

## APPENDIX “A”

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE

)

TUESDAY, THE 2<sup>ND</sup> DAY

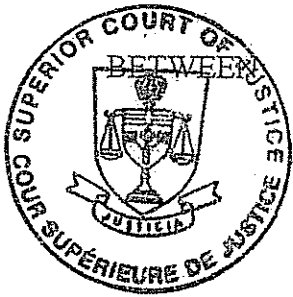
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MADAM JUSTICE PEPALL

)

OF JUNE, 2009

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



WESTLB AG, TORONTO BRANCH

Applicant

- and -

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

AMENDED AND RESTATED APPOINTMENT ORDER

THIS APPLICATION, made by the Applicant WestLB AG, Toronto Branch ("WestLB") in its capacity as Administrative Agent for a syndicate of certain lenders (the "Lenders"), for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "CJA") and section 68 of the *Construction Lien Act*, R.S.O. 1990 c. 30, as amended (the "CLA") appointing Alvarez & Marsal Canada ULC, and McIntosh & Morawetz Inc., jointly as

receiver and manager and trustee and interim receiver (in such capacities, jointly, the "Receiver") without security, of all of the assets, undertakings and properties of The Rosseau Resort Developments Inc. (the "Debtor"), was heard on May 20, 21, and June 1, 2009, and today at 330 University Avenue, Toronto, Ontario.

AND WHEREAS on May 22, 2009, The Honourable Madam Justice Pepall granted an Order (the "Appointment Order") in these proceedings appointing McIntosh & Morawetz Inc. as interim receiver, without security, pursuant to section 47(1) of the BIA, and appointing Alvarez & Marsal Canada ULC as trustee, without security, pursuant to section 68(1) of the CLA, (collectively, the "Interim Receiver") of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate, including the lands and premises legally described in Schedule "A" hereto (the "Lands") and the condominium project under construction thereon (the "Rosseau Hotel Project") and all proceeds thereof (collectively, the "Property");

AND WHEREAS pursuant to paragraph 38 of the Appointment Order, the Application for the appointment of a receiver and manager pursuant to section 101 of the CJA and subsection 68(2)(a) of the CLA was adjourned to June 1, 2009;

AND WHEREAS such relief having been granted, the Applicant seeks to have the Appointment Order amended and restated;

AND WHEREAS the terms of the Appointment Order are hereby amended and restated by the terms of this Amended and Restated Appointment Order effective from and after the granting of this Amended and Restated Appointment Order, provided that the terms of the Appointment Order are operative until then and any and all actions taken by or on behalf of the Applicant and the Interim Receiver pursuant to and in accordance with the terms of the Appointment Order and prior to the granting of this Amended and Restated Appointment Order are hereby validated;

ON READING the affidavit of Robert Dyck sworn May 19, 2009 (the "Dyck Affidavit"); the Supplemental Affidavit of Robert Dyck sworn May 19, 2009; the Report dated May 19, 2009

and Supplementary Report dated May 20, 2009 by the proposed Receiver (the "A&M Reports"); the Affidavit of Ken Fowler sworn May 19, 2009; the Affidavit of Suvin Malik sworn May 20, 2009; the First Report dated May 27, 2009 of the Interim Receiver (the "First Report"); the Supplementary Report to the First Report dated May 29, 2009 of the Interim Receiver (the "Supplementary Report"); and the Affidavit of Peter Fowler sworn June 2, 2009; all filed; and on hearing the submissions of counsel for WestLB and the Interim Receiver, counsel for the Debtor, independent counsel for the Interim Receiver, counsel for Fortress Credit Corp., counsel for Fowler Construction Company Limited, counsel for Travelers Guarantee Company of Canada, counsel for CRS Wallwin et al, counsel for Vipond Inc. and the agent for Barzelle Design Ltd., no one else appearing,

#### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 47(1) of the BIA, McIntosh & Morawetz Inc. is hereby appointed interim receiver, without security, of the Property and pursuant to section 101 of the CJA, and section 68(1) of the CLA, Alvarez & Marsal Canada ULC is hereby appointed receiver and manager and trustee, without security, of the Property.

#### **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, protect, repair and maintain control of the Property, or any part or parts thereof, including by engaging independent security personnel;
- (c) to complete the Rosseau Hotel Project and to otherwise manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage contractors, trades, architects, engineers, consultants, construction consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to complete existing purchase and sale agreements, including, execution of documents required in connection therewith without further approval of the Court;

- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) without limiting the generality of subparagraph 3(i), to: (i) create and disseminate a disclosure statement in accordance with the *Ontario Condominium Act*, 1998; (ii) to create and disseminate amendments or supplements to disclosure statements in accordance with the *Ontario Condominium Act*, 1998; (iii) to enter into deposit trust agreements and to give security therefor, if required, subject to approval of this Court; (iv) to do all things and execute all documents reasonably necessary and incidental to obtaining the registration of the Lands or a portion thereof as a standard freehold condominium, including: (I) causing to be registered in the Land Registry Office (the "LRO") plans of survey, reference plans and condominium plans; (II) executing a declaration for the proposed condominium as declarant/owner (but solely in its capacity as Receiver and not in its personal or corporate capacity) and causing same to be registered in the LRO; (III) causing to be created, passed and registered in the LRO all necessary condominium by-laws; and (IV) doing all things necessary to call a turnover meeting of the condominium unit owners;
- (k) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (l) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (m) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00 provided that the aggregate consideration for all such transactions does not exceed \$150,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case (and in the case of sales referred to in subparagraph 3(h) of this Amended and Restated Appointment Order) notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to provide financial reporting at regular intervals to WestLB and Fortress Credit Corp., on a without prejudice basis, consisting of a construction

budget with periodic rolling updates, and periodic reporting of receipts and disbursements;

- (r) to file an assignment in bankruptcy on behalf of the Debtor, pursuant to the provisions of the BIA;
- (s) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (t) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor and to execute any agreements required in connection with or as a result of such permits, licences, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);
- (u) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (v) to make payments, as required, under the Amended and Restated Hotel Management Agreement between the Debtor and Marriott Hotels of Canada Ltd., ("Marriott") dated as of October 6, 2006, or under any related agreements between the Debtor and Marriott (collectively, the Hotel Management Agreements"), without assuming liability or obligations thereunder;
- (w) to make payments to or on behalf of Rock Ridge Contractors Inc. to fund payments to its employees and contractors providing dedicated services to the Debtor or to make such other arrangements satisfactory to the Receiver to effect such payments;



- (x) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (y) to exercise the powers provided by section 68(2) of the CLA;
- (z) to repudiate such contracts or agreements to which the Debtor is party or in respect of the Property;
- (aa) to pay stay bonuses up to a maximum aggregate amount of \$75,000, as described in the First Report; and
- (bb) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel, shareholders, contractors and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to

make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. The Receiver is authorized to secure the Records of the Debtor located at the construction office of Rock Ridge Contractors Inc.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or

with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. Nothing contained in this paragraph shall prevent the registration of a certificate of action, service of a statement of claim by a lien claimant, or delivery of a demand pursuant to section 39 of the CLA.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this

Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

13. THIS COURT ORDERS that the Receiver is not the employer of the employees of the Debtor, and all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a

Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation. Nothing in this Order shall deem the Receiver to be an owner of the Property for any purpose.

## **RECEIVER'S ACCOUNTS**

17. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

18. THIS COURT ORDERS the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## **FUNDING OF THE RECEIVERSHIP**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby authorized and empowered to borrow from the Lenders, such monies from time to time as it may consider necessary or desirable, in the amount and on the terms as set out in the Term Sheet provided to the Receiver by WestLB dated May 15, 2009, substantially in the form attached as Exhibit "S" to the Dyck Affidavit, provided that the aggregate principal amount drawn does not exceed \$15,000,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures (the "Receiver's Borrowings"). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, construction

liens, charges and encumbrances, statutory or otherwise in favour of any Person, but subordinate in priority to the Receiver's Charge. The Receiver is hereby authorized to execute and deliver such other commitment letters, fee letters, credit agreements, mortgages, charges, hypothecs and security documents as the Lenders may require from time to time to carry into effect the terms of the Term Sheet.

21. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Receiver's Borrowings Charge.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

25. THIS COURT ORDERS that the Receiver is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Lenders under and pursuant to the Term Sheet and the Receiver's Certificates as and when the same become due and are to be performed.

26. THIS COURT ORDERS that the information contained in Confidential Appendix "1" of the Report is hereby sealed and shall remain sealed pending further order of this Court, made on notice to the Receiver and the Debtor.

## GENERAL

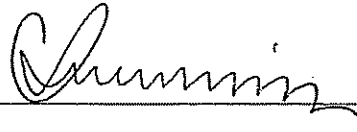
27. THIS COURT ORDERS that the First Report are hereby accepted and the activities and conduct of the Interim Receiver, as described in the First Report, are hereby approved.
28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
32. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than five (5) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



34. THIS COURT ORDERS that the Applicant and the Receiver, and any party who has served a Notice of Appearance, may serve any materials in these proceeding by emailing a PDF or other electronic copy of such materials to counsel's email addresses as recorded on the Service List from time to time, in accordance with the e-filing protocol of the Commercial List to the extent practicable, and the Receiver may post a copy of any or all such material on its website at [www.alvarezandmarsal.com/](http://www.alvarezandmarsal.com/) (the "Website").

35. THIS COURT ORDERS that, service having been required of the Appointment Order, no further notice of this Order is required and any such requirement for further notice is hereby dispensed with.

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



**Christina Irwin**  
Registrar, Superior Court of Justice

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

JUN 02 2009

PER / PAR, 

**SCHEDULE "B"**  
**RECEIVER'S CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada ULC and McIntosh & Morawetz Inc., the receiver and manager and trustee and the interim receiver, respectively (the "Receiver"), of all of the assets, undertakings and properties of The Rosseau Resort Developments Inc., appointed by the Amended and Restated Appointment Order of the Ontario Superior Court of Justice (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 2009 (the "Order") made in an Application having Court file number [•], has received as such Receiver from \_\_\_\_\_ (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the \_\_\_\_ day of each month after the date hereof at the rate per annum equal to the rate of \_\_\_\_ per cent above the prime commercial lending rate of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order, the Appointment Order dated May 22, 2009 or any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the Receiver's Charge set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the Lender without the prior written consent of the Lender.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Alvarez & Marsal Canada ULC and McIntosh & Morawetz Inc., solely in their respective capacities as receiver and manager and trustee of the Property and as interim receiver of the Property, and not in their personal capacities

Per: \_\_\_\_\_  
Name:  
Title:

IN THE MATTER of Section 47(1) of the *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS  
AMENDED, SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C. 43, AS AMENDED, AND  
SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, C. C. 30, AS AMENDED  
WESTLB AG, TORONTO BRANCH  
V.  
THE ROSSEAU RESORT DEVELOPMENTS INC.

Applicant

Respondent

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

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Lawyers for the Applicant

## APPENDIX “B”

36. **Rental Pool** - The Purchaser acknowledges that the zoning of the Lands requires that the Units be available for rental to the public and therefore the Units will be subject to rental management agreements which contain provisions respecting the availability of Units for rental to the public as follows: (1) there is a requirement that all of the Units be available for rental to the public through the Rental Pool Manager; (2) restrictions relating to reservations by owners (and non-paying guests) of such Units to no more than 14 days in any of the winter, spring and fall seasons; and (3) owners will have three options for use of the Units during the summer season which in turn will affect the amount of the Rental Pool Management Fee payable by owners pursuant to the Rental Pool Management Agreement. The options available to owners during the summer season are as follows: (a) option 1 provides a maximum permitted owner use during the summer season of 7 days and the rental pool management fee would be [REDACTED] (b) option 2 provides a maximum permitted owner use during the summer season of 14 days and the rental pool management fee would be [REDACTED] and (c) option 3 provides a maximum permitted owner use during the summer season of 21 days and the rental pool management fee would be [REDACTED]. The options for the summer season must be exercised by written notice to the Rental Pool Manager received by December 15 in the year preceding the summer season, failing which the owner will be deemed to have selected option 2. For reservations made no more than 7 days in advance and provided that their Unit has not otherwise been rented to the public, owners of Units may be able to increase their personal use in the summer season (June 15 - September 15) to a maximum of 30 days and are unrestricted in the remaining seasons. In order to comply with these requirements, the Purchaser agrees to execute, on or before the earlier of the Occupancy Date and the Closing Date, the Rental Pool Management Agreement with the Rental Pool Manager, which agreement will have an initial term of twenty-five years from the date that the hotel situated in the Condominium opens for business to the public, together with four extension terms of 10 years each, at the option of the Rental Pool Manager. The Purchaser agrees to use the services of The Rosseau Resort Management Services Inc. as its Rental Pool Manager in accordance with the requirements of the Rental Pool Agreements. The Purchaser further acknowledges that in accordance with the Rental Pool Management Agreement, the Rental Pool Manager will delegate to Marriott or an affiliate thereof a substantial portion of the obligations of the Rental Pool Manager under the Rental Pool Management Agreement. The Rental Pool Management Agreement will be substantially in the form attached as Exhibit L to the Disclosure Statement. The Purchaser is advised to carefully read the Rental Pool Management Agreement to familiarize itself with the provisions contained therein. The Purchaser covenants and agrees that the Unit shall be

occupied and used only for residential purposes in accordance with and subject to the Rental Pool Agreements.

## APPENDIX “C”



**THE ROSSEAU**  
**- a JW Marriott Resort**  
**RENTAL POOL MANAGEMENT AGREEMENT**

This Agreement dated as of December \_\_\_\_, 2008.

BETWEEN the Owner and the Rental Pool Manager

“Owner”:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

“Unit”:

Suite No. \_\_\_\_, being proposed Unit \_\_\_\_, in the proposed Resort  
Condominium

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

The Purchaser's GST Registration Number is: \_\_\_\_\_

**WHEREAS:**

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

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

**ARTICLE 1**  
**DEFINITIONS**

- 1.1 **Definitions.** In this Agreement the following terms have the following meanings:
- (1) **“Accounting Period”** means the four (4) week accounting periods having the same beginning and ending dates as the Hotel Operator’s four (4) week accounting periods, except that an Accounting Period may occasionally contain five (5) weeks when necessary to conform the Hotel Operator’s accounting system to the calendar. If the Hotel Operator’s Accounting Period for the Hotel System hotels in Canada is changed in the future, then the Accounting Period for the Hotel shall be changed accordingly, and appropriate adjustments to this Agreement’s reporting and accounting procedures shall be made;
  - (2) **“Additional Development Lands”** means the lands described in Schedule F attached hereto.
  - (3) **“Adjusted Gross Revenue”** has the meaning ascribed to such term in subsection 3.2(2);
  - (4) **“Affiliate”** means, with respect to any Person, any other Person controlling, controlled by or under common control with such first Person;
  - (5) **“Annual FF&E Estimate”** means the annual estimate prepared by the Hotel Operator or Rental Pool Manager as described in section 5.2;
  - (6) **“Apportioned Share”** means , with respect to either a Lock-Off Component or the balance of a Lock-Off Unit, the proportion of the Owner’s Share for such Lock-Off Unit that the area of the Lock-Off Component or the balance of the Lock-Off Unit bears to the area of the whole Lock-Off Unit;
  - (7) **“Base Royalty Fee”** has the meaning ascribed thereto in section 3.3(1);
  - (8) **“Basic Daily Housekeeping”** means maid and linen services provided on any Day;
  - (9) **“Board”** means the board of directors of the Resort Condominium;
  - (10) **“Case Goods”** means furniture and furnishings used in the Hotel including, without limitation: chairs, beds, chests, headboards, desks, lamps, tables, television sets, mirrors, pictures, wall decorations and similar items;
  - (11) **“Commercial Condominium”** means the condominium or proposed condominium registered or to be registered under the Condominium Act for that portion of the Hotel used or intended to be used for retail space, food and beverage, conference and spa facilities;
  - (12) **“Commercial Owners”** means the owners from time to time of units (or proposed units) in the Commercial Condominium;
  - (13) **“Common Elements”** means all of the property within the Resort Condominium other than the Resort Units and the Hotel Management Unit;

- (14) **"Condominium Act"** means the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended from time to time;
- (15) **"Conference Centre"** means collectively proposed Units 3, 4, 5 6 and 11, Level 1 and Units 2 and 3, Level A in the Commercial Condominium comprised of meeting rooms, ballrooms, pre-function space and storage space;
- (16) **"Conference Centre Lease"** means the lease of the Conference Centre between the owner thereof and the Rental Pool Manager;
- (17) **"control"** means direct or indirect (i) ownership of issued and outstanding voting shares or other interests in a Person giving the holder a majority of voting rights with respect to such person, and (ii) in the absence of such majority ownership, other effective control over the decision making process of the Person;
- (18) **"Fiscal Year"** means the Hotel Operator's Fiscal Year which, as of the date of this Agreement, ends at midnight on Friday closest to December 31 in each calendar year, the new Fiscal Year begins on Saturday immediately following said Friday. Any partial Fiscal Year between the Opening Date and the commencement of the first full Fiscal Year shall constitute a separate Fiscal Year. A partial Fiscal Year between the end of the last full Fiscal Year and the date of termination of this Agreement shall also constitute a separate Fiscal Year. If the Hotel Operator's Fiscal Year is changed in the future, then the Fiscal Year for the Hotel shall be changed accordingly, and appropriate adjustment to this Agreement's reporting and accounting procedures shall be made; provided, however that no such change or adjustment shall alter the Term or in any way reduce the distributions of Owner's Net Rental Revenue hereunder;
- (19) **"Fixed Asset Supplies"** means items included within "Property and Equipment" under the Uniform System of Accounts which are located in and intended for use in the Resort Units and consumed in the operations thereof including, but not limited to, linen, china, glassware, tableware, uniforms, and similar items;
- (20) **"Golf Course"** means the 18-hole golf course located on lands adjacent to the Hotel and on the north side of Juddhaven Road known as "The Rock";
- (21) **"Gross Rental Pool Revenue"** has the meaning ascribed to such term in subsection 3.2(1);
- (22) **"Gross Unit Revenue"** has the meaning ascribed to such term in subsection 3.2(5);
- (23) **"Hotel"** means the hotel property known as **"The Rosseau – a JW Marriott Resort"** and comprised or to be comprised of the Resort Condominium, the Commercial Condominium, a dock, boathouse, beach and water sports area located at the lakefront;
- (24) **"Hotel Easement and Restrictive Covenant Agreement"** means the agreement to be entered into under which an easement for hotel use will be granted for the benefit of the Hotel Management Unit over the Common Elements and the Resort Corporation will agree to maintain the Common Elements and common facilities and equipment at a standard consistent with the Hotel Standards;

- (25) **"Hotel Management Agreement"** means the management agreement between the Hotel Operator, The Rosseau Resort Developments Inc. and the Rental Pool Manager pursuant to which the Hotel Operator is appointed to perform a substantial portion of the obligations of the Rental Pool Manager hereunder and includes any subsequent agreement between the Rental Pool Manager and a permitted replacement for the Hotel Operator pursuant to section 2.11(2);
- (26) **"Hotel Management Unit"** means proposed Unit 28, Level 1, within the Resort Condominium to be leased to the Hotel Operator that will include the front desk, administrative office and the exclusive use of those areas of the Common Elements required for performing the duties of the Hotel Operator hereunder as designated in the declaration for the Resort Condominium;
- (27) **"Hotel Operator"** means Marriott or an Affiliate of Marriott International, Inc. and, if the Hotel Operator is replaced pursuant to subsection 2.11(2), shall mean such replacement;
- (28) **"Hotel Standards"** means the standards and policies for the management and operation of a hotel (including the Resort Units) having the design, development, construction, furnishing, equipping, operating, service and maintenance standards at least equal to a "JW Marriott" or equivalent hotel, as required from time to time under or pursuant to the Hotel Management Agreement;
- (29) **"Hotel System"** means the chain of full-service hotels which are operated by the Hotel Operator and its Affiliates in Canada and the United States having a brand name the same as that of the Hotel from time to time;
- (30) **"Incentive Royalty Fee"** means the amount payable to International Hotel Licensing Company S.À R.L. as described in section 3.3(1)(b);
- (31) **"Insurance Retention"** means the deductibles or risk retention levels; however, the Hotel's responsibility for such deductibles or risk retention levels shall be limited to the Hotel's per occurrence limit for any loss or reserve as established for the Hotel, which limit shall be the same as other similar hotels participating in blanket insurance programs, if applicable;
- (32) **"Interest Rate"** means the annual rate of interest equal to the highest rate then currently charged to Rental Pool Manager by its principal lending source plus [REDACTED] per annum;
- (33) **"International Services Agreement"** means the agreement between The Rosseau Resort Developments Inc., the Rental Pool Manager and International Hotel Licensing Company S.À R.L., an Affiliate of the Hotel Operator, for the provision of Chain Services and other systems, services and programs to the Hotel;
- (34) **"License and Royalty Agreement"** means the agreement between The Rosseau Resort Developments Inc., the Rental Pool Manager and International Hotel Licensing Company S.À R.L., an Affiliate of the Hotel Operator, for the licensed use by the Hotel of certain trademarks for hotel services;

- (35) “**Lock-Off Unit**” means a Resort Unit which has a separate room that can be locked and be made separate and secure from the balance of the Resort Unit and which has a separate keyed entrance from the balance of the Resort Unit and “**Lock-Off Component**” means that room in a Lock-Off Unit that is so separated and can be locked and secured;
- (36) “**Marketing Fee**” has the meaning ascribed thereto in section 3.3(1)(d);
- (37) “**Marriott**” means Marriott Hotels of Canada, Ltd. and its successors and permitted assigns;
- (38) “**Opening Date**” means December 22, 2008;
- (39) “**Operating Account**” means the trust account or accounts maintained by the Rental Pool Manager in accordance with section 3.1;
- (40) “**OSC Ruling**” means the exemption ruling of the Ontario Securities Commission dated April 13, 2004 relating to the sale of Units in the Hotel, as may be amended from time to time by any variation order;
- (41) “**Other Corporate Charges**” has the meaning ascribed thereto in section 3.3(1)(e);
- (42) “**Owners**” means all of the owners of Resort Units and, prior to the registration of the declaration and description creating the Resort Condominium, means the purchasers of such Resort Units under existing agreements of purchase and sale or the proposed declarant, as the case may be;
- (43) “**Owner’s Net Rental Revenue**” has the meaning ascribed to such term in subsection 3.2(4);
- (44) “**Owner’s Share**” means the daily fraction which has as its numerator the Unit Factor for the Unit (unless the Unit is a Lock-Off Unit in which case the provisions of section 7.2(2) shall apply) and as its denominator the total Unit Factors for all of the Resort Units in the Rental Pool on any given day, all as set forth in the declaration of the Resort Corporation;
- (45) “**Parking Stalls**” means all of the parking stalls in the Resort Condominium from time to time which are or will be designated as exclusive use Common Elements appurtenant to the Hotel Management Unit and which will include Parking Stalls designated from time to time for valet parking use;
- (46) “**Person**” means any individual, partnership, corporation, governmental authority, trust, trustee, unincorporated organization and the heirs, executors, administrators or other legal personal representatives of any individual;
- (47) “**Property Management Agreement**” means the property management agreement entered into or to be entered into between the Resort Corporation and the Rental Pool Manager pursuant to which the Rental Pool Manager agrees to maintain and manage the Common Elements on behalf of the Resort Corporation;
- (48) “**Qualified Operator**” means the Hotel Operator or another professional hotel operator of comparable managerial capacity and ability to that of the Hotel Operator. For the

purposes of this Agreement, “managerial capacity and ability” means the overall ability and capacity of a hotel operator based on:

- (a) recognition of its trademark, trade name, service mark and copyright to be used in connection with the marketing and operation of the Hotel as a resort hotel of its size and location;
  - (b) the perceived operating standards of hotels managed by it under the same trademark and trade name which it would use for the Hotel;
  - (c) its ability to at least maintain the Owner’s Net Rental Revenue over that which would have been produced by the Hotel Operator for the balance of the period under this Agreement under the same conditions;
  - (d) its ability to provide competent personnel experienced in the hospitality industry to manage and operate the Hotel; and
  - (e) its experience in operating hotels with operating standards similar to that of the Hotel;
- (49) **“Rental Pool”** means the rental management arrangement undertaken by the Rental Pool Manager in respect of the Resort Condominium in accordance with this Agreement and the agreements with other owners of Resort Units within the Resort Condominium on terms and conditions consistent with this Agreement;
- (50) **“Rental Pool Covenant”** means the covenant in respect of the rental of the Resort Units registered or to be registered against title to the Unit (by inclusion in the initial transfer of the Unit) in favour of the Hotel Management Unit and the other Resort Units;
- (51) **“Rental Pool Management Fee”** means the management fee payable to the Rental Pool Manager, as described in section 4.1;
- (52) **“Reservation Fees”** has the meaning ascribed thereto in section 3.3(1)(c);
- (53) **“Resort”** means the mixed use development comprised of the Hotel, the beach, boathouse, docks and related facilities intended to be constructed on lands bordering Lake Rosseau in front of the Hotel, the Golf Course and the single owner villas and cottages on the Additional Development Lands if same are built;
- (54) **“Resort Condominium”** means the proposed condominium to be registered under the Condominium Act for that portion of the Hotel used or intended to be used for hotel/lodging rooms and includes or will include approximately 178 Resort Units in the Longview building and 43 Resort Units in Paignton House, the Hotel Management Unit, the Parking Stalls, the Hotel laundry, an exercise room and a swimming pool;
- (55) **“Resort Corporation”** means the condominium corporation formed or to be formed upon registration of the Resort Condominium;
- (56) **“Resort Units”** means at any time all of the units or proposed units within the Resort Condominium but does not include the Hotel Management Unit.

