

TAB 2

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

**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

**TWENTY-THIRD 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.**

AND

**SECOND REPORT OF ALVAREZ & MARSAL CANADA ULC, AS RECEIVER OF
CERTAIN ASSETS OF THE ROSSEAU RESORT MANAGEMENT SERVICES INC.**

SEPTEMBER 16, 2011

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1.0 Introduction and Summary of Proceedings to Date¹

- 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. (now Alvarez & Marsal Canada Inc.) as trustee (the “**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**”). On June 2, 2009, the Court issued an Amended and Restated Appointment Order (as has been amended from time to time, 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) and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager are collectively defined as the “**Receiver**”).
- 1.2 To date, the Receiver has filed twenty-two reports with this Court. 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.

¹ Capitalized terms in this Twenty-Third Report shall have the meanings ascribed to them in the body of this report and in the Glossary of Defined Terms attached as **Appendix “A”**.

- 1.3 By Order of Madam Justice Pepall dated September 1, 2009 (the “**September 1 Order**”), the Court appointed A&M as receiver (the “**RRMSI Receiver**”) without security, of certain rights, titles and interest relating to certain contracts to which The Rosseau Resort Management Services Inc. (“**RRMSI**”), a company related to RRDI, was a party. In the September 1 Order, the Court granted the RRMSI Receiver the express authority to repudiate the Hotel Management Agreement that was then in existence as among Marriott, RRDI, and RRMSI (the “**Prior HMA**”), and the rental pool management agreements with each Unit Owner that were then in existence pursuant to which RRMSI had been appointed rental pool manager (the “**Prior RPMAs**”). These Prior RPMAs and the Prior HMA were ultimately repudiated by the RRMSI Receiver in accordance with the September 1 Order, and were replaced with the current Rental Pool Management Agreement executed by the Receiver on behalf of RRDI, and the current Hotel Management Agreement executed by the Receiver on behalf of RRDI, as authorized by the Amended Order dated August 18, 2009 (the “**August 18 Order**”). To date the RRMSI Receiver has filed one report to the Court, dated December 14, 2009.
- 1.4 The purpose of this joint report of the Receiver and the RRMSI Receiver (the “**Twenty-Third Report**” or the “**Report**”) is to advise the Court with respect to the resolution of various matters in the receiverships, to obtain certain relief in connection therewith, and to seek the Receiver’s discharge and the RRMSI Receiver’s discharge, substantially in the form of the draft order filed:

- (a) authorizing and directing Blake Cassels & Graydon LLP (“**Blakes**”) to pay over to Sullivan Mahoney LLP, in trust, the sum of \$11,410.26 currently held in trust by Blakes in respect of fees relating to the Resort Association collected from purchasers who purchased units in the One-Day Sale, to be held pending the determination of entitlement to such funds, whether pursuant to an agreement between the Purchaser and the Resort Association with respect to such funds, or Court order;
- (b) authorizing and directing the Receiver to pay over to Sullivan Mahoney LLP, in trust, the sum of \$3,263.58 currently held in trust by the Receiver pursuant to paragraph 8(e) of the Order of Justice Pepall dated December 21, 2009 (the “**December 21 Order**”) on account of certain entry fees payable by certain Unit Owners in respect of the Resort Association, to be held pending the determination of entitlement to such funds, whether pursuant to an agreement between the Purchaser and the Resort Association with respect to such funds, or Court order;
- (c) authorizing and directing the Receiver to pay over to the Condominium Corporation the Common Expense Subsidies in the amount of \$20,551.13 currently held in trust by the Receiver pursuant to paragraph 8(c) of the December 21 Order for the benefit of one Unit Owner from whom no direction with respect to such funds has been received by the Receiver, to be held in trust by the Condominium

Corporation on behalf of that Unit Owner in respect of and to be applied by the Condominium Corporation against that Unit Owner's future common expense obligations as incurred;

- (d) authorizing and directing the Receiver to pay over to two Unit Owners who are parties to certain modified sale/leaseback transactions with RRDI (the "**Modified Sale/Leaseback Transactions**"), pursuant to which RRDI leased their Units and agreed to pre-pay a number of expenses on their behalf (the "**Modified Sale/Leaseback Unit Owners**"), in accordance with their entitlements, the aggregate amount of \$14,019.42 currently held in trust by the Receiver pursuant to paragraph 8(d) of the December 21 Order in respect of future realty taxes, telecommunications services and entry fees for those Units;
- (e) directing the payment out of Court of the sum of \$87,428 which had been paid into Court by RRDI pursuant to the Order of the Honourable Mr. Justice T.M. Wood dated April 9, 2009, in respect of a construction lien claim which had been registered on title on March 30, 2009, as Instrument No. MT64192 in the Land Registry Office for the Land Titles Division of Muskoka by 1569243 Ontario Inc. carrying on business as Rock Solid Granite Tops ("**Rock Solid**"), plus any accrued interest, by way of a payment to Rock Solid of \$20,000, and the payment of the balance to the Receiver, for distribution to WestLB, subject to a reserve of \$7,500, and dismissing

without costs the action in Court File No. CV-09-48-00 commenced at Bracebridge;

