

(l) as soon as possible and in any event within five (5) Business Days after the Borrower receives notice or obtains knowledge of the occurrence or existence of any Environmental Matter requiring notice to a Governmental Instrumentality or with respect to which notice is received from a Governmental Instrumentality, a copy of all relevant documentation relating thereto;

(m) promptly after the sending or filing thereof, a copy of all material reports required to be filed by the Borrower with any Governmental Instrumentality, including any reports with respect to Environmental Matters;

(n) promptly upon receipt thereof, copies of all detailed management letters submitted to the Borrower by the independent public accountants referred to in clause (c) in connection with each audit made by such accountants of the books of the Borrower;

(o) as soon as possible and in any event within five (5) Business Days after the receipt thereof, any notice of a default which could reasonably be expected to have a Material Adverse Effect that is given or received by the Borrower and relates to any of the Loan Documents, the Project Documents, the Condominium Documents, the ECD Insurance Documents, the Premises, or the construction, operation or maintenance of the Premises;

(p) as soon as possible and in any event within five (5) Business Days after the Borrower obtains knowledge thereof, notice of any termination, event of default or requests for indemnification of any other party or any other notice relating to material rights or obligations under any of the Project Documents, the Condominium Documents or the ECD Insurance Documents;

(q) no later than the fifteenth (15th) day of each calendar month until Final Completion (unless such information is to be included in a Loan Request, a Bankers' Acceptance Request or Letter of Credit Issuance Request delivered or to be delivered during such calendar month), a status report describing in reasonable detail the progress of the construction of the Improvements during the immediately preceding calendar month including the Project Costs incurred during such time, an estimate of the time and costs required to complete the Improvements, the progress of construction and how it relates to the Construction Schedule;

(r) as soon as possible after receiving notice or becoming aware of any schedule delay greater than thirty (30) days and all remedial plans and updates thereof;

(s) as soon as possible and in any event within five (5) Business Days after the Borrower receives any progress report provided by the GMP Contractor, a copy thereof together with all attachments thereto;

(t) as soon as possible and in any event within five (5) Business Days after the Borrower obtains knowledge thereof, notice of any event, occurrence or circumstance which reasonably could be expected to cause the Budget not to be In Balance or render the Borrower, the Guarantor or the GMP Contractor, incapable of, or preventing such Person from (x) achieving Final Completion on or before the Outside Completion

Deadline or (y) meeting any material obligation of such Person under any of the Project Documents to which it is a party;

(u) promptly and in any event no later than thirty (30) days prior to the implementation thereof, any proposed material change in the nature or scope of the Improvements or the business or operations of the Borrower;

(v) as soon as possible and in any event within five (5) Business Days after the receipt thereof by the Borrower, copies of (x) all Project Documents and Permits obtained or entered into by the Borrower after the Effective Date, (y) any material amendment, supplement or other modification to any Permit received by the Borrower after the Effective Date, and (z) all material notices relating to the Premises, any of the Loan Documents, the Project Documents, the Condominium Documents or the ECD Insurance Documents received by or delivered to the Borrower from any Person;

(w) as soon as possible and in any event within two (2) Business Days after the occurrence thereof, written notice of any Event of Loss affecting the Premises or any portion thereof or any actual or threatened commencement of any Expropriation together with a copy of all relevant documentation relating thereto; and

(x) such other information and reports respecting the condition or operations, financial or otherwise, of the Borrower and the Premises as required under the Loan Documents, the Project Documents, the Condominium Documents or the ECD Insurance Documents, and such other information and reports respecting the construction of the Improvements as the Administrative Agent or Consulting Engineer may reasonably request from time to time.

SECTION 8.1.2 Use of Available Funds. The Borrower shall apply the proceeds of the Credit Extensions and the Available Deposits:

(a) to pay (or reimburse itself for the payment of) the Project Costs which are identified in the Budget to be paid from the Loans and Bankers' Acceptance Proceeds;

(b) to pay the costs, expenses and fees required to be paid by the Borrower under this Agreement, the other Loan Documents and, to the extent set forth in the Budget, the other Project Documents, the Condominium Documents and the ECD Insurance Documents; and

(c) in the case of Letters of Credit, for issuing Letters of Credit for the account of the Borrower to be delivered (i) to suppliers or contractors providing materials to the Improvements which constitute Project Costs set forth in the Budget to be paid from the Loans or (ii) to Governmental Instrumentalities as security for work to be done by the Borrower under any agreement between them in respect of the development of the Premises or any portion thereof.

SECTION 8.1.3 Repayment of Indebtedness. The Borrower shall repay, in accordance with its terms, all Indebtedness, including all sums due under the Loan Documents, the Project

Documents, the Condominium Documents and the ECD Insurance Documents in accordance with the terms thereof.

SECTION 8.1.4 Preserving the Project Security. The Borrower shall, subject to clauses (x) and (y), undertake all actions which are necessary or appropriate in the reasonable judgment of the Administrative Agent to (x) maintain (other than making any filings required to be made by the Administrative Agent or the Lenders to perfect a security interest or extend the period of time during which such security interest perfected by such filing is in effect) the Secured Parties' respective security interests in the Project Security in full force and effect at all times (including the priority thereof) and (y) preserve and protect the Project Security and protect and enforce the Borrower's rights and title and the respective rights of the Secured Parties to the Project Security, including the making or delivery of all filings (except as set forth above) and recordings, the payments of fees and other charges, the issuance of supplemental documentation and the discharge of all claims or other Liens (other than the Permitted Liens).

SECTION 8.1.5 Diligent Construction of the Improvements. With respect to the construction and Final Completion of the Improvements, the Borrower shall, on or before (x) July 31, 2007 obtain a Permit duly issued by the Building Department to construct Paignton House either (i) in accordance with the current Plans and Specifications which, as presently constituted will require the granting of a minor variance under the *Planning Act* (Ontario), or (ii) if such minor variance cannot be obtained, in accordance with modified Plans and Specifications (which modification shall be subject to the applicable provisions of Section 8.2.16, 8.2.17 and 8.2.18) which will provide for a decrease in the height of Paignton House over that currently set forth in such Plans and Specifications) and (y) the Outside Completion Deadline:

(a) continuously and diligently pursue construction of each Construction Phase and the Improvements to Final Completion, free of all Liens (other than Permitted Liens), obtain a temporary Permission to Occupy for the Improvements with respect to Substantial Completion thereof, and provide a copy of such Permission to Occupy to the Administrative Agent within five (5) days after receipt by the Borrower, all in accordance with the Loan Documents, the Project Documents, the Condominium Documents and the ECD Insurance Documents and in compliance with all Legal Requirements;

(b) pay all sums and perform such duties as may be necessary to complete the Improvements substantially in accordance with the Loan Documents, the Project Documents, the Condominium Documents and the ECD Insurance Documents and in compliance with all Legal Requirements;

(c) promptly after completing the Punchlist Items applicable to the Improvements, request the Consulting Engineer to issue the Punchlist Completion Certificate; and

(d) obtain a permanent Permission to Occupy for the Improvements prior to the Outside Completion Deadline and deliver a copy thereof to the Administrative Agent within two (2) Business Days after such Permission to Occupy is obtained.

SECTION 8.1.6 Correction of Defects. The Borrower shall promptly correct all defects in the Improvements or any departure from the Plans and Specifications not previously approved by the Administrative Agent. The Borrower agrees that the advance of any Loans or Bankers' Acceptance Proceeds whether before or after such defects or departures from the Plans and Specifications are discovered by, or brought to the attention of, the Administrative Agent shall not constitute a waiver of the Administrative Agent's right to require compliance with this covenant.

SECTION 8.1.7 Encroachments. The Borrower shall construct or cause to be constructed the Improvements within the Land and the Easements.

SECTION 8.1.8 In Balance; Borrower Equity. If at any time the Budget is not In Balance, the Borrower shall (i) deposit or cause to be deposited in the Project Account, in cash, funds in the amount required to bring the Budget In Balance or (ii) provide the Administrative Agent with a letter of credit which shall be in an amount sufficient to bring the Budget In Balance and otherwise reasonably satisfactory to the Administrative Agent as to issuer and the form and content thereof. Each such deposit shall be made in accordance with the Project Account Agreement on the earlier of (x) ten (10) days after demand therefor by the Administrative Agent or (y) the Business Day immediately preceding the date on which an Advance is to be made by the Lenders pursuant to the Loan Documents.

SECTION 8.1.9 Plans and Specifications. The Borrower shall provide to the Consulting Engineer a copy of, and maintain at the Premises, a complete set of Plans and Specifications as in effect from time to time. After request, the Borrower shall provide or make available to the Consulting Engineer a copy of all shop drawings, schedules, reports, diagrams, layouts, setting plans, cuts, explanations, catalogue references, samples and other data prepared by the GMP Contractor or any Contractor in connection with the development of the Plans and Specifications during the time that the Borrower and the Owner Representative have to review and approve such items in order for the Consulting Engineer to confirm the conformity thereof to the applicable provisions of the Loan Documents, the Project Documents, the Condominium Documents and the ECD Insurance Documents. Following such review and approval of such submissions, as aforesaid, no modifications shall be made to the Plans and Specifications unless permitted under Section 8.2.17. The Borrower shall provide Final Plans no later than six (6) months prior to the estimated Final Completion Date and "as built" Plans and Specifications in accordance with Section 6.6.3.

SECTION 8.1.10 Consulting Engineer. The Borrower shall:

(a) cooperate and use reasonable efforts to cause the GMP Contractor and the Architect to cooperate with the Consulting Engineer in the performance of the Consulting Engineer's duties hereunder and under the Consulting Engineer Engagement Agreement. Without limiting the generality of the foregoing, the Borrower shall and shall instruct the GMP Contractor and the Architect to: (w) communicate with and promptly provide or make available to the Consulting Engineer all invoices, documents, shop drawings, schedules, reports, diagrams, layouts, setting plans, cuts, explanations, catalogue references, samples and other data and information reasonably requested by the Consulting Engineer with respect to the construction of the Improvements, (x) provide

the Consulting Engineer with access thereto after at least two (2) days' prior notice (except in the event of an emergency, in which case no prior notice shall be required) and, subject, however, to required safety precautions, the construction areas (the Owner Representative shall accompany the Consulting Engineer on any such visits), (y) provide the Consulting Engineer with reasonable working space and access to telephone, copying and telecopying equipment (at no cost to the Lenders, the Consulting Engineer or the Administrative Agent) and (z) otherwise facilitate the Consulting Engineer's review of the construction of the Improvements and preparation of the certificates required hereby;

(b) pay or cause to be paid to the Consulting Engineer (or the Administrative Agent for the account of the relevant Lenders for reimbursement of payments advanced by or on behalf of the Lenders to the Consulting Engineer) out of the Loans and Bankers' Acceptance Proceeds made hereunder (to the extent not otherwise paid from other sources) all amounts required hereunder and under the Consulting Engineer Engagement Agreement (and, in the case of any such reimbursement, to the extent so advanced by the Administrative Agent); and

(c) in addition to any other consultation required hereunder, following the end of each calendar month, upon the reasonable request of the Administrative Agent, consult with any Person regarding any adverse event or condition identified in any report prepared by the Consulting Engineer or the Owner Representative, as the case may be.

SECTION 8.1.11 Condominium Documents.

(a) The Borrower shall, subject to the Administrative Agent's prior written approval (which approval shall be in the Administrative Agent's sole discretion), submit all Condominium Documents to the applicable Governmental Instrumentalities on a timely basis so that the Borrower may sell the Units in accordance with the terms of such approved Condominium Documents. After all required approvals have been obtained, the Borrower shall use its best commercial efforts to market and sell the Residential Condominium Units, the Detached Units and the Townhouse Units in accordance with applicable Legal Requirements including, without limitation, the OSC Ruling.

(b) The Borrower shall comply with all Legal Requirements including, without limitation, the OSC Ruling and the provisions of the Condominium Documents in connection with the offering and sale of Units.

SECTION 8.1.12 Proper Legal Forms. The Borrower shall take all action within its control required or advisable to ensure that each of the Project Documents and the Condominium Documents are in proper legal form.

SECTION 8.1.13 Licenses and Permits. The Borrower shall ensure that all material licenses, permits and consents and similar rights required from any Governmental Instrumentality for the ownership, use and operation of the Premises have been validly issued and are in full force and effect, and shall comply, in all material respects, with all of the provisions thereof applicable.

SECTION 8.1.14 Single Purpose Entity. The Borrower

(a) is and will be solvent and pay its debts and liabilities from its assets as the same shall become due;

(b) has done or caused to be done and will do all things necessary to preserve its existence and observe corporate formalities;

(c) will maintain financial statements, books and records and bank accounts separate from those of its Affiliates, its shareholders and each other;

(d) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate or member) and shall correct any known misunderstanding regarding its status as a separate entity and shall not identify itself or any of its Affiliates as a department or division or part of the other, and shall maintain separate stationery, logos, invoices, checks and telephone numbers;

(e) has and will maintain its assets in such a manner so that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate, member, or any other Person; and

(f) shall require its Organizational Documents to provide that the unanimous consent of the holders of Capital Stock shall be required for any dissolution or liquidation of the Borrower, or a merger, consolidation or recapitalization involving the Borrower.

SECTION 8.1.15 Compliance with Legal Requirements. (a) The Borrower shall (x) own, construct, maintain and operate the Premises in compliance in all material respects with all applicable Legal Requirements, including the Permits and the Environmental Laws, (y) procure, maintain and comply, or cause to be procured, maintained and complied with, in all material respects, all Permits required for any ownership, construction, financing, maintenance or operation of the Improvements or any part thereof at or before the time each such Permit becomes necessary for the ownership, construction, financing, maintenance or operation thereof, as the case may be, as contemplated by the Loan Documents, the Project Documents, the Condominium Documents and the ECD Insurance Documents and (z) pay, before the same become delinquent, all material Taxes, assessments and governmental charges imposed upon it or upon its property.

