by Marriott Hotels while the balconies were closed, and Trow fees for completion of the deficiency report.
- 4.21 In June 2009, the Receiver also engaged Trow to complete certain reporting requirements pursuant to the Tarion New Home Warranty Program (the "Bulletin 19 Reporting Requirements"). As part of the Bulletin 19 Reporting Requirements, Trow was required to perform leak pressure testing on the windows of the Units. Upon completion of the testing work performed by Trow, Trow advised the Receiver that the windows and

exterior balcony doors of the Units (the "Window and Door Systems") failed to meet the testing requirements. The Window and Door Systems were also supplied by Ross Windows.

- 4.22 Trow noted failures in the manufacture of certain components of the Window and Door Systems, as well as deficiencies in the installation thereof. As a result of Ross Windows' inability to correct the deficiencies in the product that they supplied, and in some cases, installed, the Receiver requested that Trow develop a remediation work plan and provide the plan to the Receiver along with names of appropriate contractors to complete the work. Such remediation was completed in June 2009 at a cost in excess of \$120,000.
- 4.23 As a result of the deficiencies in both the balcony handrails and the Window and Door Systems, on August 23, 2010, legal counsel to the Receiver issued a damage brief to Ross Windows and proposed a without-prejudice meeting with Ross Windows and its insurer to discuss potential settlement of the Receiver's claim. Legal counsel for the Receiver and legal counsel for Ross Windows have held various discussions and have exchanged correspondence regarding the Receiver's claim. Ross Windows has advised the Receiver that it has sought to engage its insurer. The insurer has advised legal counsel for Ross Windows that it requires a Statement of Claim in order to respond. As no progress was being made through discussions, on October 25, 2010, legal counsel to the Receiver issued a Statement of Claim against Ross Windows for \$1.5 million, a copy of which is attached as **Appendix "C"**. The claim was served on Ross Windows, and on November 2, 2010, the insurer for Ross Windows advised that it was undertaking an average investigation and had issued a reservation of rights letter to Ross Windows pending the investigation. The Receiver, through its counsel, has advised Ross Windows

and its insurer that it remains open to meeting regarding the claims to discuss the possibility of a resolution.

The repudiation of existing APSs with Existing Unit Purchasers and the refunds of their deposits by Travelers

4.24 The May 19 Order authorized the Receiver, for the reasons described in the Eleventh Report, to repudiate the APSs entered into by Existing Unit Purchasers, who had all indicated that they had no intention to close their transactions with RRDL.

4.25 In accordance with the authorization of the May 19 Order, the Receiver has delivered notice of repudiation to all Existing Unit Purchasers. The Receiver met with representatives of Travelers and Travelers' legal counsel, to coordinate an efficient means by which Existing Unit Purchasers could obtain the recovery of their deposits upon such notices of repudiation being delivered. As a result of those discussions, forms of agreements and releases satisfactory to Travelers and Tarion were negotiated and settled with Travelers' legal counsel and legal counsel for the majority of Existing Unit Purchasers. The refund process is currently underway and is continuing.

The Commission Claims Process

4.26 The Sales and Marketing Order dated July 8, 2009 authorized the Receiver to pay real estate agents the commissions owed to them from funds set aside by McCarthys on the closing of Unit sale transactions by McCarthys (the "Commission Funds"), on receipt of satisfactory proof that such claims were valid, and provided that all claims to payment of commissions had been ascertained, and that there were sufficient funds available to satisfy all proven claims. The Commission Claims Process was established for that

purpose. In its Eleventh Report, the Receiver reported on the status of the Commission Claims Process, and advised the Court that 19 claims had been received in response to the notices provided pursuant to the Commission Claims Process. These 19 claims representing claims related to the sale of 181 units (many commission claimants made claims for multiple units, some of which had closed and others which had not, and in some cases, multiple claimants made claims for the same units) and were in the aggregate amount of approximately \$505,000. 12 claimants received Notices of Revision or Disallowance from the Receiver. These claimants were required to deliver a Notice of Dispute to the Receiver by no later than May 26, 2010. The Receiver received one Notice of Dispute from a claimant in response to the Notice of Dispute. The Receiver reviewed the additional information and issued a second Notice of Revision or Disallowance to this claimant revising the commission claim amount. This new commission amount was agreed to by both the Receiver and the claimant.