- (57) **"Soft Goods"** means all fabric, textile and flexible plastic products (not including items which are classified as Fixed Asset Supplies) which are used in furnishing the Resort Units including, without limitation: carpeting, drapes, bedspreads, wall and floor coverings, mats, shower curtains and similar items;
- (58) **"Software"** means all computer software and accompanying documentation (including all future upgrades, enhancements, additions, substitutions and modifications thereof), other than computer software which is generally commercially available, which are used by the Hotel Operator in connection with operating or otherwise providing service to the Hotel and/or the Hotel System, including without limitation the property management system, the reservation system and the other electronic systems used by the Hotel Operator in connection with operating or otherwise providing services to the Hotel and/or the Hotel System;
- (59) **"Taxes"** means all taxes payable now or in the future to any governmental authority arising out of or in relation to the operation of the Hotel and the Rental Pool in the nature of hotel taxes, goods and services taxes, provincial sales or taxes similar to any of the foregoing;
- (60) **"Term"** means the initial term and any subsequent extension provided for in section 2.6;
- (61) **"Uniform System of Accounts"** shall mean the Uniform System of Accounts for the Lodging Industry, Ninth Revised Edition, 1996, as published by the Education Institute of the American Hotel & Motel Association, as revised from time to time to the extent such revision has been or is in the process of being generally implemented within the Hotel System;
- (62) **"Unit"** means the Resort Unit or proposed condominium unit described on page 1 of this Agreement;
- (63) **"Unit Expense"** has the meaning ascribed to such term in subsection 6.1(18);
- (64) **"Unit Factor"** in respect of any Unit means the factor set out opposite the number of such Resort Unit in Schedule A hereto;
- (65) **"Unit FF&E"** means, from time to time, all furniture, furnishings, Fixed Asset Supplies, Soft Goods, Case Goods, kitchen appliances, carpeting and equipment located in the Resort Units including, without limitation, appliances, equipment, fixtures and furnishings, linens, towels and housewares (including glassware, dishes, cutlery and utensils), draperies and carpeting in the Resort Unit or, if the context so requires, in one or more of the Resort Units and, as of the Opening Date, includes the Unit FF&E listed in Schedule B attached hereto;
- (66) **"Unit FF&E Reserve Fund"** means the fund established by the Rental Pool Manager pursuant to section 3.4; and
- (67) **"Unit Revenue Share"** has the meaning ascribed to that term in subsection 3.2(3).

Additional capitalized terms used in this Agreement are defined in section 7.1.

**ARTICLE 2**  
**MANAGEMENT, USE, TERM AND TERMINATION**

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

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

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

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

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

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



- (2) in accordance with usual practices of the hotel and travel industry to such persons as employees of travel companies or airlines, media, or the leaders of group occupancy packages where such use, in the sole discretion of the Hotel Operator, may contribute to the success of the Rental Pool.

2.6 **Term.** The initial term of this Agreement shall be for a period commencing on the later of the date of execution hereof and the Opening Date and terminating at midnight on the last day of the 25th full Fiscal Year (disregarding the initial Fiscal Year of less than 12 calendar months) after the Opening Date. The Rental Pool Manager shall have the right to extend the Term for four extension terms of 10 Fiscal Years each provided (except for the first extension option) the immediately preceding extension shall have been exercised. Notwithstanding the foregoing, the Term shall terminate upon the earlier termination of this Agreement in accordance with the provisions hereof. Each option to extend granted to the Rental Pool Manager by this section 2.6 shall be deemed to have been exercised unless the Rental Pool Manager shall have given written notice to the Owner of the Rental Pool Manager's intention not to exercise the option to extend in accordance with section 2.7. During each extension term provided for in this section 2.6, this Agreement shall continue in full force and effect in all respects, and all of the terms, covenants, conditions and provisions of this Agreement shall apply, except that there shall be no option to extend beyond those provided for in this section 2.6.

2.7 **Termination by Rental Pool Manager.** The Rental Pool Manager may terminate its appointment as Rental Pool Manager under this Agreement provided that it also terminates all other Rental Pool Management Agreements relating to the Rental Pool in the Resort Condominium effective as of the expiry of the Term or the end of any of the renewal periods of the Term, as the case may be, by delivering one notice to the Resort Corporation to that effect at least 180 days prior to the effective date of such termination, and the Owner hereby irrevocably appoints the Resort Corporation as its agent for the purposes of receiving such notice.

2.8 **Default of Owner.**

- (1) If the Owner rents the Unit in breach of sections 2.4, 6.1(16) or 7.6 or accepts compensation from any person for use of the Unit, the Owner shall forthwith pay to the Hotel Operator on demand an amount equal to the daily rack rate for the Unit established by the Hotel Operator for such day.
- (2) In addition and without prejudice to any other recourse available to the Rental Pool Manager, if the Owner defaults in the performance of any of its obligations hereunder and fails to cure said default within twenty (20) days following receipt of written notification thereof from the Rental Pool Manager to the Owner (or without notice in the case of a breach as described in section 2.8(1)), or should the Owner be adjudged bankrupt or become insolvent or make a voluntary assignment for the benefit of its creditors pursuant to the provisions of the Bankruptcy and Insolvency Act or otherwise take the benefit of any bankruptcy or insolvency legislation (individually referred to as an "**Event of Default**"), the Rental Pool Manager may elect at its sole discretion, by written notice to the Owner:
  - (a) to suspend the participation of the Unit in the Rental Pool forthwith upon the receipt of such notice in which event, for the period during which the Event of Default continues, the Owner shall not earn or be entitled to any Owner's Net Rental Revenue; or

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

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

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

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

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

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

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

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

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

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

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

**2.10 Events upon Termination.**

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

then the Owner shall deliver to the Rental Pool Manager within ten (10) days after receipt of the Rental Pool Manager's written request therefore, the sums necessary to establish such reserve; and if the Owner fails to timely deliver such sums to the Rental Pool Manager, the Rental Pool Manager shall have the right (without affecting the Rental Pool Manager's other remedies under this Agreement) to withdraw the amount of such expenses from the Operating Account, the Unit FF&E Reserve Fund, or any other funds of the Owner held by or under the control of the Rental Pool Manager.

- (4) Upon termination for any reason of this Agreement, a reserve in an amount determined by the Rental Pool Manager based on loss projections, shall be established from Gross Rental Pool Revenue to cover the amount of any Insurance Retention and all other costs and expenses that will eventually have to be paid by the Owners, the Hotel Operator or the Rental Pool Manager with respect to pending or contingent claims, including those that arise after termination of this Agreement for causes arising during the Term. If the Gross Rental Pool Revenue is insufficient to meet the requirements of such reserve, the Owner shall deliver to the Rental Pool Manager, within 10 days after receipt of the Rental Pool Manager's written request therefor, the sums necessary to establish such reserve; and if the Owner fails to timely deliver such sums to the Rental Pool Manager, the Rental Pool Manager shall have the right (without affecting the Rental Pool Manager's other remedies under this Agreement) to withdraw the amount of such expenses from the Operating Account, the Unit FF&E Reserve Fund, or any other funds of the Owner held or under control of the Rental Pool Manager.
- (5) The Rental Pool Manager shall, within 120 days after termination of this Agreement, prepare and deliver to the Owner a final accounting statement with respect to the monies held by the Rental Pool Manager pursuant to this section 2.10 along with (i) a statement of any sums due from the Owner to the Rental Pool Manager pursuant to this Agreement dated as of the date of termination. Within 30 days of the receipt by the Owner of such final accounting statement, the parties will make whatever cash adjustments are necessary pursuant to such final statement. The cost of preparing such final account statement shall be borne by the Owners and may be deducted from the funds held by the Rental Pool Manager, unless the termination occurs as a result of a default by the Rental Pool Manager, in which case the Rental Pool Manager shall pay such cost. The Rental Pool Manager and the Owner acknowledge that there may be certain adjustments for which the information will not be available at the time of the final accounting and the parties agree to readjust such amounts and make the necessary cash adjustments when such information becomes available; provided, however, that all accounts shall be deemed final as of the 60th day following the first anniversary of the effective date of termination of this Agreement.

#### **2.11 Assignment and Subcontracting by the Rental Pool Manager.**

- (1) The Rental Pool Manager will have the right at any time without the prior consent of the Owner to assign its interest in this Agreement to (a) a Qualified Operator, (b) an Affiliate, (c) a Person that results from any merger, amalgamation, consolidation or other reorganization of Rental Pool Manager, or (d) a Person that acquires all or substantially all of the assets or shares of the Rental Pool Manager and operates a hotel management business either on its own or in conjunction with its Affiliates, provided such assignee assumes the obligations of the Rental Pool Manager under this Agreement, including this

section 2.11, and all of the other rental pool management agreements for the Resort Units in the Rental Pool.

- (2) The Rental Pool Manager will, on delivery of at least 60 days prior written notice to the Owner, have the right to appoint a replacement for the then the Hotel Operator to carry out the Rental Pool Manager's obligations hereunder, or to delegate to or subcontract with another person with respect to the Rental Pool Manager's obligations hereunder, provided the replacement hotel operator, delegatee or subcontractor is a Qualified Operator.
- (3) In the event of an assignment, an appointment of a replacement of the Hotel Operator, a delegation or a subcontracting by the Rental Pool Manager pursuant to subsections 2.11(1) or (2), all references herein to "**Marriott**" will from and after the effective date of the assignment, appointment, delegation or subcontracting be deemed to refer to the assignee, replacement, delegatee or subcontractor and all references herein to "**JW Marriott**" will be deemed to refer to the operating name or brand of such party applicable to the Hotel.
- (4) Whether or not an assignee, replacement, agent, delegatee or subcontractor (other than Marriott) is a Qualified Operator will be determined by agreement between the Rental Pool Manager and the Resort Corporation. If the Rental Pool Manager and the Resort Corporation cannot agree as to whether a proposed Hotel Operator is a Qualified Operator within 30 days of the notice by the Rental Pool Manager of its proposed assignment hereunder, such matter shall be submitted to arbitration in accordance with section 9.2.
- (5) The Rental Pool Manager shall also have the right at any time without the prior consent of the Owner to assign, grant a security interest in or otherwise encumber all or any part of its rights under this Agreement to a financial institution as security for its obligations to such financial institution.
- (6) Except as provided in section 2.2, this section 2.11 and section 5.1, the Rental Pool Manager may not assign any interest under this Agreement or subcontract any of its obligations hereunder without the prior approval of at least 75% of the Owners.

### **ARTICLE 3**

#### **OPERATING ACCOUNT AND OWNER'S REVENUE**

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


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

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

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

**3.2 Rental Pool Definitions.** In this Agreement, the following terms have the following meanings:

- (1) **"Gross Rental Pool Revenue"** means, for any time period, all amounts collected by the Rental Pool Manager as rent or room charges for the rental of all of the Resort Units pursuant to the Rental Pool, revenue from the rental of meeting rooms and ballrooms (to the extent not included in the revenue from the rental of Resort Units) and revenue from parking by Hotel guests, if any, less any refunds, rebates, discounts and credits given, paid or returned in the course of earning such revenues, and excluding:
  - (a) departmental adjustments typical under the Uniform System of Accounts in respect of packaged rooms revenue relating to food and beverage, spa services and golf green fees;
  - (b) income derived from or in relation to the Commercial Condominium including revenue from food and beverage service and spa services;
  - (c) revenue earned with respect to the Hotel Management Unit;
  - (d) revenue earned with respect to the Waterfront and the use of its facilities and related activities;
  - (e) any incidental or other revenue as described in section 3.6, such as room service revenue, valet charges over and above the charge (if any) for parking itself, charges for the provision of cribs and rollaway cots, telephone revenue, charges for internet use, coin laundry revenue, vending machine revenue and in-room movie revenue;
  - (f) revenue derived from equipment or facilities installed by the Rental Pool Manager at its sole cost;

- (g) housekeeping fees paid to the Rental Pool Manager in connection with the Owner's occupancy pursuant to section 7.4.
  - (h) fees for access to and use of the swimming pool and exercise room as contemplated in section 8.3; and
  - (i) Taxes.
- (2) **"Adjusted Gross Revenue"** means for any time period the Gross Rental Pool Revenue less the following deductions (without duplication):
- (a) the Base Royalty Fee;
  - (b) the Incentive Royalty Fee;
  - (c) the Marketing Fee;
  - (d) the Reservation Fees;
  - (e) the Other Corporate Charges;
  - (f) payments under the Conference Centre Lease;
  - (g) all fees payable to third parties in connection with reservations that are not covered by the foregoing fees including, without limitation, tour operator and wholesaler commissions, credit card commissions and booking fees;
  - (h) the cost (including wages and benefits) of reservations staff who are employed by the Hotel Operator in addition to its worldwide reservation system and which cost is not included in the Reservation Fees;
  - (i) a corporate advertising charge payable to the Rental Pool Manager equal to  of Gross Rental Pool Revenue for each Fiscal Year of the Term (or any portion thereof);
  - (j) the cost of memberships in the Muskoka Tourism Association or similar marketing associations if the Rental Pool Manager elects to enrol the Hotel as a member thereof;
  - (k) fees, royalties and other charges which may be payable to the Red Leaves Resort Association;
  - (l) any *bona fide* out of pocket third party costs (such as legal and collection costs, credit bureau fees, audit fees and the like) incurred in collecting any amounts included in Gross Rental Pool Revenue, carrying out the duties referred to in subsections 5.1(12) and (13) or enforcing legal remedies against guests of the Resort Units;
  - (m) all other normal and reasonable costs, if any, incurred by the Rental Pool Manager or the Hotel Operator for the purpose of generating Gross Rental Pool

Revenue in connection with the operation of the Rental Pool except as expressly set forth in this Agreement; and

- (n) Taxes on any of the foregoing.
- (3) **“Unit Revenue Share”** means the Owner’s Share, calculated on a daily basis, of the Adjusted Gross Revenue received by the Rental Pool Manager on the days the Unit is in the Rental Pool multiplied by the following fraction:
- the Unit Factor for the Unit divided by the total of the Unit Factors for all of the Resort Units in the Rental Pool on such days;*
- (4) **“Owner’s Net Rental Revenue”** means, for any time period, the Unit Revenue Share less the following (without duplication):
- (a) the Rental Pool Management Fee pursuant to section 4.1;
  - (b) the Owner’s contribution to the Unit FF&E Reserve Fund pursuant to section 3.4; and
  - (c) payments due from or made on behalf of the Owner under this Agreement including without limitation payments for the following:

<u>Item</u>	<u>Section(s)</u>
(i) maintenance of Common Elements	3.5
(ii) financial statements	3.8
(iii) GST, withholding and other taxes	3.9
(iv) common expenses and other assessments	3.10
(v) unpaid Unit Expenses	3.11
(vi) unpaid room charges	3.13
(vii) Schedule E costs	3.14
(viii) Owner’s insurance	5.1(16)
(ix) telecommunications service	5.6
(x) Owner personal use housekeeping charges	5.7 and 7.4

- (5) **“Gross Unit Revenue”** means for any time period the amount equal to the Gross Rental Pool Revenue multiplied by the following fraction:

*the Unit Factor for the Unit divided by the total of the Unit Factors for all of the Resort Units.*

- (6) **“In the Rental Pool”** - for the purposes of this section 3.2, a Unit will be considered to be “in the Rental Pool” on a particular Day only if, in the reasonable opinion of the Rental Pool Manager, it is in compliance with the Hotel Standards and is fit for occupancy by the Public as defined in subsection 7.1(h). and unconditionally available for rental by the Rental Pool Manager to the Public pursuant to the Rental Pool. Without limiting the generality of the foregoing, for the purpose of this section 3.2, a Unit will not be “in the Rental Pool” on a particular Day if it is booked for use by the Owner in accordance with Article 7 (unless the Owner complies with the requirements of section



7.2) or if, in the reasonable opinion of the Rental Pool Manager, its condition renders it unfit for use by the Public pursuant to the Rental Pool.

### 3.3 Corporate Charges.

- (1) The Owner acknowledges that the Rental Pool Manager is obliged to pay the Hotel Operator or its Affiliates certain fees and other charges (and applicable Taxes) under and pursuant to the Hotel Management Agreement, the License and Royalty Agreement and the International Services Agreement in connection with the operation of the Rental Pool and that such fees and other charges (and applicable Taxes) will be paid out of Gross Rental Pool Revenues and will be deducted therefrom in determining the Adjusted Gross Revenue under section 3.2(2). The fees and other charges which will be deducted from Gross Rental Pool Revenues include, but are not limited to, the following:

- (a) a base royalty fee ("Base Royalty Fee") as follows:
  - (i) until the end of the third full Fiscal Year following the opening of Paignton House [REDACTED] Gross Rental Pool Revenue for each Fiscal Year; and
  - (ii) commencing with the fourth full Fiscal Year following the opening of Paignton House [REDACTED] of the Gross Rental Pool Revenue for each Fiscal Year;
- (b) a proportionate share of the incentive royalty fee ("**Incentive Royalty Fee**") that may from time to time be earned by and be payable to International Hotel Licensing Company S.À R.L. (an Affiliate of the Hotel Operator) under the License and Royalty Agreement based upon the financial performance of the Hotel. Such proportionate share shall be equal to the ratio that the Rooms Revenue bears to the Total Revenue (as such terms are defined in the Uniform System of Accounts);
- (c) worldwide central reservation system fees ("**Reservation Fees**") equal to the aggregate of the following:
  - (i) \$ [REDACTED] per Resort Unit per Accounting Period; and
  - (ii) \$ [REDACTED] per central reservation room booking; or
  - (iii) such other charges as may be charged by the Hotel Operator for other types of reservations;

provided that the above-described Reservation Fees may be changed by the Hotel Operator or its Affiliates from time to time to reflect, among other things, increases in operating costs, line charges, enhancements and development costs and that any of such Fees may be changed by the Hotel Operator or its Affiliates in accordance with the International Services Agreement;

- (d) a marketing and sales fee (the "**Marketing Fee**") equal to [REDACTED] of the Gross Rental Pool Revenue for each Accounting Period during the Term provided that

the Hotel Operator may change such Fee and the method of determining it in accordance with the International Services Agreement; and

- (e) the cost to the Rental Pool Manager of the Hotel Operator's guest loyalty program and other programs and services which are either mandated by the Hotel Operator or in which the Rental Pool Manager elects to participate and which are applicable to hotels operating under the same name or trade mark as the Hotel and which are intended to generate Gross Rental Pool Revenue ("**Other Corporate Charges**").
- (2) There are certain charges and expenses payable to the Hotel Operator or its Affiliates under the License and Royalty Agreement, the Hotel Management Agreement and the International Services Agreement listed below which the Rental Pool Manager agrees will be paid by it at its sole cost and which will not be paid out of or deducted from Gross Revenues. These charges and expenses include following:
- (a) all pre-opening expenses payable to the Hotel Operator and its Affiliates;
  - (b) the cost to purchase, lease, install, update, replace and enhance the hardware and software required to operate the systems of the Hotel Operator including, without limitation, the reservations, revenue management, point of sale, property management and communication systems;
  - (c) the cost to purchase, lease, install, update, replace and enhance the hardware, software and other equipment required to interface with and provide connectivity between the Hotel and the Hotel Operator's reservations system and other systems, programs and third parties as the Hotel Operator may specify from time to time;
  - (d) the cost of computer payroll and accounting services; and
  - (e) the cost of central training services, career development and relocation of Hotel management personnel.

3.4 **Unit FF&E.** The Rental Pool Manager will be entitled to withhold from the Owner's Net Rental Revenue the following:

- (1) for each Fiscal Year of the Term, the applicable percentages of Gross Unit Revenue during such Fiscal Year as follows:


<u>Fiscal Year</u>	<u>Applicable Percentage</u>
1	5%
2	5%
3 and each Fiscal Year thereafter	5%

(or such greater percentages in each Fiscal Year as may, in the reasonable opinion of the Rental Pool Manager, be required to maintain the Hotel Standards); and

- (2) such additional amounts in excess of the Unit FF&E Reserve Fund as may be approved by the Resort Corporation from time to time in accordance with section 5.2.

All such amounts will be held by the Rental Pool Manager in trust for the Owners as part of a reserve (the "**Unit FF&E Reserve Fund**") comprising similar funds collected from all of the Owners for the replacement or repair of the Unit FF&E, together with all funds derived from the sale of any Unit FF&E, in order to maintain the Resort Units and Unit FF&E at all times during the Term at a level consistent with the Hotel Standards. Subject to the terms of this Agreement, the Owner hereby authorizes the Rental Pool Manager to utilize such funds, including interest accrued thereon and any unused amounts in the Unit FF&E Reserve Fund from any preceding Fiscal Year and, subject to section 5.2, to expend amounts in excess of the unexpended amounts remaining in the Unit FF&E Reserve Fund, for such purpose. The Owner hereby authorizes the Rental Pool Manager to keep the Unit FF&E Reserve Fund in a pooled trust account (in a financial institution in Ontario qualified to engage in the banking or trust business in Ontario) with similar funds collected from all of the Owners, separate from the Operating Account, which trust account shall be under the exclusive control of the Rental Pool Manager and for which the Rental Pool Manager or any one or more of its directors, officers or employees designated by it shall have sole signing authority, subject always to section 10.11. The Unit FF&E Reserve Fund is not the property of any individual Resort Unit Owner and the Owner will not be entitled to any refund of any portion thereof at any time, including on the sale of the Unit.

**3.5 Common Elements.** The Owner acknowledges and agrees that, consistent with the obligation of the Owner set out in subsection 6.1(4), in the event of any failure of the Resort Corporation to maintain the Common Elements at a level consistent with the Hotel Standards as agreed to in the Property Management Agreement and contemplated in the Hotel Easement and Restrictive Covenant Agreement, to the extent that the Rental Pool Manager is entitled to be reimbursed under the Hotel Easement and Restrictive Covenant Agreement or to receive funds pursuant to the Property Management Agreement for expenditures made to maintain the Common Elements at a level consistent with the Hotel Standards, the Rental Pool Manager will be entitled to deduct such amounts from Owner's Net Rental Revenue to the same extent that the Owner would have been responsible for the expenditures if the same had been paid by the Resort Corporation. The Rental Pool Manager shall also be entitled to use funds in the Unit FF&E Reserve Fund to maintain the Common Elements within the Resort Condominium at a level consistent with the Hotel Standards if there are not sufficient funds to do so provided by the Resort Corporation.

**3.6 Rental Pool Manager's Other Revenue.** The Owner acknowledges and agrees that, subject to sections 8.1 and 8.2, the Rental Pool Manager will be entitled to keep % of any revenue from telephone charges and charges for internet use levied to guests and Owners of Resort Units participating in the Rental Pool and from any other services which the Manager may, at its sole discretion, provide in addition to the rental of the Unit, including those in respect of food and beverage service (including room service), spa services, golf fees, valet parking service, provision of cribs and rollaway cots, pay-per-view and video game rentals, vending machines, dry cleaning and laundry (including coin laundry), full housekeeping service (over and above those set out in section 5.7), audio-visual and other equipment rentals in connection with the conference facilities, set-up and tear down services and commissions paid by third parties and that such revenues will not be included in Gross Rental Pool Revenue.

**3.7 Payment to Owner.** Within 30 days after the end of every Accounting Period during the Term, the Rental Pool Manager will pay to the Owner the Owner's Net Rental Revenue then in the Operating Account if the Owner's Net Rental Revenue exceeds \$100 for such period. Payment under this section 3.7 will be made by the Rental Pool Manager mailing the Rental Pool Manager's cheque for such

amount to the Owner's address set out above (or such other address as the Owner may notify the Manager in writing pursuant to section 10.6), or at the Rental Pool Manager's option, by deposit to the Owner's bank account if the Owner notifies the Rental Pool Manager of all the relevant details of such account. In the event that a balance is due and owed to the Rental Pool Manager by the Owner, such balance will be paid within thirty (30) days of the issuance of the statement referred to in section 3.8. A financing charge may be applied on overdue accounts at the Interest Rate.

**3.8 Statements to Owner.** Concurrently with the payment of the Owner's Net Rental Revenue in accordance with section 3.7, the Rental Pool Manager will provide the Owner with a written statement of the Gross Rental Pool Revenue, the Adjusted Gross Revenue, the Unit Revenue Share, and the Owner's Net Rental Revenue and any applicable withholding tax, goods and services tax or other applicable tax, charge or levy for the relevant Accounting Period. In addition to the foregoing, the Rental Pool Manager will provide to the Owner and the other Owners of Resort Units in the Resort Condominium, the following:

- (1) the Rental Pool Manager will provide to the Owner quarterly "interim unaudited financial statements" for the Rental Pool, such statements to be prepared and delivered at the cost of the Owner and the Owners of the other Resort Units in accordance with sections 77 and 79 of the *Securities Act* (Ontario) within 60 days after the end of each quarterly period; and
- (2) the Rental Pool Manager will provide to the Owner, at the cost of the Owner and the other Owners of the Resort Units on or before the 140th day after the end of each Fiscal Year of the Rental Pool, audited annual financial statements for the Rental Pool (which shall include details of the Incentive Royalty Fee for the Fiscal Year, if any).

