

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

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

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

July 7, 2009

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JULY 7, 2009

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1.0 Introduction

- 1.1 On May 22, 2009, the Ontario Superior Court of Justice (the “Court”) issued an order appointing Alvarez & Marsal Canada ULC (“A&M”) and McIntosh & Morawetz Inc., as trustee and interim receiver, respectively (collectively the “Interim Receiver”) pursuant to Section 68 of the *Construction Lien Act (Ontario)* (“CLA”) and Section 47(1) of the *Bankruptcy and Insolvency Act* (“BIA”) of all the property, assets and undertakings (the “Assets”) of The Rosseau Resort Developments Inc. (“RRDI” or the “Company”). On June 2, 2009, the Court issued an order (the “Appointment Order”) appointing A&M as receiver and manager (the “Receiver and Manager”) pursuant to Section 101 of the *Courts of Justice Act* (“CJA”) and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager hereinafter collectively defined as the “Receiver”).
- 1.2 On July 3, 2009, the Receiver filed its second report (the “Second Report”) with this Honourable Court, which, among other things, described the Receiver’s proposed Sales and Marketing Process as defined therein.
- 1.3 Capitalized terms in this Supplementary Report to the Second Report shall have the meanings ascribed to them in either the A&M Reports or the First and Second Reports unless otherwise defined herein.
- 1.4 This purpose of this report (the “Supplementary Report to the Second Report”) is to:
- Outline to this Honourable Court the terms upon which the Receiver intends to enter into agreements with each of Colliers MaCaulay Nicolls (Ontario) Inc.

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

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

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

2.0 Terms of Reference

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

3.0 The Colliers Listing and Marketing Agreement

- 3.1 As described in Section 5.4 of the Second Report, the Receiver intends, upon Court approval, to retain Colliers, a brokerage house with international expertise in the marketing of hotel resort properties throughout the world, to undertake a sales and marketing process of all of the Assets on an en bloc basis (the “Institutional Sales Process”).
- 3.2 Attached as Confidential Appendix “A” is a copy of the listing and marketing agreement (the “Colliers Listing & Marketing Agreement”) that the Receiver intends to enter into with Colliers upon obtaining the approval of this Honourable Court. The key highlights of the Colliers Listing & Marketing Agreement are summarized below:
- The Colliers Listing & Marketing Agreement is for a term of ten months from the date of its execution.
 - Colliers acknowledges that Baker Real Estate has been (or will be) engaged by the Receiver to execute the Retail Sale Program which will be undertaken concurrently with the Institutional Sales Process.
 - Colliers’ fee structure is comprised of a modest marketing fee, a work fee and a commission fee payable upon successful completion of a transaction. Both the marketing fee and work fee are to be deducted from any commissions ultimately earned by Colliers.
 - The agreement includes a break-up fee (the “Break-Up Fee”) payable to Colliers should the Receiver ultimately determine to proceed only with the Retail Sales

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

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

4.0 The Baker Real Estate Exclusive Listing Agreement

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

5.0 Issues in Respect of Rental Pool Management Agreements

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

* * *

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

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

Per: 
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