(b) The Borrower, at its sole cost and expense, may contest by appropriate proceedings conducted in good faith the validity or application of any Legal Requirement; provided, however, that (x) the Administrative Agent, the Lenders and the Borrower shall not be subject to any criminal liability for the failure to comply therewith, (y) all proceedings to enforce such Legal Requirement against the Administrative Agent, the Lenders and the Borrower shall have been duly and effectively stayed during the entire pendency of such contest and (z) if required under Canadian GAAP, adequate reserves shall have been set aside on its books.

SECTION 8.1.16 Environmental. (a) The Borrower shall:

(i) construct, use and operate all of its facilities and properties in material compliance with applicable Environmental Laws, keep all necessary permits, approvals, certificates, licenses and other authorizations relating to

Environmental Matters in effect and remain in material compliance therewith, and handle all Hazardous Substances in material compliance with all applicable Environmental Laws; and

(ii) provide such information and certifications which the Administrative Agent may reasonably request from time to time to evidence compliance with this Section.

(b) The Borrower, at its sole cost and expense, (x) may contest the assertion of any Environmental Claim affecting the Borrower, the Lenders, the Administrative Agent or any portion of the Premises and (y) may perform any work with respect to such Environmental Claims, subject to the following conditions;

(i) no Event of Default exists under this Agreement and the Administrative Agent has not commenced or completed foreclosure or accepted a deed in lieu of foreclosure or otherwise taken title to all or any portion of the Premises or commenced power of sale proceedings in respect of any portion of the Premises;

(ii) the Project Security shall not be impaired in the sole judgment of the Administrative Agent, and the Administrative Agent, the Lenders and the Borrower (and their respective agents, servants, employees and contractors) shall not be subject to any criminal or other penalties, costs or expenses, by reason of such contest or the performance of such work or any delays in connection therewith;

(iii) the Borrower shall notify the Administrative Agent within ten (10) days after the commencement of any such contest or work, and shall report to the Administrative Agent after request, during the period of such contest or the performance of such work, on the Borrower's progress with respect thereto, and shall promptly give the Administrative Agent such other information with respect thereto as the Administrative Agent shall reasonably request;

(iv) with respect to contests so instituted by the Borrower, such contest shall be instituted promptly after the Borrower obtains actual knowledge of an action, suit, proceeding or governmental order or directive which asserts any obligation or liability of an Environmental Claim affecting the Borrower, the Lenders, the Administrative Agent or any portion of the Premises, and such contest once instituted, unless discontinued, settled or compromised, shall be prosecuted diligently until a final judgment is obtained;

(v) with respect to contests, the Administrative Agent shall have the right (but not the obligation) to join in any action or proceeding in which the Borrower contests any such assertion of an Environmental Claim;

(vi) with respect to corrective work required under any Environmental Law, any such corrective work shall be instituted promptly after the earlier to occur of: (A) a determination by the applicable Governmental Instrumentality

that the contest is unsuccessful, which determination is not, or ceases to be, subject to further appeal; (B) the discontinuance, settlement or compromise of such judicial or administrative proceeding; or (C) the Borrower obtains actual knowledge of any Hazardous Substances on, in, under or affecting all or a portion of the Premises or (when applicable) any surrounding areas in contravention of any Environmental Law, and such corrective work shall at all times be diligently prosecuted until all such Hazardous Substances are removed and properly and lawfully disposed of; and

(vii) with respect to any corrective work required under any Environmental Law, the Borrower, not less than 15 days prior to commencement of such corrective work, shall submit to the Administrative Agent for its review reasonably detailed plans for such corrective work, and, if, within said 15-day period, the Administrative Agent, in its reasonable judgment, rejects such plans, the Borrower shall promptly submit revised plans to the Administrative Agent and shall obtain the Administrative Agent's acceptance of such plans prior to commencement of such corrective work, and the Borrower shall comply with the plans submitted to the Administrative Agent in performing such corrective work; provided, however, that the Borrower may commence such corrective work prior to the submission and/or the approval of any such detailed plans by the Administrative Agent if required by applicable Environmental Law.

SECTION 8.1.17 Compliance with Project Documents. The Borrower shall comply duly and promptly, in all material respects, with its obligations, and enforce all of its respective rights, under all Project Documents, except where the failure to comply or enforce such rights, as the case may be, could not reasonably be expected to have a Material Adverse Effect.

SECTION 8.1.18 Maintenance of Properties; Operation; Reserves. The Borrower will or will cause the Premises to be maintained, preserved, protected and kept in good repair, working order and condition as a luxury property equivalent to a minimum classification of five stars or, if applicable, five diamonds and in accordance with the Project Documents and the Condominium Documents and all Legal Requirements (ordinary wear and tear excepted), and make necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times. The Borrower shall maintain adequate working capital reserves as set forth in the annual budget to be delivered by the Borrower in accordance with clause (f) of Section 8.1.1. From and after the Opening Date, the Borrower shall establish (v) the Lock-Box and Cash Management Account pursuant to which all revenues from the Premises (other than amounts that are deposited into a Deposit Account) are deposited and disbursed in accordance with the Lock-Box Account Agreement, (w) the FF&E Reserve pursuant to which a reserve for replacements shall be funded by the Borrower in accordance with the FF&E Reserve Account Agreement and the Hotel Management Agreement, (x) the HOA Reserve pursuant to which a reserve for unsold Units shall be funded by the Borrower in accordance with the HOA Reserve Account Agreement, (y) the Impositions and Insurance Reserve pursuant to which a reserve for Impositions and insurance shall be funded in accordance with the Impositions and Insurance Reserve Account Agreement and (z) the Debt Service Reserve pursuant to which a reserve for Debt Service shall be funded in accordance with the Debt Service Reserve Account Agreement. Each of the foregoing accounts and reserves

shall be pledged to, and be under the dominion and control of, the Administrative Agent for the benefit of the Lenders. The Borrower as declarant for the Condominium Regime shall also cause the HOA Reserves to be established in accordance with the *Condominium Act* (Ontario).

SECTION 8.1.19 Books and Records. The Borrower shall maintain adequate books, accounts and records with respect to the Premises in compliance in all material respects with the regulations of any Governmental Instrumentality having jurisdiction thereof and, with respect to financial statements, in accordance with Canadian GAAP. Subject to reasonable safety requirements and the rights of other Persons, the Borrower shall, at its cost and expense, permit employees or agents of the Administrative Agent and the Consulting Engineer at any reasonable times and upon reasonable prior notice to inspect the Premises, to examine or audit all of the Borrower's books, accounts and records pertaining or related to the Premises, to make copies and memoranda thereof and, with respect to any Environmental Matters, to perform any tests or studies and prepare any reports reasonably required by the Administrative Agent acting in good faith (but not more often than once during the prior twelve months unless the Administrative Agent has a good faith concern that a material Environmental Claim may exist). The Borrower shall retain all records (contracts, orders, invoices, bills, receipts and other documents) evidencing the Project Costs for five years after the Final Completion Date.

SECTION 8.1.20 Additional Project Security. The Borrower shall cause the Administrative Agent to have at all times a first priority Lien (subject only to Permitted Liens) in all of the Project Security. Without limiting the generality of the foregoing, the Borrower shall, execute, deliver or cause to be executed and delivered the security agreement(s), financing statements under the PPSA, mortgages and other documentation necessary to grant and perfect such Liens, in each case in form and substance reasonably satisfactory to the Administrative Agent.

SECTION 8.1.21 Security Interest in Newly Acquired Project Security. If the Borrower shall at any time acquire any interest in property not covered by the Loan Documents (including, without limitation, the Wedge Parcel) or enter into any Project Document or Condominium Document (after satisfaction of the applicable conditions in Sections 8.2.16, 8.2.17 and 8.2.18), then promptly upon such acquisition or execution the Borrower shall execute, deliver, register and record a supplement to the Loan Documents, reasonably satisfactory in form and substance to the Administrative Agent, subjecting such interests to the Liens created by the Loan Documents (having first priority subject only to Permitted Liens) and deliver to the Administrative Agent, on behalf of the Secured Parties, Consents (with such changes thereto as are reasonably acceptable to the Administrative Agent) with respect to the collateral assignment of such Project Document or Condominium Document, as the case may be.

SECTION 8.1.22 Insurance. The Borrower shall maintain the insurance coverages and endorsements listed in Schedule VI and shall comply in all material respects with the requirements of the applicable insurance policies.

SECTION 8.1.23 Event of Loss. If any Event of Loss shall occur with respect to the Premises or any portion thereof, the Borrower shall, at its expense, diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Instrumentalities, as applicable, in respect of such Event of Loss and shall not, without the

consent of the Administrative Agent, compromise or settle any claim involving an amount in excess of \$500,000. Unless such Event of Loss is a Total Expropriation, the Borrower shall promptly commence and diligently prosecute Restoration of the Premises affected thereby. Notwithstanding any Event of Loss, the Borrower shall continue to make all payments required to be made pursuant to the Loan Documents in accordance with the terms thereof, the Obligations shall not be reduced until any Net Proceeds shall have been actually received and applied by the Administrative Agent in accordance with Section 8.1.24, and the Administrative Agent shall not be limited to the interest paid as part of the Expropriation Proceeds but shall be entitled to receive interest at the applicable rates provided for herein.

SECTION 8.1.24 Net Proceeds. (a) Subject to the provisions of the *Condominium Act* (Ontario) and the Hotel Management Agreement that has been approved by the Administrative Agent in accordance with this Agreement, all Insurance Proceeds and Expropriation Proceeds relating to the Premises are hereby irrevocably assigned to and shall be paid to the Administrative Agent, and the Administrative Agent shall deposit such amounts received hereunder into an escrow account designated by the Administrative Agent for disbursement in accordance with this Section 8.1.24.

(b) The Administrative Agent may participate in any action, suit or proceeding relating to any such proceeds, causes of action, claims, compensation, awards or recoveries, and the Administrative Agent is hereby authorized, in its own name or in the Borrower's name, to adjust any loss covered by insurance, or any Expropriation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and the Borrower shall from time to time deliver to the Administrative Agent any instrument required to permit or further evidence such participation.

(c) Other than with respect to a Total Expropriation, the Administrative Agent shall make Net Proceeds available to the Borrower for the Restoration of an Event of Loss, provided that each of the following conditions are met:

(i) no Default shall have occurred and be continuing; provided, however, that if a Default that is not an Event of Default exists during such time as Net Proceeds are in the Net Proceeds Account, all Net Proceeds shall remain in the Net Proceeds Account and shall be available for the Restoration if such Default is cured prior to the expiration of any applicable cure period (but not thereafter, in which case, clause (1) of this Section 8.1.24 shall apply);

(ii) Restoration can be reasonably completed no later than three (3) months prior to the Stated Maturity Date (such determination to be made solely by the Administrative Agent) and, upon such completion, the Premises can be occupied and operated under applicable Legal Requirements as it was prior to the Event of Loss;

(iii) no cancellation rights exist under Unit Contracts of Sale or the Hotel Management Agreement resulting from such Event of Loss;

(iv) the Borrower promptly commences Restoration and diligently continues same through completion;

(v) Restoration is completed in accordance with all applicable Legal Requirements;

(vi) the quality and character of the Premises after Restoration shall be at least equivalent to the quality and character of the Premises immediately prior to such casualty or Partial Expropriation;

(vii) the Borrower delivers to the Administrative Agent a written undertaking that it will expeditiously commence and satisfactorily complete with due diligence Restoration in accordance with the terms of this Agreement and the applicable Project Documents; and

(viii) the Borrower delivers to the Administrative Agent evidence that the Net Proceeds, together with any Net Proceeds Deficiency, are sufficient to pay in full all costs of the Restoration as determined by the Consulting Engineer.

In the event any of the foregoing conditions are not satisfied at any time or if the Event of Loss is a Total Expropriation, the disbursement of Net Proceeds shall be made in accordance with clause (l) of this Section 8.1.24.

(d) The Net Proceeds shall be held in an account pledged to the Administrative Agent, and until disbursed in accordance with the provisions of this Section, shall constitute additional security for repayment of the Obligations. Net Proceeds in such account may be invested in Cash Equivalent Investments in accordance with the agreement covering such account. Subject to clause (c) of this Section 8.1.24, the Net Proceeds shall be disbursed by the Administrative Agent to the Borrower from time to time during the course of Restoration, upon receipt of evidence satisfactory to the Administrative Agent, providing that (i) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (ii) there exist no notices of pendency, stop orders, or any other Claims or Liens of any nature whatsoever affecting the Premises arising out of the Restoration (other than Permitted Liens).

(e) All plans and specifications required in connection with any Restoration shall be reviewed and approved by the Consulting Engineer and the Administrative Agent. The Administrative Agent shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors engaged in such Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and approval by the Administrative Agent and the Consulting Engineer, such approvals not to be unreasonably withheld or delayed. All costs and expenses incurred by the Administrative Agent in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable attorneys' fees and disbursements and the Consulting Engineer's fees, shall be paid by the Borrower.

(f) In no event shall the Administrative Agent be obligated to make disbursements of Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for

work in place as part of the Restoration, as certified by the Consulting Engineer, minus the Holdback Amount. The final advance of the balance of the Holdback Amount shall not be made until (A) the Consulting Engineer certifies to the Administrative Agent that (y) the Restoration has been completed in accordance with the provisions of this Section; and (z) all Governmental Approvals necessary for the re-occupancy and use of the Premises have been obtained from all appropriate Governmental Instrumentalities, (B) the Administrative Agent receives evidence satisfactory to it that the costs of the Restoration have been paid in full in cash or will be paid in full out of the Holdback Amount, and (C) the Administrative Agent receives and approves an endorsement to the Title Insurance Policy insuring that the first priority of the Lien of the Mortgage has not changed.

(g) The Administrative Agent shall not be obligated to make disbursements of the Net Proceeds more frequently than once in any calendar month.

(h) If at any time the Net Proceeds or the undisbursed balance thereof shall not be sufficient to pay the balance of the total costs which are estimated by the Consulting Engineer to be incurred in connection with the completion of the Restoration, the Borrower shall promptly deposit with the Administrative Agent cash or Cash Equivalent Investments in an amount equal to the deficiency (the "**Net Proceeds Deficiency**") before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with the Administrative Agent shall be held by the Administrative Agent and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section shall constitute additional security for the Obligations.