The Owner's share of the cost of the above-described statements for any Fiscal Year will be based on the proportion of the Unit Factor for the Unit to the aggregate of the Unit Factors for all Units. The Rental Pool Manager may deduct such cost from the Owner's Net Rental Revenue.

**3.9 GST and Withholding Tax.** The Owner will be responsible for the payment of all Taxes in connection with the Unit or this Agreement, including those payable in connection with the Rental Pool Management Fee. The Rental Pool Manager may withhold from the Owner's Net Rental Revenue and remit to Revenue Canada or any other relevant authority any amount required to be withheld or remitted in respect of goods and services tax, withholding tax or any other applicable tax, charge, rate or levy which the Rental Pool Manager is required to withhold or remit and the Rental Pool Manager will provide the Owner with annual statements of such information within a reasonable time after the end of each Fiscal Year of the Term. The Rental Pool Manager will comply with any requirement to remit withholding tax on payment of the Rental Pool Management Fee and other fees payable to the Hotel Operator and its Affiliates.

**3.10 Common Expenses.** The Rental Pool Manager will be entitled to withhold from the Owner's Net Rental Revenue and pay to the Resort Corporation or to the manager under the Property Management Agreement the monthly common expense contribution and other condominium assessments attributable to the Unit. The Owner acknowledges that he is responsible for all condominium fees, special assessments and any other charges levied by the Resort Corporation. The Rental Pool Manager has the right to withhold any Owner's Net Rental Revenue due to the Owner until such time as the Owner's account with the Resort Corporation is up to date.

3.11 **Owner's Failure to Pay Unit Expenses.** If the Owner does not pay any Unit Expense when due, the Rental Pool Manager may, but will not be obligated to:

- (1) pay any such amount out of the Owner's Net Rental Revenue payable in respect of the Unit and the Owner hereby authorizes the Rental Pool Manager to utilize such funds for such purpose; or
- (2) pay any such amount out of its own funds and the Owner will repay such amount to the Rental Pool Manager forthwith upon demand and will pay interest on any amount outstanding at the rate equal to the Interest Rate, calculated daily and compounded monthly from the date of advance by the Rental Pool Manager until the date of repayment by the Owner and the Rental Pool Manager may deduct the amount of any such payment by the Rental Pool Manager from any future Owner's Net Rental Revenue payable in respect of the Unit.

3.12 **Allocation of Fees and Charges.** To the extent that any of the fees, charges or deductions referred to herein relate to programs or services which cover more than the Resort Condominium or do not relate exclusively to the Rental Pool, then the Rental Pool Manager shall allocate a reasonable share of such fees, charges or deductions to the Resort Condominium or the Rental Pool, as the case may be.

3.13 **Room Charges.** The Owner agrees to pay the cost of all items or services charged to his Unit account (such as personal use housekeeping charges, long distance telephone charges and other Hotel related charges) upon check-out at the end of each stay by the Unit Owner (as such term is defined in section 7.1), failing which the Rental Pool Manager may deduct such amounts from the Owner's Net Rental Revenues.


3.14 **Responsibility for Costs.** Schedule E is attached to this Agreement as convenient reference of respective responsibilities for commonly occurring costs. The Owner will pay for those costs which are indicated as being the Owner's responsibility in Schedule E. The Rental Pool Manager may deduct such costs from the Owner's Net Rental Revenue. If any specific term of this Agreement is in conflict with Schedule E, the specific term of this Agreement will supersede and prevail over the term in Schedule E.

3.15 **No Charges for Common Elements.** The Rental Pool Manager will not charge any Unit Owner (as defined in paragraph 7.1(1)(o)) for the use or enjoyment of any portion of the Common Elements provided that such use by the Unit Owner is in accordance with Article 7.

#### **ARTICLE 4**

##### **RENTAL POOL MANAGEMENT FEE**

4.1 **Rental Pool Management Fee.** As compensation for the services rendered by the Rental Pool Manager pursuant to this Agreement, the Rental Pool Manager shall have earned and shall be entitled to payment of a management fee (the "**Rental Pool Management Fee**") calculated on the basis of the applicable percentage or percentages of the Unit Revenue Share for each Fiscal Year of the Term or part thereof after the Opening Date. For the purposes hereof, the "applicable percentage" for each year commencing June 15 will be determined on the basis of which option the Unit Owner has selected (or has been deemed to have selected) pursuant to paragraph 7.1(5)(a) as follows:

<u>Option Selected</u>	<u>Applicable Percentage</u>
Option 1 (7 Days)	 %
Option 2 (14 Days)	 %
Option 3 (21 Days)	 %

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

## **ARTICLE 5**

### **RENTAL POOL MANAGER'S RESPONSIBILITIES**

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

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

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

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

- (15) take out and maintain at all times during the Term the following insurance, at a minimum, pertaining to the Rental Pool Manager's activities hereunder:
- (a) comprehensive public liability insurance in an amount of U.S.\$ [REDACTED] per occurrence (or such greater amount as the Hotel Operator may from time to time deem advisable) for claims for personal injury, death, or property damage arising out of any one occurrence; and
  - (b) business interruption insurance including extra expense with policy terms deemed appropriate by the Hotel Operator; and
  - (c) such other insurance as may be deemed appropriate by the Hotel Operator, acting reasonably.
- (16) use commercially reasonable efforts to arrange, on behalf of the Owner, the following insurance in respect of the Unit and the Unit FF&E within the Unit with insurers and on terms and with deductible amounts as are determined by the Hotel Operator from time to time (and to collect the proceeds of all such insurance):
- (a) property damage insurance for the standard Unit FF&E within the Unit to their full replacement value (but not any other personal property of the Owner which shall be the Owner's sole responsibility);
  - (b) comprehensive public liability insurance in the amount of \$ [REDACTED] per occurrence (or such greater amount as the Hotel Operator may from time to time deem advisable) for claims for personal injury, death or property damage arising out of and in connection with the operation of the Rental Pool; and
  - (c) such other insurance as may be deemed appropriate by the Hotel Operator, acting reasonably,
- and if the same is combined with insurance coverage taken out on behalf of the Resort Corporation, then the cost of the foregoing insurance will be a common expense of the Resort Corporation, but otherwise the Rental Pool Manager is authorized to deduct the cost from the Owner's Net Rental Revenue and the Owner will reimburse the Rental Pool Manager for such cost that is not so deducted forthwith upon receipt by the Owner of the Rental Pool Manager's invoice therefor;
- (17) faithfully perform its duties and responsibilities hereunder and otherwise use its best efforts to supervise and direct the rental of the Unit in an efficient and profitable manner consistent with the Hotel Standards, it being the intention of the parties that the Rental Pool Manager will have the control for all customary purposes and the right to determine all operating policies with respect to reasonable standards of operations, quality of services and any other matters affecting the rental of the Unit;
- (18) procure and maintain all such licenses and permits as are necessary in connection with the performance by the Rental Pool Manager of its obligations under this Agreement;



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

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

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

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

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

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

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

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

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

**5.7 Maintenance and Housekeeping.**

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

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

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

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

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

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

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

## **ARTICLE 6**

### **OWNER'S RESPONSIBILITIES AND AUTHORIZATIONS**

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

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

any event, only if: (a) the security for such financing covers the Unit FF&E as well as the Unit; (b) the lender providing such financing enters into an agreement with the Rental Pool Manager acknowledging the rights of the Rental Pool Manager hereunder respecting the Unit FF&E and agreeing to assume and be subject to this Agreement in the event such lender enforces its security; and (c) the principal amount of such financing does not exceed XXXX% of the fair market value of the Unit at the time of such financing;

- (7) ensure that the Unit is serviced with water, sewer, propane, electricity, telephone (including connections to the Rental Pool Manager's hotel switchboard), internet access and satellite television at all times during the Term;
- (8) not exercise any voting rights or other powers as a member of the Resort Corporation in a manner which is inconsistent with, or would interfere with the Rental Pool Manager's ability to carry out the Rental Pool Manager's duties and obligations hereunder including its ability to maintain and operate the Resort Condominium at a standard consistent with the Hotel Standards;
- (9) take out and maintain insurance covering the Owner's personal effects and personal liability and, if the Rental Pool Manager is unable to arrange insurance on the Owner's behalf in accordance with section 5.1(16), take out and maintain at all times during the Term the insurance described in that subsection;
- (10) not make any alteration to the Unit, Common Elements (including exclusive use Common Elements) or the Unit FF&E or remove any Unit FF&E from the Unit, without the prior approval of the Rental Pool Manager in its sole discretion;
- (11) not withhold its approval of any budget prepared by the Rental Pool Manager hereunder or under the bylaws or rules and regulations of the Resort Corporation, or any other expenditures proposed by the Rental Pool Manager, if and to the extent the expenditures are necessary to ensure the operation and maintenance of the Unit, the Hotel, the Resort Condominium and the Common Elements to a standard consistent with the Hotel Standards;
- (12) not to use the name "**JW Marriott**" or any of the trademarks associated therewith in any manner whatsoever except only for purposes of identifying the location of the Unit as authorized by the Hotel Operator or its Affiliates, in writing; and
- (13) indemnify and save the Rental Pool Manager, the Hotel Operator and those for whom in law the Rental Pool Manager or the Hotel Operator is responsible harmless from any claim, damage and cost incurred by the Rental Pool Manager or the Hotel Operator or any other person within the scope of their authority in connection with the management of the Resort Condominium including the Unit and the Unit FF&E and, subject to subsection 5.1(16), to carry, at the expense of the Owner, adequate insurance to protect the Rental Pool Manager, the Hotel Operator and such other persons against any such claim, damage and cost in the same manner and to the same extent as the Owner, including the Rental Pool Manager and the Hotel Operator as additional insureds;
- (14) be liable for and indemnify the Rental Pool Manager and the Hotel Operator for the acts and omissions of the Owner's guests and those persons included in the definition of "Unit Owner" under section 7.1(1);

- (15) not charge the Rental Pool Manager or those for whom the Rental Pool Manager is in law liable or hold them responsible for any liability for any error of judgment or for any mistake of fact or law or for anything which it may do or refrain from doing in connection with this Agreement except in case of gross negligence or wilful misconduct;
- (16) not lease or permit occupation of the Unit except in accordance with this Agreement;
- (17) comply with Rental Pool Manager's and Hotel Operator's rules, regulations and policies (including pet policies) with respect to the use of the Unit and the Common Elements; and
- (18) promptly pay when due all amounts owing under any financing of the Unit arranged by the Owner and all real property taxes, telecommunications charges (other than long distance charges incurred by renters of the Unit), common expenses, assessments, levies and other amounts payable to the Resort Corporation, and all other taxes, rates, levies and assessments in respect of or relating to the Unit (collectively, the "**Unit Expenses**").

**6.2 Owner's Authorizations.** The Owner hereby:

- (a) authorizes, to the extent not already authorized hereunder, the Rental Pool Manager to take any and all such steps as are reasonably necessary or desirable to enable the Rental Pool Manager to perform efficiently its functions and duties under this Agreement, including depositing and withdrawing funds from the Operating Account and other trust accounts as set out herein and performing the Rental Pool Manager's obligations set out in Article 5;
- (b) irrevocably appoints the Rental Pool Manager to be the attorney of the Owner, which appointment is coupled with an interest, to execute all necessary instruments and documents of whatsoever kind or nature and to take or cause to be taken all such steps, actions or proceedings, in the name of and on behalf of the Owner, as fully and effectually in every respect as the Owner itself could do in respect of the matters herein contained, including the right to institute or defend legal proceedings in respect of the same in relation to which the Owner hereby covenants and agrees to provide the Rental Pool Manager with all documents and instruments of whatsoever nature reasonably required by the Rental Pool Manager and to cooperate with the Rental Pool Manager in instituting or defending legal proceedings as aforesaid, provided that the Rental Pool Manager will not be obligated to institute or defend any such legal proceedings and that such legal proceedings will be undertaken at the sole cost and expense of the Owner; and
- (c) agrees that if the Unit is a Lock-Off Unit, the Rental Pool Manager may rent the Lock-Off Component either separately or together with the balance of the Lock-Off Unit.

**6.3 Sale of the Unit.** The Owner agrees that if at any time the Owner wishes to sell or otherwise directly or indirectly dispose of the Unit and the Unit FF&E or any interest therein to any person (in this section 6.3 called a "**Transferee**") (other than by way of financing):

- (1) prior to entering into any contract or agreement with any Transferee, the Owner will  
(i) notify the proposed Transferee of the existence and substance of this Agreement and the fact that the ownership and use of the Unit and the Unit FF&E are subject to the rights of the Rental Pool Manager and the hotel guests pursuant to this Agreement and the Rental Pool (including the Rental Pool Covenant), (ii) notify the proposed Transferee of its right to obtain from the Rental Pool Manager the items described in subsections 6.3(3) and (4), (iii) notify the proposed Transferee of any bookings of the Unit by the Owner pursuant to Article 7, (iv) provide the proposed Transferee with a true copy of this Agreement, and (v) notify the Rental Pool Manager of the intended sale to the Transferee;
- (2) the Owner will not show or permit the Unit to be shown by any agent acting on his behalf to prospective purchasers except during periods reserved for occupation of the Unit by the Owner in accordance with this Agreement or on prior appointment with the Hotel Operator. In no event shall the Unit be available for showing when it has been reserved for use by a paying guest;
- (3) the Owner will not, and will not permit any agent acting on behalf of the Owner to, advertise the expected economic benefits of the Rental Pool or this Agreement to any Transferee or prospective Transferee;
- (4) the Rental Pool Manager will, upon reasonable written notice of an intended sale by the Owner, deliver to the prospective Transferee before an agreement of purchase and sale with the Transferee is entered into:
  - (a) the statements of the Rental Pool for the most recent Fiscal Year, which include statements for the prior comparative year, if any; and
  - (b) interim statements for any interim periods after the most recent Fiscal Year end, each as prepared in accordance with section 3.8;
- (5) the Rental Pool Manager agrees that, upon reasonable written notice of an intended sale by the Owner:
  - (a) if the intended sale is to be completed within 12 months from the date of the issuance of permission to occupy the Unit, the Rental Pool Manager will cause the developer of the Resort Condominium to deliver to the prospective Transferee, before an agreement of purchase and sale with the Transferee is entered into, the disclosure statement for the Resort Condominium; and
  - (b) if the intended sale is to be completed after 12 months from the date of the issuance of permission to occupy the Unit, the Rental Pool Manager will deliver to the prospective Transferee, before an agreement of purchase and sale with the Transferee is entered into, a "summary disclosure statement" as required by the OSC Ruling;
- (6) the Owner will not directly or indirectly sell or otherwise directly or indirectly dispose of the Unit and the Unit FF&E located therein or any interest therein unless:

- (a) the Owner is not then in default of any of the Owner's obligations under this Agreement;
  - (b) the Unit and the Unit FF&E located therein are sold or disposed of together to the same Person; and
  - (c) prior to the completion of such transaction the proposed Transferee covenants pursuant to a written assignment and assumption agreement, in the form and content reasonably required by the Rental Pool Manager, to fully assume and be bound by this Agreement and the Rental Pool Covenant;
- (7) upon written request from the Owner, the Rental Pool Manager will provide any prospective Transferee therein with details of any bookings of the Unit by the Owner pursuant to Article 7;
- (8) the Owner or the Transferee will notify the Rental Pool Manager of the completion of the sale or other disposition of the Unit and the Unit FF&E located therein and provide the Rental Pool Manager with reasonable evidence thereof, together with the assignment and assumption agreement described above, duly executed by the Owner and the Transferee;
- (9) the Rental Pool Manager will not be required to make any adjustments as between the Owner and any Transferee and the Rental Pool Manager will be deemed to have fully discharged its obligations hereunder if the Rental Pool Manager pays the Owner's Net Rental Revenue payable to such Owner in accordance with section 3.7 to or to the order of the Person who was, according to the records of the Rental Pool Manager, the registered owner of the Unit on the days such Owner's Net Rental Revenue was earned;
- (10) subject to any existing reservations of the Unit made by the Rental Pool Manager in accordance with Article 7 hereof and to the Rental Pool Manager's approval, acting reasonably, the Transferee may upon not less than 30 days' notice to the Rental Pool Manager, reschedule the use by the Transferee of the Unit pursuant to Article 7 as the new owner of the Unit; and
- (11) upon the execution and delivery of the assignment and assumption agreement described above by the vendor and the Transferee and the transfer of title of the Unit and the Unit FF&E to the Transferee:
- (a) the vendor of the Unit and the Unit FF&E will be released from the duties and obligations of the Owner under this Agreement for the period from and including the date of such transfer of title; and
  - (b) the Transferee will be responsible for all duties and obligations of the Owner under this Agreement for the period from and including the date of such transfer of title.

6.4 **Name of Hotel.** During the Term, the Hotel will be known as "**The Rosseau – a JW Marriott Resort**" or such other name designated by the Rental Pool Manager from time to time.



**ARTICLE 7**  
**USE BY OWNER**

7.1 **Use by Owner.** The parties agree that:

- (1) for the purposes of this Agreement:
  - (a) **“Christmas Break”** means the period commencing on the day before Christmas Day and ending on New Year’s Day;
  - (b) **“Day”** means any period of 24 consecutive hours, commencing at 2:00 p.m. on any day and ending at 2:00 p.m. on the immediately following day;
  - (c) **“Easter Weekend”** means the period commencing on the Thursday immediately preceding Good Friday and ending on the following Sunday;
  - (d) **“Fall Season”** means the period from 2:00 p.m. on September 15 to 2:00 p.m. on December 15 of each calendar year;
  - (e) **“Holiday Weekend”** means a period of three Days commencing on a Friday and ending on a Statutory Holiday;
  - (f) **“March Break”** means the period of at least ten consecutive Days occurring in March which includes those Days when public schools are closed in Ontario (or if public schools in different areas of Ontario are not all closed at the same time, then those Days when public schools are closed in the City of Toronto) including the Friday and Saturday immediately preceding and immediately following such Days;
  - (g) **“Personal Holding Corporation”** means a corporation where all of the issued and outstanding shares are owned by and all of the directors and officers of which are a person and/or the spouse, children and parents of such person;
  - (h) **“Public”** means all persons other than the Unit Owner;
  - (i) **“Registered Owner”** shall mean the person registered in the Land Registry Office for the Land Titles Division of Muskoka as owner of the Unit or, where there is a agreement for sale of the Unit, the holder of the last agreement for sale, in each case of which the Rental Pool Manager has been notified in writing;
  - (j) **“Season”** means any of the Spring, Summer, Fall and Winter Seasons, as the case may be;
  - (k) **“Spring Season”** means the period from 2:00 p.m. on March 15 to 2:00 p.m. on June 15 of each calendar year;
  - (l) **“Statutory Holiday”** means any day which is a statutory holiday in Ontario;
  - (m) **“Summer Season”** means the period from 2:00 p.m. on June 15 to 2:00 p.m. on September 15 of each calendar year;

- (n) **"Thanksgiving Weekend"** means the Holiday Weekend in which Thanksgiving day occurs;
  - (o) **"Unit Owner"** means the Registered Owner and the spouse, children and parents of such Registered Owner and the parents of the Registered Owner's spouse; and where there is more than one Registered Owner, all the Registered Owners and their spouses, children, parents and the parents of their spouses will together constitute the **"Unit Owner"** for the Unit and, where the Registered Owner is a Personal Holding Corporation or Corporations, all directors, officers, shareholders and senior employees and the spouses, children and parents of each of them will together with the Personal Holding Corporation or Corporations constitute the **"Unit Owner"** for the Unit; and **"Unit Owner"** shall include any person permitted by any of the foregoing to use the Unit free of charge, provided that if the **"Unit Owner"** comprises more than one person, the Unit Owner shall designate one person for the purpose of all dealings with the Rental Pool Manager;
  - (p) **"use"** includes the purpose to which the Unit is put, and includes reside, sleep, inhabit, or otherwise occupy;
  - (q) **"Weekly Period"** means any period of seven consecutive Days; and
  - (r) **"Winter Season"** means the period from 2:00 p.m. on December 15 in a calendar year to 2:00 p.m. on March 15 in the next calendar year.
- (2) the Rental Pool Manager may accept reservations from the Public for use of the Unit on any Day except as follows:
- (a) the Rental Pool Manager may not accept a reservation for any Day that has already been reserved by the Owner in accordance herewith;
  - (b) the Rental Pool Manager may not accept reservations for more than forty percent (40%) of the Resort Units for any Day of the period from 2:00 p.m. on June 30 to 2:00 p.m. on Labour Day or of Thanksgiving Weekend, Christmas Break, March Break or Easter Weekend at any time more than six months prior to the commencement of the Season in which such reservation occurs; and
  - (c) at any time more than six months prior to the commencement of the Spring, Fall or Winter Seasons or the Summer Season with respect to the periods from 2:00 p.m. on June 15 to 2:00 p.m. on June 30 and from 2:00 p.m. on Labour Day to 2:00 p.m. on September 15, as the case may be, the Rental Pool Manager may not accept reservations for more than forty percent (40%) of the total number of Days available for all Resort Units in the Resort Condominium during that Season or period (other than Days occurring on any of Thanksgiving Weekend, Christmas Break, March Break or Easter Weekend). For greater certainty, the Rental Pool Manager may accept reservations for all of the Resort Units for any period during the Spring, Fall or Winter Seasons or the periods described in this subparagraph provided that the limitations in this subparagraph and in subparagraphs (a) and (b) of this section 7.1(2) are observed;

- (3) subject to subsection 7.1(2) above and the other terms hereof, the Registered Owner may reserve the Unit as follows:
- (a) for use by any Unit Owner by notice in writing to the Rental Pool Manager at least six months prior to the commencement of the Season in which the reservation falls;
  - (b) for use by any Unit Owner at any time more than 7 Days but not more than 30 Days in advance if the Unit is not then reserved for use by a member of the Public provided that if 80% or more of all Resort Units in the Resort Condominium have been reserved by members of the Public (including other Unit Owners) for any of the Days that the Registered Owner seeks to reserve, the Rental Pool Manager may refuse to accept the requested reservation;
  - (c) for use by the Unit Owner (not including non-paying guests) at any time up to 7 Days in advance provided that the Unit is not then reserved for use by a member of the Public or another Unit Owner.
- (4) if, at the time of making a reservation (not including a reservation pursuant to section 7.1(3)(c)), the Rental Pool Manager has accepted a reservation for the Unit from the Public, the Rental Pool Manager may, in its sole discretion, offer the Owner a reservation for a Resort Unit of the same type as the Unit which the Owner may, but shall not be obligated, to accept;
- (5) reservations by the Registered Owner for use of the Unit will be subject to the following restrictions:
- (a) the Unit may not be used by any Unit Owner for more than the following periods (the "**Permitted Seasonal Allotment**"):
    - (i) for more than 14 days in any of the Spring, Fall and Winter Seasons; and
    - (ii) for the Summer Season, the Unit Owner may select any one of the following options by written notice to the Rental Pool Manager by December 15 in the preceding year:
      - (A) Option 1 - 7 Days; or
      - (B) Option 2 - 14 Days; or
      - (C) Option 3 - 21 Days

provided that, if the Unit Owner has not made any selection or fails to give written notice by December 15 in any year, then the Unit Owner will be deemed to have selected Option 2 for the ensuing Summer Season or, if the Unit Owner has previously made a selection, then that selection will continue to apply until a new selection is made;
  - (b) any part of a Permitted Seasonal Allotment not used in that Season may not be used in any other Season;

- (c) a reservation made pursuant to subsections 7.1(3)(a) or (b) shall form part of and be counted against the applicable Permitted Seasonal Allotment;
  - (d) a reservation made pursuant to subsection 7.1(3)(c) shall not form part of or be counted against any Permitted Seasonal Allotment;
  - (e) except for a reservation made pursuant to subsection 7.1(3)(c) (which may be for a single Day) and subject to subsection 7.1(5)(k), any reservation must be for a minimum of two consecutive Days;
  - (f) no reservation may commence or end on a Saturday other than a reservation pursuant to subsection 7.1(3)(c);
  - (g) any reservation for a Day which commences at 2:00 p.m. on a Friday must include use of the Unit for the next Day (Saturday) and, on a Holiday Weekend, the next Day (Sunday);
  - (h) a reservation for any of the Seasons must include at least one Weekly Period provided that, where Option 3 has been selected, reservations for the Summer Seasons must include at least two Weekly Periods (which may but need not be consecutive). A reservation in any Season may include all of the applicable Permitted Seasonal Allotment;
  - (i) in any Summer Season, the Unit Owner may reserve one but not more than one of the Holiday Weekends occurring in that Period;
  - (j) in any calendar year, the Unit Owner may reserve either the Thanksgiving Weekend or the Easter Weekend but not both;
  - (k) the Unit Owner may reserve a period of at least three (3) consecutive Days which includes Christmas Day or New Year's Day but not both; and
  - (l) the Unit Owner may not, in any event, occupy the Unit for more than 30 Days in the Summer Season;
- (6) if the Registered Owner (or any other person permitted by the Rental Pool Manager, in its sole discretion, to reserve the use of the Unit on behalf of the Registered Owner) reserves the use of the Unit pursuant to subsection 7.1(3), the Unit Owner will be deemed to have used the Unit during the period or periods so reserved, whether or not the Unit Owner actually uses or occupies the Unit during such period or periods, unless the Unit is available for rental to the Public and, at least 30 Days prior to the Unit Owner's scheduled use of the Unit, the Registered Owner cancels such reservation by a notice in writing to the Rental Pool Manager and obtains the approval of the Rental Pool Manager, acting reasonably;
- (7) if the Unit Owner does not use the full amount of Days permitted to be used by the Unit Owner pursuant to subsection 7.1(5) in any Season, the Unit Owner will not be entitled to accumulate or otherwise use the unused Days in any future Season; and

- (8) a Unit Owner using the Unit pursuant to this Article 7 will be subject to, and shall comply with, the Rental Pool Manager's rules and policies regarding smoking, pets, noise and other operating matters and shall be responsible for all costs arising from any breach thereof including cleaning costs.