- 4.27 The Receiver reported in its Eleventh Report that it had found, on the basis of the claims filed, that there were sufficient funds available out of the Commission Funds to pay all valid, proven claims, together with the related Receiver's fees and disbursements in administering the Commission Claims Process. Based on the Receiver's review of the claims, the total accepted claim amount was approximately \$303,432.18. No disputes remain outstanding. As a result, in accordance with its intentions as set out in the Eleventh Report, on or about June 3, 2010 the Receiver made distributions in satisfaction of proven Commission Claims, in the amount of approximately \$303,000 to commission claimants. This resolves all claims filed in response to the Commission Claims Process. The balance of the funds are the property of RRDI.

The Realty Tax Appeal

4.28 As described in the Eighth Report, in November 2009, the Municipal Property Assessment Corporation ("MPAC") provided RRDI and each existing Unit Owner with a revised property tax assessment notice for all of their respective Units. On February 4, 2010, the Receiver, in consultation with the Ad Hoc Committee, engaged Altus Group Tax Consulting Paralegal Professional Corporation (the "Altus Tax Group"), to work on a contingency basis and to file realty tax appeals with MPAC in an effort to reduce the overall realty tax liability in connection with RRDI's property for the benefit of all stakeholders. On or about March 11, 2010, Altus Tax Group filed 216 realty tax appeals with MPAC on behalf of 82 of the 88 Unit Owners and the 134 unsold (or sold and unclosed) Units (including the Hotel Management Unit) which, at that time, were in the possession of the Receiver.

4.29 Altus Tax Group is continuing its appeal efforts with the Ontario Ministry of Finance and MPAC, and has advised the Receiver and other Unit Owners that Altus Tax Group has been continuing to informally meet with representatives of the Ontario Ministry of Finance in connection with the advancement of matters concerning the classification of the Resort for tax purposes, and that the Ministry of Finance has now agreed to participate in a formal meeting during November 2010 to discuss this matter further. As the Court has been advised previously, there are several resort properties in Ontario that are impacted by the manner in which resorts, such as the Hotel, are classified for tax purposes. Altus Tax Group is representing a significant majority of such resorts in appeals similar to that which is being undertaken on behalf of RRDI and the Unit Owners.

Other General Matters

Fortress

4.30 On October 12, 2010, legal counsel for WestLB was advised by legal counsel for Fortress Credit Corp. ("Fortress") that it had assigned its debt and security to a numbered company incorporated by Ken Fowler. A review of the title to the RRDI lands discloses that Fortress has discharged its mortgage from title to such lands. However, a review of the personal property registrations against RRDI reveals that a personal property registration by Fortress continues to be registered against RRDI.

Fees and Disbursements of the Receiver and its legal counsel

4.31 The Receiver, its legal counsel, and its independent legal counsel have incurred fees and disbursements through the course of the receivership, as disclosed in the statements of receipts and disbursements filed with the Court. The Receiver has not yet formally passed its accounts and those of its legal counsel, as it has sought to resolve issues with various stakeholders such as lien claimants so as to avoid such stakeholders having to engage time or expense in considering and responding to a motion to pass accounts if there was no need for them to do so. Once the settlement of the lien claims is completed and the Receiver's recommendation is presented for the completion of a transaction, it may eliminate the need for certain stakeholders to participate in such process. The Receiver intends to bring a motion to seek the Court's approval of its accounts and those of its counsel in the near future, upon resolving matters with the lien claimants and other stakeholders.