- (f) authorizing the Receiver to pay to Miller Thomson LLP (“**MT**”) the sum of \$47,000 on account of fees and disbursements and taxes incurred in its respective capacities as Representative Counsel for certain Unit Owners and counsel to the Ad Hoc Committee of Unit Owners (the “**Ad Hoc Committee**”) and discharging MT as Representative Counsel;
- (g) authorizing the Receiver to deliver to the Purchaser a contact list of potential purchasers of Units accumulated by the Receiver during the course of the receivership (the “**Contact List**”), subject to restrictions on the use of such information by the Purchaser;
- (h) confirming, *nunc pro tunc*, the report of Master Short dated May 16, 2011 (the “**Master’s Report**”) in respect of the Reference directed by the Court by Orders dated October 14, 2009 and April 21, 2010;
- (i) approving the distribution of the remaining proceeds available in the estate of RRDI in accordance with the Receiver’s Distribution Summary, appended as **Appendix “B”** hereto, subject to a professional fees holdback in the amount of \$350,000 (the “**Professional Fees Holdback**”), and a reserve in the amount of \$232,919 (the “**Reserve**”) to pay the final fees and disbursements of the Receiver and its legal counsel and any remaining expenses (the “**Remaining Disbursements**”) of the receivership proceedings,

particularly in respect of certain remaining duties as set out in the draft discharge Order;

- (j) approving the activities of the Receiver as set out in the Report;
- (k) approving the activities of the RRMSI Receiver as set out in the Report;
- (l) discharging the Receiver in its respective capacities as Receiver and Manager, Interim Receiver, and Trustee of the Assets of RRDI, upon the filing of a certificate by the Receiver with the Court, subject to certain remaining duties as set out in the draft discharge Order;
- (m) discharging the RRMSI Receiver effective immediately upon the Court granting the Order sought in connection with this Report;
- (n) releasing the Receiver and the RRMSI Receiver, and other parties from any and all liability upon the granting of the discharge Order; and
- (o) other relief related and ancillary to the above.

2.0 *Terms of Reference*

2.1 In preparing this Report, the Receiver has relied on unaudited financial information prepared by RRDI and RRDI's consultants and advisors, RRDI's books and records and discussions with certain remaining employees of RRDI. The Receiver has not performed an audit or other verification of such information. An examination of RRDI'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 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 Report, or relied upon by the Receiver in preparing the Report. All references to dollar figures contained in the Report are in Canadian currency unless otherwise specified.

3.0 Closing of the Sale of Assets of RRDI

- 3.1 The Twenty-First Report of the Receiver dated July 11, 2011 (the “**Twenty-First Report**”) was filed in support of a motion for approval of the sale of the Purchased Assets of RRDI to 2253100 Ontario Inc. (the “**Purchaser**”), an affiliate of Canadian Niagara Hotels Inc. (“**Canadian Niagara**”). By Order dated July 21, 2011, Madam Justice Mesbur approved the sale and granted an order vesting the Purchased Assets in and to the Purchaser (the “**Sale Approval Order**”).
- 3.2 The sale of the Purchased Assets closed on August 23, 2011.
- 3.3 Both prior to and subsequent to the Closing, the Receiver has worked together with Marriott and the transition team from Canadian Niagara to facilitate the transition of the Hotel and its operations to the Purchaser. The Receiver has attended at the Hotel for meetings with Marriott and the Purchaser to discuss various matters relating to the property and the Hotel operations. The Receiver also participated in numerous telephone discussions with the Purchaser’s transition team, Marriott, and other third parties to organize and facilitate a smooth ownership transition.
- 3.4 Prior to the Closing, the Receiver participated in meetings with Marriott’s employees at the Hotel to discuss, among other things, the Purchaser’s future plans for the Hotel. This included a discussion of the proposed termination of their employment by Marriott and their immediate re-employment by the Purchaser, in connection with the Purchaser’s proposed replacement of the

current Hotel Management Agreement with a franchise arrangement between the Purchaser and Marriott.

3.5 The Receiver understands that the Purchaser has also been in communication with members of the Ad Hoc Committee with respect to the transition and the proposed conversion of the Hotel Management Agreement to a franchise arrangement. The Receiver has furthermore been advised that the Purchaser has met with the principals of the Neighbouring Properties to discuss various matters as part of the transition.

3.6 In addition to the execution and delivery by the Receiver of the closing documentation required to complete the sale to the Purchaser, the Receiver, with the assistance of its legal counsel, has also facilitated the following in connection with the transaction:

- (a) the registration on title of an amendment to the Declaration of the Condominium Corporation in order to implement the Fresh Start Approach in respect of the budgeting for the Condominium Corporation, as more fully described in the Receiver's Nineteenth Report dated May 25, 2011;
- (b) the registration of the discharge of certain construction lien claims that had been assigned to WestLB that had been improperly registered against title to Units owned by individual Unit Owners;

- (c) the resignation of the Receiver's appointees to the Board of Directors of the Condominium Corporation (the "**RRDI Director Appointees**"), and their resignation as officers, effective on the Closing;
- (d) dealing with various insurance-related matters to ensure that all policies in respect of the Assets have been either transferred to the Purchaser, or new policies arranged and existing policies terminated; and
- (e) the transfer of all of the books and records of RRDI relating to the operations of the Hotel to the Purchaser.