(i) Provided no Default shall have occurred and be continuing, if at any time the Net Proceeds, together with any Net Proceeds Deficiency, or the undisbursed balance thereof, shall be in excess of the balance of the total costs which are estimated by the Consulting Engineer to be incurred in connection with the completion of the Restoration, the Administrative Agent shall pay such excess to the Borrower; provided, however, that if a Default shall have occurred and be continuing, the Administrative Agent shall continue to hold such excess and shall deliver same to the Borrower in accordance with this clause (i) if such Default is cured prior to the expiration of any applicable cure period. No payment made to the Borrower pursuant to this Section shall in any event prevent the Administrative Agent from requiring the Borrower to make further Net Proceeds Deficiency deposits in the event same shall be required pursuant to clause (h) of this Section 8.1.24.

(j) So long as no Default has occurred and is continuing, any excess of Net Proceeds (together with any earnings thereon) and the remaining balance, if any, of the Net Proceeds Deficiency deposited with the Administrative Agent (together with any earnings thereon) shall be remitted by the Administrative Agent to the Borrower after the Consulting Engineer certifies to the Administrative Agent that Restoration has been substantially completed in accordance with the provisions of this Section and the receipt by the Administrative Agent of evidence satisfactory to the Administrative Agent that all costs incurred in connection with Restoration have been paid in full or are being contested as permitted under clause (b) of Section 8.1.15.

(k) If the Premises are sold, through foreclosure or otherwise, prior to the receipt by the Administrative Agent of the Insurance Proceeds or Expropriation Proceeds (as applicable), the Administrative Agent shall have the right, whether or not a deficiency judgment shall have been sought, recovered or denied, to receive such Insurance Proceeds or Expropriation Proceeds (as applicable), or a portion thereof sufficient to pay the outstanding principal amount of the Loans, Bankers' Acceptance Obligations and Letter of Credit Outstandings, plus all other amounts owed by the Borrower under the Loan Documents.

(l) Subject to any provisions of the *Condominium Act* (Ontario) and the Hotel Management Agreement that has been approved by the Administrative Agent in accordance with this Agreement to the contrary, all Net Proceeds (together with any earnings thereon) not required (i) to be made available for the Restoration, or (ii) to be returned to the Borrower as excess Net Proceeds pursuant to clauses (i) or (j) of this Section 8.1.24, may be retained and applied by the Administrative Agent toward the payment of the Obligations, whether or not then due and payable or, at the discretion of the Administrative Agent, the same may be paid, either in whole or in part, to the Borrower. If the Administrative Agent shall receive and retain Net Proceeds, the Lien of the Mortgage shall be reduced only by the amount thereof actually applied by the Administrative Agent in reduction of the Obligation.

SECTION 8.1.25 Appraisals. In connection with each extension of the Stated Maturity Date hereunder and, in addition thereto no more often than once every twenty-four months after the Initial Credit Extension Date and from and after the occurrence of a Default under this Agreement, the Borrower shall pay for an Appraisal of the Premises commissioned by the Administrative Agent.

SECTION 8.2 Negative Covenants. The Borrower agrees with the Administrative Agent, the Issuer and each Lender that, until all Commitments have terminated and all Obligations have been indefeasibly paid and performed in full, the Borrower will perform the obligations set forth in this Section 8.2.

SECTION 8.2.1 Business Activities. The Borrower will not

(a) engage in any business activity, except those described in the recitals and such activities as are reasonably incidental or substantially similar thereto and the ownership and construction of the Improvements, registration of the Improvements under the Condominium Regime pursuant to the Condominium Documents, sale of the Units and operation of Improvements as a hotel/condominium;

(b) hold title to any assets other than in its own name;

(c) fail to preserve its existence as an entity duly organized, validly existing and in good standing under the Governmental Instrumentality under which it was organized;

(d) fail to file its own tax returns, or to file a consolidated federal income tax return with any other Person; or

(e) fail to maintain adequate capital for the normal obligations reasonably perceivable for a business of its size and character in light of its contemplated business operation.

SECTION 8.2.2 Indebtedness. The Borrower will not directly or indirectly, accept, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness, or issues any shares of Preferred Stock other than, without duplication, the following:

- (a) Indebtedness in respect of the Credit Extensions and other Obligations (other than Obligations under Rate Protection Agreements);
- (b) Indebtedness of the Borrower under the ECD Insurance Documents in an aggregate amount not to exceed \$40,000,000 reduced by any principal payments made thereon;
- (c) Existing Indebtedness;
- (d) Indebtedness of the Borrower comprised of Hedging Liabilities under the Rate Protection Agreements required under Section 6.2.5 and clause (b) of Section 6.7.3; provided, however, that the Administrative Agent has approved the counterparty to the agreement pursuant to which such Indebtedness is incurred prior to the incurrence thereof and the notional principal amount of any such Hedging liability does not exceed the principal amount of the Indebtedness to which such Hedging liability relates.
- (e) Indebtedness of the Borrower for unsecured trade payables incurred in the ordinary course of business for the purchase of goods and services which are payable, without interest, within forty-five (45) days of billing;
- (f) Intercompany Indebtedness which provides that (x) all rights, remedies and options of the lender thereunder are subject and subordinate to the Obligations, the Loan Documents and the ECD Insurance Documents in all respects, (y) no collection proceedings or other remedies may be commenced until the Obligations and the Indebtedness permitted under clause (b) of this Section 8.2.2 have been indefeasibly repaid in full and (z) the lender thereunder is prohibited from initiating or intervening in an insolvency proceeding of the Borrower other than to the extent necessary in order to file a proof of claim with respect to such Intercompany Indebtedness;
- (g) Capitalized Lease Liabilities incurred for the purposes of financing all or any part of the purchase price or cost of FF&E and Personal Property and the installation and improvement thereof used in the construction of the Improvements and, after the Opening Date, in the business of the Borrower with annual rental payments any time outstanding not to exceed \$500,000; and
- (h) Without duplication, equipment leases which are not Capitalized Lease Liabilities and installment sales contracts for equipment used in the ordinary course of the operation of a Premises; provided, however, that the annual rental payments for all such equipment leases and installment sales contracts shall not at any time exceed the aggregate amount of \$500,000.

Accrual of interest and the payment of interest in the form of additional Indebtedness will not be deemed to be an incurrence of Indebtedness for purposes of this covenant.

SECTION 8.2.3 Liens. Other than the Permitted Liens, the Borrower will not accept, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets, whether now owned or hereafter acquired, or any proceeds, income or profits therefrom, or assign or convey any right to receive income therefrom; provided, however, that upon the satisfaction of the conditions set forth below, the Condominium Declarations will be a Permitted Lien:

(a) on the date that the Condominium Declarations are filed with the Land Registrar, no Event of Default shall have occurred and be continuing;

(b) the Administrative Agent shall have received and approved in all respects the Condominium Documents which shall be in proper form for recording or filing, as necessary, in the appropriate offices;

(c) the Borrower shall or shall cause to be: (a) registered a supplementary Mortgage, satisfactory to the Administrative Agent, immediately after the registration of the Condominium Declarations; (b) delivered an opinion of counsel to Borrower, satisfactory to the Administrative Agent, which will, among other things, confirm that the supplementary Mortgage is not prepayable under section 14(1) of the *Condominium Act*; (c) delivered such other documents as the Administrative Agent may reasonably request in order to create, perfect and maintain the perfection of the security interests in the Project Security in accordance with this Agreement, satisfactory to the Administrative Agent and the Title Insurance Company, acting reasonably; and (d) to the extent not previously delivered, all approvals required in order to comply with applicable Legal Requirements;

(d) the Title Policy shall have been endorsed to provide affirmative insurance to the effect that the Improvements constitute a Condominium Regime validly created under applicable Legal Requirements;

(e) the Borrower shall have duly executed and delivered, or caused to be duly executed and delivered, to the Administrative Agent (i) a conditional assignment of Borrower's or the declarant's (if the declarant under the applicable Condominium Documents is other than Borrower) rights under the Condominium Documents in the form approved by the Administrative Agent and (ii) conditional resignations of the officers and members of the board of directors of the applicable condominium corporation who have been appointed or elected by the Borrower or any Affiliate of Borrower in the form of Exhibit V hereto; and

(f) the Administrative Agent shall have received evidence reasonably satisfactory to it that provides, inter alia, that (A) the Condominium Documents satisfy all requirements of applicable Governmental Instrumentalities, and have been duly executed, (B) all requirements of any applicable Legal Requirement relating to the creation of the Condominium Regime have been duly satisfied and all required consents have been obtained (including the consent required by the *Condominium Act* (Ontario), and the Condominium Regime has been duly and validly created and is existing in full force and effect, and no filing, registration or other compliance with any Legal Requirement will be required in connection with the sale of the Units in the Province or offering for sale in any other jurisdiction, or if such filing is necessary, that the applicable Legal Requirements governing the same have been fully complied with, and (C) the assignment, resignations and agreements referred to in clause (d) of this Section have each been

duly authorized, executed and delivered by the respective parties thereto and are enforceable against said parties in accordance with their respective terms.

Upon the satisfaction of the foregoing conditions, the Borrower may record the Condominium Declarations in the Land Registrar's office and, if required under the Condominium Declarations, the Administrative Agent shall execute the appropriate Instruments (reasonably satisfactory in all respects to Administrative Agent unless applicable Legal Requirements specify the form thereof) in registrable form to effect the subordination of the Lien of the Mortgage to the Condominium Declarations.

SECTION 8.2.4 Investments. The Borrower will not make, incur, assume or suffer to exist any Investment in any other Person, except:

- (a) Ongoing Investments;
- (b) Cash Equivalent Investments;
- (c) without duplication, Investments to the extent permitted as Indebtedness pursuant to clauses (e) and (f) of Section 8.2.2;
- (d) without duplication, Investments permitted as Capital Expenditures pursuant to Section 8.2.12; or
- (e) Investments constituting (x) accounts receivable arising, (y) trade debt granted or (z) deposits made in connection with the purchase price of goods or services, in each case, in the ordinary course of business;

provided, however, that

- (f) any Investment which when made complied with the requirements of clauses (w), (x) or (y) of the definition of the term "Cash Equivalent Investment" may continue to be held notwithstanding that such Investment, if made thereafter, would not comply with such requirements; and
- (g) no Investment otherwise permitted by clauses (c) or (d) shall be permitted to be made if any Default has occurred and is continuing or would result therefrom.

SECTION 8.2.5 Restricted Payments, etc. On and at all times after the date hereof:

- (a) the Borrower will not declare, pay or make any dividend or distribution (in cash, property or obligations) on any Capital Stock (now or hereafter outstanding) or on any warrants, options or other rights with respect to any Capital Stock (now or hereafter outstanding) of the Borrower (other than dividends or distributions payable on its Capital Stock or reclassifications of its Capital Stock into additional or other shares of its Capital Stock) or apply any of its funds, property or assets to the purchase, redemption, sinking fund or other retirement of, or agree to purchase or redeem, any shares of any Capital Stock (now or hereafter outstanding), or warrants, options or other rights with respect to any Capital Stock (now or hereafter outstanding);

(b) the Borrower will not,

(i) make any payment or prepayment of principal of, or make any payment of interest on, any Intercompany Debt;

(ii) make any payment or prepayment of principal of, or make any payment of interest on, any Indebtedness permitted under Section 8.2.2 (other than clause (a) thereof) on any day other than the stated, scheduled date for such payment or prepayment set forth in the documents and instruments memorializing such Indebtedness, or which would violate the provisions of such instruments; or

(iii) redeem, purchase or defease, any Indebtedness permitted under Section 8.2.2 (other than clause (a) thereof) or make any payment for purposes of funding any of the foregoing;

(the foregoing prohibited acts referred to in clauses (a) and (b) being herein collectively referred to as "**Restricted Payments**"); provided, however, that notwithstanding the provisions of clause (a), so long as no Default has occurred and is continuing or would result therefrom, from and after the first anniversary of the Substantial Completion Date, the Borrower may make the Restricted Payments in clause (a) if the Debt Service Coverage Ratio is greater than or equal to 1.30:1.00.

SECTION 8.2.6 Accounts. The Borrower shall not at any time open or establish any bank, deposit or any other accounts at any financial institution other than the FF&E Reserve Account, the Debt Service Reserve Account, the HOA Reserve Account, the Impositions and Insurance Reserve Account, the Deposit Account, the Project Account, the Disbursement Account, the Lock-Box and Cash Management Account or accounts that have otherwise been reasonably approved by the Administrative Agent.

SECTION 8.2.7 Rental Obligations. The Borrower will not enter into at any time any arrangement which involves the leasing by the Borrower from any lessor of any real or personal property (or any interest therein), which does not create a Capitalized Lease Liability other than leases permitted under clause (h) of Section 8.2.2 or clause (a) of Section 8.2.13.

SECTION 8.2.8 Take or Pay Contracts. The Borrower will not enter into or be a party to any arrangements for the purchase of materials, supplies, or other property or services if such arrangement requires that payment be made by the Borrower regardless of whether such materials, supplies, other property or services are in fact or can be required to be delivered or furnished to it.

SECTION 8.2.9 Consolidation, Merger, etc. The Borrower will not liquidate or dissolve, amalgamate with any other Person, or purchase or otherwise acquire all or substantially all of the assets of any Person (or of any division thereof).