The Registered Owner will be bound by the rental bookings of the Unit made by the Rental Pool Manager pursuant to this Agreement and the Rental Pool. Neither the Registered Owner nor any Unit Owner will be required to pay rent for the use of the Unit on such Days, but the Unit Owner will pay to the Rental Pool Manager the amounts set out in this Article 7.

**7.2 Lock-Off Units.** The Registered Owner of a Lock-Off Unit shall be entitled to make reservations for the use of either the Lock-Off Component or the balance of the Lock-Off Unit and keep the unoccupied part of the Lock-Off Unit available for rent as part of the Rental Pool provided that:

- (1) the Registered Owner complies with section 7.1(3) or 7.1(4) of this Agreement, as the case may be, with respect to making reservations to occupy the part of the Lock-Off Unit to be personally used by a Unit Owner;
- (2) the Owner's Share for the purposes of calculating Owner's Net Rental Revenue shall be deemed to be the Apportioned Share for the part of the Lock-Off Unit which is in the Rental Pool for the relevant period of calculation; and
- (3) use of a part of the Lock-Off Unit by a Unit Owner shall be deemed use of the entire Lock-Off Unit for the purposes of section 7.1(5). Specifically, except as permitted by section 7.1(3)(c), a Unit Owner shall not be entitled to use any part of the Lock-Off Unit for more than the time periods set forth in section 7.1(5).

**7.3 Change in Use.** The Registered Owner will forthwith notify the Rental Pool Manager in writing if the Registered Owner determines or discovers at any time that any Unit Owner will not use the Unit on any of the Days for which the Registered Owner gave notice therefor pursuant to subsection 7.1(3) and the Rental Pool Manager may then rent out the Unit on such Days, provided that, in any event, the provisions of section 7.1(6) will continue to apply for the purposes of determining whether the Owner is deemed to have used the Unit during any of the Days in question.

**7.4 Housekeeping Service.**

- (1) The Unit Owner will be required to utilize the Basic Daily Housekeeping Services provided by the Rental Pool Manager on each Day the Unit Owner uses the Unit. The Owner may elect to upgrade such service to Marriott's Full Service Daily Housekeeping as described in Schedule D. The Owner shall pay the Rental Pool Manager the applicable daily housekeeping fees in respect thereof in accordance with subsection 7.4(4).
- (2) The Unit Owner will leave the Unit in a reasonably neat and tidy condition following use thereof. The Unit Owner will vacate the Unit by 12:00 noon on the Day following the last evening of the Unit Owner's use thereof. The Unit Owner will pay to the Rental Pool Manager the fee for Departure Cleaning (as described in Schedule D) in respect of each stay after the Unit Owner completes use of the Unit in accordance with subsection 7.4(4).
- (3) The Owner acknowledges that the Rental Pool Manager will arrange for an annual Deep Cleaning of the Unit (as described in Schedule D) and that the Unit will not be in the

Rental Pool during the period required to perform such service. The Owner shall pay the Rental Pool Manager the annual Deep Cleaning Fee in respect thereof in accordance with subsection 7.4(4).

- (4) The Rental Pool Manager's fees for Basic Daily Housekeeping, Marriott's Full Service Daily Housekeeping, Departure Cleaning and Annual Deep Cleaning services as of the Commencement Date are set out in paragraph G in Schedule D attached hereto. The Rental Pool Manager may change its fees at any time upon notice to the Registered Owner. The Owner shall pay the Rental Pool Manager's daily housekeeping and Departure Cleaning fees on check out provided that, if the Unit Owner does not make such payment, the Rental Pool Manager may deduct such amount from the Owner's Net Rental Revenue and withdraw it from the Operating Account.

**7.5 Use by or on behalf of Registered Owner.** The Registered Owner will be responsible for any use of the Unit by any Unit Owner and any amount payable from any Unit Owner to the Rental Pool Manager hereunder and will cause any Unit Owner to comply with its obligations under this Article 7. Under no circumstances will the Registered Owner or any Unit Owner during the Term directly or indirectly market, advertise or charge rent or accept any form of consideration for the use of the Unit except in accordance with the Rental Pool and this Agreement.

**7.6 No Other Use by Registered Owner.** Neither the Registered Owner nor any Unit Owner will use or permit any person to use the Unit, the Unit FF&E, or the Common Elements (including any Parking Stalls) except in accordance with this Article 7 or with the prior written consent of the Rental Pool Manager in its sole discretion.

## **ARTICLE 8**

### **CONFERENCE FACILITIES, PARKING AND COMMON AREAS**

**8.1 Conference Facilities.** The Owner acknowledges that the Rental Pool Manager has entered into the Conference Centre Lease for the purposes of making the meeting rooms, ballrooms and other facilities contained in the Conference Centre available for use in conjunction with the rental of Resort Units. The use of the Conference Centre may be included in the rental rates charged for the Resort Units. Any additional revenues earned directly for the use of the Conference Centre or any part thereof will be included in Gross Rental Pool Revenue after deduction of all expenses related to such use. The Owner acknowledges and agrees that revenues earned by the Rental Pool Manager for conference services provided by it, such as food and beverage service, rental of audio-visual equipment and set up and tear down services, will belong solely to the Rental Pool Manager.

The Owner acknowledges that the Conference Centre Lease will require the Rental Pool Manager to pay rent to the owner of the Conference Centre on a "net" basis to cover all of the costs of the owner relating thereto including, without limitation, common expenses, reserve fund payments, the cost of repairs and replacements to the Conference Centre including the furniture, fixtures and equipment contained therein, realty taxes and insurance. The Owner acknowledges that such payments will be a deduction from Gross Rental Pool Revenue in order to determine Adjusted Gross Revenue pursuant to section 3.2 hereof.

**8.2 Parking.** The Owner agrees that the Rental Pool Manager, as the owner of the Hotel Management Unit, will have control over the management, administration and rental of the Parking Stalls, provided that:

- (1) the Rental Pool Manager may but shall not be obligated to levy parking charges for the use of Parking Stalls;
- (2) all parking revenue earned from the use of Parking Stalls by guests shall form part of Gross Rental Pool Revenue (other than valet charges over and above the charge, if any, for parking itself, which shall belong to the Rental Pool Manager); and
- (3) the Owner acknowledges that pursuant to the declaration of the Resort Condominium, the Hotel Management Unit has appurtenant to it the exclusive right to operate and manage Parking Stalls.

The Resort Corporation will be responsible for cleaning, maintaining, repairing and replacing the Parking Stalls provided that the Commercial Condominium will be obligated to contribute to the cost thereof on an equitable basis based on estimated usage.

**8.3 Swimming Pool and Exercise Room.** The Owner agrees that the Rental Pool Manager shall have the right to administer and manage the swimming pool and the exercise room within the Resort Condominium, including establishing and collecting fees for the use thereof (other than from the Unit Owner as defined in section 7.1) including fees for access thereto by owners of units on the Additional Development Lands if such units are constructed (subject always to the provisions of this Agreement). Such fees will be used, at least in part, to offset the costs of such facilities.

**8.4 Recreational Facilities and Other Common Areas and Facilities.** The Unit Owner (as such term is defined in section 7.1(1) but not including non-paying guests) shall have the right to use any recreational facilities, common areas and common facilities within the Resort Condominium at all times whether the Unit Owner is occupying the Unit or not, subject always to the Declaration, by-laws and reasonable rules and regulations of the Resort Corporation and the Hotel Operator and any other arrangements which the Resort Corporation or the Hotel Operator may make with respect thereto.

## **ARTICLE 9**

### **ARBITRATION**

**9.1 Dispute Resolution.** Unless otherwise specifically provided for in this Agreement, all disputes, controversies, claims or disagreements arising out of or relating to this Agreement (singularly, a “Dispute”, and collectively, “Disputes”) shall be resolved in the following manner:

- (1) first, within 10 days from the receipt of notice of a Dispute by one party to the other, the parties shall in good faith attempt to negotiate for a period of 30 days in an effort to resolve the Dispute;
- (2) second, if the parties are unable to resolve the Dispute within such 30 day period, the parties shall resort to the arbitration procedures set forth in section 9.2; and
- (3) third, any party to the Dispute shall be entitled to join any Dispute proceeding arising out of this Agreement with any other Dispute proceeding arising out of this Agreement.

Notwithstanding the provisions of this section 9.1, each of the Owner and the Rental Pool Manager may waive the provisions of section 9.1(1) in respect of any Dispute by written notice to the other, in which

case the parties shall resort directly to the arbitration procedures set forth in section 9.2 in respect of such Dispute.

9.2           **Arbitration.** Except as otherwise provided in this section 9.2 or in section 9.3, any Dispute shall be settled by arbitration as follows:

- (1)       such Dispute may be submitted to arbitration by either party giving written notice to the other party that the party giving the notice has elected to have the Dispute submitted to arbitration. Such arbitration will be carried out by a single arbitrator mutually agreed upon by the parties. If the parties fail to agree upon an arbitrator within 15 days after a party has notified the other party of the name of the person it nominates to carry out the arbitration, then either party may apply to a judge of the Superior Court of Justice of Ontario for the appointment of an arbitrator and such appointment will be binding on the parties. Any arbitrator nominated or selected will be independent of each of the parties to the Dispute;
- (2)       it is the intention of the parties that the arbitration will be conducted, and that the determination or award of the arbitrator be made and communicated in writing to the parties, as expeditiously as possible and this will be reflected in choice of and directions given to and by the arbitrator. The arbitrator will conduct the arbitration of the dispute as expeditiously as reasonably possible and will provide written reasons for his decision. The decision of the arbitrator duly appointed pursuant to this section 9.2 will be final and binding upon the parties hereto;
- (3)       the arbitration will be held in Toronto, Ontario; and
- (4)       no limitation imposed by or pursuant to the *Arbitration Act* on the remuneration of the arbitrator will apply. The arbitrator is authorized to include in his determination or award an award in favour of either party in respect of any costs incurred in connection with or in respect of the arbitration, including the cost of the arbitrator and the arbitration and all legal and other professional costs and disbursements and although such an award must be made on a judicial basis, it need not be based on any court approved tariff basis and may be on a complete indemnity basis. In all other respects the arbitration will be governed by the *Arbitration Act*, as the same may be amended or replaced from time to time.

Notwithstanding anything contained in this section 9.2, each of the Owner and the Rental Pool Manager shall be entitled to (i) commence legal proceedings seeking such mandatory, declaratory or injunctive relief as may be necessary to define or protect the rights and enforce the obligations contained herein pending the settlement of a Dispute, (ii) commence legal proceedings involving the enforcement of an arbitration decision or award arising out of this Agreement, or (iii) join any arbitration proceeding arising out of this Agreement with any other arbitration proceeding arising out of this Agreement.

9.3           **Expert Decisions.** Notwithstanding the other provisions of this Article 9, if a Dispute arises involving a matter which the Rental Pool Manager gives notice that it is subject to determination by an Expert appointed by the Rental Pool Manager and the Hotel Operator under the Hotel Management Agreement, the parties agree that the Dispute shall be determined by such Expert in accordance with the provisions of the Hotel Management Agreement as follows:

- (1)       the use of the Expert shall be the exclusive remedy of the parties and neither party shall attempt to adjudicate any dispute in any other forum. The decision of the Expert shall be



final and binding on the parties and shall not be capable of challenge, whether by arbitration, in court or otherwise;

- (2) each party shall be entitled to make written submissions to the Expert, and if a party makes any submission it shall also provide a copy to the other party and the other party shall have the right to comment on such submission. The parties shall make available to the Expert all books and records relating to the issue in dispute and shall render to the Expert any assistance requested of the parties. The costs of the Expert and the proceedings shall be borne as directed by the Expert unless otherwise provided for herein;
- (3) the Expert shall make its decision with respect to the matter referred for determination by applying the standards applicable to first class hotels in accordance with the System Standards (including compliance with the requirements of any quality assurance program) and determining whether the matter at issue is necessary to satisfy such standards; and
- (4) the terms of engagement of the Expert shall include an obligation on the part of the Expert to: (i) notify the parties in writing of his decision within forty five (45) days from the date on which the Expert has been selected (or such other period as the parties may agree or as set forth herein); and (ii) establish a timetable for the making of submissions and replies.

9.4 **Additional Parties.** The Rental Pool Manager shall be entitled by notice to the Owner to join the Owner and other Owners, the Resort Corporation, the Commercial Corporation and the Hotel Operator or any of them to any of the proceedings described in this Article 9 if, in the reasonable opinion of the Rental Pool Manager, the dispute involves issues affecting such other parties.

## **ARTICLE 10**

### **MISCELLANEOUS**

10.1 **Cooperation.** The parties will at all times during the Term act in good faith, cooperate and act reasonably in respect of all matters within the scope of this Agreement.

10.2 **Proxies.** Subject to any previous appointment of any mortgagee of the Unit, the Owner will, upon request by the Rental Pool Manager, nominate, constitute and appoint the Rental Pool Manager to be the proxy for the Owner, to attend in the place and stead and for and on behalf of the Owner at such meetings of the Resort Corporation as the Rental Pool Manager may from time to time and at any time wish to attend, and to act and vote or refrain from acting or voting in the place and stead and for and on behalf of the Owner on any and all matters where the Owner has the power or right to act or vote conferred on it by or under the *Condominium Act*, the bylaws or rules and regulations of the Resort Corporation as owner of the Unit or otherwise, except insofar as such action or voting relates to any contract between the Rental Pool Manager and the Resort Corporation. The Owner will promptly execute such proxy or proxies, whether general or specific, as the Rental Pool Manager may hereafter request for the foregoing purpose. Nothing contained in this section 10.2 will require the Rental Pool Manager to attend any meeting of the Resort Corporation or act or vote in any particular way and the Owner acknowledges and agrees that the Rental Pool Manager will not be directly or indirectly liable to the Owner or any person claiming through or under the Owner in connection with the Manager's exercise or failure to exercise any of such rights provided that the Rental Pool Manager acts in good faith. For clarity,

nothing in this section 10.2 will prevent the Owner from specifying how the proxy is to vote on a particular question or issue. Further, if an Owner attends a meeting in person, any proxy previously given by the Owner to the Manager with respect to such meeting will be automatically revoked.

**10.3 Approval by the Owner.** Whenever any matter pursuant to or arising out of this Agreement is left to the discretion or approval or disapproval of the Owner, the Owner will notify the Rental Pool Manager of his decision promptly and any approval requested by the Rental Pool Manager will not be unreasonably withheld, conditioned or delayed by the Owner; provided that it shall be unreasonable to deny or refuse consent or approval to any matter if the effect of such denial or refusal would prevent or hinder the operation or maintenance of the Common Elements or the Unit in a manner consistent with the Hotel Standards. In the absence of a notification from the Owner within seven days after any matter arises the Rental Pool Manager will be entitled (but not obligated) to make such decision on behalf of the Owner. The Rental Pool Manager will not be responsible for any decisions so made or for the failure of the Rental Pool Manager to make any such decision provided that the Rental Pool Manager has acted in good faith.

**10.4 Privacy Consent.** In this section 10.4, “**Personal Information**” means information about an identifiable individual. The Rental Pool Manager and Hotel Operator and each of their respective agents, Affiliates and service providers may collect, use and/or disclose the Owner’s Personal Information for the following purposes: (a) to consider whether the Rental Pool Manager, the Hotel Operator or any of their respective Affiliates should establish or continue a commercial relationship with the Owner, including without limitation, to provide ongoing products and services, administer the Owner’s account, conduct credit checks, obtain and receive payments, administer loyalty programs in accordance with the terms thereof, and to fulfil contractual obligations; (b) to understand and respond to the Owner’s needs and preferences, including to contact the Owner and to conduct surveys, contests and promotions; (c) to develop, enhance, market, sell, provide and inform the Owner of the Rental Pool Manager’s and/or the Hotel Operator’s products and services; (d) to market, sell, provide and inform the Owner of products and services of third parties, including the Rental Pool Manager’s Affiliates, with whom the Rental Pool Manager and/or the Hotel Operator has a commercial relationship; (e) for the purposes of management and the operation by Intrawest Trading Company Inc. of its “Resort to Resort” program with which the Hotel will be a registered member; (f) to manage and develop the Rental Pool Manager’s, the Hotel Operator’s and their respective Affiliates’ businesses and operations; (g) to monitor communications to ensure the consistency and quality of the products and services of the Rental Pool Manager, the Hotel Operator, their respective Affiliates and other third parties with whom the Rental Pool Manager and/or the Hotel Operator has a commercial relationship; (h) to detect and protect the Rental Pool Manager, the Hotel Operator, their Affiliates and other third parties against error, negligence, breach of contract, theft, fraud and other illegal activity, and to audit compliance with the Rental Pool Manager’s and the Hotel Operator’s policies and contractual obligations; (i) to engage in business transactions, including the purchase, sale, lease, merger, amalgamation or any other type of acquisition, disposal, securitization or financing involving the Rental Pool Manager, the Hotel Operator, or any of their respective Affiliates; (j) as permitted by, and to comply with, any legal or regulatory requirements or provisions; and (k) for any other purpose to which the Owner consents.

**10.5 Relationship.** This Agreement is not a lease, partnership or joint venture agreement and nothing contained herein will constitute the parties landlord and tenant, partners or joint venturers.

**10.6 Notices.** Any payment, demand or notice in connection with this Agreement will be delivered, telecopied or sent by postage prepaid mail and addressed to the parties at their addresses first above written, or at such other address as either party may specify in writing to the other in the manner set forth in this section 10.6. No notice from the Owner to the Rental Pool Manager will be effective unless

the Owner has provided a copy thereof to the registered owner of the Unit containing the front desk and other management facilities used or occupied by the Rental Pool Manager in connection with managing the Resort Units, to the address set out on the title to such Unit or such other address as the Rental Pool Manager specifies to the Owner in writing. The time of giving and receiving any such notice will be deemed to be on the day of delivery or transmittal if delivered or sent by telecopy, or on the sixth business day after the day of mailing thereof if sent by mail. In the event of any disruption of mail services, all notices will be delivered or sent by telecopy rather (if available) than mailed.

10.7           **No Waiver.** No failure or delay on the part of either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

10.8           **Applicable Laws.** This Agreement will be construed according to the laws in force in the Province of Ontario.

10.9           **Force Majeure.** If either the Resort Condominium or Unit is so damaged by fire, catastrophe, acts of God, civil commotion, war or other casualty as to render the Unit unfit for rental purposes, as determined by the Rental Pool Manager, then all Unit reservations that cannot be fulfilled due to the condition of the building or Unit may be cancelled, and the obligations of the parties hereunder shall be temporarily abated until the building and/or Unit is restored to a first-class, occupiable condition suitable for renting.

10.10          **Canadian Funds.** All amounts payable by either party to the other hereunder will be paid in Canadian funds.

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

10.12          **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and will not be modified or amended except by an instrument in writing signed by each of the parties.

10.13          **Non Limiting.** The word "including", when following any general statement, will be construed to refer to all other things that could reasonably fall within the scope of such general statement, whether or not non limiting language (such as "without limitation") is used with reference thereto.

10.14          **Gender and Number.** Words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa.

10.15          **Joint and Several.** If the Owner is more than one person, all of the covenants and liabilities of the Owner are joint and several.

10.16          **Enurement.** This Agreement will enure to the benefit of and be binding upon the heirs, executors, legal representatives, successors and permitted assigns of the parties.

10.17           **Execution by Telecopy.** This Agreement may be executed by the parties and transmitted by telecopy and if so executed and transmitted this Agreement will be for all purposes as effective as if the parties had delivered an executed original Agreement.

10.18           **Counterparts.** This Agreement may be executed in two or more counterparts, each of which counterparts shall be deemed an original. In proving this Agreement, it shall not be necessary to produce or account for more than one of the counterparts.

10.19           **Severability.** If any provision of this Agreement or any part hereof is found or determined to be invalid it will be severable and severed from this Agreement and the remainder of this Agreement will be construed as if such invalid provision or part had been deleted from this Agreement, except when such construction (i) would operate as an undue hardship on either party, or (ii) would constitute a substantial deviation from the general intent and purposes of the parties as reflected in this Agreement. In the event of either clause (i) or (ii) above, the parties shall, subject to section 9.1, use their best efforts to negotiate a mutually satisfactory amendment to this Agreement to circumvent such adverse construction. If no such amendment has been agreed upon within 60 days, the dispute shall be submitted to arbitration in accordance with the provisions of section 9.1.

10.20           **Status Certificates.** Each of the Owner and the Rental Pool Manager will, upon request, provide a certificate confirming that this Agreement is in full force and effect and that there are no defaults outstanding hereunder or, if applicable, detailing the defaults which are then subsisting.

10.21           **Third Party Beneficiary.** The parties confirm that the Hotel Operator, although not a party to this Agreement is nevertheless a third party beneficiary hereof. As such, the parties hereby confer on the Hotel Operator the benefit of the covenants of the Owner hereunder in favour of the Rental Pool Manager and the ability to enforce the rights and privileges of the Rental Pool Manager set forth herein against the Owner.

10.22           **Amendments.** This Agreement must not be amended unless the same amendments are simultaneously being made to all rental pool management agreements between the Rental Pool Manager and each of the Owners in respect of all of the Resort Units, and any such amendment will be effective, and the Owner will be bound thereby, if approved by a seventy-five percent (75%) vote of the Owners, whether or not the Owner voted in favour of such amendment.

10.23           **Further Assurances.** Each party agrees to make such further assurances as may be reasonably required from time to time by any other party to more fully implement the true intent of this Agreement.

10.24           **Schedules.** The following schedules are attached to and form part of this Agreement:

- Schedule A    -     Unit Factors
- Schedule B    -     List of Unit FF&E
- Schedule C    -     Rental Pool Covenant
- Schedule D    -     Description of Housekeeping and Maintenance Services
- Schedule E    -     Summary of Costs

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date first above written.

BY THE RENTAL POOL MANAGER:

**THE ROSSEAU RESORT MANAGEMENT  
SERVICES INC.**

By: \_\_\_\_\_

BY THE OWNER:

If a corporation:

By: \_\_\_\_\_

If an individual:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name: \_\_\_\_\_

## **APPENDIX “D”**

THE ROSSEAU - a JW MARRIOTT RESORT

RENTAL POOL COVENANTS

Recitals

1. In this Schedule, the capitalized terms have the meanings ascribed thereto as follows:

"Hotel" means the building and related lands known as "The Rosseau – a JW Marriott Resort" and includes all the units and common elements of the Resort Condominium;

"Hotel Management Agreement" means the agreement between the Rental Pool Manager, the Hotel Management Unit Owner and Marriott Hotels of Canada, Ltd. for the management of the Hotel, as the same may be amended, extended, restated or replaced from time to time and includes any subsequent agreement between the Rental Pool Manager and a permitted replacement for the hotel manager pursuant to the Rental Pool Management Agreements;

"Hotel Management Unit" means Unit 28, Level 1, Muskoka Standard Condominium Plan No. 62;

"Hotel Management Unit Owner" means The Rosseau Resort Developments Inc. and shall include its successors in title to the Hotel Management Unit;

"Hotel Operator" means Marriott Hotels of Canada Ltd. and includes any permitted replacement therefor pursuant to the Rental Pool Management Agreements;

"Hotel Use" means the use of the Resort Units for the purpose of the rental to the public for tourists', visitors' and travellers' transient accommodation as part of the Rental Pool under the Rental Pool Management Agreements;

"Owner" means from time to time the registered owner of a Unit and shall include his or her or its successors in title to such Unit;

"Personal Use" means the use of the Resort Unit as permitted under the applicable Rental Pool Management Agreement by the Resort Unit Owner and his or her successors in title;

"Rental Pool" means the rental management arrangement undertaken by the Rental Pool Manager in respect of the Resort Condominium in accordance with the Rental Pool Management Agreements;

"Rental Pool Manager" means the person named as rental pool manager from time to time under the Rental Pool Management Agreements whose responsibility it is to manage and operate the Hotel and the Rental Pool and includes any person to whom its responsibilities have been delegated in accordance with the Rental Pool Management Agreements;

"Rental Pool Management Agreements" means, collectively, the rental pool management agreements entered into by each owner or purchaser of a Resort Unit and the Rental Pool Manager, as such agreement may be modified, amended, superseded or replaced from time to time;

"Resort Condominium" means Muskoka Standard Condominium Plan No. 62;

"Resort Units" means, collectively, all of the units in the Resort Condominium from time to time save and except the Hotel Management Unit and "Resort Unit" means the condominium unit described in the attached transfer of land;

"Resort Unit Owner" means the transferee named in the attached transfer of land and shall include his or her successors in title to the Resort Unit;

"Unit" means any one of the Resort Units or the Hotel Management Unit and the term "Units" shall mean all of them;

2. Wherever the singular or masculine is used the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties hereto so require.