4.0 Other Final Activities of the Receiver

- 4.1 In addition to the completion of the transaction and its involvement with transitional matters related thereto, the Receiver has been engaged in finalizing or resolving various matters in the receivership in order to be in a position to apply for its discharge. These matters have included:
- (a) obtaining the approval of its fees and disbursements and those of its legal counsel for the period to June 30, 2011, which were approved by Order of the Court dated August 26, 2011 (the “**August 26 Order**”), which Order dispensed with the need for approval of the remaining fees and disbursements of the receivership;
 - (b) engaging in negotiations and discussions with respect to resolving outstanding litigation commenced by the Receiver against Parry Sound Glass Limited, carrying on business as Ross Windows and Doors (“**Ross Windows**”), as more fully described below;
 - (c) resolving the claims to funds paid into Court in respect of a construction lien claim asserted by Rock Solid as more fully described below;
 - (d) obtaining information required for the preparation and delivery to Unit Owners of final rental pool management statements by RRDI prior to the discharge of the Receiver;

- (e) completing various tax and administrative matters, some of which will necessarily continue subsequent to the Receiver's discharge, as described below;
- (f) following up with Unit Owners with respect to Common Expense Subsidies and Indulgence Card incentives that had been held by the Receiver pursuant to the December 21 Order, in order to determine whether the Unit Owners wished to direct the Receiver to pay such remaining funds to the Condominium Corporation (all of whom have responded as of the date of this Report but for one, as more fully described below);
- (g) communicating with Unit Owners who have leases with RRDI pursuant to sale/leaseback transactions, to coordinate the termination of such leases by such Unit Owners in accordance with their terms, as authorized by the Court on July 21, 2011; and
- (h) seeking and obtaining the approval of WestLB for the payment to MT from the proceeds of realization the sum of \$47,000 in settlement of MT's claims for payment by the Receiver of fees and disbursements incurred by them in respect of their appointment as Representative Counsel on behalf of Unit Owners and their capacity as counsel to the Ad Hoc Committee. The claim related to payment for services provided by MT pursuant to the August 18 Order and an Order of Justice Pepall dated August 20, 2009 (the "**August 20 Order**").

5.0 Fees and Disbursements of the Receiver and its Counsel

- 5.1 By an endorsement of Madam Justice Mesbur dated July 21, 2011, a timetable for a motion by the Receiver for approval of its fees and disbursements and approval of the fees and disbursements of its legal counsel and its independent legal counsel for the period since the commencement of the receivership until June 30, 2011 was established, with a hearing date scheduled for August 26, 2011 before Mr. Justice Campbell.
- 5.2 As noted in the Twenty Second Report of the Receiver dated July 29, 2011 in support of the fee approval motion, the only party with an economic interest in the proceeds of realization of the estate is WestLB in respect of the Receiver's Borrowings. As such, the endorsement of Justice Mesbur provided that detailed copies of the accounts of the Receiver, its legal counsel, and its independent legal counsel were not required to be served on the service list, but only required to be filed electronically with Justice Campbell. Copies of the accounts as filed with Justice Campbell were also provided to WestLB.
- 5.3 On August 26, 2011, with the concurrence of WestLB, the Court issued the August 26 Order approving the fees and disbursements of the Receiver, its legal counsel, and its independent legal counsel for the period to June 30, 2011. In addition, by its August 26 Order, the Court dispensed with any further obligation of the Receiver and/or its legal counsel or independent legal counsel to pass their accounts for the period subsequent to June 30, 2011.

6.0 Remaining Construction Lien Matters

- 6.1 The Construction Lien Claims Process was established by Order dated July 24, 2009. By Order dated October 14, 2009, certain threshold issues arising under the Construction Lien Claims Process were referred by Justice Pepall to Master Short for determination.
- 6.2 As reported in the Receiver's previous reports, all but two construction lien claims were resolved and determined by the Receiver, as confirmed by Order of Justice Campbell dated December 7, 2010 (the "**December 7 Order**"). The resolution was achieved in the context of the acquisition of such construction lien claims by WestLB for approximately \$2.8 million.
- 6.3 The two construction lien claims that remained outstanding subsequent to the issuance of the December 7 Order were the claims of Ross Windows and Rock Solid. Since the issuance of the December 7 Order, the Receiver has engaged in discussions and negotiations with both Ross Windows and Rock Solid in an effort to resolve these two remaining lien claims.

Ross Windows

- 6.4 Ross Windows was the supplier and installer of the balcony railings and the windows at the Hotel. The Receiver's Twelfth Report dated November 5, 2010 outlined in detail the nature of the action that has been commenced by the Receiver against Ross Windows for an amount in excess of \$1 million in damages for deficiencies in the construction and installation of the balcony railings and windows.

- 6.5 Ross Windows has a construction lien claim against RRDI for unpaid work. It also has an invoice owing to it by RRDI for work performed for RRDI at the request of the Receiver subsequent to the commencement of the receivership. The Receiver has asserted set-off of RRDI's deficiency claim against these amounts.