5.0 *Update on Hotel Operations*

- 5.1 As described in Section 9 of the Eleventh Report, in early 2010, the Receiver entered into the New HMA and other New Marriott Agreements with Marriott Hotels. This was an important step in stabilizing the operations of the Hotel and bringing confidence to the Unit Owners of the Hotel, as well as the Hotel's corporate and leisure guests.
- 5.2 As detailed in the Eleventh Report, during the first four periods of 2010 (corresponding with the period from January to April), Hotel revenues were approximately 25% greater than they were for that same period in 2009. In addition, Marriott Hotels was confident that the Hotel's operations would continue to stabilize and either meet or exceed its forecast during the busy, summer season in 2010. With the summer season now complete, the Receiver can report that the Hotel did in fact exceed its net house profit forecast during this period. For the first ten periods of 2010 (corresponding with the period from January to the middle of October), Hotel revenues were approximately 31% higher than for the same period in 2009, and while the Hotel still did incur a cumulative net loss for those ten periods, the quantum of the net loss was decreased by approximately 65% versus the same time frame in 2009.
- 5.3 With respect to the Hotel's operating performance during the summer period (between June and October 2010), Hotel revenues were up approximately 27% as compared to the same period in 2009, and net house profit has quadrupled, as there was little net profit in the first year of operation. The Hotel's revenue was roughly in line with that forecasted by Marriott Hotels, and the Hotel exceeded the forecast for net house profit for the period between June and October 2010 by approximately 49%.

5.4 Although the Hotel is now entering into its slower, winter season, the Receiver has been working with Marriott Hotels in an effort to improve operations, enhance efficiency, and reduce funding requirements. Marriott Hotels' sales and marketing efforts are continuing to show positive results with strong growth in corporate and group bookings for 2011. Marriott Hotels has advised the Receiver that as at November 1, 2010, the pace of group and corporate bookings for the balance of 2010 and 2011 is up 35% and 100%, respectively, over the same time last year. Furthermore, confirmed wedding bookings for summer 2011 as at November 1, 2010, is nearly double that which was confirmed at the same time last year.

5.5 In addition, the Hotel has continued to receive excellent press and media coverage, including articles and reviews published in several travel/lifestyle periodicals such as The Bay Street Bull, Precedent Magazine, Horizon Magazine, and What's Up Mukoka.

6.0 *Additional Receiver's Borrowings*

- 6.1 Attached as **Appendix "D"** is the Receiver's statement of Receipts and Disbursements for the period from May 22, 2009 to October 31, 2010 (the "R&D"). As at October 31, 2010, the Receiver had cash on hand of approximately \$2.04 million.
- 6.2 Since its last appearance before the Court, the Receiver has pursued the Unit Owner Proposal as authorized by the Court and conducted significant discussions with the Ad Hoc Committee and Independent Directors in that regard, and has continued to deal with the various issues encountered by the Receiver, as outlined at Section 4.0 above. As noted in prior reports, professional fees and costs to date have been in excess of what had been contemplated at the outset of the receivership, due to the numerous legal, financial and operational complexities of the receivership, all of which have necessitated additional significant time and expenses being incurred.
- 6.3 During that period of time, the Receiver has also engaged in a detailed analysis of, and discussions with WestLB and the Syndicate regarding the various options for recovery on the assets of RRDI, including the Unit Owner Proposal. In the context of such considerations, the Receiver has also addressed in consultation with WestLB the budget required to fund the receivership until one or more transactions with respect to the Hotel can be completed.
- 6.4 The Receiver has concluded that regardless of the realization strategy to be followed, it will take well into 2011 to complete any transaction for the sale of the Hotel. Furthermore, there may be residual assets to deal with thereafter, depending on the nature of the transaction completed.