3. The headings are inserted for reference and convenience only and must not be used to construe or interpret these provisions hereof.
4. It is desirable for the greater benefit and enjoyment of the Hotel Management Unit and the Resort Units, that certain restrictions be placed on the use of the Resort Units and the Hotel Management Unit so as to ensure that, at all times, the Resort Units will be available for and operated in a collective manner as a hotel, and that the Hotel Management Unit will be used to provide facilities considered necessary or desirable in the operation of the Hotel and accordingly, these restrictive covenants have been registered against title to the Units.

#### Use of Resort Unit

5. With the intent that this restriction shall run with and burden each of the Resort Units and be for the benefit of the Hotel Management Unit, that for so long as the Hotel Management Unit is used to manage and operate the Rental Pool and, in any event, for so long as the Hotel Management Agreement continues in effect, the Resort Unit Owner of each Resort Unit will not occupy, use or permit or cause to be occupied or used, all or any portion of the Resort Unit for any purpose whatsoever other than for Hotel Use or Personal Use.

#### Use of Hotel Management Unit

6. With the intent that this restriction shall run with and burden the Hotel Management Unit and be for the benefit of each and every Resort Unit in the Hotel, for so long as the Resort Units are used for Hotel Use and, in any event, for so long as the Hotel Management Agreement continues in effect, the Hotel Management Unit Owner will not occupy, use or permit or cause to be occupied or used, all or any portion of the Hotel Management Unit for any purpose whatsoever other than for managing and operating the Hotel and the Rental Pool or as may be permitted under either the Rental Pool Management Agreements or the Hotel Management Agreement.

#### Priority of Mortgages

7. No mortgage, assignment of rents or other security, including any renewals, modifications, replacements or extensions thereof will be registered against title to any of the Units or rank or purport to rank in priority to these restrictions, other than the construction financing for the Hotel.

#### Resort Unit Mortgages

8. No lien, charge or encumbrance shall be filed against title to any of the Resort Units or the furniture, fixtures and equipment located therein except in connection with the Resort Unit Owner's financing thereof and, in any event, only if: (a) the security for such financing covers the furniture, fixtures and equipment as well as the Resort Unit; (b) the lender providing such financing enters into an agreement with the Rental Pool Manager acknowledging the rights of the Rental Pool Manager under the Rental Pool Management Agreement respecting the furniture, fixtures and equipment and agreeing to assume and be subject to the Rental Pool Management Agreement in the event such lender enforces its security; and (c) the principal amount of such financing does not exceed 75% of the fair market value of the Resort Unit at the time of such financing.

#### General Matters

9. Each and every Resort Unit shall only be available and offered for rental to the public as part of the Rental Pool as operated and managed by the Rental Pool Manager.
10. The Hotel Management Unit shall only be available for the purpose described in paragraph 6 hereof.
11. Each of the Rental Pool Manager and the Hotel Operator (if there is one) may, from time to time, in its sole and unfettered discretion, waive or suspend, in writing, the application of any of the restrictions or covenants hereunder with respect to any one or more of the Resort Units, either on a temporary or on a permanent basis.



12. Each of the Resort Unit Owners and the Hotel Management Unit Owner shall each do and cause to be done all things and shall execute and cause to be executed all plans, documents and other instruments which may be necessary to give proper effect to the intention of these restrictions. Without limitation, the Resort Unit Owner of each Resort Unit from time to time will, prior to and as a condition of the sale, transfer or assignment of the Resort Unit require the purchaser, transferee or assignee to duly execute and deliver to the Rental Pool Manager an agreement whereby such purchaser, transferee or assignee agrees to assume the Resort Unit Owner's responsibilities under the Rental Pool Management Agreement relating to Resort Unit or, if required by the Rental Pool Manager, a new Rental Pool Management Agreement in the Rental Pool Manager's standard form from time to time. Notwithstanding this obligation, if the Resort Unit Owner from time to time of any Resort Unit sells, transfers or assigns the Resort Unit or any interest therein without concurrently obtaining an assumption agreement from such purchaser, transferee or assignee, then the interest of such Resort Unit Owner under the Rental Pool Management Agreement will automatically be assigned to and assumed by the purchaser, transferee or assignee of such Resort Unit Owner's interest in the Resort Unit.
13. No amendment to these restrictions is valid unless in writing and executed by the Rental Pool Manager, the Hotel Operator, the Hotel Management Unit Owner and at least two-thirds of the Resort Unit Owners. It is understood and agreed that the Rental Pool Management Agreements may be modified, amended, superseded or replaced from time to time as may be permitted or required pursuant to the terms of the Rental Pool Management Agreements. In the event that the Rental Pool Management Agreements are so modified, amended, superseded or replaced, each of the Resort Unit Owners and the Hotel Management Unit Owner will, if requested by the Rental Pool Manager from time to time, promptly execute an amendment to these restrictions in registrable form to reflect any amendment or modification to the Rental Pool Management Agreements.
14. Should any section, or part thereof, of these restrictions be held invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable part shall be severed and the invalidity or unenforceability of such section or part shall not affect the validity of the remainder which shall remain binding on the Resort Unit Owners and the Hotel Management Unit Owner and shall charge the Resort Units and the Hotel Management Unit and be enforceable to the fullest extent of the law.
15. Time is of the essence of these restrictive covenants.
16. These restrictions shall be personal and binding upon each of the Resort Unit Owners and the Hotel Management Unit Owner only during his, her or its ownership of any interest in the Resort Unit or the Hotel Management Unit, as the case may be, but the Resort Unit and the Hotel Management Unit shall nevertheless be and remain at all times charged herewith, to the intent that upon the transfer of all interest of such Owner in the Resort Unit or the Hotel Management Unit, as the case may be, in accordance with these restrictions and the Rental Pool Management Agreements, such Owner shall be freed and discharged from the observance and performance thereafter of the restrictions on its part in respect of the Resort Unit or the Hotel Management Unit, as the case may be, on its part to be observed and performed.
17. These restrictions shall charge each of the Resort Units and the Hotel Management Unit and the burden of all the restrictive covenants herein shall run with each of the Resort Units and the Hotel Management Unit and charge each of the Resort Units and the Hotel Management Unit and every part thereof.
18. These restrictions shall enure to the benefit of and be binding upon the Resort Unit Owners and the Hotel Management Unit Owner and their respective heirs, executors, administrators, successors and permitted assigns. Without limiting the foregoing, these restrictions will bind any Owner from time to time of any Unit to the same extent as if that Owner had executed and delivered these restrictions as the act and deed of such Owner.

## APPENDIX “E”

## ASSIGNMENT OF HOTEL MANAGEMENT AGREEMENT

THIS ASSIGNMENT OF HOTEL MANAGEMENT AGREEMENT (as amended, supplemented, amended and restated or otherwise modified from time to time, this "Assignment"), dated as of April 20, 2007, is made by THE ROSSEAU RESORT DEVELOPMENTS INC., an Ontario corporation (the "Borrower"), and THE ROSSEAU RESORT MANAGEMENT SERVICES INC., an Ontario corporation ("RRMS"; together with the Borrower, the "Assignors" and each, an "Assignor"), in favor of WESTLB AG, TORONTO BRANCH, a joint stock company organized and existing under the laws of Germany, acting through its Toronto Branch ("WestLB"), in its capacity as Administrative Agent for the benefit of the Lenders (the "Administrative Agent"), pursuant to that certain Credit Agreement dated as of the date hereof, among the Assignor, as borrower (in such capacity, the "Borrower"), the various financial institutions which may from time to time become a party thereto (each individually, including WestLB, a "Lender" and collectively, the "Lenders"), and the Administrative Agent (as such agreement may be amended, supplemented, amended and restated or otherwise modified from time to time, the "Credit Agreement").

### WITNESSETH:

WHEREAS, the Borrower is the record legal title holder of that certain real property located in Muskoka, Ontario, Canada as more particularly described (i) on Exhibit A-1 to the Credit Agreement and (ii) on and after the date on which the Wedge Parcel is acquired by the Borrower in accordance with Section 6.4.1 of the Credit Agreement, the Wedge Parcel which, when acquired, shall then be described on Exhibit A-2 to be annexed to an amendment to the Credit Agreement, and in each case, including all Appurtenant Rights thereto (the "Land") upon which it will develop the Resort; and

WHEREAS, pursuant to the Credit Agreement, the Lenders have agreed to make certain Credit Extensions available to the Borrower in the aggregate principal amount of up to ONE HUNDRED THIRTEEN MILLION FIVE HUNDRED NINETEEN THOUSAND THREE HUNDRED ONE AND 00/100 CANADIAN DOLLARS (CA\$113,519,301) (the "Credit Facility"); and

WHEREAS, each Assignor and Marriott Hotels of Canada Ltd., a Canadian corporation (the "Hotel Manager"), have entered into that certain Amended and Restated Hotel Management Agreement, dated as of October 6, 2006 (as thereafter from time to time amended, supplemented, further amended and restated or otherwise modified in accordance with the terms hereof and in accordance with the other Loan Documents, the "Hotel Management Agreement"), a true and correct copy of which is attached hereto as Exhibit B, pursuant to which the Assignors exclusively employ the Hotel Manager to provide its services to supervise, direct and control the management and operation of the Hotel (as such term is defined in the Hotel Management Agreement), as more specifically provided in the Hotel Management Agreement (collectively, the "Services"); and

WHEREAS, the Obligations of the Borrower under the Credit Agreement and each other Loan Document are secured, inter alia, by this Assignment and the other Loan Documents; and

WHEREAS, each Assignor for and in consideration of the Credit Extensions and the Credit Facility is granting this Assignment to the Administrative Agent; and

WHEREAS, as a condition precedent to the Administrative Agent entering into the Credit Agreement and the Lenders making the Credit Extensions available to the Borrower under the Credit Agreement, each Assignor is required to execute and deliver this Assignment; and

WHEREAS, as an inducement to the Lenders and the Administrative Agent to enter into the Credit Agreement, each Assignor has agreed to assign all of its right, title and interest in and to the Hotel Management Agreement to the Administrative Agent, for its benefit and the benefit of the Secured Parties, as security for the Credit Extensions and the Hotel Manager has consented to such assignment and has agreed to execute and deliver a Subordination, Non-Disturbance and Attornment Agreement (the "SNDA"), the form of which is annexed hereto as Exhibit A.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

SECTION 1. Defined Terms. All capitalized terms used in this Assignment (including its preamble and recitals) but not otherwise defined herein shall have the meanings given to them in the Credit Agreement.

SECTION 2. Assignment. As additional security for the full and timely repayment of the Credit Extensions and the full and timely payment and performance of all Obligations of the Borrower under the Credit Agreement and the other Loan Documents, each Assignor hereby absolutely grants, conveys, transfers, assigns and delivers to the Administrative Agent as security for the payment and performance of the Obligations under the Credit Agreement and the other Loan Documents all of the rights, titles, interests, privileges, benefits and remedies of such Assignor in, to and under the Hotel Management Agreement, together with any and all extensions and renewals thereof including, without limitation, the following:

(a) all of the right, title and interest of each Assignor in, to and under the Hotel Management Agreement, including any and all guaranties and/or warranties and any and all options, licenses, and other agreements now or subsequently executed or created by or on behalf of either each Assignor with respect to the Hotel Management Agreement; and

(b) the rights of each Assignor under the Hotel Management Agreement with respect to the Hotel to receive and collect any monies or other benefits or sums due or to become due or to which either Assignor may now or shall hereafter become entitled or may demand or claim under the Hotel Management Agreement with respect to the Hotel; and

(c) all of the right, power and authority of each Assignor to alter, modify, amend or change the terms, conditions and provisions of the Hotel Management Agreement with respect to the Hotel or to surrender, cancel or terminate the same or to accept any surrender, cancellation or termination of the same; and

(d) all of the rights, powers and privileges of each Assignor under the Hotel Management Agreement with respect to the Hotel, including, without limitation, the right to sue for enforcement of the provisions thereof or to seek damages for a breach thereof or indemnification thereunder, whether heretofore or hereafter existing;

provided, however, that absent the occurrence and continuance of a Default, each Assignor is hereby granted a license to exercise the rights so assigned with respect to the Hotel Management Agreement to the extent permitted by the Credit Agreement and the other Loan Documents with respect to the Project Documents. From and after the occurrence and continuance of a Default, such license shall automatically be revoked without any obligation on the part of the Administrative Agent to provide notice of such revocation. The assignment hereunder of the Hotel Management Agreement is intended, to the fullest extent permitted by law, to be an absolute assignment from the Assignor to the Administrative Agent, and not merely the passing of a security interest.

SECTION 3. Performance Under the Hotel Management Agreement. Each Assignor covenants and agrees:

(a) to abide by, perform and discharge all obligations, covenants and agreements to be performed by it under the Hotel Management Agreement in all material respects;

(b) to give prompt notice to the Administrative Agent of (i) any notice of default given or received with respect to any material provision of the Hotel Management Agreement together with an accurate and complete copy of any such notice and (ii) any notice or information that either Assignor receives which indicates that (A) the Hotel Manager is terminating (or is attempting to terminate) the Hotel Management Agreement, (B) that the Hotel Manager is otherwise discontinuing its management of the Hotel, (C) that the Hotel Manager has ceased to provide the Services to the Assignor, or (D) that the Hotel Manager is in default of its obligations thereunder or that the Hotel Manager asserts that either Assignor is in default thereunder;

(c) at the sole cost and expense of the Assignors, to enforce (short of termination of the Hotel Management Agreement) and secure the performance of the obligations, covenants, conditions and agreements to be performed by the Hotel Manager under the Hotel Management Agreement;

(d) that, except to the extent permitted by Section 8.2.16 of the Credit Agreement with respect to the Project Documents without the Administrative Agent's prior written consent (which consent shall not be unreasonably withheld), the Assignors shall not (i) modify, supplement or in any way amend the Hotel Management Agreement, (ii) terminate the Hotel Management Agreement or accept a surrender thereof, (iii) waive, excuse, condone or in any manner release or discharge (in whole or in part) the Hotel Manager from any claim or any obligation, covenant, condition or agreement to be performed by it under the Hotel Management Agreement, (iv) fail to exercise promptly and diligently material rights that it may have under the Hotel Management Agreement or (v) fail to deliver to the Administrative Agent a copy of each demand or notice given or

received by it relating in any way to a material provision of the Hotel Management Agreement; and

(e) that neither Assignor shall (i) transfer the responsibility for the management of the Hotel from the Hotel Manager to any other Person (or otherwise receive the Services from any other Person) without the prior written consent of the Administrative Agent, which consent may be withheld by the Administrative Agent in the Administrative Agent's sole and absolute discretion or (ii) terminate or otherwise amend in any material respect any of the terms or provisions of the Hotel Management Agreement without the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld.

SECTION 4. No Modification. Any modification or amendment of the Hotel Management Agreement which violates any term or provision of this Assignment or the Loan Documents or termination or surrender of the Hotel Management Agreement, in each case, without the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld), shall constitute an Event of Default under the Credit Agreement. Any waiver, release or discharge by the Assignor of the Hotel Manager from any material obligation, covenant, condition and agreement to be performed by it under the Hotel Management Agreement or failure to exercise promptly and diligently material rights that the Assignors may have under the Hotel Management Agreement without the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld) shall constitute an Event of Default under the Credit Agreement.

SECTION 5. Defense of Claims. Each Assignor covenants and agrees to appear in and defend, at the Assignors' sole cost and expense, any action or proceeding arising under, growing out of or in any manner connected with the Hotel Management Agreement or the obligations, duties or liabilities of either Assignor under the Hotel Management Agreement, and to pay all reasonable costs and out-of-pocket expenses of the Administrative Agent, including, without limitation, reasonable attorneys' fees and out-of-pocket costs and expenses, in any such action or proceeding in which the Administrative Agent is a party except where caused by the Administrative Agent's gross negligence or wilful misconduct.

SECTION 6. Remedies. Should either Assignor fail to make any payment or to do any act required of such Assignor pursuant to the Hotel Management Agreement or this Assignment and such failure shall continue beyond any applicable notice and cure period under the Credit Agreement, then the Administrative Agent (or its designee or nominee) may (but without obligation to do so and without releasing the Assignor or any other Person from any obligation under the Hotel Management Agreement or this Assignment) make or do the same, after giving notice to the Assignors of its intention to so make or do, in such manner and to such extent as the Administrative Agent (or its designee or nominee) may deem necessary to protect the security hereof and thereof, including specifically, without limiting the generality of the foregoing, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Administrative Agent and also the right to perform and discharge each and every obligation, covenant and agreement of the Assignor under the Hotel Management Agreement, and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees and costs and expenses. Any curing by the

Administrative Agent of either Assignor's default under the Hotel Management Agreement shall not be construed as an assumption by the Administrative Agent of any or all obligations, covenants and agreements of either Assignor under the Hotel Management Agreement. Upon the revocation of the license granted to the Assignors pursuant to Section 2 of this Assignment, the Administrative Agent (or its designee or nominee) may exercise all rights and remedies contained herein and in the Loan Documents and without regard for the adequacy of security for the Obligations hereby secured, either in person or by agent with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of any portion of the Premises and exercise all rights under the Hotel Management Agreement and do any acts that the Administrative Agent (or its designee or nominee) deems proper to protect the security hereof, and upon the occurrence of such event neither Assignor shall exercise any further rights under the Hotel Management Agreement. Neither such entering upon and taking possession of any portion of the Premises nor the commission of any other act authorized by this Section shall be deemed to cure or waive any default, or to waive, modify or affect any notice of Default, under the Credit Agreement, or to invalidate any act done pursuant to such notice.

SECTION 7. Performance of Assignors' Obligations. Each Assignor shall pay immediately upon demand all reasonable sums expended by the Administrative Agent under the authority hereof together with interest thereon at the rate set forth in Section 3.2.2 of the Credit Agreement and the same shall be added to the Obligations and shall be secured hereby and by the Loan Documents.

SECTION 8. Warranties. Each Assignor hereby warrants and represents to the Administrative Agent and the Lenders that:

- (a) a true, correct and complete copy of the Hotel Management Agreement has been delivered to the Administrative Agent and is attached hereto as Exhibit B;
- (b) the Hotel Management Agreement has not been amended, modified or otherwise changed in any manner whatsoever and remains in full force and effect;
- (c) neither Assignor has executed any prior assignments of the Hotel Management Agreement or of its right, title and interest therein except as aforesaid;
- (d) neither Assignor has performed any act or executed any instrument that could prevent the Administrative Agent from operating under any of the terms and conditions hereof, or that would limit the Administrative Agent in such operation;
- (e) there is no default or any event that with notice or lapse of time or both would constitute a default now existing under the Hotel Management Agreement on the part of either Assignor and, to the best knowledge of each Assignor, the Hotel Manager;
- (f) as of the date hereof, all due and payable management fees have been paid in full; and
- (g) the Hotel Manager has no legal interest in or to the Hotel, the Resort, the Land or the Improvements other than pursuant to the Management Agreement.

SECTION 9. Instructions from the Administrative Agent. Each Assignor hereby authorizes and directs the Hotel Manager to cooperate with the Administrative Agent in the performance of the Assignors' duties and upon the occurrence and continuation of an Event of Default under the Credit Agreement to act in accordance with any and all instructions received from the Administrative Agent with respect to the Hotel Management Agreement and in accordance with the SNDA.

SECTION 10. No Obligation of the Administrative Agent. The Administrative Agent shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of the Assignor under the Hotel Management Agreement by reason of this Assignment. Should the Administrative Agent incur any loss, cost, claim, demand, expense, liability or damage under the Hotel Management Agreement or by reason of this Assignment, or in the defense against any such claims or demands, the amount thereof, including reasonable costs and expenses and reasonable attorneys' fees, together with interest thereon at the rate set forth in Section 3.2.2 of the Credit Agreement, shall be secured hereby and by the other Loan Documents, and the Assignor shall reimburse the Administrative Agent therefor immediately upon demand.

SECTION 11. Release. Upon the indefeasible payment in full of the Obligations secured hereby and by the other Loan Documents and the performance by each Assignor of all of its obligations hereunder and under the other Loan Documents to which it is a party, this Assignment shall become and be void and of no effect and, upon request, at the Assignors' sole cost and expense, the Administrative Agent will confirm such termination in writing or deliver an assignment in lieu of termination.

SECTION 12. Loan Document. This Assignment is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof.

SECTION 13. Successors and Assigns. This Assignment shall inure to the benefit of the Administrative Agent and each Assignor and their respective successors and assigns. The term "Hotel Management Agreement" as used herein means not only such instrument hereby assigned or any extension or renewal thereof, but also any other agreement subsequently executed by either Assignor in connection with the subject matter covered by the Hotel Management Agreement. In this Assignment, whenever the context so requires, the neuter gender includes the masculine or feminine, a singular number includes the plural, and a plural number includes the singular.

SECTION 14. Amendment; Waivers. No amendment to or waiver of any provision of this Assignment nor consent to any departure by either Assignor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 15. Notices. Any notice, demand, request, or other communication that any party hereto may be required or may desire to give or make hereunder shall be given or made as



provided in Section 11.2 of the Credit Agreement; provided, however, that any such notices, demands, requests or other communications delivered to RRMS shall be addressed as follows:

The Rosseau Resort Management Services Inc.  
c/o Ken Fowler Enterprises Limited  
P.O. Box 24091  
110 Hannover Drive, Suite 203B  
St. Catharines, Ontario, Canada  
L2R 7P7  
Attention: Ken Fowler  
Facsimile No.: (905) 688-3060

SECTION 16. Headings. The various headings of this Assignment are inserted for convenience only and shall not affect the meaning or interpretation of this Assignment or any provisions hereof.

SECTION 17. Severability. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Assignment or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 18. Execution in Counterparts, Effectiveness, etc. This Assignment may be executed by the parties hereto in several counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement. This Assignment shall become effective when counterparts hereof executed on behalf of each Assignor and the Administrative Agent shall have been received by the Administrative Agent.

SECTION 19. Waiver of Jury Trial. THE ADMINISTRATIVE AGENT AND EACH ASSIGNOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS ASSIGNMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT OR EITHER ASSIGNOR IN CONNECTION HERewith OR THEREWITH. EACH ASSIGNOR ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT ENTERING INTO THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS.

SECTION 20. Forum Selection and Consent to Jurisdiction. The provisions of Section 11.15 of the Credit Agreement shall apply to this Assignment.

SECTION 21. Governing Law, Entire Agreement, etc. THIS ASSIGNMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE

SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF A SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK. This Assignment constitutes the entire understanding among the parties hereto with respect to the subject matter hereof and thereof and supersedes any and all prior agreements, written or oral, with respect thereto.

SECTION 22. Further Assurances. Each Assignor agrees to execute and deliver, in recordable form if necessary, any and all documents and instruments requested by the Administrative Agent to give effect to the terms and provisions of this Assignment.

*[No further text]*

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their Authorized Representatives as of the day and year first above written.

**ASSIGNORS:**

**THE ROSSEAU RESORT  
DEVELOPMENTS INC.**, an Ontario  
corporation

By: \_\_\_\_\_

Name: *James Farrar*

Title: *ASO*

**THE ROSSEAU RESORT  
MANAGEMENT SERVICES INC.**, an  
Ontario corporation

By: \_\_\_\_\_

Name: *James Farrar*

Title: *ASO*

**ADMINISTRATIVE AGENT:**

**WESTLB AG, TORONTO BRANCH**, a  
joint stock company organized and existing  
under the laws of Germany, acting through its  
Toronto Branch

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their Authorized Representatives as of the day and year first above written.

**ASSIGNORS:**

**THE ROSSEAU RESORT  
DEVELOPMENTS INC.**, an Ontario  
corporation

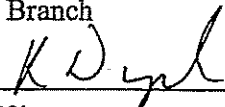
By: \_\_\_\_\_  
Name:  
Title:

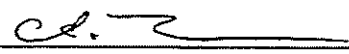
**THE ROSSEAU RESORT  
MANAGEMENT SERVICES INC.**, an  
Ontario corporation

By: \_\_\_\_\_  
Name:  
Title:

**ADMINISTRATIVE AGENT:**

**WESTLB AG, TORONTO BRANCH**, a  
joint stock company organized and existing  
under the laws of Germany, acting through its  
Toronto Branch

By:   
Name: **Robert L. Dyck**  
Title: **Director, Corporate Finance**

By:   
Name: **Alik A. Kassner**  
Title: **Principal Officer**

**EXHIBIT A**

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

Please see attached.