Rock Solid Granite Tops

- 6.6 Rock Solid asserted a construction lien claim in the Construction Lien Claims Process in the amount of approximately \$70,000. That lien claim is secured by funds paid into Court by RRDI prior to the receivership, in the amount of approximately \$88,000. Legal counsel to the Receiver has advised it that such funds are also subject to the claims of WestLB as the assignee of approximately \$2.8 million of construction lien claims, and Ross Windows, in respect of its pre-receivership construction lien claim.

Resolution of Reference Issues

- 6.7 For purposes of resolving the construction lien Reference to Master Short by Order dated October 14, 2009, the Receiver and Ross Windows have agreed on the value and priority of the construction lien claim asserted by Ross Windows against RRDI, in the amount of approximately \$266,000, subject to the Receiver's claim for set-off of its deficiency claim.
- 6.8 As well, as a result of discussions with counsel for Rock Solid, the issues raised in the Reference proceedings before Master Short in respect of the Rock Solid lien claim were resolved by the parties.

6.9 Master Short was advised of the resolutions of the remaining Reference issues with Ross Windows and Rock Solid, and a report was issued by Master Short on May 16, 2011 disposing of the Reference proceedings, a copy of which is attached as **Appendix “C”** to this Report. The report by Master Short was entered prior to its confirmation by the Court, as is required by the *Rules of Civil Procedure*. In order to comply with the Rules, the Receiver seeks an Order “*nunc pro tunc*” confirming the Report.

Settlement of Rock Solid Claim

6.10 Counsel for WestLB and Rock Solid have engaged in negotiations regarding settlement of their respective claims to the funds paid into Court. As a result of these discussions, the parties have agreed to a settlement pursuant to which entitlement to the funds in Court would be divided by way of a payment of \$20,000 to Rock Solid, and the balance to the Receiver on behalf of WestLB, in its capacity as holder of approximately \$2.8 million of construction lien claims. As Ross Windows has also asserted a claim to the funds in Court, the Receiver will hold in reserve from the amount it receives on behalf of WestLB the amount of \$7,500 (representing Ross Windows’ *pro rata* claim to the amount in Court) pending a resolution of entitlement to that amount as between Ross Windows and WestLB, either by agreement or order in the Construction Lien Claims Process. The Receiver requests an Order for payment out of Court in accordance with this settlement and an Order dismissing the action commenced by Rock Solid.

Status of Ross Windows Claim

- 6.11 There are insufficient funds payable out of the proceeds of the receivership proceedings to pay any outstanding construction lien claims, including that of Ross Windows, which in any event is subject to the set-off claim asserted by the Receiver.
- 6.12 Discussions with respect to the deficiency claim between the Receiver and Ross Windows have continued for many months. If there is not a settlement of the action commenced by the Receiver prior to the discharge hearing, the Receiver will be seeking either a larger Reserve for the pursuit of the action against Ross Windows to conclusion, or will put in place arrangements with WestLB satisfactory to the Receiver, for the funding of the costs of the litigation.

7.0 *Transfer of Funds Relating to Resort Association, and Payment of Other Miscellaneous Funds*

Funds held by Blakes in Trust

- 7.1 Certain proceeds in the amount of \$11,410.26 were collected by the Receiver on account of fees payable to the Resort Association from purchasers who purchased their Units during the One-Day-Sale. These proceeds have been held in trust by the Receiver's legal counsel, Blakes, since the transactions closed in early 2010.
- 7.2 The Purchaser assumed a Mutual Undertaking among RRDI and certain members of the Resort Association to use reasonable commercial efforts to negotiate and settle binding definitive documentation to give effect to the principle terms of an agreement with respect to the Resort Association. Such agreement, once finalized, will deal with the entitlement to the funds held in trust by Blakes.
- 7.3 As the Receiver is seeking its discharge and will no longer be in a position to deal with these funds, the Receiver proposes that such funds in the amount of \$11,410.26 be transferred to legal counsel for the Purchaser, Sullivan Mahoney LLP, to be held in trust pending the finalization of an agreement or other resolution as contemplated by the Mutual Undertaking with respect to entitlement to such funds. Sullivan Mahoney LLP has consented to hold these funds in trust as proposed.

Funds held in Trust by the Receiver

7.4 The Receiver is currently holding funds in trust in the amount of \$48,230.01 in relation to a number of items, summarized below:

Common Expense Subsidies		\$ 20,551.13
Modified SaleLeasebacks		
#1	\$ 6,888.73	
#2	<u>7,130.69</u>	
Total Modified Sale Leasebacks		14,019.42
Red Leaves Resort Association		3,263.58
RRDI Indulgence Cards	5,691.88	
Marriott Gold Membership Fees	<u>4,704.00</u>	
Total		10,395.88
Total Held in Trust, September 14, 2011		\$ 48,230.01

7.5 The Receiver proposes to release these trust funds as follows.

Common Expense Subsidies

7.6 Pursuant to the December 21 Order, the Receiver has held in trust certain funds in respect of Common Expense Subsidies given to Unit Owners by RRDI prior to the receivership, and which had been held by McCarthy Tetrault LLP in its trust account, as more fully detailed in the Receiver's Eighth Report dated December 14, 2009. These funds were paid by McCarthy Tetrault LLP to the Receiver in trust, on behalf of Unit Owners, pursuant to the December 21 Order, to be remitted to the Condominium Corporation on account of common expense obligations incurred by the respective Unit Owners. Funds were remitted from time to time by the Receiver on behalf of

Unit Owners in respect of common expense obligations, but not all funds were distributed as no common expense obligations were assessed after the first year of operation of the Condominium Corporation. Attached as **Appendix "D"** is a copy of the December 21 Order.