SECTION 8.2.10 Acquisitions; Permitted Dispositions. The Borrower shall not (x) acquire any real property or rights therein (by lease, easement, license or otherwise) or (y) sell, transfer, lease, contribute or otherwise convey (including by way of merger), or grant options, warrants or other rights with respect to, any of its Capital Stock or assets (including accounts

receivable to any Person (each of the foregoing prohibited acts in this clause (y) being a "**Disposition**"); provided, however, that the Borrower may:

(a) dispose of obsolete, worn out or surplus assets or assets no longer used or useful in the ordinary course of the Borrower's business so long as:

(i) such disposition does not materially and adversely affect the ability of the Borrower to own and operate the Premises in accordance with the Loan Documents, the Project Documents, the Condominium Documents and the ECD Insurance Documents;

(ii) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof in the reasonable judgment of the Administrative Agent;

(iii) the Net Deposition Proceeds thereof which have not otherwise been used to fund replacement assets shall be delivered to the Administrative Agent to be applied against the Obligations in accordance with clause (c) of Section 3.1.1; and

(iv) prior to or promptly following any such Disposition, if a replacement is required to carry on the Borrower's business in the ordinary course, such disposed property shall be replaced with other property of substantially equal utility and a value at least substantially equal to that of the replaced property when first acquired and free from any Liens (other than Permitted Liens) and by such removal and replacement the Borrower shall be deemed to have subjected such replacement property to the Lien of the Loan Documents in favor of Lenders, as applicable;

(b) sell inventory (other than Units) in the ordinary course of the Borrower's business;

(c) sell, transfer and convey Units (other than Commercial Condominium Units and Hotel Management Condominium Units) provided that the following conditions have been satisfied:

(i) no Event of Default shall have occurred and be continuing at the time of each such sale, transfer or conveyance;

(ii) the Unit to be released shall be covered by a Bona Fide Sales Contract and the Administrative Agent shall have received a copy thereof;

(iii) the Administrative Agent shall have received not less than seven (7) Business Days prior written notice of the proposed Disposition of such Unit;

(iv) contemporaneous with such Disposition, such Unit shall be transferred and conveyed to the Qualified Purchaser in accordance with the Bona Fide Sales Contract covering such Condominium Unit, and the consideration to be

paid by such Qualified Purchaser (including the release of any amounts then on deposit in the Deposit Account) shall be paid to or for the benefit of the Borrower in cash and in Dollars;

(v) such Unit shall constitute one or more tax lots separate and distinct from the tax lot or lots applicable to the other Units;

(vi) neither the release from the Lien of the Mortgage nor the conveyance to the Qualified Purchaser of such Unit will violate any applicable zoning or subdivision laws or the ECD Insurance Documents;

(vii) the Administrative Agent shall have received a wire transfer of immediately available funds in the amount of the Minimum Release Price for such Unit; and

(viii) the Administrative Agent shall have received such other documents, certificates, instruments, opinions or assurances as the Administrative Agent may reasonably request.

(d) Acquire the Wedge Parcel after satisfaction of the conditions in Section 6.4.

(e) Transfer and convey the Encroachment Land to the owner of the property contiguous to the portion of the Land affected by such Encroachment Land for nominal consideration after delivering to the Administrative Agent satisfactory evidence that the Borrower has obtained the necessary consents therefor under the provisions of the *Planning Act* (Ontario) (the Encroachment Land shall be released from the Liens in favor of the Secured Parties and the Administrative Agent will, after notice, deliver such release to the Borrower or its designee).

The Administrative Agent shall execute and deliver in recordable form a duly executed release in recordable form together with such other documents as may reasonably be required in order to release the property that is the subject of a Disposition permitted hereunder from the Lien of the Mortgage.

SECTION 8.2.11 Transactions with Affiliates. Except for the contracts listed on Schedule II, the Borrower will not sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower or the Guarantor (each of the foregoing, an "**Affiliate Transaction**") without the consent of the Administrative Agent, which consent shall not be unreasonably withheld or delayed if (a) (i) such Affiliate Transaction is on terms that are no less favorable to the Borrower than those that would have been obtained in a comparable transaction by the Borrower with a Person that is not an Affiliate and (ii) the Borrower delivers to the Administrative Agent a certificate from an Authorized Representative of the Borrower certifying that such Affiliate Transaction complies with clause (i) above, (b) such Affiliate Transaction is subordinated in all respects to the Liens granted under the Loan Documents and the ECD Insurance Documents and all modifications, amendments, restatements, extensions, supplements, increases, replacements and renewals thereof, and (c) all rights, remedies and options under the

Affiliate Transaction can be terminated by the Administrative Agent without premium or penalty after an Event of Default has occurred and is continuing.

SECTION 8.2.12 Capital Expenditures, etc. The Borrower will not make or commit to make Capital Expenditures except for

- (a) Capital Expenditures permitted or required under the Project Documents; and
- (b) Capital Expenditures by the Borrower as the owner of a Unit in connection with the maintenance thereof or in the ordinary course of business of owning a Unit.

SECTION 8.2.13 Units. (a) The Borrower will not enter into any lease of any Unit, and shall not permit any Affiliate of the Borrower or the Guarantor from entering into a lease covering any Condominium Unit other than a lease of one or more Units that are a part of the Rental Pool so long as the Borrower's aggregate payment obligations thereunder do not exceed \$4,000,000.00 at any time.

(b) The Borrower shall not default under any Unit Contract of Sale or take any action, or fail to take any actions which would be grounds for rescission by a purchaser under a Unit Contract of Sale.

(c) The Borrower, as the Hotel Management Condominium Unit Owner, shall not transfer, sell, lease, convey or otherwise dispose of its interest in the Hotel Management Condominium Unit or allow any other Person to have, directly or indirectly, any rights under the Condominium Declarations as the Hotel Management Condominium Unit Owner other than the Hotel Manager pursuant to the terms of the Hotel Management Agreement or to an Operating Agreement covering a portion of the Hotel Management Condominium Unit.

(d) The Borrower, as the Commercial Condominium Unit Owner, shall not transfer, sell, lease, convey or otherwise dispose of its interest in the Commercial Condominium Unit or allow any other Person to have, directly or indirectly, any rights under the Condominium Declarations as the Commercial Condominium Unit Owner.

(e) The Borrower shall not, without the prior written consent of the Administrative Agent, exercise any rights it may have under the Condominium Declarations as either the Hotel Management Condominium Unit Owner or the Commercial Condominium Unit Owner including, without limitation, any right it may have to expand, alter, relocate and/or eliminate any portions) of the Hotel Management Condominium Unit.

(f) Without the prior written consent of the Administrative Agent, in its sole discretion, the Borrower shall not:

(i) enter into a contract of sale for any Residential Condominium Unit, Detached Unit or Townhouse Unit which is not a Bona Fide Sales Contract;

(ii) enter into any Bona Fide Sales Contract unless (A) the sale price is greater than or equal to the Minimum Sales Price, and (B) the sale price is payable in full in cash in Dollars by bank or certified check or wire transfer at closing;

(iii) amend, modify or supplement any Bona Fide Sales Contract in any material manner or terminate any Bona Fide Sales Contract (except for material default on the part of a purchaser thereto which default, under applicable laws, would allow the Borrower to keep the Deposit made by such purchaser, but with prompt written notice to the Administrative Agent), or permit any of the foregoing actions to be taken;

(iv) release any Deposit under any Bona Fide Sales Contract, except in each case, in accordance with the terms of such Bona Fide Sales Contract, this Agreement, the ECD Insurance Documents and applicable Legal Requirements;
or

(v) abandon or materially change its plan for submission of the Premises to the condominium form of ownership.

SECTION 8.2.14 No Other Powers of Attorney. The Borrower will not execute or deliver any agreement creating any Lien (other than Permitted Liens), powers of attorney (other than powers of attorney for signatories of documents permitted or contemplated by the Loan Documents, the Project Documents or the Condominium Documents), or similar documents, instruments or agreements, except to the extent such documents, instruments or agreements comprise part of the Loan Documents.

SECTION 8.2.15 Negative Pledges, Restrictive Agreements, etc. The Borrower will not enter into any agreement (excluding, however, this Agreement and the other Loan Documents) prohibiting

(a) the creation or assumption of any Lien upon its properties, revenues or assets, whether now owned or hereafter acquired; or

(b) the ability of the Borrower to amend or otherwise modify any of the Loan Documents, the Project Documents, the Condominium Documents or the ECD Insurance Documents.

SECTION 8.2.16 Modification of Certain Agreements. The Borrower will not directly or indirectly, enter into, amend (by Change Order or otherwise), modify (by Change Order or otherwise), terminate, supplement or waive a right under or permit or consent to the amendment, modification, termination, supplement or waiver of any of the provisions of, or grant any consent under or direct or enter into (i) any contract of sale covering any Unit, (ii) any contract material to the operation and management of the Premises (other than the Hotel Management Agreement and the Operating Agreement), unless the Administrative Agent has approved the form and substance thereof in its reasonable discretion, (iii) any Project Document without the consent of the Administrative Agent except in accordance with the procedures set forth in Section 8.2.17 and Section 9.1.13, as applicable, (iv) any GMP Contract or any Contract which increases or decreases the amount of the obligations thereunder by more than \$250,000 at any one time or \$1,000,000 in the aggregate without the consent of the Administrative Agent (which consent, with respect to an increase, will not be unreasonably withheld or delayed if the conditions set below are satisfied by the Borrower), (v) the Organizational Documents of the Borrower without

first obtaining the Administrative Agent's prior written consent in its sole discretion, (vi) the ECD Insurance Documents without first obtaining the Administrative Agent's prior written consent in its sole discretion or (vii) the documents evidencing and securing Indebtedness permitted under clauses (g) and (h) of Section 8.2.2 without obtaining the Administrative Agent's prior written approval thereof (which approval shall not be unreasonably withheld). Notwithstanding any of the foregoing, the Borrower may:

(a) enter into Contracts consistent with the other Project Documents, the Loan Documents, the Condominium Documents and the ECD Insurance Documents as each is in effect from time to time so long as (i) such Contract does not require an adjustment of the Contract Time beyond the Outside Completion Deadline and (ii) each such Contract is in writing and only becomes effective after: (a) the Borrower and the other party thereto have executed and delivered such Contract (with the effectiveness thereof subject only to satisfaction of the conditions in clauses (c), (d), (d), (e) and (f) below); (b) the Borrower has submitted to the Administrative Agent an Additional Contract Certificate together with all exhibits, attachments and certificates required thereby (including the Consulting Engineer's Advance Certificate), each duly completed and executed; (c) if entering into such Contract will require a Change Order affecting the Budget, as aforesaid, the Borrower has complied with the requirements of Section 8.2.18; (d) if entering into such Contract will require a Change Order resulting in a Scope Change, the Borrower has complied with the provisions of this Section 8.2.18; (e) if entering into such Contract will cause the Budget not to be In Balance, the Borrower has complied with the requirements of Section 8.1.8; and (f) the Administrative Agent has acknowledged receipt of the materials referenced in item (b) above, as contemplated in the Additional Contract Certificate; and

(b) from time to time, deliver a Change Order or amend any Major Contract or the Plans and Specifications as each is in effect from time to time so long as (i) such Change Order or amendment is in writing and identifies with particularity all changes being made, (ii) each such amendment or Change Order becomes effective only after: (A) the Borrower and the GMP Contractor or Major Contractor, as applicable, have executed and delivered the Change Order or amendment (with the effectiveness thereof subject only to satisfaction of the conditions in clauses (b), (c), (d), (e) and (f) below); (b) the Borrower has submitted to the Administrative Agent a Contract Amendment Certificate together with all exhibits, attachments and certificates required thereby, each duly completed and executed; (c) if such Change Order or amendment will result in an adjustment to the Budget, the Borrower has complied with the requirements of Section 8.2.18; (d) if such Change Order or amendment will have the effect of a Scope Change, the Borrower has complied with the provisions of Section 8.2.17; (e) if such amendment will cause the Budget not to be In Balance, the Borrower has complied with the requirements of Section 8.1.8 and (f) the Administrative Agent has acknowledged its receipt of the materials referenced in item (b) above, and (iii) if such Change Order sets forth any Realized Savings, the amount thereof and the conditions thereto have been confirmed by the Consulting Engineer.

SECTION 8.2.17 Scope Changes. (a) Without obtaining the Required Scope Change Approval, the Borrower shall not direct, consent to or enter into any Scope Change if such Scope Change:

(i) will cause the Budget not to be In Balance, unless the Borrower complies with the requirements of Section 8.1.8 or amends the Budget as provided in clause (a) of Section 8.2.18 so that, after giving effect to the proposed Scope Change, the Budget will be In Balance;

(ii) in the reasonable judgment of the Administrative Agent, is reasonably likely to materially and adversely change or affect all or a portion of the Premises;

(iii) in the reasonable judgment of the Administrative Agent after consultation with the Consulting Engineer (based on the Consulting Engineer's review of the Improvements and representations provided by the Borrower, the GMP Contractor and the Major Contractors) the Contract Time will be extended beyond the Outside Completion Deadline, or the GMP Contractor or one or more of the Major Contractors will be required to accelerate performance (except in accordance with the Scope Change) of the Work;

(iv) in the judgment of the Administrative Agent, could reasonably be expected to result in a material modification or material impairment of the enforceability of any warranty under, or any material reduction in the quality standards set forth in, the GMP Contract or any Major Contract;

(v) is not permitted by a Loan Document, Project Document, Condominium Document or ECD Insurance Document;

(vi) presents a significant risk of the revocation or material adverse modification of any Permit;

(vii) could reasonably cause the Premises or any portion thereof not to comply with Legal Requirements; or

(viii) could reasonably result in a material adverse modification, cancellation or termination of any insurance policy required to be maintained by the Borrower pursuant to Section 8.1.22.

(b) Prior to implementing any Scope Change, the Borrower shall submit an Additional Contract Certificate or Contract Amendment Certificate and otherwise comply with the provisions of clauses (a) or (b) of Section 8.2.18, as applicable.

SECTION 8.2.18 Amendment of Budget, Construction Schedule; Contract Time and Guaranteed Maximum Price. The Borrower shall not directly or indirectly amend (by Change Order or otherwise), modify (by Change Order or otherwise), allocate, reallocate or supplement or permit or consent to the amendment (by Change Order or otherwise), modification (by Change Order or otherwise), allocation, reallocation or supplementation of any of the Line Items or Line Item Categories by any amount which would constitute a Scope Change, or other

sections of the Budget, the Construction Schedule, or the Contract Time or adjust the Guaranteed Maximum Price, except as follows:

(a) Concurrently with the implementation of any Scope Change, the Borrower shall submit a Budget/Schedule Amendment Certificate and amend the Budget in accordance with the provisions of clause (c) of this Section 8.2.18 to the extent necessary so that the amount set forth therein for each Line Item Category and Line Item therein shall reflect all Scope Changes that have been made thereto.