- 6.5 The Receiver continues to engage in discussions with WestLB, in its capacity as the first priority secured lender and agent for the Syndicate which has the primary economic interest in these proceedings, and in its capacity as the party which has been financing the ongoing receivership proceedings, regarding the various options and realization strategies in respect of the assets of RRDI. The Receiver intends to file a further report to the Court shortly to advise the Court on its recommended strategy for realization, once it has determined such in consultation with WestLB.
- 6.6 In the interim, and consistent with its previous budgets, the Receiver has determined that it is necessary to obtain additional financing for the receivership to permit the Receiver to continue to fund the costs and expenses of the receivership and maintain the Hotel operations, as the Receiver has concluded that regardless of the ultimate realization strategy determined, the maximization of value to all stakeholders is best achieved with the continued operation of the Hotel. The Receiver has therefore sought and obtained from WestLB, in conjunction with discussing the options for realization, an agreement to fund the Third Tranche Receiver's Borrowings in an amount of \$8.7 million.
- 6.7 WestLB has agreed to provide the Third Tranche Receiver's Borrowings to cover the receivership budget developed by the Receiver and approved by WestLB for the period to April 30, 2011 (the "2011 Budget"), at which time the Receiver expects to have concluded a transaction which will exit the Hotel from receivership. Attached hereto as **Appendix "E"** is a copy of the 2011 Budget, outlining the expenses that are projected to be incurred during that period. The funding is to be used generally for the financing of the receivership, including (a) implementing and completing the recommended realization strategy in respect of the Hotel, to be determined in conjunction with WestLB,

and for which Court approval will be sought, (b) resolving the various issues identified in Section 4.0 above, (c) funding Marriot Hotels for the continued management of the Hotel; and (d) funding professional fees through the period.

- 6.8 In furtherance of the Third Tranche Receiver's Borrowings, the Receiver has negotiated with WestLB a term sheet (the "**Third Tranche Term Sheet**"), consistent with the form of terms sheets executed in respect of prior Receiver's Borrowings in this matter, substantially in the form attached as **Appendix "F"**. WestLB has requested that the Third Tranche Receiver's Borrowings rank ahead of the Second Tranche Receiver's Borrowings, which have also been advanced by WestLB. Both the Second Tranche Receiver's Borrowings and the Third Tranche Receiver's Borrowings will continue to rank subordinate to the First Tranche Receiver's Borrowings, which have been advanced by the Syndicate.
- 6.9 The Receiver seeks approval and authorization of the Court to enter into the Third Tranche Term Sheet and proceed with the Third Tranche Receiver's Borrowings.

7.0 *Distribution to WestLB*

- 7.1 The Receiver is in possession of the sum of \$730,380.32, which has been released by McCarthys to the Receiver in accordance with the December 21 Order, as property of RRDL. The Receiver advised the Court that these funds would be held for distribution to WestLB in repayment of the First Tranche Receiver's Borrowings. The Receiver seeks authorization of the Court to distribute these funds to WestLB, once the Third Tranche Receiver's Borrowings are in place.

8.0 Conclusions and Recommendations

8.1 For the reasons outlined herein, the Receiver respectfully recommends that this Honourable court:

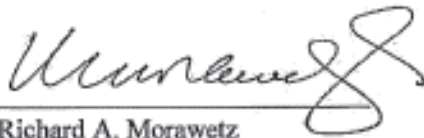
- a) Authorize and approve the requested Third Tranche Receiver's Borrowings;
- b) Authorize the distribution of \$730,380.82 to WestLB AG, New York Branch; and
- c) Approve the activities of the Receiver to date.

* * *

All of which is respectfully submitted, this 5th day of November, 2010.

**ALVAREZ & MARSAL CANADA ULC &
ALVAREZ & MARSAL CANADA INC. IN THEIR CAPACITIES AS
CONSTRUCTION LIEN ACT TRUSTEE AND RECEIVER AND MANAGER,
AND INTERIM RECEIVER, RESPECTIVELY, OF THE ASSETS OF
THE ROSSEAU RESORT DEVELOPMENTS INC.**

Per:


Richard A. Morawetz