- 7.7 With respect to the balance of Common Expense Subsidies held by the Receiver, all Unit Owners but one, (who owns two Units), have directed the Receiver to pay such funds to the Condominium Corporation, to be paid into its general account, in return for certain credits on account of future common expenses. These directions were delivered in connection with the implementation of the Fresh Start Approach in respect of the budget of the Condominium Corporation, as more fully described in the Receiver's Nineteenth Report.
- 7.8 The balance that the Receiver continues to hold in trust on behalf of the remaining Unit Owner is \$20,551.13. The Receiver is seeking its discharge and will no longer be in a position to administer the funds it holds in trust. The Receiver therefore proposes that it be authorized to pay this amount to the Condominium Corporation to be held in trust by the Condominium Corporation on behalf of that Unit Owner, to be applied by the Condominium Corporation to future common expense obligations of the Unit Owner.
- 7.9 The Receiver has advised the remaining directors of the Condominium Corporation of this proposal, and they are in concurrence. The Receiver has also advised the Unit Owner of this proposed step.

Modified Sale/Leaseback Unit Owner Funds

7.10 The Receiver is also holding \$14,019.42 in trust in respect of realty tax payments, telecommunications expenses and entry fees payable to the Resort Association for two Modified Sale/Leaseback Unit Owners who entered into Modified Sale/Leaseback Transactions with RRDI, pursuant to which all incentives and payments under their respective leases with RRDI were set aside in trust by McCarthy Tetrault LLP prior to the receivership. Pursuant to the December 21 Order, these funds were remitted to the Receiver, to be held in trust and applied as appropriate on behalf of these Modified Sale/Leaseback Unit Owners.

7.11 As the Receiver will no longer be in a position to hold and administer these funds after its discharge, the Receiver proposes that it remit the balance still held in trust by the Receiver to the respective Modified Sale/Leaseback Unit Owners.

Resort Association Fees

7.12 The Receiver is holding in trust the sum of \$3,263.58, which was paid to the Receiver by McCarthy Tetrault LLP pursuant to paragraph 8(e) of the December 21 Order, to be held by the Receiver pending further direction of the Court. This amount represents entry fees payable to the Resort Association on behalf of certain Unit Owners. As the entitlement of the Resort Association to fees is the subject matter of the Mutual Undertaking described above, the Receiver proposes that this amount also be paid to Sullivan Mahoney LLP in trust, to be held by them pending the determination

of entitlement to such funds, whether pursuant to an agreement between the Purchaser and the Resort Association, or Court order. Sullivan Mahoney LLP has also consented to hold these funds in trust as proposed.

Balance

- 7.13 The balance of \$10,395.88 held in trust will be paid to the Receiver to reimburse it for discharging the obligation to honour Indulgence Cards and pay Unit Owners' Marriott Gold Membership fees, for which that money was held pursuant to the December 21 Order.

8.0 Miller Thomson LLP Fees

- 8.1 MT represented the members of the Ad Hoc Committee with respect to the negotiation of settlement agreements that were ultimately completed with Unit Owners regarding their various purchase incentives, and the execution of the current Rental Pool Management Agreement with RRDI. The August 18 Order authorized the Receiver to pay the legal fees incurred by MT on behalf of the Ad Hoc Committee, in respect of this retainer, in the amount of \$75,000.
- 8.2 MT also assisted with the analysis of the funds that were held by McCarthy Tetrault LLP in its trust account out of proceeds of the sale of Units prior to the receivership, and the ultimate settlement of entitlement to those proceeds. The August 18 Order authorized the payment by the Receiver to MT of an amount of \$25,000 to assist with this exercise.
- 8.3 MT was also appointed as Representative Counsel for certain Unit Owners and purchasers by the August 20 Order, in order to assist the Receiver and WestLB on the contested motion for the appointment of A&M as RRMSI Receiver (this matter, together with those referred to at 8.1 and 8.2 above, the “**Unit Owner Matters**”).
- 8.4 The Order appointing MT as Representative Counsel provided for payment of legal fees and disbursements in the amount of up to \$50,000 out of the Assets of RRDI in respect of this retainer.

- 8.5 The Receiver paid MT the entirety of the \$150,000 authorized by the Court for its various retainers, representing the Ad Hoc Committee and acting as Representative Counsel. However, MT incurred fees and disbursements in excess of this amount in respect of its various mandates and has sought payment of the outstanding amounts from the Receiver. MT has provided to the Receiver copies of its accounts and details of its billings. After discussions between the Receiver and MT, the parties have agreed to settle the amount sought by MT in respect of the excess fees and disbursements incurred, in the amount of \$47,000 (inclusive of applicable taxes). WestLB has consented to this payment to MT out of the proceeds of realization.
- 8.6 The Receiver therefore seeks authorization from the Court to pay MT the sum of \$47,000 in full and final settlement of its claims against the Receiver for reimbursement of its fees and disbursements and applicable taxes in respect of the Unit Owner Matters. The Receiver also requests an order discharging MT as Representative Counsel as their mandate is at an end.