(b) The Borrower may from time to time request an amendment to the Budget by delivering to the Administrative Agent and the Consulting Engineer a Budget/Schedule Amendment Certificate together with all exhibits, attachments and certificates required thereby, each duly completed and executed. Each such Budget/Schedule Amendment Certificate shall describe with particularity the increases, decreases, contingency allocations, and other proposed amendments to the Line Item Categories and the Line Items within each Line Item Category which will be adjusted by such amendment.

(i) Increases to any Line Item Category or Line Item within such Line Item Category will only be permitted to the extent of

(1) a trade transfer to such Line Item Category or Line Item within such Line Item Category from a different Line Item Category or Line Item within such Line Item Category so long as (A) such trade transfer is for a Project Cost which is included in the Line Item Category and a Line Item within such Line Item Category to which such trade transfer is being made, (B) after giving effect to such trade transfer, such Project Cost is no longer included in the Line Item Category or in any Line Item within such Line Item Category from which such trade transfer was made and (C) after giving effect to any such trade transfer, the Available Funds allocated to each such Line Item Category and Line Item equals or exceeds for such Line Item Category and Line Item the aggregate of (X) the costs required to complete such Line Item Category and Line Item, as the case may be, (Y) the Holdback Amount to be paid to Persons who have supplied labor or materials in connection with such Line Item Category and Line Item and (Z) with respect to the Line Item Category entitled "**Capitalized Interest**", the amount required to pay interest and all other amounts due under this Agreement at the maximum rate of interest set forth in the Budget through the Substantial Completion Date;

(2) allocation of (A) Realized Savings obtained in a different Line Item Category, (B) previously "unallocated contingency" (which allocations shall be subject to clause (e) of this Section 8.2.17 and, after giving effect to such allocation, such "unallocated contingency" shall equal or exceed the Required Minimum Contingency), or (C) an increase in Available Funds.

(ii) Decreases to any Line Item Category or Line Item within a Line Item Category will only be permitted to the extent of Realized Savings in such Line Item Category or a trade transfer from such Line Item Category to a different Line Item Category so long as (A) such trade transfer is for a Project Cost which

is included in the Line Item Category and a Line Item within such Line Item Category to which such trade transfer is being made, (B) after giving effect to such trade transfer, such Project Cost is no longer included in the Line Item Category or in any Line Item within such Line Item Category from which such trade transfer was made and (C) after giving effect to any such trade transfer, the Available Funds allocated to such Line Item Category and Line Item equals or exceeds for such Line Item Category and Line Item the aggregate of (X) the costs required to complete such Line Item Category or Line Item, as the case may be, (Y) the Holdback Amount to be paid to Persons who have supplied labor or materials in connection with such Line Item Category and Line Item and (Z) with respect to the Line Item Category entitled "**Capitalized Interest**", the amount required to pay interest and all other amounts due under this Agreement at the maximum rate of interest set forth in the Budget through the Substantial Completion Date.

(c) The Borrower may, from time to time, amend the Construction Schedule to extend the Final Completion Date, but not beyond the Outside Completion Deadline, by delivering to the Administrative Agent a Budget/Schedule Amendment Certificate (x) containing a revised Construction Schedule reflecting the new Final Completion Date and (y) complying with the applicable provisions of this Section 8.2.18 with respect to the changes in the Budget that will result from the extension of the Final Completion Date. If a Force Majeure Event occurs, then the Borrower shall be permitted to extend the Outside Completion Deadline (but not beyond the number of days set forth in clause (w) of the proviso in the definition of Force Majeure Event), subject to the satisfaction of the conditions to such extension as set forth in the definition of Force Majeure Event.

(d) Upon satisfaction of the conditions set forth in this Section 8.2.18, such Change Order or amendment shall become effective hereunder.

(e) Allocations of the Line Items in the Line Item Category entitled "**Project Contingency**" shall be subject to the approval of the Administrative Agent which approval will not be unreasonably withheld or delayed if, after giving effect to the proposed allocation, the Line Item entitled "**Project Contingency**" will equal or exceed the Required Minimum Contingency.

SECTION 8.2.19 Financial Condition and Operations. The Borrower will not, as of the close of any calendar month, commencing with the applicable calendar month described below, permit:

(a) the Debt Service Coverage Ratio as at the last day of any calendar month ending after the Substantial Completion Date to be less than 1.10:1.00; provided, however, that the Debt Service Coverage Ratio may be less than 1.10:1.00 (but not less than 1.00:1.00) if, as at the last day of the applicable calendar month, the amount by which (i) Net Operating Income of the Premises for such calendar month actually exceeded (ii) the sum of (A) the Interest Expense of the Borrower during such calendar month plus (B) all other Debt Service for such calendar month by at least \$368,000.

(b) "Working Capital" (as defined in the Hotel Management Agreement) at the close of any calendar month ending after the date on which the Borrower is first obligated to maintain Working Capital, and at all times during such calendar month, to be less than \$368,000.

SECTION 8.2.20 Rate Protection Agreements. The Borrower will not directly or indirectly amend, modify, terminate, supplement or waive a right under or consent to any amendment, termination, supplement or waiver of any Rate Protection Agreement required by Section 6.2.5 and clause (b) of Section 6.7.3 or not have such required Rate Protection Agreements in place at any time prior to the payment in full in cash of the Obligations.

ARTICLE IX

EVENTS OF DEFAULT

SECTION 9.1 Listing of Events of Default. Each of the following events or occurrences described in this Section 9.1 shall constitute an "Event of Default".

SECTION 9.1.1 Non-Payment of Obligations. The Borrower or the Guarantor shall default in the payment or prepayment when due of

(a) any Letter of Credit Reimbursement Obligation or any deposit of cash for collateral purposes pursuant to Section 2.6.2 or Section 2.7.1, as the case may be;

(b) any principal of or interest on any of the Obligations, and, with respect to any Default in the payment of interest, such Default shall continue unremedied for a period of five (5) Business Days after notice; or

(c) any fee described in Article III or of any other Obligation and such Default shall continue unremedied for a period of five (5) Business Days after notice.

SECTION 9.1.2 Breach of Warranty. Any representation or warranty of the Borrower or the Guarantor made or deemed to be made under any Loan Document, Project Document, Condominium Document or ECD Insurance Documents executed by it or any other writing or certificate furnished by or on behalf of either such Person to the Administrative Agent, the Issuer or any Lender for the purposes of or in connection with any Loan Document, Project Document, Condominium Document or ECD Insurance Documents (including any certificates delivered pursuant to Article VI hereof) is or shall be incorrect when made or deemed to have been made in any material respect.

SECTION 9.1.3 Non-Performance of Certain Covenants and Obligations. The Borrower shall default in the due performance and observance of any of its obligations under Section 8.1.2, Section 8.1.8, Section 8.1.22 or Section 8.2.

SECTION 9.1.4 Non-Performance of Other Covenants and Obligations. The Borrower or the Guarantor shall default in the due performance and observance of any Loan Document executed by it, and such Default shall continue unremedied for a period of thirty (30) days (or such other period of time during which performance is required under the applicable Loan

Document) after notice thereof shall have been given to such Person by the Administrative Agent; provided, however, that if such Default cannot be cured within such thirty-day period despite the Borrower's or the Guarantor's, as the case may be, good faith and diligent efforts to do so, the cure period shall be extended as is reasonably necessary beyond such thirty-day period (but in no event longer than sixty (60) days) if remedial action reasonably likely to result in a cure of such Default is promptly instituted within such thirty-day period and is thereafter diligently pursued until the Default is corrected.

SECTION 9.1.5 Default on Other Indebtedness. A default shall occur (x) in the payment when due (subject to any applicable grace period) whether by acceleration or otherwise, of any Indebtedness of the Borrower or the Guarantor (other than Indebtedness described in Section 9.1.1) having a principal amount, individually or in the aggregate, in excess of \$1,000,000 or (y) in the performance or observance of any obligation or condition with respect to such Indebtedness (subject to any applicable grace period) if the effect of such Default is to accelerate the maturity of any such Indebtedness or such Default shall continue unremedied for any applicable period of time sufficient to permit the holder or holders of such Indebtedness, or any trustee or agent for such holders, to cause or declare such Indebtedness to become due and payable or to require such Indebtedness to be prepaid, redeemed, purchased or defeased, or to cause an offer to purchase or redeem such Indebtedness to be required to be made, prior to its expressed maturity.

SECTION 9.1.6 Outside Completion Deadline. The Borrower shall fail to achieve Final Completion on or before the Outside Completion Deadline.

SECTION 9.1.7 Judgments. Any judgment or order for the payment of money in excess of \$1,000,000 individually or in the aggregate (excluding, however, any amounts fully covered by insurance (less any permitted deductible) or indemnification and as to which the insurer or the indemnifying party, as the case may be, has acknowledged its responsibility to cover such judgment or order) shall be rendered against the Borrower or the Guarantor and such judgment shall not have been vacated or discharged or stayed or appealed within sixty (60) days after the entry thereof.

SECTION 9.1.8 Welfare Plans. Any of the following events shall occur with respect to any Welfare Plan

(a) the institution of any steps by the Borrower or any of its Affiliates to terminate a Welfare Plan if, as a result of such termination, the Borrower or any such member could be required to make a contribution to such Welfare Plan, or could reasonably expect to incur a liability or obligation to such Welfare Plan, in excess of \$1,000,000; or

(b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien against all or a portion of the Premises and such failure continues for thirty (30) days or more.

SECTION 9.1.9 Change in Control. Any Change in Control shall occur.

SECTION 9.1.10 Bankruptcy, Insolvency, etc. The Borrower or the Guarantor shall

(a) become insolvent or generally fail to pay, or admit in writing its inability or unwillingness generally to pay, debts as they become due;

(b) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, sequestrator or other custodian for a substantial part of its property, or make a general assignment for the benefit of creditors;

(c) in the absence of such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for a substantial part of its property, and such trustee, receiver, sequestrator or other custodian shall not be discharged within sixty (60) days; provided, however, that the Borrower hereby expressly authorizes the Administrative Agent and each Lender to appear in any court conducting any relevant proceeding during such sixty-day period to preserve, protect and defend their rights under the Loan Documents and the Project Documents;

(d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect thereof, and, if any such case or proceeding is not commenced by the Person which is the subject of such case or proceeding, such case or proceeding shall be consented to or acquiesced in by such Person or shall result in the entry of an order for relief or shall remain for sixty (60) days undismissed; provided, however, that the Borrower hereby expressly authorizes the Administrative Agent and each Lender to appear in any court conducting any such case or proceeding during such sixty-day period to preserve, protect and defend their rights under the Loan Documents and the Project Documents; or

(e) take any action authorizing, or in furtherance of, any of the foregoing.

SECTION 9.1.11 Impairment of Security, etc. Any Loan Document, or any Lien granted thereunder, shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of any Loan Party that is a party thereto; any Loan Party shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability; or, except as permitted under any Loan Document, any Lien securing any Obligation shall, in whole or in part, cease to be a perfected first priority Lien, subject only to Permitted Liens.

SECTION 9.1.12 Breach of Project Documents. Any Loan Party or any other Person shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Project Document or any other material agreement (other than the Loan Documents or the Condominium Documents) to which such Loan Party or other Person is a party beyond the expiration of any applicable grace, notice or cure period and such breach or default shall continue unremedied for thirty (30) days after notice from the Administrative Agent to the Borrower; provided, however, that,

(a) if a breach or default by any Person that is not a Loan Party is reasonably susceptible to cure within thirty (30) days but cannot be cured within such thirty-day period despite the Loan Parties' or such other Person's good faith and diligent efforts to

do so, the cure period shall be extended as is reasonably necessary beyond such thirty (30) day period (but in no event longer than sixty (60) days) if remedial action reasonably likely to result in cure is promptly instituted within such thirty (30) day period and is thereafter diligently pursued until the breach or default is corrected;

(b) if the breach is by a Person other than a Loan Party, then no Event of Default shall be deemed to have occurred as a result of such breach if the Borrower provides written notice to the Administrative Agent immediately upon (but in no event more than two (2) Business Days after) the Borrower becoming aware of such breach that such Project Document shall be replaced (or that replacement is not necessary) and (x) a replacement obligor or obligors reasonably acceptable to the Borrower (after consultation with the Administrative Agent) for the affected Person (if in the reasonable judgment of the Borrower (after consultation with the Administrative Agent) a replacement is necessary), (y) the Borrower enters into a replacement Project Document in accordance with Section 8.2.16 on terms no less beneficial to the Borrower and the Lenders in any material respect than the Project Document so terminated (if in the reasonable judgment of the Borrower (after consultation with the Administrative Agent) a replacement is necessary) and (z) such termination, after considering any replacement obligor and replacement Project Document and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect; and

(c) if the breach is a result of a bona fide dispute between the Borrower and any other Person, and the Borrower believes, in good faith, in the validity of its claim in such dispute, then no Event of Default shall have occurred under this Section 9.1.12 if the Borrower (x) provides prompt written notice of such dispute to the Administrative Agent, and (y) satisfies the provisions of clause (b) of Section 8.1.15 with respect to such dispute.

SECTION 9.1.13 Termination or Invalidity of Project Documents; Abandonment of Improvements. (a) The GMP Contract shall have terminated, become invalid or illegal or otherwise ceased to be in full force and effect or if any of the other Project Documents shall have terminated, become invalid or illegal, or otherwise ceased to be in full force and effect if the effect thereof could reasonably be expected to have a Material Adverse Effect with respect to the Borrower or the Improvements; provided, however, that, with respect to any Project Document other than the GMP Contract, no Event of Default shall be deemed to have occurred as a result of such termination if the Borrower provides written notice to the Administrative Agent, immediately upon (but in no event more than two Business Days after) the Borrower becoming aware of such Project Document ceasing to be in full force or effect that the Borrower intends to replace such Project Document (or that replacement is not necessary) and (x) the Borrower obtains a replacement obligor or obligors reasonably acceptable to the Borrower (after consultation with the Administrative Agent) for the affected party (if in the reasonable judgment of the Borrower (after consultation with the Administrative Agent) a replacement is necessary), (y) the Borrower enters into a replacement Project Document in accordance with Section 8.2.16, on terms no less beneficial to the Borrower and the Lenders in any material respect than the Project Document so terminated, within thirty (30) days of such termination (if in the reasonable judgment of the Borrower (after consultation with the Administrative Agent) a replacement is necessary) and (z) such termination, after considering any replacement obligor and replacement

Project Document and the time required to implement such replacement, has not had and would not reasonably be expected to have a Material Adverse Effect.