**EXHIBIT B**

**HOTEL MANAGEMENT AGREEMENT**

Please see attached.

## APPENDIX “F”

**WHEN RECORDED PLEASE MAIL TO:**

Marriott Hotels of Canada Ltd.  
c/o Marriott International, Inc.  
10400 Fernwood Road  
Bethesda, Maryland 20817  
Attention: Thomas E. Vickery, Esq.  
Law Department 52.923

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**SPACE ABOVE THIS LINE FOR RECORDER'S USE**

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (the "Agreement") is made and entered into as of the 20<sup>th</sup> day of April, 2007, among: (i) **WESTLB AG, Toronto Branch** ("Administrative Agent"), having an address at Suite 2301, Box 41, Royal Bank Plaza, North Tower, 200 Bay Street, Toronto, Ontario M5J 2J1; (ii) **THE ROSSEAU RESORT DEVELOPMENTS INC.** ("Hotel Owner") and **THE ROSSEAU RESORT MANAGEMENT SERVICES INC.** ("Rental Pool Manager"), each an Ontario corporation, with a mailing address c/o Ken Fowler Enterprises Limited, P.O. Box 24091, 110 Hanover Drive, Suite 203B, St. Catharines, Ontario, Canada L2R 7P7 (Hotel Owner and Rental Pool Manager are hereinafter individually and collectively referred to as "Owner"); (iii) **MARRIOTT HOTELS OF CANADA LTD.** ("Manager"), a Canadian corporation, having an address at 2425 Matheson Boulevard East, Suite 100, Mississauga, Ontario, Canada L4W 5K4 and (iv) **INTERNATIONAL HOTEL LICENSING COMPANY S.À R.L.** ("IHLIC"), a Luxembourg company having a registered office at Bahnhofplatz 14, 8001 Zurich, Switzerland.

**RECITALS**

1. Owner is the owner of the Hotel (defined in Section 1; each capitalized term not otherwise defined herein shall have the meaning ascribed to such term in Section 1) and Administrative Agent is the holder of the Mortgage encumbering the Hotel for the benefit of the Lenders.

2. Manager and Owner have entered into the Management Agreement, pursuant to which Manager will manage the Hotel on behalf of Owner.



3. Owner and IHLC have entered into the License and Royalty Agreement and the International Services Agreement in connection with the operation of the Hotel. Also, Owner and IHLC have entered into the Marketing License Agreement, pursuant to which Owner will market the sale of the Hotel Units.

4. Administrative Agent, on behalf of the Lenders, Manager and IHLC desire to provide for Manager's continued management of the Hotel pursuant to the Management Agreement and IHLC's continued performance under the License and Royalty Agreement and the International Services Agreement, notwithstanding any default by Owner under the Mortgage, the Hotel Agreements or the Marketing License Agreement, in each case, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree and covenant as follows:

1. Definitions. Any capitalized term that is not specifically defined in this Agreement shall have the meaning set forth in the Hotel Agreements. The following terms when used in this Agreement shall have the meanings indicated:

"Administrative Agent" shall mean any of the following: (i) the entity identified as the "Administrative Agent" in the Preamble, (ii) any successors or assigns of that entity, (iii) any nominee or designee of that entity (or any other entity described in this definition) or (iv) any initial or subsequent assignee of all or any portion of the interest of that entity in the Loan Documents.

"Approved Marketing Organization" is defined in Section 11.A.1.

"Bankruptcy Act" means the Bankruptcy and Insolvency Act (*Canada*), the Companies' Creditors Arrangement Act (*Canada*) or any similar statute.

"Credit Agreement" means the Credit Agreement dated as of February 1, 2007, by and among the Hotel Owner, the various financial institutions that are or may become a party thereto (the "Lenders") and Administrative Agent, CIT Financial Ltd., as the Syndication Agent, and Raiffeisen Zentralbank Österreich AG, as the Documentation Agent, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms thereof.

"Foreclosure" shall mean any exercise of the remedies available to the holder of the Mortgage, upon a default under the Mortgage, which results in a transfer of title to or control or possession of the Hotel. The term "Foreclosure" shall include, without limitation: (i) a transfer by judicial foreclosure or private power of sale; (ii) a transfer by deed in lieu of foreclosure;

(iii) the appointment of a receiver to assume possession of the Hotel; (iv) a transfer of either ownership or control of Owner, direct or indirect in either case, by exercise of a stock pledge or otherwise; (v) a transfer resulting from an order given in a bankruptcy, reorganization, insolvency or similar proceeding; (vi) if title to the Hotel is held by a tenant under a ground lease, an assignment of the tenant's interest in such ground lease; or (vii) a transfer through any similar judicial or non-judicial exercise of the remedies held by the holder of the Mortgage.

**"Foreclosure Date"** shall mean the date on which title to or possession or control of the Hotel is transferred by means of a Foreclosure.

**"Hotel"** shall mean that certain hotel containing approximately 221 guest rooms, a lobby, restaurants, lounge/bar, meeting rooms, ballrooms, administrative offices, parking, spa, swimming pools, recreational facilities, retail components and certain other amenities and related facilities that is located on a portion of the site described in Exhibit A hereto.

**"Hotel Agreements"** shall mean (i) the Management Agreement, (ii) the License and Royalty Agreement, and (iii) the International Services Agreement, individually and collectively. The term "Hotel Agreements," as used in this Agreement, shall include any "New Hotel Agreements" entered into pursuant to Section 3.B. of this Agreement but such term expressly excludes the Marketing License Agreement.

**"Hotel Units"** is defined in the Marketing License Agreement.

**"IHLC"** is defined in the preamble.

**"International Services Agreement"** shall mean that certain International Services Agreement, dated October 1, 2004, as amended, between Owner and IHLC. The term "International Services Agreement," as used in this Agreement, shall include (i) any amendments, modifications, supplements, replacements or extensions of the original International Services Agreement; and (ii) any new International Services Agreement, in each case, entered into pursuant to Section 3.B of this Agreement.

**"Lenders"** is defined in the definition of Credit Agreement.

**"License and Royalty Agreement"** shall mean that certain License and Royalty Agreement, dated as of October 1, 2004, as amended, between Owner and IHLC. The term "License and Royalty Agreement," as used in this Agreement, shall include (i) any amendments, modifications, supplements, replacements or extensions of the original License and Royalty Agreement; and (ii) any new License and Royalty Agreement, in each case, entered into pursuant to Section 3.B of this Agreement.

**"Licensee"** is defined in the Marketing License Agreement.

**"Loan Documents"** shall mean the Credit Agreement, the Mortgage and the other documents evidencing and securing the indebtedness secured by the Mortgage.

**"Management Agreement"** shall mean that certain Amended and Restated Hotel Management Agreement, dated October 6, 2006, between Owner and Manager pursuant to which Manager will provide Owner with the management services set forth therein. The term "Management Agreement," as used in this Agreement, shall include (i) any amendments, modifications, supplements, replacements or extensions of the original Management Agreement; and (ii) any new Management Agreement, in each case, entered into pursuant to Section 3.B of this Agreement.

**"Marketing License Agreement"** shall mean that certain Marketing and License Agreement dated June 15, 2004, as amended by that certain First Amendment to Marketing License Agreement dated July 31, 2005 and that certain Second Amendment to Marketing and License Agreement dated October 6, 2006.

**"Marriott Companies"** shall mean, collectively, Manager and IHLC.

**"Mortgage"** shall mean that certain mortgage, dated as of the date hereof in the principal amount of One Hundred Thirteen Million Five Hundred Nine Thousand Three Hundred One Canadian Dollars (CAN\$113, 509, 301) and which encumbers the property described therein including the Hotel and the Non-Hotel Property. The term "Mortgage," as used in this Agreement, shall include: (i) any amendments, modifications, supplements, increases, replacements, renewals or extensions of the original "Mortgage" that was recorded as set forth above; and (ii) any existing or future financing that is wholly or partially secured by the Hotel, including a "blanket mortgage" encumbering properties other than the Hotel.

**"New Hotel Agreements"** is defined in Section 3.B.

**"New Marketing License Agreement"** is defined in Section 11.A.

**"Non-Hotel Property"** shall mean the Lakeview and Golf Cottages to be separately developed by Owner and certain other amenities and related facilities that are located on a portion of the site described in Exhibit A hereto.

**"Subsequent Owner"** shall mean any individual or entity that acquires title to or control or possession of the Hotel at or through a Foreclosure (together with any successors or assigns thereof), including, without limitation, (i) Administrative Agent, (ii) any purchaser of the Hotel from Administrative Agent, or any lessee of the Hotel from Administrative Agent, or (iii) any purchaser of the Hotel at Foreclosure.

2. **Subordination of Hotel Agreements and Marketing License Agreement.** Subject to the parties' compliance with the provisions of this Agreement, the right, title and interest of

Marriott Companies in and to the Hotel under the Hotel Agreements and the Marketing License Agreement (the "Manager's Interests") are and shall be subject and subordinate solely to the lien of the Mortgage and the other security interests created and perfected by the Loan Documents; provided, however, that, notwithstanding the foregoing subordination, (i) neither Administrative Agent nor any Subsequent Owner shall name any of Marriott Companies as a defendant in any Foreclosure (unless required under applicable law to effect the Foreclosure and then only to effect the Foreclosure and not to effect a termination or other limitation of the Hotel Agreements or the Marketing License Agreement) or otherwise take steps that are inconsistent with Section 3 of this Agreement unless required under applicable law to effect the Foreclosure and then only to effect the Foreclosure and not to effect a termination or other limitation of the Hotel Agreements or the Marketing License Agreement, and (ii) the Manager's Interests shall not be subordinate to any mortgage other than the Mortgage.

3. Non-Disturbance.

A. In the event any Subsequent Owner comes into possession of or acquires title to or possession or control of the Hotel either at or following a Foreclosure, Administrative Agent agrees (which agreement shall be binding on all Subsequent Owners) that if, at such time, the Hotel Agreements have not expired or otherwise been earlier terminated in accordance with its terms, then (i) Administrative Agent and all Subsequent Owners shall recognize Marriott Companies' rights under the Hotel Agreements and the Marketing License Agreement, (ii) subject to the provisions of Section 2 of this Agreement, Marriott Companies shall not be named as a party in any Foreclosure action or proceeding, and (iii) Marriott Companies shall not be disturbed in its right to manage and operate the Hotel pursuant to the provisions of the Hotel Agreements or to affect any of Marriott Companies' rights, remedies or options under the Marketing License Agreement.

B. If, at the time a Subsequent Owner acquires its interest in the Hotel, the Hotel Agreements have been terminated or Marriott Companies no longer have the right to manage or operate the Hotel due to (i) the exercise of any rights of Owner under the law of agency (notwithstanding Section 11.03 of the Management Agreement), or (ii) a court ruling in any proceeding or action involving bankruptcy, receivership, assignment for the benefit of creditors, dissolution procedure or process, or similar proceedings or actions in respect of Owner (but in no event due solely to an Event of Default by Marriott Companies under the Hotel Agreements or a termination by Marriott Companies under the Hotel Agreements) such Subsequent Owner shall immediately enter into agreements with Marriott Companies on the same terms and conditions as the Hotel Agreements (the "New Hotel Agreements"). Subsequent Owner shall be so obligated even if Marriott Companies are then no longer managing or operating the Hotel, provided that (i) Marriott Companies are contesting such a termination or such a loss of right that has not been subject to a final non-appealable order from a court having jurisdiction, and (ii) Marriott Companies have not actually received amounts due to them under the Management Agreement based upon such termination or, if applicable, the full amount of its allowed claim in any bankruptcy proceeding. If within the later to occur of: (x) thirty (30) days after such termination

or rejection (as the case may be) or (y) the date the Subsequent Owner obtains title to and possession of the Hotel, such Subsequent Owner cures or is in the process of timely curing Owner's defaults under the Hotel Agreements in accordance with Section 5 hereof, and if such Subsequent Owner tenders Marriott Companies New Hotel Agreements for the Hotel, executed by such Subsequent Owner, then within thirty (30) days of the date on which the New Hotel Agreements have been tendered to Marriott Companies, Marriott Companies shall duly execute and deliver the New Hotel Agreements with such Subsequent Owner designated as "Owner" of the Hotel. The term of each of the New Hotel Agreements shall commence effective as of the earlier to occur of: (i) the date on which the Subsequent Owner acquired its interest in the Hotel if Manager is then currently managing or operating the Hotel, or (ii) the date on which Marriott Companies execute and deliver the New Hotel Agreements and Marriott Companies assume management and operational responsibility, and shall expire on the date the term of the Hotel Agreements would have otherwise expired but for such termination or loss of right. In the event that the Hotel Agreements are terminated and replaced with New Hotel Agreements, Marriott Companies agree that no termination fee, if any, under the Management Agreement shall be due from the Subsequent Owner.

C. In the event Owner seeks protection under the Bankruptcy Act, during any proceeding with respect thereto, Marriott Companies may exercise their rights and remedies to ensure that the Hotel Agreements and the Marketing License Agreement remain in full force and effect. To that end, Administrative Agent shall take no affirmative action to terminate or cause the termination of the Hotel Agreements or the Marketing License Agreement, subject to the terms hereof.

D. Administrative Agent acknowledges that Marriott Companies must operate the Hotel pursuant to the provisions of the Hotel Agreements. Administrative Agent shall, commencing on the date Administrative Agent acts as "Owner" under the Hotel Agreements until the Foreclosure Date, act in a manner that is commercially reasonable and pursuant to the provisions of the Hotel Agreements.

E. Administrative Agent hereby consents to the Hotel Agreements and the Marketing License Agreement, and Marriott Companies hereby consent to the assignment of the Hotel Agreements to Administrative Agent as collateral security for the indebtedness evidenced and secured by the Mortgage.

4. Attornment. Provided the Hotel Agreements are in effect, and have not expired or otherwise been earlier terminated in accordance with their terms, Marriott Companies shall attorn to any Subsequent Owner and shall remain bound by all of the terms, covenants and conditions of the Hotel Agreements, for the balance of the remaining term thereof (and any extensions or renewals thereof that may be effected in accordance with the Hotel Agreements) with the same force and effect as if such Subsequent Owner were the "Owner" under the Hotel Agreements; provided, however, Management Companies shall be under no such obligation to so attorn: (i) if such Subsequent Owner would not qualify as a permitted transferee under the

applicable section of the Management Agreement or similar section of the New Hotel Agreements; and (ii) unless such Subsequent Owner, within twenty (20) days after the Foreclosure Date (or, in the event such Subsequent Owner acquires title to the Hotel after the Foreclosure Date, within twenty (20) days after the date of such acquisition of title to the Hotel), assumes all of the obligations of the "Owner" under the Hotel Agreements that are continuing or that arise after the Foreclosure Date (or such later date of acquisition of title to the Hotel), pursuant to a written assumption agreement that is reasonably acceptable to Marriott Companies and that shall be delivered to Marriott Companies; provided, however, that the Subsequent Owner shall not be (x) responsible for any "Owner" obligation under the Hotel Agreements or for any "Licensee" obligation under the Marketing License Agreement (other than the obligation of the Licensee to pay the Introduction Fee (as defined in the Marketing License Agreement)) which, in each case relates to a period prior to the Foreclosure Date to the extent such an obligation is not a continuing obligation of the "Owner" under the Hotel Agreements or the "Licensee" under the Marketing License Agreement, as the case may be; (y) liable for any act or omission of a prior "Owner" under the Hotel Agreements or the Marketing License Agreement; or (z) subject to any offsets or counterclaims that shall have accrued to the Marriott Companies against a prior "Owner" or "Licensee" prior to the Foreclosure Date. Notwithstanding the foregoing, nothing contained in this Section 4 shall constitute a waiver by Marriott Companies of (1) Subsequent Owner's obligation to perform the obligations of "Owner" under the Hotel Agreements and "Licensee" under the Marketing License Agreement, subject, however, to this Agreement; (2) any right that Marriott Companies may have to pursue Owner personally for its failure to perform obligations under the Hotel Agreements or under the Marketing License Agreement; or (3) any right that Marriott Companies may have under the Hotel Agreements to collect or pay from the revenues of the Hotel operations (or require Subsequent Owner to pay if funds from the operation of the Hotel are insufficient) any Deductions or any other fees, expenses or other amounts incurred or due Marriott Companies pursuant to the Hotel Agreements (including Deductions or any other fees, expenses or other amounts due Marriott Companies arising prior to Foreclosure). Upon the written request of Administrative Agent or any Subsequent Owner, Marriott Companies shall periodically execute and deliver a statement, in a form reasonably satisfactory to Administrative Agent or any Subsequent Owner, reaffirming Marriott Companies' obligation to attorn as set forth in this Section 4.

5. Notice and Opportunity to Cure.

A. In the event of a Default by Owner in the performance or observance of any of the terms and conditions of the Hotel Agreements or the Marketing License Agreement, and in the event that Manager (as to the Hotel Agreements) or IHLC (as to the Marketing License Agreement), on behalf of Marriott Companies, gives written notice thereof to Owner pursuant to the applicable sections of the Hotel Agreements, the Marketing License Agreement or similar provision in the New Hotel Agreements or New Marketing License Agreement, as applicable, Manager shall, at the same time, also give a duplicate copy (herein referred to as the "First Notice") of such notice to Administrative Agent, in accordance with Section 8 of this Agreement. In addition, in the event that such Default is not cured within the applicable cure

period under the applicable section of the Hotel Agreements or Marketing License Agreement, and Marriott Companies intend to exercise their remedies of terminating the Hotel Agreements or Marketing License Agreement, Manager shall send a second notice (the "**Second Notice**") to Administrative Agent, in accordance with Section 8 hereof, stating Marriott Companies' intention to terminate the Hotel Agreements or the Marketing License Agreement, as the case may be. Marriott Companies shall forbear from taking any action to terminate, rescind or void the Hotel Agreements or the Marketing License Agreement, for a period of thirty (30) days after the service of the First Notice, and for an additional period of thirty (30) days after the service of the Second Notice (if such Second Notice is required, as set forth above); provided, however, in the event of a bankruptcy, reorganization, insolvency or similar proceeding of Owner, the time periods set forth in this sentence shall cease to be calculated during any stay pursuant to the terms of an order under the Bankruptcy Act (or other similar protection) and shall be extended after the expiration of any such protection period such that Administrative Agent shall have the full benefit of time granted hereunder without giving effect to any such automatic stay (or other similar protection). In the case of any default which cannot be cured within such period, if Administrative Agent shall proceed promptly to commence the curing of the same and thereafter prosecute such curing with diligence and continuity, then the time within which such default must be cured before Marriott Companies may take any of the aforesaid actions under the Hotel Agreements or the Marketing License Agreement shall be extended for the amount of time necessary in order for Administrative Agent to complete the curing thereof in accordance with this sentence. With respect to any default which cannot be cured until the possession of the Hotel is obtained, the Subsequent Owner shall have a reasonable time after possession is obtained to cure such default provided that the Subsequent Owner shall first agree in writing to proceed diligently to remedy such default after possession is obtained by the Subsequent Owner and in no event shall Administrative Agent or any Subsequent Owner be required to cure a default relating to bankruptcy or insolvency of Owner or other non-monetary defaults which are not susceptible of being cured by Administrative Agent or the Subsequent Owner.

B. No notice given by Manager to Owner shall be effective as a notice under the applicable sections of the Hotel Agreements or the Marketing License Agreement or similar provision under the New Hotel Agreements or New Marketing License Agreement unless the applicable duplicate notice to Administrative Agent that is required under Section 5.A hereof (either the First Notice or the Second Notice, as the case may be) is given to Administrative Agent in accordance with this Agreement. It is understood that any failure by Manager to give such a duplicate notice (either the First Notice or the Second Notice, as the case may be) to Administrative Agent shall not be a default by Marriott Companies either under this Agreement, the Hotel Agreements or the Marketing License Agreement, but rather shall operate only to void the effectiveness of any such notice by Marriott Companies to Owner under the applicable sections thereof.

C. Marriott Companies agree to accept performance by Administrative Agent with the same force and effect as if the same were performed by Owner, in accordance with the provisions and within the cure periods prescribed in the Hotel Agreements and the Marketing

License Agreement, as applicable (except that Administrative Agent shall have such additional cure periods, not available to Owner, as are set forth in Section 5.A hereof). Administrative Agent shall have the right (but not the obligation) to cure any such default by Owner, except as otherwise set forth in Section 12.K below.

D. Except as specifically limited in the foregoing paragraphs, nothing contained herein shall preclude Marriott Companies from exercising any of its rights or remedies against Owner with respect to any default by Owner under the Hotel Agreements or the Marketing License Agreement.

E. Owner hereby agrees that in the event of any act or omission by Marriott Companies under the Hotel Agreements or the Marketing License Agreement which would give Owner the right to terminate the Hotel Agreements or the Marketing License Agreement as a result of such act or omission, Owner shall not exercise any such right without the prior written consent of Administrative Agent.

F. Owner hereby agrees that so long as any portion of the indebtedness evidenced and secured by the Mortgage shall remain unpaid, no notice of termination by Owner under the Hotel Agreements or the Marketing License Agreement shall be effective unless consented to in writing by Administrative Agent.

G. Administrative Agent shall not be bound by any amendment or modification of any Hotel Agreement or the Marketing License Agreement made without Administrative Agent's prior consent; provided, however, that such consent as to immaterial amendments or modifications shall not be unreasonably withheld, conditioned or delayed.

6. Notice to Manager. Administrative Agent shall deliver to Manager, on behalf of Marriott Companies a copy of any notice of default under the Mortgage that Administrative Agent sends to Owner.

7. Assignment of Hotel Agreements. Owner has, pursuant to the applicable provisions of the Mortgage or pursuant to a separate assignment of the Hotel Agreements, collaterally assigned to Administrative Agent for the benefit of the Lenders, as additional security for the indebtedness evidenced by the Mortgage, all of Owner's right, title and interest in and to the Hotel Agreements, including the right to distributions payable to Owner pursuant to Article III and Article IV thereof (or similar provisions of the New Hotel Agreements). Manager, on behalf of Marriott Companies hereby acknowledges that it has been given a copy of the foregoing assignment. If, pursuant to such assignment (or subsequent loan documentation entered into between Owner and Administrative Agent with a similar purpose), Manager receives (which it may, from time to time) a notice or notices from Administrative Agent directing Marriott Companies to pay to Administrative Agent distributions under the Hotel Agreements that would otherwise be payable to Owner, Marriott Companies shall comply with any such notice. Marriott Companies shall continue to make payments in compliance with any



such notice from Administrative Agent until Marriott Companies receives written instructions to the contrary from Administrative Agent. Owner hereby gives its consent to any such payments by Marriott Companies to Administrative Agent that are in compliance with any such notice. Owner acknowledges and agrees that any such payment by Marriott Companies to Administrative Agent satisfies Marriott Companies' obligations under the Hotel Agreements to distribute such funds to Owner, and Owner hereby releases Marriott Companies from any and all obligations relating to such payments. The foregoing consent by Owner shall be deemed to be irrevocable until the entire debt secured by the Mortgage has been discharged, as evidenced either by the registration of a discharge or release executed by Administrative Agent, or by the delivery of a written statement to that effect from Administrative Agent to Marriott Companies. It is understood that Marriott Companies shall comply with the direction set forth in any such notice without any necessity to investigate Administrative Agent's reasons for sending such notice, or to confirm whether or not Owner is in fact in default under the terms of the Mortgage.

8. Notices. Notices, statements and other communications to be given under the terms of this Agreement shall be in writing and delivered by hand against receipt or sent by certified or registered mail, postage prepaid, return receipt requested or by nationally recognized overnight delivery service, addressed to the parties as follows:

To Administrative  
Agent:

WestLB AG, Toronto Branch  
Royal Bank Plaza, North Plaza  
Suite 2301, Box 41  
200 Bay Street  
Toronto, Ontario M5J 2J1  
Attn: Mr. Robert Dyck  
Fax: (416) 216-5020

To Owner: The Rosseau Resort Developments Inc.  
c/o Ken Fowler Enterprises Limited  
P.O. Box 24091  
110 Hannover Drive, Suite 203B  
St. Catharines, Ontario, Canada  
Attn: Mr. Ken Fowler  
Fax: (905) 688-3060

To Manager: Marriott Hotels of Canada Ltd.  
2425 Matheson Boulevard East, Suite 100  
Mississauga, Ontario, Canada L4W 5K4  
Attn: Regional Vice President, Operations  
Tel: 905-366-5200  
Fax: 905-366-5220

With a copy to: Marriott International, Inc.  
10400 Fernwood Road  
Bethesda, Maryland 20817  
Attn: Law Department 52/923  
Senior Operations Attorney  
Phone: (301) 380-9555  
Fax: (301) 380-6727

or at such other address as is from time to time designated by the party receiving the notice. Any such notice that is mailed in accordance herewith shall be deemed to have been served as of five (5) days after said posting for purposes of establishing that the sending party complied with the applicable time limitations set forth herein, but shall not be binding on the addressee until actually received or refused. Additionally, notices may be given by telephone facsimile transmission or electronic mail transmissions, provided that an original copy of said transmission shall be delivered to the addressee by nationally recognized overnight delivery service by no later than the second (2<sup>nd</sup>) business day following such transmission. Telephone facsimiles and electronic mail transmissions shall be deemed delivered on the date of such transmission.