9.0 *Contact List*

- 9.1 In the course of the receivership, the Receiver has accumulated contact information from approximately 2500 individuals who expressed an interest from time to time in the acquisition of a Unit of the Hotel. Names and contact information were collected in the context of people registering interest in the One-Day Sale that was conducted by the Receiver in August 2009. Other names and contact details have been accumulated over the period of the receivership as inquiries have been received.
- 9.2 The Purchaser has requested that the Receiver provide this list of contacts to the Purchaser as part of the acquisition of the Assets of RRDI. The Receiver is prepared to deliver this list of contacts to the Purchaser, provided that it is done in a manner that protects the privacy of individuals in accordance with the *Personal Information Protection and Electronic Documents Act* (“**PIPEDA**”). The Purchaser has agreed to execute an undertaking in favour of the Receiver in this regard. The Receiver requests an Order authorizing the delivery of information in accordance with the provisions of PIPEDA, in the form of the draft order filed.

10.0 Distribution of Proceeds

- 10.1 Pursuant to an Order Ancillary to the Approval and Vesting Order dated July 21, 2011 (the “**Ancillary July 21 Order**”), the Receiver was authorized to distribute and has distributed the net proceeds from the sale of the Purchased Assets to WestLB in repayment of the Receiver’s Borrowings. Other proceeds recovered by the Receiver have also been distributed to WestLB from time to time as authorized by the Court. Attached hereto as **Appendix “B”** is a Distribution Summary disclosing the balance available in the receivership estate for distribution (the “**Distribution Summary**”). In connection with the preparation of the Distribution Summary, WestLB, as the party with the only economic interest in the proceeds of realization, has been provided with a detailed schedule of all receipts and disbursements in the receivership. Any material items on the schedule provided to WestLB have been previously disclosed to and approved by the Court as part of the Receiver’s activities.
- 10.2 As disclosed in the Distribution Summary, as of September 14, 2011, the Receiver is holding \$2,506,772 of cash on hand. After payment of the remaining expenses of the receivership, including the proposed payment of \$47,000 to MT, the payment of interest on Receiver’s Borrowings of approximately \$108,000, the payment of outstanding professional fees estimated for August, 2011 in the amount of approximately \$279,000, costs associated with preparation of financial statements and final tax returns, and other administrative matters, as set out in the Distribution Summary, the

Receiver estimates that the amount remaining on hand will be approximately \$2,142,919.

- 10.3 Subject to paragraphs 10.4 and 10.5, below, all matters in the receivership have been substantially completed, and the Receiver is in a position to distribute the balance of the proceeds of realization to WestLB and seek its discharge.
- 10.4 Additional amounts may be recovered by the Receiver subsequent to the Receiver's discharge, including refunds on account of HST and a property tax refund if a property tax appeal that is currently underway is ultimately successful. Such property tax refund may not be received for several years. By the Ancillary July 21 Order, Justice Mesbur directed the Township of Muskoka to remit to the Receiver any realty tax refunds payable in respect of the Hotel for the period prior to July 16, 2011. The Purchaser has also delivered a similar direction to the Township. The Receiver therefore proposes that it be granted incidental authority to collect and remit any tax refunds and any other miscellaneous receipts to WestLB as and when such may be received by the Receiver on behalf of RRDI, notwithstanding its discharge.
- 10.5 There are also some small administrative matters that will remain to be completed subsequent to discharge, such as the completion of financial statements and the filing of tax returns, the obtaining of an accounting of any remaining funds held by Travelers Guarantee Insurance Company of Canada

("Travelers") in respect of purchaser deposits, and other miscellaneous matters.

- 10.6 As disclosed in the Distribution Summary, the Receiver will have expenses, including professional fees and disbursements, up to the date of and subsequent to its discharge. The Receiver also intends to reserve the sum of \$38,000 in respect of the claim by Ross Windows for payment of work performed post-receivership, pending a resolution of the claims against Ross Windows. The Receiver therefore plans to hold back the Professional Fees Holdback in the amount of \$350,000, and the Reserve of approximately \$233,000, and distribute the balance of cash on hand, in the amount of \$1,560,000 to WestLB.
- 10.7 The Receiver proposes that on all matters being finally completed, any remaining balance of the Professional Fees Holdback and the Reserve shall be remitted to WestLB.
- 10.8 The Purchase Agreement with the Purchaser provides for the survival of the Vendor's representations and warranties for 60 days subsequent to Closing, namely, until October 24, 2011. This period will extend beyond the Receiver's discharge. The representations and warranties consist of the following: (a) that the Receiver has the authority to enter into the Purchase Agreement, subject to Court approval; (b) that the Receiver has not created any encumbrances on the Purchased Assets other than the court-ordered charges granted in the receivership; and (c) neither RRDI nor the Receiver is a non-resident under the *Income Tax Act*. The representations and warranties

were fulfilled with the completion of the sale of the Purchased Assets and the granting of the Sale Approval Order. The survival of these representations and warranties for a short period subsequent to the Receiver's proposed discharge has no impact on the distributions by the Receiver contemplated herein.