(b) The Borrower shall abandon any material portion of the Transactions or cease construction of the Improvements (except during such time as a Force Majeure Event exists under this Agreement) or, after Final Completion, cease to pursue the operation of the Premises as presently contemplated or except as otherwise permitted hereunder shall sell or otherwise dispose of all or a portion of its interest in the Premises.

SECTION 9.1.14 Government Authorizations. Any Permit necessary for the ownership (including the ownership of the Units), construction, maintenance, financing, or operation of the Premises for its intended purpose shall be materially modified or refused, rejected, suspended, revoked or canceled, or allowed to lapse, or a notice of a material violation is issued under any Permit, by the issuing agency or other Governmental Instrumentality having or asserting jurisdiction, or any proceeding is commenced by any Governmental Instrumentality for the purpose of modifying, suspending, revoking or canceling any Permit, and such modification, refusal, rejection, revocation or loss of such Permit or such notice of a material violation or proceeding could reasonably be expected to have a Material Adverse Effect and such Default shall continue unremedied for a period of thirty (30) days after notice thereof shall have been given by the Administrative Agent; provided, however, that if such Default cannot be cured within such thirty-day period despite the Borrower's or the Guarantor's, as the case may be, good faith and diligent efforts to do so, the cure period shall be extended as is reasonably necessary beyond such thirty-day period (but in no event longer than sixty (60) days) if remedial action reasonably likely to result in a cure of such Default is promptly instituted within such thirty-day period and is thereafter diligently pursued until the Default is corrected.

SECTION 9.1.15 Fraudulent Submission. Any voucher or invoice for Project Costs delivered in connection with any Advance is fraudulently submitted by the Borrower.

SECTION 9.1.16 Material Adverse Effect. The occurrence of any act, event or condition that, in the Administrative Agent's sole discretion, may result in a Material Adverse Effect.

SECTION 9.1.17 Condominium Documents; ECD Insurance Documents. The occurrence of a default by any Loan Party under any Condominium Document or ECD Insurance Document which remains uncured beyond any applicable notice or grace period provided for under such Condominium Document or ECD Insurance Document or, if no notice or grace period is specified for any such default, such default remains uncured after thirty (30) days; provided, however, that if such default cannot be cured within such thirty-day period despite such Loan Party's good faith and diligent efforts to do so, if permitted under the Condominium Documents or ECD Insurance Documents, as applicable, the cure period shall be extended as is reasonably necessary beyond such thirty-day period (but in no event longer than sixty (60) days in the aggregate) if remedial action reasonably likely to result in cure is promptly instituted within such thirty-day period and is thereafter diligently pursued until the default is corrected.

SECTION 9.1.18 Taxes. (i) The entry by any court of a decision that an undertaking by the Borrower as provided herein or in any other Loan Document to pay taxes, assessments,

levies, liabilities, obligations and encumbrances is legally inoperative or cannot be enforced or (ii) if any law is enacted changing in any way or respect the laws now in force for the taxation of mortgages or indebtedness secured thereby for any purpose, or the manner of collection of any such taxes, so as to affect adversely the Mortgage or the Indebtedness or other Obligations secured thereby; provided, however, that it shall not be an Event of Default if the Borrower pays, and the Borrower and each Guarantor agrees with the Administrative Agent in writing (in form and substance acceptable to the Administrative Agent) to pay in the future, when the same shall become due, any such taxes or other liabilities, so long as (A) such taxes may, under applicable law, be paid by the Borrower, (B) such agreement to pay such future taxes or liabilities is an enforceable obligation, and (C) the payment of any such taxes by the Borrower or the Guarantors shall not constitute taxable income to the Administrative Agent or any of the Lenders.

SECTION 9.1.19 Rescission of Condominium Unit Contract of Sales. If purchasers of ten or more Units have a right under the Interstate Land Sales Act that is binding on the Borrower to rescind their Condominium Unit Contract of Sale.

SECTION 9.2 Action if Bankruptcy. If any Event of Default described in clauses (a) through (e) of Section 9.1.10 shall occur, the Commitments (other than Commitments to make obligatory Advances pursuant to Section 2.6.1 and Section 2.6.2) shall automatically terminate (if not theretofore terminated), the outstanding principal amount of all outstanding Loans and Bankers' Acceptance Obligations and all other Obligations (including Letter of Credit Reimbursement Obligations) shall automatically be and become immediately due and payable without notice or demand, the Borrower shall automatically and immediately be obligated to deposit with the Administrative Agent cash collateral in an amount equal to all Letter of Credit Outstandings and Bankers' Acceptances in accordance with Section 2.7.1, the Lenders may refuse, suspend or terminate requests from the Borrower and performance of any other obligations of the Lenders hereunder which are expressly subject to there not being a Default, and the Issuer may deliver a notice to each Beneficiary of a Letter of Credit that the Stated Expiry Date of such Letter of Credit will not be extended beyond the then applicable Stated Expiry Date.

SECTION 9.3 Action if Other Event of Default. If any Event of Default (other than any Event of Default described in clauses (a) through (e) of Section 9.1.10) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Administrative Agent, upon the direction of the Required Lenders, shall by notice to the Borrower declare all or any portion of the outstanding principal amount of the Loans, Bankers' Acceptance Obligations and other Obligations (including Letter of Credit Reimbursement Obligations) to be due and payable or the Commitments (other than Commitments to make obligatory Advances pursuant to Section 2.6.1 and Section 2.6.2) to be terminated (if not theretofore terminated), whereupon the full unpaid amount of such Loans and other Obligations which shall be so declared due and payable shall be and become immediately due and payable, without further notice, demand or presentment, or, as the case may be, the Commitments shall terminate and the Borrower shall automatically and immediately be obligated to deposit with the Administrative Agent cash collateral in an amount equal to all Letter of Credit Outstandings and Bankers' Acceptances in accordance with Section 2.7.1. In addition to the foregoing, the Administrative Agent upon direction of the Required Lenders may, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and

demands being waived (to the extent permitted by applicable law), exercise any or all rights and remedies at law or in equity (in any combination or order that the Lenders may elect, subject to the foregoing), including, without prejudice to the Lenders' other rights and remedies, the following:

(a) the Lenders may refuse, suspend or terminate requests from the Borrower and performance of any other obligations of the Lenders hereunder which are expressly subject to there not being a Default;

(b) make or do the same in such manner and to such extent as the Lenders may deem necessary to protect the security hereof, the Administrative Agent (or its nominee or designee) being authorized to enter upon and take possession of the Premises for such purposes;

(c) remedy such Event of Default without waiving it on the part of the Borrower;

(d) commence, appear in and/or defend any action or proceedings purporting to affect the security hereof, and/or any additional or other security therefor, the interests, rights, powers or duties of the Administrative Agent and the Lenders hereunder, whether brought by or against the Borrower, the Lenders or the Administrative Agent;

(e) pay, purchase, contest or compromise any claim, debt, Lien, charge or encumbrance that in the judgment of the Lenders may impair or could reasonably be expected to impair the security of the Mortgage or the other Loan Documents, the interests of the Administrative Agent or the Lenders or the rights, powers and/or duties of the Lenders or the Administrative Agent hereunder;

(f) the Administrative Agent and its nominee or designee are authorized either by themselves or by their agents or by a receiver appointed by a court of competent jurisdiction, to enter into and upon and take and hold possession of any portion or all of the Premises, whether real and personal, and exclude the Borrower and all other Persons (other than the Hotel Manager (unless terminated by the Lenders)) therefrom and thereupon the Administrative Agent and such nominee or designee may, (u) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct business thereat, (v) take possession of all materials, supplies, tools, equipment and construction facilities and appliances located on or about the Premises and perform any and all work and labor necessary to complete the construction of Improvements in accordance with the Project Documents and the Condominium Documents and any agreements relating to the Premises existing at the time the Administrative Agent or such nominee or designee enters into possession thereof and perform any and all work and labor necessary to complete the Improvements or to operate and maintain the Premises (including the registration thereof as a Condominium Regime under the *Condominium Act* (Ontario)), (w) employ watchmen to protect the Premises, (x) make alterations, additions, renewals, replacements and improvements thereto and, if required by the Project Documents, the Condominium Documents or any other agreements relating to the Premises, (y) exercise all rights and powers of the

Borrower with respect thereto and pursuant to or under the Project Documents, the Condominium Documents or any other agreements relating to the Premises, whether in the name of the Borrower or otherwise, including the right to make, cancel, enforce or modify the Project Documents, the Condominium Documents or any other such other agreements, obtain and evict tenants and other Persons, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income from the Premises, and every part thereof and (z) apply the receipts therefrom to the payment of the Obligations in accordance with this Agreement, after deducting therefrom all expenses (including reasonable attorneys' fees and costs and expenses) incurred in connection with the aforesaid operations and all amounts to pay the Impositions, assessments, insurance and other charges in connection with the Premises as well as just and reasonable compensation for the services of the Administrative Agent, each such nominee or designee, the Lenders and their counsel, agents and employees;

(g) conduct a marketing or leasing program with respect to the Premises, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Premises or portions thereof, and employ brokers, marketing agents or other independent contractors or professionals, and to enter into leases at such rents and for such periods of occupancy and upon conditions and provisions, in each case, as the Required Lenders, in their sole discretion, deem appropriate or desirable to implement and effectuate the rights and powers herein granted;

(h) sue or otherwise collect the earnings, revenues, rents, including those past due and unpaid issues, profits and other income from the Premises, and apply the receipts therefrom to the payment of the Obligations and all expenses (including reasonable attorneys' fees and costs and expenses) incurred in connection with the collection thereof;

(i) exercise all rights and remedies under the Loan Documents, the Project Documents and the Condominium Documents;

(j) institute an action, suit or proceeding in equity for the specific performance by the Borrower of any covenant, condition, or agreement contained in the Loan Documents, the Project Documents or the Condominium Documents;

(k) foreclose the Mortgage or sell or cause the Premises to be sold in one or more parcels at the option of the Lenders;

(l) recover judgment on the Completion Guaranty, the Payment Guaranty, the Non-Recourse Carve Out Guaranty, the Non-Recourse Pledge Guaranty and the Environmental Indemnity either before, during or after any proceedings for the enforcement of the Lenders' rights and remedies under the Loan Documents, the Project Documents and the Condominium Documents;

(m) apply, ex parte and without notice to any Person, for the appointment of a custodian, receiver, liquidator or conservator of the Premises without regard for the adequacy of the security for the Obligations evidenced and secured by the Loan Documents;

(n) set off and apply all monies on deposit in any account held by the Administrative Agent or any amounts paid under the Completion Guaranty, the Payment Guaranty, the Non-Recourse Carve Out Guaranty or the Non-Recourse Pledge Guaranty or any other monies of the Borrower on deposit with the Administrative Agent to the satisfaction of the Obligations under the Loan Documents;

(o) from time to time and without notice to the Borrower (i) release any Person liable for the payment of the Obligations, (ii) extend or modify the terms of payment of the Obligations, (iii) accept additional security or alter, substitute or release any security securing the Obligations, (iv) recover any part of the Project Security, or (v) join in any amendment or modification of any of the Loan Documents; and

(p) exercise any and all rights and remedies available to it under applicable law or any of the Project Documents;

provided, however, that

(q) for the foregoing purposes, the Borrower to the fullest extent permitted by law, hereby constitutes and appoints irrevocably the Administrative Agent (or its nominee or designee) as the true and lawful agent and attorney-in-fact of the Borrower, coupled with an interest, with full power of substitution and hereby empowers the Administrative Agent (and its nominee or designee) to take such action and require such performance as it or they deem necessary or desirable;

(r) the Administrative Agent (and its nominee or designee) may at any time discontinue any action or remedy commenced by it or them, as the case may be, or change any course of action undertaken by it or them, and in such event, the Administrative Agent, the Lenders and each such nominee or designee shall not be bound by any requirements or limitations of time contained in the Loan Documents;

(s) the Lenders, the Administrative Agent and their designee or nominee shall not be liable for any loss sustained by the Borrower resulting from any failure to lease the Premises, or any part thereof, or from any other act or omission of any Person in managing the Premises (including the Hotel Manager), nor shall the Lenders, the Administrative Agent or their designee or nominee be obligated to perform or discharge any obligation, duty or liability under any lease or under or by reason of this Agreement or the exercise of rights or remedies hereunder; and

(t) all sums expended by the Lenders for any of the purposes described above shall be deemed to have been advanced to the Borrower under and pursuant to the provisions of this Agreement, shall become part of the Indebtedness evidenced and secured by the Loan Documents, shall bear interest at the rate of interest set forth in Section 3.2.2, shall be repaid on demand, and shall be evidenced and secured by the Loan Documents.