9. Estoppel Certificates.

A. Marriott Companies, as applicable, shall, at any time and from time to time upon not less than thirty (30) days' prior written notice from Administrative Agent, execute, acknowledge and deliver to Administrative Agent, or to any third party specified by Administrative Agent, a statement in writing: (a) certifying (i) that the Hotel Agreements and the Marketing License Agreement are unmodified and in full force and effect (or if there have been modifications, that the same, as modified, are in full force and effect and stating the modifications), and (ii) the date through which all fees and payments due under the Hotel Agreements and the Marketing License Agreement have been paid; and (b) stating whether or

not to the best knowledge of Marriott Companies (i) there is a continuing default by Owner in the performance or observance of any covenant, agreement or condition contained in the Hotel Agreements and the Marketing License Agreement, or (ii) there shall have occurred any event that, with the giving of notice or passage of time or both, would become such a default, and, if so, specifying each such default or occurrence of which Marriott Companies have knowledge. Such statement shall be binding upon Marriott Companies and may be relied upon by Administrative Agent and/or such third party specified by Administrative Agent as aforesaid.

B. Administrative Agent shall, at any time and from time to time upon not less than thirty (30) days' prior written notice from Marriott Companies, execute, acknowledge and deliver to Marriott Companies, or to any third party specified by Marriott Companies, a statement in writing stating the then outstanding principal amount of the Loans and the amount of Bankers' Acceptance Obligations and Letter of Credit Outstandings (as such terms are defined in the Credit Agreement). Such statement shall be binding upon Administrative Agent absent manifest error and may be relied upon by Marriott Companies and/or such third party specified by Marriott Companies as aforesaid.

10. Confirmatory Documentation. The provisions of Section 2, Section 3 and Section 4 of this Agreement are and shall be fully effective and binding between the parties and any Subsequent Owner, upon the occurrence of the conditions set forth in such Sections, without the execution of any further instruments by any party. Notwithstanding the foregoing, each party to this Agreement shall have the right (from time to time, for so long as this Agreement is in effect) to request any other party to execute documentation (in form reasonably satisfactory to all signing parties) confirming (if true) that such conditions (if any) have been satisfied and that the provisions of Section 2, Section 3 and/or Section 4 hereof have been implemented. In such event, each of the parties that are requested to execute such confirmatory documentation agrees to execute it within a reasonable period of time (not to exceed thirty (30) days) after its receipt of such request.

11. Marketing License Agreement; Non-Hotel Properties.

A. Owner, as Licensee, and IHLC, as Licensor, have entered into the Marketing License Agreement. Prior to December 31, 2012, and so long as the Hotel Agreements are then in effect and all of the Hotel Units have not been sold, IHLC shall enter into an agreement substantially in the form of the Marketing License Agreement (the "**New Marketing License Agreement**") with any Subsequent Owner for the balance of the remaining Term (as defined in the Marketing License Agreement) if such Subsequent Owner has satisfied the following conditions in all material respects:

1. such Subsequent Owner shall have retained (x) one of the marketing organizations that has been reasonably approved by IHLC (each, an "**Approved Marketing Organization**") to sell the Hotel Units, (y) a marketing organization whose reputation, qualifications and experience is substantially similar to that of

one or more of the Approved Marketing Organizations (as reasonably determined by IHLC) or (z) such other reputable, qualified and experienced marketing organization satisfactory to IHLC in its sole discretion;

2. a plan to sell the Hotel Units shall be prepared by or on behalf of such Subsequent Owner, which plan shall be subject to IHLC' approval in its sole discretion (other than the items set forth in the current Marketing License Agreement that require IHLC to be reasonable); provided, however, that if such plan is substantially similar to the plan in place by Owner, such approval shall not be unreasonably withheld or delayed; and further provided, however, that all objections to any plan shall be provided in writing by IHLC within a reasonable time period and that such plan shall be deemed approved after such objections no longer exist (as confirmed by IHLC in writing); and
3. Subsequent Owner shall have paid IHLC any outstanding Introduction Fees that are then due and payable under the Marketing License Agreement.

Notwithstanding anything to the contrary, if a Subsequent Owner has not satisfied the conditions set forth above in all material respects (x) IHLC shall have no obligation to enter into a New Marketing License Agreement with such Subsequent Owner, (y) such Subsequent Owner shall have no rights under the Marketing License Agreement or otherwise to market the sale of the Hotel Units using the Marriott trademarks and (z) Marriott Companies shall have the right to take any legal action as it deems necessary and appropriate including any remedies at law or in equity to prevent the use of the Marriott trademarks by such Subsequent Owner until all conditions have been satisfied. Under no circumstances are Marriott Companies obligated to consent to any assignment of the Marketing License Agreement or any New Marketing License Agreement or to grant any security interest therein; provided, however, Marriott Companies covenant and agree that they will not consent to any such assignment or grant other than to the Administrative Agent for the benefit of the Lenders. Administrative Agent and Marriott Companies acknowledge that except as set forth in this Agreement, any attempt to assign the Marketing License Agreement or any rights therein shall be void ab initio and of no force and effect.

B. Marriott Companies, Owner and Administrative Agent acknowledge that even though the Mortgage shall encumber both the Hotel and the Non-Hotel Properties, Management Companies rights under the Hotel Agreements and the Marketing License Agreement shall not be impacted in any manner with respect to a Foreclosure solely with respect to the Non-Hotel Properties.

## 12. Miscellaneous.

A. This Agreement may be executed in a number of identical counterparts. If so executed, all counterparts shall, collectively, constitute one agreement, but in making proof of

this Agreement, it shall not be necessary to produce or account for more than one such counterpart, provided that photocopy or facsimile copies of all signatures are produced.

B. The terms and conditions of this Agreement shall inure to the benefit of, and be binding upon, the respective successors, heirs, legal representatives and assigns of each of the parties hereto, and in furtherance of the foregoing, any party to this Agreement may cause it to be registered in the Registry Office at anytime, but at the sole expense of the party recording the Agreement.

C. Notwithstanding anything herein to the contrary, the commencement and prosecution of Foreclosure proceedings under the Mortgage is a matter entirely within the discretion of Administrative Agent.

D. The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

E. In the event the Hotel Agreements shall be amended, modified or supplemented, the Hotel Agreements, as so amended, modified or supplemented, shall continue to be subject to the provisions of this Agreement without the necessity of any further act by the parties hereto.

F. The provisions of this Agreement shall not be modified, amended, waived, discharged or terminated except by a written document signed by all of the parties hereto.

G. This Agreement and its validity, interpretation and enforcement shall be governed by the laws of the province of Ontario and the federal laws of Canada applicable therein.

H. Captions of Sections herein are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Sections to which they refer.

I. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respects, all other terms and conditions of this Agreement shall remain in full force and effect.

J. The waiver by any party of the performance of any covenant, condition or promise shall not invalidate this Agreement and shall not be considered a waiver of any other covenant, condition or promise. No such waiver shall constitute a waiver of the time for performing any other act or identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not constitute a waiver of any remedy provided by law or in equity, and the provision in this Agreement of any remedy shall not exclude any other remedy unless such remedy is expressly excluded hereby

K. Notwithstanding anything contained herein or in the Hotel Agreements or the Marketing License Agreement to the contrary, in the event that Administrative Agent, its designee, successor or assignee shall become a Subsequent Owner, such Subsequent Owner shall not be (x) responsible for any "Owner" obligation under the Hotel Agreements or any "Licensee" obligation the Marketing License Agreement relating to a period prior to the Foreclosure Date to the extent such an obligation is not a continuing obligation of the "Owner" under the Hotel Agreements or "Licensee" under the Marketing License Agreement; (y) liable for any act or omission of a prior "Owner" under the Hotel Agreements or a prior "Licensee" under the Marketing License Agreement; or (z) subject to any offsets, defenses, claims or counterclaims that shall have accrued to the Marriott Companies against a prior "Owner" or "Licensee" prior to the Foreclosure Date. Notwithstanding the foregoing, nothing contained in this Section 12.K shall constitute a waiver by Marriott Companies of (1) Administrative Agent's obligation to perform the obligations of "Owner" under the Hotel Agreements; (2) any right that Marriott Companies may have to pursue Owner or Licensee personally for its failure to perform obligations under the Hotel Agreements or any New Marketing License Agreement, as the case may be; or (3) any right that Marriott Companies may have under the Hotel Agreements or the Marketing License Agreement to collect or pay from the revenues of the Hotel operations (or request funds in accordance with the Hotel Agreements if sufficient funds are not generated from Hotel operations) any Deductions or any other fees, expenses or other amounts incurred or due Marriott Companies pursuant to the Hotel Agreements or the Marketing License Agreement (including Deductions or any other fees, expenses or other amounts due Marriott Companies arising prior to Foreclosure). Marriott Companies agree that with respect to any judgment which may be obtained or secured by Marriott Companies against such Subsequent Owner, Marriott Companies shall look solely to the estate or interest owned by such Subsequent Owner in the Hotel and Marriott Companies will not collect or attempt to collect any such judgment out of any other assets of such Subsequent Owner.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal as of the day and year first written above.

**ADMINISTRATIVE AGENT:**

WESTLB AG, TORONTO BRANCH

ATTEST:

By: [Signature]  
Print Name: Kenneth Chan  
Title: Director, Credits America

By: [Signature]  
Print Name: Robert L. Dyck  
Title: Director, Corporate Finance

By: [Signature]  
Print Name: KARON S. HATLEY  
Title: Manager

By: [Signature]  
Print Name: Alik A. Kassner  
Title: Principal Officer

**OWNER:**

THE ROSSEAU RESORT DEVELOPMENTS  
INC., an Ontario corporation

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

THE ROSSEAU RESORT MANAGEMENT  
SERVICES INC., an Ontario corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal as of the day and year first written above.

ADMINISTRATIVE AGENT:

WESTLB AG, TORONTO BRANCH

ATTEST:

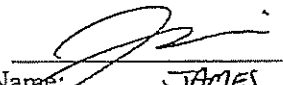
By: \_\_\_\_\_  
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Title: \_\_\_\_\_

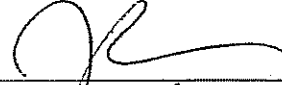
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OWNER:

THE ROSSEAU RESORT DEVELOPMENTS  
INC., an Ontario corporation


ATTEST:


By:   
Print Name: JAMES ULEN  
Title: LAWYER

By:   
Print Name: JAMES FARLAA  
Title: Authorized signing officer

ATTEST:

THE ROSSEAU RESORT MANAGEMENT  
SERVICES INC., an Ontario corporation

By:   
Print Name: JAMES ULEN  
Title: LAWYER

By:   
Print Name: JAMES FARLAA  
Title: Authorized signing officer



ATTEST:

By: K. Widler

Print Name: K. WIDLER

Title: Sr. Legal Assistant

MANAGER:

**MARRIOTT HOTELS OF CANADA LTD.**

a Canadian corporation

By: 

Print Name: ROBERT N. DAVIES

Title: \_\_\_\_\_

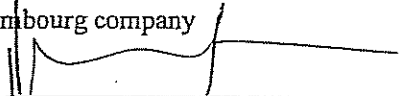
ATTEST:

By: Kwidler  
Print Name: K. WIDLER  
Title: Sr. Legal Assistant

LICENSOR:

INTERNATIONAL HOTEL LICENSING  
COMPANY S.À R.L.

a Luxembourg company

By:   
Print Name: ROBERT N. DAVIES  
Title: \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION

*Lands owned by The Rosseau Resort Developments Inc.*

*PIN 48143-0266 (LT)*

- FIRSTLY: Part of Lot 25, Concession 11 Medora, Part of the Road Allowance between Lots 25 and 26, Concession 11, Medora (Closed by By-law 72-34, Instrument DM105704), designated as Part 2 on Reference Plan 35R-21398;  
Part of Lot 25, Concession 11 Medora, Part of the Road Allowance between Lots 25 and 26, Concession 11, Medora (Closed by By-law 72-34, Instrument DM105704), designated as Part 3 on Reference Plan 35R-21398, SUBJECT to Easement as in ME5721;  
Part of Lot 25, Concession 11 Medora, Part of the Road Allowance Between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704), Part of Lot 25, Concession 10 Medora, Part of the Road Allowance Between Concessions 10 and 11 Medora in front of Lot 25 (Closed by By-law 190, Instrument ME1289), Part of the Road Allowance Between Concessions 10 and 11 Medora in front of Lot 24 (Closed by By-law 744, Instrument DM12512), designated as Part 4 on Reference Plan 35R-21398;  
Part of Lot 25, Concession 11 Medora, Part of Lot 25, Concession 10 Medora, Part of the Road Allowance Between Concessions 10 and 11 Medora in front of Lot 25 (Closed by By-law 190, Instrument ME1289), Part of the Road Allowance Between Concessions 10 and 11 Medora in front of Lot 24 (Closed by By-law 744, Instrument DM12512) designated as Part 10 on Reference Plan 35R-21398;  
Township of Muskoka Lakes in the District Municipality of Muskoka  
Land Titles Division of Muskoka
- SECONDLY: in the Township of Medora now in the Township of Muskoka Lakes in the District Municipality of Muskoka, being that Part of Lot 24, Concession 11, designated as Part 8 on Reference Plan 35R-20257  
Land Titles Division of Muskoka
- THIRDLY: in the Township of Medora now in the Township of Muskoka Lakes in the District Municipality of Muskoka, being that Part of Lot 24, Concession 11, designated as Part 7 on Reference Plan 35R-20257  
TOGETHER WITH an easement over Part of Lot 24, Concession

11, in the Township of Medora designated as Part 5 on Plan 35R-7006 as in LT103789  
Land Titles Division of Muskoka

FOURTHLY: in the Township of Medora now in the Township of Muskoka Lakes in the District Municipality of Muskoka, being Part of Lot 24, Concession 11, designated as Parts 5 and 6 on Reference Plan 35R-20257.

TOGETHER WITH an easement over Part of Lot 24, Concession 11, in the Township of Medora, as in LT22475  
Land Titles Division of Muskoka

FIFTHLY: Parcel 26105, Section Register for Muskoka, being Part of Lot 24, Concession 11 of the Township of Medora, now in the Township of Muskoka Lakes, in the District Municipality of Muskoka, designated as Part 2, Plan 35R-3373  
Land Titles Division of Muskoka

## APPENDIX “G”



Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
199 Bay Street  
Suite 2800, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

Katherine McEachern  
Dir: 416-863-2566  
katherine.mceachern@blakes.com

June 8, 2009

VIA EMAIL

Reference: 71416/2

Peter Howard  
Maria Konyuhkova  
Kathy Mah  
Stikeman Elliot LLP  
Suite 5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

**Re: WestLB AG, Toronto Branch v. The Rosseau Resort Developments, Inc. ("RRDI")  
(Court File No. CV-09-8201-00CL)**

Dear Counsel:

Since its appointment, the Receiver has been diligently working through a number of issues in order to move the construction at the resort forward, work cooperatively with J.W. Marriott, and respond to the issues and concerns of homeowners.

One matter of important concern to homeowners, and purchasers of units under existing agreements of purchase and sale, is the hotel rental pool which has been established to distribute to homeowners the revenue from the rental of units to hotel guests (the "Hotel Rental Pool"). Currently, the Hotel Rental Pool is governed by a Rental Pool Management Agreement that has been entered into between individual homeowners and The Rosseau Resort Management Services Inc. ("RRMSI"). It is our understanding that RRMSI is a company without material assets, which was set up to administer the Hotel Rental Pool, but that employees of RRDI effectively have performed the functions of RRMSI under the Rental Pool Management Agreements since the inception of its operation.

A review of clause 2.11 of the Rental Pool Management Agreement demonstrates that the rights and obligations of RRMSI under that agreement may be assigned to an affiliate of RRMSI. In order to permit the Receiver to effectively administer the Hotel Rental Pool and ensure that homeowners' concerns regarding their entitlements under the Hotel Rental Pool are adequately addressed, it would appear appropriate for RRMSI to assign its obligations under the Rental Pool Management Agreement to RRDI. The Receiver will assume, on behalf of RRDI (and not in its personal capacity), the obligations of RRMSI under the Rental Pool Management Agreements.

A corporate search demonstrates that Ken Fowler and Peter Fowler are the directors and officers of RRMSI. The Receiver is requesting that RRMSI execute the proposed assignment. A form of assignment and assumption agreement is being prepared, and will be forwarded to you by tomorrow for review.

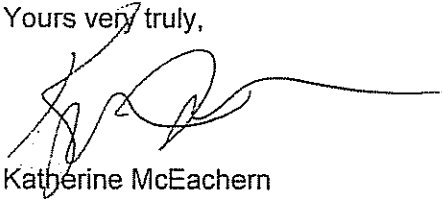
We trust that your client has no issue with this request, as your client has expressed an interest in ensuring that homeowners' concerns are addressed in the receivership.

12303038.2

In addition to the foregoing, Marriott Hotels of Canada Ltd. ("Marriott") has requested that the Receiver obtain the consent of Ken Fowler Enterprises Limited ("KFE") to its cooperation with the Receiver, and to the provision of information regarding the Hotel to the Receiver. A form of consent has been prepared for execution by KFE, and is enclosed. Please provide the executed consent at your earliest convenience so that Marriott may be satisfied as to this point.

Thank you very much for your anticipated cooperation and assistance. We note that these are two of a number of issues that we anticipate will arise from time to time with respect to which the Receiver will be requesting cooperation from your client. We will be in further touch as needed with respect to these issues.

Yours very truly,



Katherine McEachern

KAM

c: Richard Morawetz  
Adam Zalev  
Greg Karpel  
Stephen Ferguson  
Shayne Kukulowicz  
Pamela Huff  
Silvana D'Alimonte

TO: **MARRIOTT HOTELS OF CANADA LTD.**

RE: Red Leaves Rosseau Hotel and Condominium Project (the "**Project**")

AND RE: Receivership of the assets of The Rosseau Resort Developments Inc.

**CONSENT**

Ken Fowler Enterprises Limited hereby consents to your:

1. cooperating with Alvarez & Marsal Canada ULC, the receiver and manager of the assets of The Rosseau Resort Developments Inc. (the "**Receiver and Manager**"); and
2. providing to the Receiver and Manager all documents and information now or in the future in your possession or control with respect to the Project or any other matter.

**DATED** the                      day of June, 2009.

**KEN FOWLER ENTERPRISES LIMITED**

By: \_\_\_\_\_  
Title:



## **APPENDIX “H”**

**RRDI/MCCARTHY  
JOINT UNDERTAKING**

**FROM:** The Rosseau Resort Developments Inc. ("RRDI"), and its solicitors McCarthy Tétrault LLP ("McCarthy")

**TO:** WestLB AG, Toronto Branch, as Administrative Agent ("WestLB"), and its solicitors, Blake, Cassels & Graydon LLP ("Blakes")

**AND TO:** Travelers Guarantee Company of Canada, and its solicitors, Baker Schneider Ruggiero LLP

**AND TO:** Fortress Credit Corp. ("Fortress") and its solicitors, Goodmans LLP

**RE:** The development by RRDI of a freehold standard condominium now registered as **Muskoka Standard Condominium Corporation No. 62** (hereinafter referred to as the "**Condominium**")

**AND RE:** Procuring partial discharges of the outstanding blanket mortgage and supplementary mortgage given by RRDI to and in favour of WestLB registered as Instrument Nos. MT29969 and MT63504, respectively (with such mortgages being hereinafter collectively referred to as the "**WestLB Security**")

**AND RE:** Procuring partial discharges of the outstanding blanket mortgage given by RRDI to and in favour of Travelers Guarantee Company of Canada ("**Travelers**") registered as Instrument No. MT29970(hereinafter referred to as the "**Travelers Security**")

**AND RE:** Procuring partial discharges of the outstanding blanket mortgage given by RRDI to and in favour of Fortress Credit Corp. registered as Instrument No. MT33625 (hereinafter referred to as the "**Fortress Security**")

---

For good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), RRDI and McCarthy hereby jointly undertake and agree as follows:

1. As long as any indebtedness owed by RRDI to WestLB and secured under the WestLB Security is still outstanding and unpaid:
  - (a) McCarthy shall remit the Net Closing Proceeds (as hereinafter defined) received by McCarthy in connection with the final closing of each unit sale transaction in the Condominium by wire transfer as set out in Schedule A to WestLB (or to whomsoever and in whatsoever manner WestLB may in writing direct), one business day after the Net Closing Proceeds have been received by McCarthy and shall provide WestLB with the wire confirmation number(s) as soon as it is available;

- (b) upon McCarthy's receipt of a copy of the Electronic Registration Authorization and Direction dated March 25, 2009, executed by WestLB authorizing McCarthy to electronically sign and register (on behalf of WestLB) partial discharges of the WestLB Security, McCarthy hereby undertakes and agrees not to register (or cause to be registered) any partial discharge of the WestLB Security involving any purchaser's acquired unit(s) in the Condominium except in accordance with the Electronic Registration Authorization and Direction; and
- (c) for the purposes hereof, "Net Closing Proceeds" for any unit means the balance due on closing in accordance with the final Statement of Adjustments related to the sale of that unit less the following:
  - (i) any goods and services taxes ("GST"), retail sales taxes and non-resident withholding taxes included therein;
  - (ii) an amount equal to 4.5% of the net sales price for that unit (net of incentives, including sale-leaseback incentives credited to the purchaser on closing) (the "Closing Costs Holdback"). The Closing Costs Holdback shall be held in trust by McCarthy deposited into an account to be specified by WestLB (which shall be pledged in favour of WestLB) and shall be used to pay closing costs comprised of brokerage commissions and other reasonable closing costs (including legal fees and disbursements) subject to the prior approval of WestLB acting reasonably and without delay in accordance with a control agreement in favour of WestLB, provided that McCarthy shall be entitled to deduct and to pay the following on closing:
    - A. brokerage commissions which are required to be paid as a term of the agreement of purchase and sale for the unit plus GST; and
    - B. the levy payable to the Law Society of Upper Canada respecting the sale of the unit plus GST;
  - (iii) amounts collected from purchasers on account of estimated realty taxes which shall be held in trust by McCarthy and paid to the Township of Muskoka Lakes to be applied against the realty taxes attributable to the unit (including realty taxes pursuant to a supplementary tax bill when issued);
  - (iv) the entry fees agreed to be paid by RRDI pursuant to the applicable sale agreement payable to Red Leaves Resort Association on behalf of the purchaser and RRDI being a total of 0.5% of the sale price of the unit (excluding furniture and equipment) plus GST;
  - (v) the following amounts (plus GST) agreed to be paid by RRDI pursuant to the applicable sale agreement in respect of each of Suites [REDACTED]  
[REDACTED]

- A. the estimated realty taxes attributable to the unit covering the period of three years following the occupancy date to be paid by McCarthy to the Township of Muskoka Lakes for credit to the tax account for the unit;
  - B. the estimated common expenses attributable to the unit for the period from the closing date until the third anniversary of the occupancy date of the unit to be paid by McCarthy to Muskoka Standard Condominium Corporation No. 62 for credit to the account of that unit;
  - C. the estimated fees for telecommunications service (including telephone, satellite television and internet service) attributable to the unit for the period from the closing date until the third anniversary of the occupancy date of the unit to be paid by McCarthy to the Rental Pool Manager, The Rosseau Resort Management Services Inc., in trust, for credit to the account for that unit; and
  - D. the basic annual fee payable to the Red Leaves Resort Association (being \$1.00 per annum per square foot of the area of the unit for the period of three years following the occupancy date of the unit to be paid by McCarthy to Red Leaves Resort Association for credit to the account for that unit;
- (vi) the sum of [REDACTED] (plus GST) agreed to be paid by RRDI pursuant to the applicable sale agreement to cover the fees payable for Marriott Gold membership for a period of two years as listed on the spreadsheet provided to WestLB entitled Minimum Sales Prices – Schedule VII dated March 16, 2009 (the “Spreadsheet”) to be paid by McCarthy to Marriott Hotels of Canada Limited;
- (vii) the value of the Indulgence Card agreed to be issued pursuant to the applicable sale agreement to the purchaser of the unit on closing, if any, as shown on the Spreadsheet with such amount to be paid by McCarthy to RRDI to be held in trust and applied to satisfy amounts charged against the Indulgence Card. Upon request by WestLB, RRDI will transfer or cause McCarthy to transfer the amounts deducted hereunder less any amounts previously paid to satisfy amounts charged against the Indulgence Card to an account designated by WestLB provided that such account will be subject to a control agreement between WestLB and RRDI in form satisfactory to both acting reasonably and which will, *inter alia*, provide for payment of amounts charged against the Indulgence Card;
- (viii) the sum of [REDACTED] plus GST agreed to be paid by RRDI pursuant to the applicable sale agreement to cover the fees for two years membership in

the Resort to Resort Program as listed on the Spreadsheet to be paid by McCarthy to Intrawest Resort to Resort; and

- (ix) the amount of common expenses agreed to be paid by RRDI pursuant to the applicable sale agreements on behalf of the purchasers of those units as listed on the Spreadsheet to be paid by McCarthy to Muskoka Standard Condominium Corporation No. 62 for credit to the accounts for those units.
2. McCarthy and RRDI jointly confirm and agree that until the outstanding indebtedness of RRDI to WestLB secured under the WestLB Security has been paid in full:
- (a) the Net Closing Proceeds received on the closing of each unit sale transaction in the Condominium shall be the property of WestLB, and neither RRDI or McCarthy shall claim any ownership interest therein or thereto; and
  - (b) any and all Net Closing Proceeds received by McCarthy in connection with the completion of any unit sale transaction in respect of the Condominium shall be deemed to be held by McCarthy in trust for WestLB.
3. McCarthy and RRDI further jointly confirm and agree that once the outstanding indebtedness of RRDI to WestLB secured under the WestLB Security has been fully repaid, and the WestLB Security has been fully discharged, then the aggregate of all Net Closing Proceeds received thereafter on the closing of each unit sale transaction in the Condominium, subject to Section 4 below, shall be delivered and remitted:
- (a) firstly to Fortress in order to repay or further secure any outstanding indebtedness or liabilities, if any, owed by RRDI to Fortress and secured by the Fortress Security, within one (1) business day after such funds have been received by McCarthy until such time as the entire outstanding indebtedness or liabilities of RRDI to Fortress have been fully repaid or secured to the satisfaction of Fortress, or until McCarthy has received written instructions from Fortress to thereafter remit all Net Sale Proceeds to RRDI (or to whomsoever RRDI may direct in writing), and without limiting the generality of the foregoing obligation, McCarthy and RRDI hereby jointly undertake and agree not to register (or in any other manner deal with) any partial discharge(s) of the Fortress Security, in respect of any unit in the Condominium, until such time as a transfer/deed of title with respect thereto from RRDI to the respective unit purchaser(s) thereof, or to whomsoever such unit purchaser(s) may in writing further direct is registered electronically in the Land Titles Division of the Muskoka Registry Office (No. 35); and
  - (b) secondly to RRDI (or to whomsoever RRDI may direct in writing), within one (1) business day after such funds have been received by McCarthy and the unit sale transactions to which such Net Closing Proceeds relate have been finally closed.
4. McCarthy and RRDI jointly confirm and agree that once the outstanding indebtedness of RRDI to WestLB secured under the WestLB Security has been fully repaid, and the

WestLB Security has been fully discharged, the Closing Costs Holdback in respect of sales after such date shall be deposited by McCarthy into an account to be specified by Fortress (which shall be pledged in favour of Fortress) and shall be used to pay closing costs comprised of brokerage commissions and other reasonable closing costs (including legal fees and disbursements) subject to the prior approval of Fortress acting reasonably and without delay in accordance with a control agreement in favour of Fortress, provided that McCarthy shall be entitled to deduct and to pay the amounts set forth in Section 1 (c)(ii)A. and B.