- 10.9 The Purchaser also has 30 days from the Closing to request any readjustments to the purchase price under the Purchase Agreement, which period will expire on September 22, 2011. However, the Receiver views it as unlikely that any re-adjustments will be requested by the Purchaser. The only matters that the Receiver considers could be the subject of re-adjustment under the Purchase Agreement are realty taxes and payments to Marriott. The realty tax obligations were confirmed with the Township by both the Receiver and the Purchaser, and were adjusted accordingly on Closing. Marriott provided its final reconciliation of charges as of the adjustment date of July 16, 2011, which were reviewed by both the Receiver and the Purchaser prior to Closing. The Receiver does not expect that there could be re-adjustments that would be material enough to affect the proposed distribution. In such a case, the Receiver would consider filing a supplementary report in this regard prior to the hearing of the motion.

11.0 Discharge of the Receiver

- 11.1 The sale of the Purchased Assets to the Purchaser has closed. The remaining Assets of RRDI have either been realized upon or have otherwise been provided for. The Receiver has substantially completed its duties and obligations in respect of the receivership. Upon issuing the payments for which authorization is requested on this motion, distributing the balance of proceeds of realization to WestLB subject to the Professional Fees Holdback and the Reserve, and completing various other administrative matters, the Receiver will be in a position to file a certificate with the Court certifying that it has completed the matters described in this Report and that it is entitled to its discharge.
- 11.2 On this basis, the Receiver therefore requests an order for its discharge as Interim Receiver, Trustee, and Receiver and Manager of the Assets of RRDI, subject to an Order providing for certain residual authorities to deal with certain matters that may arise subsequent to its discharge, as outlined in the draft Order filed.

12.0 Activities of the RRMSI Receiver and Discharge of the RRMSI Receiver

- 12.1 The RRMSI Receiver was appointed pursuant to the September 1 Order, a copy of which is attached as Appendix “E”. Pursuant to the September 1 Order, the RRMSI Receiver was granted possession and control over the Prior RPMAs, the Prior HMA, and other related prior agreements among RRDI, RRMSI, and Marriott. The RRMSI Receiver was authorized and directed to repudiate these agreements. The RRMSI Receiver has fulfilled this limited mandate.
- 12.2 The September 1 Order required the RRMSI Receiver to record all fees, if any, that would have been received by RRMSI under the Prior RPMAs, for the period September 1, 2009 to February 28, 2010, and report to the Court regarding same. The September 1 Order provided that such report and record may be considered by the Court with respect to any proposed distributions in the RRDI or RRMSI receiverships.
- 12.3 The RRMSI Receiver has determined that no fees would have been received by RRMSI during the period September 1, 2009 to February 28, 2010, as during that period, the Hotel was operating at a loss and no cash was available for distribution to RRDI or RRMSI under the Prior HMA. Any fees payable to RRMSI as former rental pool manager under the Prior RPMAs were to be paid out of funds that would have been collected from operations of the Hotel and deposited to an operating account maintained pursuant to the Prior RPMAs. Because no cash was distributed under the Prior HMA (which was

effective until January 22, 2010) or the current Hotel Management Agreement with RRDI (which was effective after January 22, 2010), RRMSI would have had no cash in its operating account as rental pool manager to make distributions to Unit Owners, or to pay itself a fee.

12.4 The Receiver learned by a notice dated October 8, 2009 from the Ministry of Government Services that it was seeking to dissolve RRMSI for failing to maintain directors. While the Receiver's legal counsel advised the Ministry of the stay of proceedings, nonetheless RRMSI was cancelled by the Ministry effective August 18, 2010.

12.5 The Receiver has collected no cash or other property of RRMSI for which it would need to account. The September 1 Order provided that the fees and disbursements of the Receiver in respect of RRMSI were secured by the Receiver's Charge over the Assets of RRDI. These fees and disbursements have been minimal and have formed part of the accounts issued in respect of RRDI that have been approved by the Court. As there remains nothing further to be completed by the RRMSI Receiver pursuant to the September 1 Order, the RRMSI Receiver seeks its discharge effective immediately upon the issuance of the Order requested.