ARTICLE X

THE ADMINISTRATIVE AGENT

SECTION 10.1 Actions. Each Lender hereby appoints WestLB as its Administrative Agent under and for purposes of the Loan Documents. Each Lender authorizes the Administrative Agent to act on behalf of such Lender under the Loan Documents and, in the absence of other written instructions from the Required Lenders received from time to time by the Administrative Agent (with respect to which the Administrative Agent agrees that it will comply, except as otherwise provided in this Section or as otherwise advised by counsel in order to avoid contravention of applicable law), to exercise such powers hereunder and thereunder as are specifically delegated to or required of the Administrative Agent by the terms hereof and thereof, together with such powers as may be reasonably incidental thereto. Notwithstanding any provisions to the contrary contained in this Agreement or in the other Loan Documents, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Each Lender hereby indemnifies (which indemnity shall survive any termination of this Agreement) the Administrative Agent, pro rata according to such Lender's Percentage, from and against any and all liabilities, obligations, losses, damages, claims, costs or expenses of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against, the Administrative Agent in any way relating to or arising out of any of the Loan Documents, including reasonable attorneys' fees, consultants' fees and as to which the Administrative Agent is not reimbursed by the Borrower; provided, however, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, claims, costs or expenses which are determined by a court of competent jurisdiction in a final proceeding to have resulted solely from the Administrative Agent's gross negligence or willful misconduct. The Administrative Agent shall not be required to take any action under any of the Loan Documents, the Project Documents, the Condominium Documents or the ECD Insurance Documents, or to prosecute or defend any suit in respect of any of the Loan Documents, the Project Documents, the Condominium Documents or the ECD Insurance Documents, unless it is indemnified hereunder to its satisfaction. If any indemnity in favor of the Administrative Agent shall be or become, in the Administrative Agent's determination, inadequate, the Administrative Agent may call for additional indemnification from the Lenders and cease to do the acts indemnified against hereunder until such additional indemnity is given.

SECTION 10.2 Funding Reliance, etc. Unless the Administrative Agent shall have been notified by telephone, confirmed in writing, by any Lender by 2:00 p.m., Toronto time, on the Business Day prior to a Borrowing that such Lender will not make available the amount which would constitute its Percentage of such Borrowing comprised of Loans or the portion of such Borrowing comprised of Bankers' Acceptance Proceeds on the date specified therefor, the Administrative Agent may assume that such Lender has made such amounts available to the Administrative Agent and, in reliance upon such assumption, make available to the Borrower corresponding amounts. If and to the extent that such Lender shall not have made such amounts available to the Administrative Agent, such Lender and the Borrower severally agree to repay the

Administrative Agent forthwith on demand such corresponding amounts, together with interest thereon, for each day from the date the Administrative Agent made such amount available to the Borrower to the date such amount is repaid to the Administrative Agent, at the interest rate applicable at the time to Loans comprising such Borrowing and any applicable amount payable pursuant to Section 4.2 in the case of the Borrower, and at the overnight rate in effect from time to time as announced by the Bank of Canada (in the case of a Lender) (for the first two Business Days after which such amount has not been repaid) and thereafter at the interest rate applicable to Loans comprising such Borrowing. The Borrower shall also repay the Administrative Agent the applicable Stamping Fee plus the Bankers' Acceptance Rate. Nothing in this Section shall affect or impair the rights or remedies of the Borrower against such Lender with respect to the failure of such Lender to make available its Percentage of such Borrowing.

SECTION 10.3 Exculpation. Neither the Administrative Agent nor any of its directors, officers, employees or agents shall (a) be liable to any Lender or any other Person for any action taken or omitted to be taken by it under this Agreement or any other Loan Document, or in connection herewith or therewith, except for its own willful misconduct or gross negligence, or (b) be responsible for (i) any recitals or warranties herein or therein, or (ii) for the effectiveness, enforceability, validity or due execution of this Agreement or any other Loan Document, or (iii) for the creation, perfection or priority of any Liens purported to be created by any of the Loan Documents, or (iv) the validity, genuineness, enforceability, existence, value or sufficiency of any collateral security, or (v) making any inquiry respecting the performance by the Borrower of its obligations under any of the Loan Documents; provided, however, that any such inquiry which may be made by the Administrative Agent shall not obligate it to make any further inquiry or to take any action. The Administrative Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any notice, consent, certificate, statement or writing which the Administrative Agent believes to be genuine and to have been presented by a proper Person.

SECTION 10.4 Successor. The Administrative Agent may resign as such at any time upon at least thirty (30) days' prior notice to the Borrower and the Lenders, but such resignation shall not affect its obligations as a Lender hereunder. If the Administrative Agent at any time shall resign, the Required Lenders may appoint another Lender as a successor Administrative Agent which shall thereupon become the Administrative Agent hereunder. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within thirty (30) days after the retiring Administrative Agent's giving notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be one of the Lenders or a commercial banking institution organized under the laws of Canada or a Canadian branch or agency of a commercial banking institution and having a credit rating equal to the lesser of (x) the credit rating of WestLB or (y) A- by Moody's or a comparable rating by S&P; provided, however, that if, after expending all reasonable commercial efforts, such retiring Administrative Agent is unable to find a commercial banking institution which is willing to accept such appointment and which meets the qualifications set forth in item (y), such resigning Administrative Agent shall be permitted to appoint as its successor from all available commercial banking institutions willing to accept such appointment such institution having the highest credit rating of all such available and willing institutions. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall be entitled to receive from the resigning Administrative

Agent such documents of transfer and assignment as such successor Administrative Agent may reasonably request, and shall thereupon succeed to and become vested with all rights, powers, privileges and duties of the resigning Administrative Agent, and the resigning Administrative Agent shall be discharged from its duties and obligations under this Agreement from and after the date of acceptance of appointment by the successor Administrative Agent. After any resigning Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of

(a) this Article X shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement; and

(b) Section 10.3 and Section 10.4 shall continue to inure to its benefit.

SECTION 10.5 Credit Extensions by WestLB. WestLB shall have the same rights and powers with respect to (x) the Credit Extensions made by it or any of its Affiliates, and (y) the Notes held by it or any of its Affiliates as any other Lender and may exercise the same as if it were not the Administrative Agent. WestLB and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Borrower, the Guarantor or any Subsidiary or Affiliate of the Borrower of the Guarantor as if WestLB were not the Administrative Agent hereunder.

SECTION 10.6 Credit Decisions. Each Lender acknowledges that it has, independently of the Administrative Agent and each other Lender, and based on such Lender's review of the financial information of the Borrower, the Guarantor, the Loan Documents (the terms and provisions of which being satisfactory to such Lender) and such other documents, information and investigations as such Lender has deemed appropriate, made its own credit decision to extend its Commitments. Each Lender also acknowledges that it will, independently of the Administrative Agent and each other Lender, and based on such other documents, information and investigations as it shall deem appropriate at any time, continue to make its own credit decisions as to exercising or not exercising from time to time any rights and privileges available to it under this Agreement or any other Loan Document.

SECTION 10.7 Copies, etc. The Administrative Agent shall give prompt notice to each Lender of each material notice or request required or permitted to be given to the Administrative Agent by the Borrower pursuant to the terms of this Agreement (unless concurrently delivered to the Lenders by the Borrower). The Administrative Agent will distribute to each Lender each material document or instrument received for its account and copies of all other communications received by the Administrative Agent from the Borrower for distribution to the Lenders by the Administrative Agent in accordance with the terms of this Agreement or any other Loan Document.

SECTION 10.8 Consultants and Reports. (a) The Administrative Agent, in its sole discretion, may remove from time to time the Independent Consultants and, after consultation with the Borrower, appoint replacements as the Administrative Agent may choose. As soon as practicable, notice of any replacement Independent Consultant shall be given by the Administrative Agent to the Borrower and the Independent Consultant being replaced. All

reasonable fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by the Borrower.

(b) Each of the Independent Consultants shall be contractually obligated to the Administrative Agent and each of the Lenders to carry out the activities required of it in the Loan Documents, and in the Consulting Engineer Engagement Agreement and as otherwise requested by the Administrative Agent. The Borrower acknowledges that it will not have any cause of action or claim against any Independent Consultant resulting from any decision made or not made, any action taken or not taken or any advice given by such Independent Consultant in the due performance of its duties.

SECTION 10.9 Defaulting Lenders. In addition to the provisions of Section 4.9, the following provisions shall apply with respect to a Defaulting Lender:

(a) Upon any Lender becoming a Defaulting Lender, (i) the Administrative Agent shall endeavor to promptly notify the Borrower and each other Lender of the amount owed or potentially owed, as the case may be, by such Defaulting Lender and the default which gave rise to such Lender becoming a Defaulting Lender and (ii) the Commitment Amount shall be reduced by an amount equal to the unutilized portion of such Defaulting Lender's Percentage thereof then in effect (the "**Unutilized Portion**"); provided, however, that, the Administrative Agent shall request any Non-Defaulting Lender to, whereupon such Non-Defaulting Lender may (in its sole discretion and without the consent of any other Lender), by promptly notifying the Borrower and the Administrative Agent, increase its Commitment Amount in an amount equal to the Unutilized Portion, in which case, upon receipt by the Borrower and the Administrative Agent of such notice, (x) the Commitment of such Lender shall be so increased and (y) the Commitment Amount then in effect shall be equal to the amount of the Commitment Amount in effect immediately prior to the time such Defaulting Lender became a Defaulting Lender and (iii) the Commitment of such Defaulting Lender shall be reduced to zero. Upon the effective date that such Lender's Commitment Amount is increased, the Borrower shall issue a replacement Note or Notes, as the case may be, to such Lender for registration in accordance with Section 2.8, and upon such registration such Lender's Commitment Amount shall be so increased for all purposes under this Agreement and the other Loan Documents.

(b) Except for existing participations made by a Lender in accordance with Section 11.12.2 prior to the time that such Lender became a Defaulting Lender, no Defaulting Lender shall grant participation interests in or sell, transfer or convey its interest in the Loan or the Loan Documents.

(c) A Defaulting Lender shall not be entitled to participate in any discussions among or decisions by the Lenders that are not Defaulting Lenders and shall not be entitled to consent or object to any amendment, modification or waiver under the Loan Documents, the Project Documents, the Condominium Documents or the ECD Insurance Documents, including, without limitation, any actions or consents on the part of the Administrative Agent as to which the approval or consent of any of the Lenders is required under Section 11.1, so long as such Defaulting Lender is a Defaulting Lender, and any decision by such other Lenders shall be binding on such Defaulting Lender.

(d) Notwithstanding anything to the contrary in this Agreement, the interests of a Defaulting Lender shall be subordinate to the interests of all Non-Defaulting Lenders and all amounts received by the Administrative Agent with respect to the Loan Documents (including, without limitation, Loss Proceeds or by reason of the realization of all or a portion of any Project Security) shall be distributed first to each Non-Defaulting Lender until each such Non-Defaulting Lender has been indefeasibly paid in full and thereafter to each Lender which is a Defaulting Lender until each such Defaulting Lender has received its Percentage of such payment. If any payment or distribution shall be received by any Defaulting Lender prior to the payment thereof to each Non-Defaulting Lender, such payment or distribution shall be received in trust for the benefit of, and shall promptly be paid over or delivered and transferred to, the Administrative Agent for distribution in accordance with the first sentence of this clause (d). In the event of the failure of any Defaulting Lender to endorse or assign any such payment or distribution, the Administrative Agent is hereby irrevocably authorized to endorse or assign the same as attorney-in-fact for such Defaulting Lender. Each Lender acknowledges and agrees that by its execution hereof that each Lender is entering into this Agreement and the Loan Documents in reliance upon the subordination in time and right of payment as set forth in this clause (d).

(e) In addition to and not in limitation of the subordination in time and right of payment as set forth in clause (d) of this Section 10.9, the Borrower, the Administrative Agent and each of the Lenders may also exercise any and all other rights and remedies available at law or in equity in respect of a Defaulting Lender.

(f) After determination by a court of competent jurisdiction in a final proceeding that a Lender is a Defaulting Lender, such Defaulting Lender agrees to pay all costs and expenses incurred by the Borrower, any Lender and the Administrative Agent, as applicable, with respect to enforcement proceedings against such Defaulting Lender.

SECTION 10.10. The Arranger, the Syndication Agent and the Documentation Agent. The Arranger, the Syndication Agent and the Documentation Agent hereunder shall not have any right, power, obligation, liability, responsibility or duty under this Agreement (or any other Loan Document) other than those applicable to it in its capacity as a Lender to the extent it is a Lender hereunder. Without limiting the foregoing, the Persons identified as the "Arranger", the "Syndication Agent" and the "Documentation Agent" shall not have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on the Person so identified as the "Arranger", the "Syndication Agent" or the "Documentation Agent" in deciding to enter into this Agreement and each other Loan Document to which it is a party or in taking or not taking action hereunder or thereunder.

ARTICLE XI

MISCELLANEOUS PROVISIONS

SECTION 11.1 Waivers, Amendments, etc. The provisions of this Agreement and of each other Loan Document may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by the Borrower and the Required Lenders; provided, however, that no such amendment, modification or waiver shall:

(a) extend any Commitment Termination Date or modify this Section without the consent of all Lenders;

(b) increase the aggregate amount of any Lender's then existing Commitments, increase the aggregate amount of any Loans, Bankers' Acceptances or Letter of Credit Outstandings required to be made by a Lender pursuant to its Commitments or reduce any fees described in Section 3.3 payable to any Lender without the consent of such Lender;

(c) extend the Stated Maturity Date for any Lender's Loan (other than in accordance with Section 6.7) or the maturity date of any Bankers' Acceptance, or reduce the principal amount of or rate of interest on any Lender's Loan or Bankers' Acceptance, without the consent of such Lender; provided, however, that any vote to rescind any acceleration made pursuant to Section 9.2 or 9.3 of amounts owing with respect to the Loans, the Bankers' Acceptances, the Letter of Credit Outstandings and other Obligations shall only require the vote of the Required Lenders;

(d) change the definition of "Required Lenders" or any requirement hereunder that any particular action be taken by all Lenders without the consent of all Lenders;

(e) increase the Stated Amount of any Letter of Credit unless consented to by the Issuer thereof;

(f) release the Guarantor under the Completion Guaranty, the Payment Guaranty, the Non-Recourse Carve Out Guaranty, the Non-Recourse Pledge Guaranty or the Environmental Indemnity, or discharge the Lien of the Mortgage, or release all or substantially all of the other security interests granted pursuant to the Loan Documents, in each case, without the consent of all of the Lenders (it being agreed that the Administrative Agent shall have the right to release the Encroachment Land in accordance with clause (e) of Section 8.2.10 without the consent of any Lender); or

(g) affect adversely the interests, rights or obligations of the Administrative Agent or any Issuer, without the consent of the Administrative Agent or such Issuer.