5. RRDI expressly confirms and agrees that McCarthy is hereby irrevocably authorized and directed to receive the Net Closing Proceeds, and to deliver and/or remit the Net Closing Proceeds, in strict conformity with the foregoing provisions hereof.
6. A photocopy, telefaxed copy or scanned/mailed copy of this executed joint undertaking may be relied upon to the same extent as if it were an original executed version specifically addressed and delivered to each of the parties to whom (or in favour of whom) this joint undertaking is given.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated this 25 day of March, 2009.

IN WITNESS WHEREOF the parties have executed this Agreement.


**The Rosseau Resort Developments Inc.**

Per:   
Name: PETER QUINN  
Title: SECRETARY / TREASURER

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

We have authority to bind the Corporation

**McCarthy Tétrault LLP**

Per:   
Peter D. Quinn

**RRDI/MCCARTHY  
JOINT UNDERTAKING**

**FROM:** The Rosseau Resort Developments Inc. ("RRDI"), and its solicitors McCarthy Tétrault LLP ("McCarthy")

**TO:** WestLB AG, Toronto Branch, as Administrative Agent ("WestLB"), and its solicitors, Blake, Cassels & Graydon LLP ("Blakes")

**AND TO:** Travelers Guarantee Company of Canada, and its solicitors, Baker Schneider Ruggiero LLP

**AND TO:** Fortress Credit Corp. ("Fortress") and its solicitors, Goodmans LLP

**RE:** The development by RRDI of a freehold standard condominium now registered as **Muskoka Standard Condominium Corporation No. 62** (hereinafter referred to as the "**Condominium**")

**AND RE:** Procuring partial discharges of the outstanding blanket mortgage and supplementary mortgage given by RRDI to and in favour of WestLB registered as Instrument Nos. MT29969 and MT63504, respectively (with such mortgages being hereinafter collectively referred to as the "**WestLB Security**")

**AND RE:** Procuring partial discharges of the outstanding blanket mortgage given by RRDI to and in favour of Travelers Guarantee Company of Canada ("**Travelers**") registered as Instrument No. MT29970(hereinafter referred to as the "**Travelers Security**")

**AND RE:** Procuring partial discharges of the outstanding blanket mortgage given by RRDI to and in favour of Fortress Credit Corp. registered as Instrument No. MT33625 (hereinafter referred to as the "**Fortress Security**")

---

For good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), RRDI and McCarthy hereby jointly undertake and agree as follows:

1. As long as any indebtedness owed by RRDI to WestLB and secured under the WestLB Security is still outstanding and unpaid:
  - (a) McCarthy shall remit the Net Closing Proceeds (as hereinafter defined) received by McCarthy in connection with the final closing of each unit sale transaction in the Condominium by wire transfer as set out in Schedule A to WestLB (or to whomsoever and in whatsoever manner WestLB may in writing direct), one business day after the Net Closing Proceeds have been received by McCarthy and shall provide WestLB with the wire confirmation number(s) as soon as it is available;



- (b) upon McCarthy's receipt of a copy of the Electronic Registration Authorization and Direction dated April 9, 2009, executed by WestLB authorizing McCarthy to electronically sign and register (on behalf of WestLB) partial discharges of the WestLB Security, McCarthy hereby undertakes and agrees not to register (or cause to be registered) any partial discharge of the WestLB Security involving any purchaser's acquired unit(s) in the Condominium except in accordance with the Electronic Registration Authorization and Direction; and
- (c) for the purposes hereof, "Net Closing Proceeds" for any unit means the balance due on closing in accordance with the final Statement of Adjustments related to the sale of that unit less the following:
  - (i) any goods and services taxes ("GST"), retail sales taxes and non-resident withholding taxes included therein;
  - (ii) an amount equal to 4.5% of the net sales price for that unit (net of incentives, including sale-leaseback incentives credited to the purchaser on closing) (the "Closing Costs Holdback"). The Closing Costs Holdback shall be held in trust by McCarthy deposited into an account to be specified by WestLB (which shall be pledged in favour of WestLB) and shall be used to pay closing costs comprised of brokerage commissions and other reasonable closing costs (including legal fees and disbursements) subject to the prior approval of WestLB acting reasonably and without delay in accordance with a control agreement in favour of WestLB, provided that McCarthy shall be entitled to deduct and to pay the following on closing:
    - A. brokerage commissions which are required to be paid as a term of the agreement of purchase and sale for the unit plus GST; and
    - B. the levy payable to the Law Society of Upper Canada respecting the sale of the unit plus GST;
  - (iii) amounts collected from purchasers on account of estimated realty taxes which shall be held in trust by McCarthy and paid to the Township of Muskoka Lakes to be applied against the realty taxes attributable to the unit (including realty taxes pursuant to a supplementary tax bill when issued);
  - (iv) the entry fees agreed to be paid by RRDI pursuant to the applicable sale agreement payable to Red Leaves Resort Association on behalf of the purchaser and RRDI being a total of 0.5% of the sale price of the unit (excluding furniture and equipment) plus GST;
  - (v) the following amounts (plus GST) agreed to be paid by RRDI pursuant to the applicable sale agreement in respect of each of Suites [REDACTED]  
[REDACTED]

- A. the estimated realty taxes attributable to the unit covering the period of three years following the occupancy date to be paid by McCarthy to the Township of Muskoka Lakes for credit to the tax account for the unit;
  - B. the estimated common expenses attributable to the unit for the period from the closing date until the third anniversary of the occupancy date of the unit to be paid by McCarthy to Muskoka Standard Condominium Corporation No. 62 for credit to the account of that unit;
  - C. the estimated fees for telecommunications service (including telephone, satellite television and internet service) attributable to the unit for the period from the closing date until the third anniversary of the occupancy date of the unit to be paid by McCarthy to the Rental Pool Manager, The Rosseau Resort Management Services Inc., in trust, for credit to the account for that unit; and
  - D. the basic annual fee payable to the Red Leaves Resort Association (being \$1.00 per annum per square foot of the area of the unit for the period of three years following the occupancy date of the unit to be paid by McCarthy to Red Leaves Resort Association for credit to the account for that unit;
- (vi) the sum of [REDACTED] plus GST) agreed to be paid by RRDI pursuant to the applicable sale agreement to cover the fees payable for Marriott Gold membership for a period of two years as listed on the spreadsheet provided to WestLB entitled Minimum Sales Prices – Schedule VII dated March 16, 2009 (the “Spreadsheet”) to be paid by McCarthy to Marriott Hotels of Canada Limited;
- (vii) the value of the Indulgence Card agreed to be issued pursuant to the applicable sale agreement to the purchaser of the unit on closing, if any, as shown on the Spreadsheet with such amount to be paid by McCarthy to RRDI to be held in trust and applied to satisfy amounts charged against the Indulgence Card. Upon request by WestLB, RRDI will transfer or cause McCarthy to transfer the amounts deducted hereunder less any amounts previously paid to satisfy amounts charged against the Indulgence Card to an account designated by WestLB provided that such account will be subject to a control agreement between WestLB and RRDI in form satisfactory to both acting reasonably and which will, *inter alia*, provide for payment of amounts charged against the Indulgence Card;
- (viii) the sum of \$[REDACTED] plus GST agreed to be paid by RRDI pursuant to the applicable sale agreement to cover the fees for two years membership in

the Resort to Resort Program as listed on the Spreadsheet to be paid by McCarthy to Intrawest Resort to Resort; and

- (ix) the amount of common expenses agreed to be paid by RRDI pursuant to the applicable sale agreements on behalf of the purchasers of those units as listed on the Spreadsheet to be paid by McCarthy to Muskoka Standard Condominium Corporation No. 62 for credit to the accounts for those units.

2. McCarthy and RRDI jointly confirm and agree that until the outstanding indebtedness of RRDI to WestLB secured under the WestLB Security has been paid in full:

- (a) the Net Closing Proceeds received on the closing of each unit sale transaction in the Condominium shall be the property of WestLB, and neither RRDI or McCarthy shall claim any ownership interest therein or thereto; and
- (b) any and all Net Closing Proceeds received by McCarthy in connection with the completion of any unit sale transaction in respect of the Condominium shall be deemed to be held by McCarthy in trust for WestLB.

3. McCarthy and RRDI further jointly confirm and agree that once the outstanding indebtedness of RRDI to WestLB secured under the WestLB Security has been fully repaid, and the WestLB Security has been fully discharged, then the aggregate of all Net Closing Proceeds received thereafter on the closing of each unit sale transaction in the Condominium, subject to Section 4 below, shall be delivered and remitted:

- (a) firstly to Fortress in order to repay or further secure any outstanding indebtedness or liabilities, if any, owed by RRDI to Fortress and secured by the Fortress Security, within one (1) business day after such funds have been received by McCarthy until such time as the entire outstanding indebtedness or liabilities of RRDI to Fortress have been fully repaid or secured to the satisfaction of Fortress, or until McCarthy has received written instructions from Fortress to thereafter remit all Net Sale Proceeds to RRDI (or to whomsoever RRDI may direct in writing), and without limiting the generality of the foregoing obligation, McCarthy and RRDI hereby jointly undertake and agree not to register (or in any other manner deal with) any partial discharge(s) of the Fortress Security, in respect of any unit in the Condominium, until such time as a transfer/deed of title with respect thereto from RRDI to the respective unit purchaser(s) thereof, or to whomsoever such unit purchaser(s) may in writing further direct is registered electronically in the Land Titles Division of the Muskoka Registry Office (No. 35); and
- (b) secondly to RRDI (or to whomsoever RRDI may direct in writing), within one (1) business day after such funds have been received by McCarthy and the unit sale transactions to which such Net Closing Proceeds relate have been finally closed.

4. McCarthy and RRDI jointly confirm and agree that once the outstanding indebtedness of RRDI to WestLB secured under the WestLB Security has been fully repaid, and the

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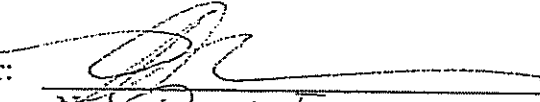
5. RRDI expressly confirms and agrees that McCarthy is hereby irrevocably authorized and directed to receive the Net Closing Proceeds, and to deliver and/or remit the Net Closing Proceeds, in strict conformity with the foregoing provisions hereof.
6. A photocopy, telefaxed copy or scanned/mailed copy of this executed joint undertaking may be relied upon to the same extent as if it were an original executed version specifically addressed and delivered to each of the parties to whom (or in favour of whom) this joint undertaking is given.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated this 9<sup>th</sup> day of April, 2009.

IN WITNESS WHEREOF the parties have executed this Agreement.


**The Rosseau Resort Developments Inc.**

Per:   
Name: PETER FOWLER  
Title: SECRETARY TREASURER

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

We have authority to bind the Corporation

**McCarthy Tétrault LLP**

Per:   
Peter D. Quinn

**RRDI/MCCARTHY**  
**JOINT UNDERTAKING**

**FROM:** The Rosseau Resort Developments Inc. ("RRDI"), and its solicitors McCarthy Tétrault LLP ("McCarthy")

**TO:** WestLB AG, Toronto Branch, as Administrative Agent ("WestLB"), and its solicitors, Blake, Cassels & Graydon LLP ("Blakes")

**AND TO:** Travelers Guarantee Company of Canada, and its solicitors, Baker Schneider Ruggiero LLP

**AND TO:** Fortress Credit Corp. ("Fortress") and its solicitors, Goodmans LLP

**RE:** The development by RRDI of a freehold standard condominium now registered as **Muskoka Standard Condominium Corporation No. 62** (hereinafter referred to as the "**Condominium**")

**AND RE:** Procuring partial discharges of the outstanding blanket mortgage and supplementary mortgage given by RRDI to and in favour of WestLB registered as Instrument Nos. MT29969 and MT63504, respectively (with such mortgages being hereinafter collectively referred to as the "**WestLB Security**")

**AND RE:** Procuring partial discharges of the outstanding blanket mortgage given by RRDI to and in favour of Travelers Guarantee Company of Canada ("**Travelers**") registered as Instrument No. MT29970 (hereinafter referred to as the "**Travelers Security**")

**AND RE:** Procuring partial discharges of the outstanding blanket mortgage given by RRDI to and in favour of Fortress Credit Corp. registered as Instrument No. MT33625 (hereinafter referred to as the "**Fortress Security**")

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For good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), RRDI and McCarthy hereby jointly undertake and agree as follows:

1. As long as any indebtedness owed by RRDI to WestLB and secured under the WestLB Security is still outstanding and unpaid:
  - (a) McCarthy shall remit the Net Closing Proceeds (as hereinafter defined) received by McCarthy in connection with the final closing of each unit sale transaction in the Condominium by wire transfer as set out in Schedule A to WestLB (or to whomsoever and in whatsoever manner WestLB may in writing direct), one business day after the Net Closing Proceeds have been received by McCarthy and shall provide WestLB with the wire confirmation number(s) as soon as it is available;

- (b) upon McCarthy's receipt of a copy of the Electronic Registration Authorization and Direction dated April 20, 2009, executed by WestLB authorizing McCarthy to electronically sign and register (on behalf of WestLB) partial discharges of the WestLB Security, McCarthy hereby undertakes and agrees not to register (or cause to be registered) any partial discharge of the WestLB Security involving any purchaser's acquired unit(s) in the Condominium except in accordance with the Electronic Registration Authorization and Direction; and
- (c) for the purposes hereof, "Net Closing Proceeds" for any unit means the balance due on closing in accordance with the final Statement of Adjustments related to the sale of that unit less the following:
- (i) any goods and services taxes ("GST"), retail sales taxes and non-resident withholding taxes included therein;
  - (ii) an amount equal to 4.5% of the net sales price for that unit (net of incentives, including sale-leaseback incentives credited to the purchaser on closing) (the "Closing Costs Holdback"). The Closing Costs Holdback shall be held in trust by McCarthy (deposited into an account to be specified by WestLB (which shall be pledged in favour of WestLB) and shall be used to pay closing costs comprised of brokerage commissions and other reasonable closing costs (including legal fees and disbursements) subject to the prior approval of WestLB acting reasonably and without delay in accordance with a control agreement in favour of WestLB, provided that McCarthy shall be entitled to deduct and to pay the following on closing:
    - A. brokerage commissions which are required to be paid as a term of the agreement of purchase and sale for the unit plus GST; and
    - B. the levy payable to the Law Society of Upper Canada respecting the sale of the unit plus GST;
  - (iii) amounts collected from purchasers on account of estimated realty taxes which shall be held in trust by McCarthy and paid to the Township of Muskoka Lakes to be applied against the realty taxes attributable to the unit (including realty taxes pursuant to a supplementary tax bill when issued);
  - (iv) the entry fees agreed to be paid by RRDI pursuant to the applicable sale agreement payable to Red Leaves Resort Association on behalf of the purchaser and RRDI being a total of 0.5% of the sale price of the unit (excluding furniture and equipment) plus GST;
  - (v) the following amounts (plus GST) agreed to be paid by RRDI pursuant to the applicable sale agreement in respect of each of Suites ~~201-202-203~~  
~~204-205-206~~:

- A. the estimated realty taxes attributable to the unit covering the period of three years following the occupancy date to be paid by McCarthy to the Township of Muskoka Lakes for credit to the tax account for the unit;
  - B. the estimated common expenses attributable to the unit for the period from the closing date until the third anniversary of the occupancy date of the unit to be paid by McCarthy to Muskoka Standard Condominium Corporation No. 62 for credit to the account of that unit;
  - C. the estimated fees for telecommunications service (including telephone, satellite television and internet service) attributable to the unit for the period from the closing date until the third anniversary of the occupancy date of the unit to be paid by McCarthy to the Rental Pool Manager, The Rosseau Resort Management Services Inc., in trust, for credit to the account for that unit; and
  - D. the basic annual fee payable to the Red Leaves Resort Association (being \$1.00 per annum per square foot of the area of the unit for the period of three years following the occupancy date of the unit to be paid by McCarthy to Red Leaves Resort Association for credit to the account for that unit;
- (vi) the sum of \$[REDACTED] plus GST) agreed to be paid by RRDI pursuant to the applicable sale agreement to cover the fees payable for Marriott Gold membership for a period of two years as listed on the spreadsheet provided to WestLB entitled Minimum Sales Prices – Schedule VII dated March 16, 2009 (the “Spreadsheet”) to be paid by McCarthy to Marriott Hotels of Canada Limited;
  - (vii) the value of the Indulgence Card agreed to be issued pursuant to the applicable sale agreement to the purchaser of the unit on closing, if any, as shown on the Spreadsheet with such amount to be paid by McCarthy to RRDI to be held in trust and applied to satisfy amounts charged against the Indulgence Card. Upon request by WestLB, RRDI will transfer or cause McCarthy to transfer the amounts deducted hereunder less any amounts previously paid to satisfy amounts charged against the Indulgence Card to an account designated by WestLB provided that such account will be subject to a control agreement between WestLB and RRDI in form satisfactory to both acting reasonably and which will, *inter alia*, provide for payment of amounts charged against the Indulgence Card;
  - (viii) the sum of \$[REDACTED] plus GST agreed to be paid by RRDI pursuant to the applicable sale agreement to cover the fees for two years membership in



the Resort to Resort Program as listed on the Spreadsheet to be paid by McCarthy to Intrawest Resort to Resort; and

- (ix) the amount of common expenses agreed to be paid by RRDI pursuant to the applicable sale agreements on behalf of the purchasers of those units as listed on the Spreadsheet to be paid by McCarthy to Muskoka Standard Condominium Corporation No. 62 for credit to the accounts for those units.
2. McCarthy and RRDI jointly confirm and agree that until the outstanding indebtedness of RRDI to WestLB secured under the WestLB Security has been paid in full:
- (a) the Net Closing Proceeds received on the closing of each unit sale transaction in the Condominium shall be the property of WestLB, and neither RRDI or McCarthy shall claim any ownership interest therein or thereto; and
  - (b) any and all Net Closing Proceeds received by McCarthy in connection with the completion of any unit sale transaction in respect of the Condominium shall be deemed to be held by McCarthy in trust for WestLB.
3. McCarthy and RRDI further jointly confirm and agree that once the outstanding indebtedness of RRDI to WestLB secured under the WestLB Security has been fully repaid, and the WestLB Security has been fully discharged, then the aggregate of all Net Closing Proceeds received thereafter on the closing of each unit sale transaction in the Condominium, subject to Section 4 below, shall be delivered and remitted:
- (a) firstly to Fortress in order to repay or further secure any outstanding indebtedness or liabilities, if any, owed by RRDI to Fortress and secured by the Fortress Security, within one (1) business day after such funds have been received by McCarthy until such time as the entire outstanding indebtedness or liabilities of RRDI to Fortress have been fully repaid or secured to the satisfaction of Fortress, or until McCarthy has received written instructions from Fortress to thereafter remit all Net Sale Proceeds to RRDI (or to whomsoever RRDI may direct in writing), and without limiting the generality of the foregoing obligation, McCarthy and RRDI hereby jointly undertake and agree not to register (or in any other manner deal with) any partial discharge(s) of the Fortress Security, in respect of any unit in the Condominium, until such time as a transfer/deed of title with respect thereto from RRDI to the respective unit purchaser(s) thereof, or to whomsoever such unit purchaser(s) may in writing further direct is registered electronically in the Land Titles Division of the Muskoka Registry Office (No. 35); and
  - (b) secondly to RRDI (or to whomsoever RRDI may direct in writing), within one (1) business day after such funds have been received by McCarthy and the unit sale transactions to which such Net Closing Proceeds relate have been finally closed.
4. McCarthy and RRDI jointly confirm and agree that once the outstanding indebtedness of RRDI to WestLB secured under the WestLB Security has been fully repaid, and the

WestLB Security has been fully discharged, the Closing Costs Holdback in respect of sales after such date shall be deposited by McCarthy into an account to be specified by Fortress (which shall be pledged in favour of Fortress) and shall be used to pay closing costs comprised of brokerage commissions and other reasonable closing costs (including legal fees and disbursements) subject to the prior approval of Fortress acting reasonably and without delay in accordance with a control agreement in favour of Fortress, provided that McCarthy shall be entitled to deduct and to pay the amounts set forth in Section 1 (c)(ii)A. and B.

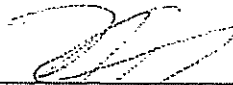
5. RRDI expressly confirms and agrees that McCarthy is hereby irrevocably authorized and directed to receive the Net Closing Proceeds, and to deliver and/or remit the Net Closing Proceeds, in strict conformity with the foregoing provisions hereof.
6. A photocopy, telefaxed copy or scanned/mailed copy of this executed joint undertaking may be relied upon to the same extent as if it were an original executed version specifically addressed and delivered to each of the parties to whom (or in favour of whom) this joint undertaking is given.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated this 20<sup>th</sup> day of April, 2009.

IN WITNESS WHEREOF the parties have executed this Agreement.

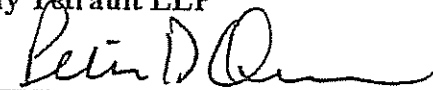
**The Rosseau Resort Developments Inc.**

Per:   
Name: PETER FOWLER  
Title: SECRETARY TREASURER

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

We have authority to bind the Corporation

**McCarthy Tétrault LLP**

Per:   
Peter D. Quinn

## APPENDIX “I”

**The Rosseau Resort Developments Inc. ("RRDI")**  
**by its Receiver and Manager and Trustee of its assets,**  
**Alvarez & Marsal Canada ULC**  
**Receipts and Disbursements for the period - May 22, 2009 to June 30, 2009**

	<u>TOTAL</u>
<b>Receipts:</b>	
Receiver borrowings	\$ 5,250,000.00
<b>Total Receipts</b>	<u>\$ 5,250,000.00</u>
<b>Disbursements:</b>	
RRDI payroll costs incl. source deductions	\$ 181,179.07
Independent contractors	114,276.42
Construction costs	165,576.87
Furniture, fixtures & equipment	173,827.23
Construction consultants/contractors	56,106.24
Marriott working capital funding	550,000.00
Utilities	2,177.70
GST paid	69,738.91
Insurance	16,891.74
Office expenses	1,292.06
Security	16,370.00
Professional fees	863,727.14
Miscellaneous	3,528.69
<b>Total Disbursements</b>	<u>\$ 2,214,692.07</u>
<b>Excess Receipts over Disbursements</b>	<u><u>\$ 3,035,307.93</u></u>