13.0 Release

- 13.1 In connection with the discharge of the Receiver and the RRMSI Receiver, a release is requested in favour of the Receiver, the RRMSI Receiver, WestLB, EAA, CIT, RZB, the RRDI Director Appointees, and their respective employees, agents and legal counsel, of any and all obligations and liabilities in respect of the appointments of the Receiver and the RRMSI Receiver, the conduct of the receivership proceedings and the affairs of the Condominium Corporation, and any acts done by the Receiver or the RRMSI Receiver in connection with both receiverships, other than any gross negligence or willful misconduct by the proposed releasees. The Receiver is not aware of any claims that have been made or are being contemplated against the Receiver, the RRMSI Receiver, or any of the other proposed releasees.
- 13.2 The Receiver notes that numerous releases have been granted in connection with these proceedings to date:
- (a) Unit Owners have delivered, in connection with the completion of their Unit Owner Settlement Agreements, releases in favour of RRDI, the Receiver, WestLB, CIT, and RZB, among others, in respect of their agreements of purchase and sale, their Prior RPMAs with RRMSI, any breach of obligations under the *Condominium Act*, the *Securities Act*, or other legislation, the appointment of the Receiver and the conduct of the Receiver in respect of its appointment, and the management, financing or operation of the Hotel;

- (b) In connection with the termination of their outstanding purchase agreements and the refund of their deposits by Travelers, Unit purchasers who had purchased Units prior to the receivership, and who did not close their purchase transactions with RRDI, released and quit claimed to RRDI all right and title in the Units, and released the Receiver and RRDI from any claims connected with arising out of their respective purchase agreements with RRDI, the bond posted by Travelers in respect of their deposits, an Excess Condominium Deposit Insurance Policy issued by Travelers, the *Condominium Act*, and the *Ontario New Home Warranties Plan Act*;
- (c) By Order dated April 13, 2011 (the “**April 13 Order**”), the Receiver was authorized to execute a full and final release in favour of WestLB, CIT, EAA, and RZB on behalf of RRDI, which release was executed and delivered on April 13, 2011. By the April 13 Order, the Receiver was also authorized to deliver to WestLB a consent to judgment against RRDI in the amount of approximately US \$84 million, in order to resolve the litigation in the New York Supreme Court in respect of the debt obligation owing by RRDI to WestLB. The judgment has since been issued by the New York Supreme Court, and WestLB is seeking recognition of this judgment by the Ontario Court concurrent with this motion;
- (d) By Undertaking, Consent, Waiver, and Release date March 18, 2011, among other things, 22458454 Ontario Inc., the assignee of the debt

and security formerly held by Fortress Credit Corp. over RRDI, released WestLB, RZB, and EAA from any claims arising from or connected with WestLB's seeking of the appointment of the Receiver or the RRMSI Receiver. A copy of the Undertaking, Consent, Waiver and Release was attached to the Receiver's Twenty First Report dated July 11, 2011 at Appendix "P";

- (e) The Purchaser has released RRDI, the Receiver, and the RRDI Director Appointees with respect to certain matters relating to the Condominium Corporation, in accordance with the Purchase Agreement;
- (f) The Ancillary July 21 Order releases the Receiver, RRDI and the RRDI Director Appointees from any claims relating to any Assumed Liabilities (as those are defined in the Purchase Agreement) that have been assumed by the Purchaser under the Purchase Agreement. The Receiver, RRDI, and the RRDI Directors were also released from any further liability under the rental pool management agreements, and any liability in respect of those matters relating to the Condominium Corporation described in the Purchase Agreement. Attached to this Report as **Appendix "F"** is a copy of the Ancillary July 21 Order; and
- (g) the Condominium Corporation and the Independent Directors of the Condominium Corporation have released the Receiver and RRDI from any obligations in respect of common expenses for the period up to the Fresh Start Date, as a result of the implementation of the Fresh Start

Approach in respect of the budgeting for the Condominium Corporation, as more fully described in the Receiver's Nineteenth Report.

- 13.3 A full and final release in favour of the proposed releasees is requested in order to fill in any gaps remaining after the delivery of the foregoing releases, to ensure that no residual claims arise subsequent to the Receiver's discharge, and to provide certainty and finality in the receivership, which, as previous reports have outlined, has been litigious in numerous respects.
- 13.4 WestLB, in its capacity as Agent, and in its personal capacity, provided the financing to the receivership, which facilitated the completion of the Hotel and its continuation as a going concern.

14.0 Recommendations and Conclusion

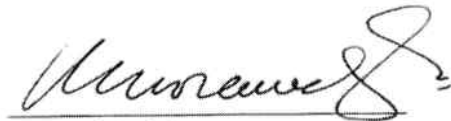
- 14.1 Subject to (a) those matters identified above that will remain to be dealt with subsequent to its requested discharge, and (b) those matters for which authorization is requested on this motion, the Receiver has substantially completed all steps necessary for the finalization of the receivership of RRDI. The Receiver anticipates that it will complete the distribution of proceeds of the receivership and distribution of other funds pursuant to the Order sought, as well as any remaining administrative matters, on a timely basis upon the issuance of the requested Order. It will be in a position to file a certificate certifying the making of the payments outlined in this Report, thereby effecting its discharge, immediately thereafter.
- 14.2 The RRMSI Receiver has fulfilled its mandate as receiver of certain of the assets of RRMSI, and has no further duties or obligations in that regard.
- 14.3 Based on the foregoing, the Receiver and the RRMSI Receiver seek an Order substantially in the form attached to the Notice of Motion, among other things, discharging the Receiver and the RRMSI Receiver, and approving the activities of the Receiver and the RRMSI Receiver up to the date of discharge, and authorizing those activities of the Receiver that have been set out herein that will be necessary after the date of discharge.

* * *

All of which is respectfully submitted, this 16th day of September, 2011.

**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