No failure or delay on the part of the Administrative Agent, the Issuer or any Lender in exercising any power or right under this Agreement or any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on the Borrower in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by the Administrative Agent, any Issuer or any Lender under this Agreement or any other Loan Document shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

SECTION 11.2 Notices. All notices and other communications provided to any party hereto under this Agreement or any other Loan Document shall be in writing and addressed, delivered or transmitted to such party at its address or facsimile number set forth below its

signature hereto or set forth in the Lender Assignment Agreement or at such other address or facsimile number as may be designated by such party in a notice to the other parties. All such notices and communications shall be deemed to have been properly given if (x) hand delivered with receipt acknowledged by the recipient; (y) mailed, upon the fifth Business Day after the date on which it is deposited in registered or certified mail, postage prepaid, return receipt requested or (z) by Federal Express or other nationally-recognized express courier service with instructions to deliver on the following Business Day, on the next Business Day after delivery to such express courier service. Notices and other communications may also be properly given by facsimile but shall be deemed to be received upon automatic facsimile confirmation of receipt thereof by the intended recipient machine therefor with the original of such notice or communication to be given in the manner provided in the second sentence of this Section; provided, however, that the failure to deliver a copy in accordance with the second sentence of this Section shall not invalidate the effectiveness of such facsimile notice.

SECTION 11.3 Payment of Costs and Expenses. The Borrower agrees to pay within five (5) Business Days after request all expenses of the Administrative Agent and CIT (including the reasonable fees and out-of-pocket expenses of counsel to the Administrative Agent and CIT and of local counsel, if any, who may be retained by counsel to the Administrative Agent) in connection with

- (a) the negotiation, preparation, execution and delivery of the Loan Documents, including schedules and exhibits, and any amendments, waivers, consents, supplements or other modifications to any of the Loan Document made from time to time, whether or not the transactions contemplated hereby are consummated;
- (b) all costs of syndicating interests in the Commitments, the Loans, the Bankers' Acceptance Obligations and the Letter of Credit Outstandings incurred by the Arranger to and including the Initial Credit Extension Date;
- (c) the filing, recording, refiling or rerecording of any Loan Document or any PPSA financing statements or similar Instruments relating thereto and all amendments, supplements, amendments and restatements and other modifications to any thereof and any and all other documents or instruments of further assurance required to be filed or recorded or refiled or rerecorded by the terms hereof or the terms of any Loan Document;
- (d) the preparation and review of the form of any document or instrument relevant to this Agreement or any other Loan Document; and
- (e) the preparation of any information or response required with respect to any investigative request or inquiry, approval, findings of suitability or any other response or communication involving a Governmental Instrumentality arising out of this Agreement, any other Project Documents or any Obligation evidenced and secured by the Loan Documents or the participation in any public or investigatory hearing or meeting.

The Borrower further agrees to pay for all Appraisals which the Borrower is required to deliver pursuant to Section 8.1.25, and to save the Administrative Agent, the Issuer and the Lenders harmless from all liability for, any stamp, recording or other taxes or brokerage commissions

which may be payable in connection with the execution or delivery of this Agreement, the Credit Extensions hereunder, or the issuance of the Notes, the Letters of Credit or any other Loan Document. The Borrower also agrees to reimburse the Administrative Agent and the Issuer, and following an Event of Default, each Lender, upon demand, for all reasonable out-of-pocket expenses (including reasonable attorneys' fees and costs and expenses and fees and expenses of consultants to the Administrative Agent, the Issuer and the Lenders, and, based upon the written advice of legal counsel, a copy of which shall be provided to the Borrower, that in such counsel's judgment having a common counsel for the Administrative Agent, the Issuer and the Lenders would present such counsel with a conflict of interest, of other counsel selected by the Required Lenders (other than the Administrative Agent and the Issuer) and, if such conflict applies to the Issuer, of separate counsel selected by the Issuer) incurred by the Administrative Agent, the Issuer or such Lenders in connection with (x) the negotiation of any restructuring or "work-out" with the Borrower, whether or not consummated, of any Obligations and (y) the enforcement of any Obligations.

SECTION 11.4 Indemnification. In consideration of the execution and delivery of this Agreement by the Administrative Agent, the Issuer and the Lenders and the extension of the Commitments, the Borrower hereby indemnifies, exonerates and holds the Administrative Agent, the Issuer and the Lenders and each of their respective officers, directors, employees and agents and Affiliates (collectively, the "**Indemnified Parties**") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages, and expenses incurred in connection therewith (irrespective of whether any such Indemnified Party is a party to the action for which indemnification hereunder is sought), including reasonable attorneys' fees and disbursements, whether incurred in connection with actions between or among the parties hereto or the parties hereto and third parties (collectively, the "**Indemnified Liabilities**"), incurred by the Indemnified Parties or any of them as a result of, or arising out of, or relating to

(a) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Credit Extension, including all Indemnified Liabilities arising in connection with the Transaction;

(b) the entering into and performance of this Agreement and any other Loan Document by any of the Indemnified Parties (including any action brought by or on behalf of the Borrower as the result of any determination by the Required Lenders pursuant to Article V not to fund any Credit Extension); provided, however, that any such action is resolved in favor of such Indemnified Party;

(c) any investigation, litigation or proceeding related to any acquisition or proposed acquisition by the Borrower of all or any portion of the stock or assets of any Person, whether or not the Administrative Agent, the Issuer or any Lender is party thereto;

(d) any investigation, litigation or proceeding related to any environmental cleanup, audit, compliance or other matter relating to the protection of the environment or the Release of any Hazardous Substances by the Borrower or any other Person which owns or leases a portion of the Premises;

(e) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or releases from, any portion of the Premises of any Hazardous Substances (including any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law), regardless of whether caused by, or within the control of, the Borrower;

(f) each Lender's Environmental Liability (the indemnification herein for any Environmental Claim shall survive repayment of the Obligations and any transfer of the property of the Borrower by foreclosure or by a deed in lieu of foreclosure, or by power of sale, regardless of whether caused by, or within the control of, the Borrower);

except for, in each case, (x) any such Indemnified Liabilities arising for the account of a particular Indemnified Party by reason of the relevant Indemnified Party's gross negligence or willful misconduct and (y) any such Indemnified Liabilities arising from actions, occurrences, or events that take place after conveyance of the portion of the Premises by foreclosure or deed in lieu of foreclosure or power of sale. The Borrower and its successors and assigns hereby waive, release and agree not to make any claim or bring any cost recovery action against the Administrative Agent, the Issuer or any Lender under any Environmental Law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that any of the Indemnified Parties is strictly liable under any Environmental Laws, the Borrower's obligation to such Person under this indemnity shall likewise be without regard to fault on the part of the Borrower with respect to the violation or condition which results in liability of such Person. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

SECTION 11.5 Survival. The obligations of the Borrower under Sections 4.2, 4.3, 4.4, 4.7, 11.3, 11.4 and 11.10, and the obligations of the Lenders under Sections 10.1 and 11.22, shall in each case survive any assignment from one Lender to another (in the case of Sections 11.3 and 11.4) and any termination of this Agreement, the payment in full of all the Obligations and the termination of all the Commitments. The representations and warranties made by the Loan Parties in each of the Loan Documents shall survive the execution and delivery thereof.

SECTION 11.6 Severability. Any provision of this Agreement or any other Loan Document 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 Agreement or such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 11.7 Headings. The various headings of this Agreement and of each other Loan Document are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or such other Loan Document or any provisions hereof or thereof.

SECTION 11.8 Execution in Counterparts, Effectiveness, etc. This Agreement 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 Agreement shall

become effective when counterparts hereof executed on behalf of the Borrower, the Administrative Agent, the Issuer and each Lender shall have been received by the Administrative Agent and the conditions to Closing set forth in Section 6.1 are satisfied or waived by the Administrative Agent in writing (it being deemed by the parties hereto that the date of this Agreement is the date on which it has become effective unless the Administrative Agent has delivered written notice to the Borrower that one or more conditions to Closing set forth in Section 6.1 have not been satisfied or waived and that this Agreement is not effective).

SECTION 11.9 Governing Law; Entire Agreement. THIS AGREEMENT, THE NOTES AND EACH OTHER LOAN DOCUMENT (INCLUDING PROVISIONS WITH RESPECT TO INTEREST, LOAN CHARGES AND COMMITMENT FEES), OTHER THAN BANKERS' ACCEPTANCES AND THE PROVISIONS OF THIS AGREEMENT RELATING TO BANKERS' ACCEPTANCES, SHALL EACH 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 OR MORTGAGE 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. THE BANKERS' ACCEPTANCES AND PROVISIONS OF THIS AGREEMENT RELATING TO BANKERS' ACCEPTANCES SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE PROVINCE OF ONTARIO. The Loan Documents constitute the entire understanding among the parties hereto with respect to the subject matter hereof and thereof and supersede any and all prior agreements, written or oral, with respect thereto including that certain Indicative Term Sheet dated March 27, 2006.

SECTION 11.10 Judgment Currency. The Obligations of the Borrower in respect of any sum due to the Administrative Agent, any Lender or any Issuer hereunder or under or in respect of any other Loan Document shall, notwithstanding any judgment in a currency (the "**Judgment Currency**") other than Dollars, be discharged only to the extent that on the Business Day following receipt by such Person of any sum adjudged to be so due in the Judgment Currency, such Person, in accordance with normal banking procedures, purchases Dollars with the Judgment Currency. If the amount of Dollars so purchased is less than the sum originally due to such Person, the Borrower agrees as a separate obligation and notwithstanding any such judgment, to indemnify each Person, as the case may be, against such loss, and if the amount of Dollars so purchased exceeds the sum originally due to such Person, as the case may be, each agreeing to remit any excess to the Borrower.

SECTION 11.11 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that:

- (a) the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the Administrative Agent, the Issuer and the Lenders, which consent shall be determined in their sole discretion; and

(b) the rights of sale, assignment and transfer of the Lenders are subject to Section 11.12.

SECTION 11.12 Sale and Transfer of Commitments, Loans, Bankers' Acceptance Obligations, Letter of Credit Outstandings and Notes; Participations in Commitments, Loans, Bankers' Acceptance Obligations, Letter of Credit Outstandings and Notes. Each Lender may assign, or sell participations in, its Commitments, Loans, Bankers' Acceptance Obligations, and Letter of Credit Outstandings to one or more other Persons in accordance with this Section 11.12.

SECTION 11.12.1 Assignments. Upon prior notice to the Borrower and the Administrative Agent, any Lender,

(a) with the consent of the Issuer and the Administrative Agent (which consents shall not be unreasonably delayed or withheld), may at any time assign and delegate to one or more Eligible Assignees, and

(b) without the consent of the Issuer or the Administrative Agent, may assign and delegate to any of its Affiliates or any other Lender,

(each Person described in either of the foregoing clauses as being the Person to which such assignment and delegation is to be made, being hereinafter referred to as an "Assignee Lender"), all or any portion of such Lender's total Commitments, Loans, Bankers' Acceptance Obligations and Letter of Credit Outstandings in a minimum aggregate amount of \$10,000,000 (so long as after giving effect thereto the assigning Lender retains an aggregate amount of Commitments, Loans, Bankers' Acceptance Obligations and Letter of Credit Outstandings of no less than \$10,000,000 (unless the entire remaining amount of such Lender's Commitments, Loans, Bankers' Acceptance Obligations and Letter of Credit Outstandings are being assigned)). The Loan Parties and the Administrative Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned and delegated to an Assignee Lender until

(c) notice of such assignment and delegation, together with (i) payment instructions, and (ii) addresses and related information with respect to such Assignee Lender, shall have been delivered to the Borrower and the Administrative Agent by such Lender and such Assignee Lender;

(d) such Assignee Lender shall have executed and delivered to the Borrower and the Administrative Agent a Lender Assignment Agreement, created by the Administrative Agent; and

(e) the processing fees described below shall have been paid.

From and after the date that the Administrative Agent accepts such Lender Assignment Agreement (and records the information therein in the Register, if applicable), (x) the Assignee Lender thereunder shall be deemed automatically to have become a party hereto, and to the extent that rights and obligations hereunder have been assigned and delegated to such Assignee Lender in connection with such Lender Assignment Agreement, shall have the rights and

obligations of a Lender hereunder and under the other Loan Documents, and (y) the assignor Lender, to the extent that rights and obligations hereunder have been assigned and delegated by it in connection with such Lender Assignment Agreement, shall be released from its obligations hereunder and under the other Loan Documents. Within five Business Days after its receipt of notice that the Administrative Agent has received and created an executed Lender Assignment Agreement, subject, however, to clause (d) of this Section 11.12.1, the Borrower shall execute and deliver to the Administrative Agent (for delivery to the relevant Assignee Lender) a new Tranche A Note and Tranche B Note evidencing such Assignee Lender's assigned Commitments, Loans, Bankers' Acceptance Obligations and Letter of Credit Outstandings and, if the assignor Lender has retained Commitments, Loans, Bankers' Acceptance Obligations and Letter of Credit Outstandings hereunder, a replacement Tranche A Note and/or Tranche B Note in the pro rata principal amount of the Commitments, Loans, Bankers' Acceptance Obligations, and Letter of Credit Outstandings retained by the assignor Lender hereunder, in each case, pro rated between such Lender's Tranche A Commitments and Tranche B Commitments (such Note to be in exchange for, but not in payment of, the Note then held by such assignor Lender). Each such Note shall be dated the date of the predecessor Note. The assignor Lender shall mark each of the predecessor Notes "exchanged" and deliver each of them to the Borrower. Accrued interest on that part of each of the predecessor Notes evidenced by new Notes, and accrued fees, shall be paid as provided in the Lender Assignment Agreement. Accrued interest on that part of each of the predecessor Notes evidenced by a replacement Note shall be paid to the assignor Lender. Accrued interest and accrued fees shall be paid at the same time or times provided in the predecessor Notes and in this Agreement. Such assignor Lender or such Assignee Lender must also pay a processing fee in the amount of \$3,500 to the Administrative Agent upon delivery of any Lender Assignment Agreement. Any attempted assignment and delegation not made in accordance with this Section 11.12.1 shall be null and void.

SECTION 11.12.2 Participations. Upon prior written notice to the Borrower and the Administrative Agent, any Lender may at any time sell to one or more commercial banks or other Persons (other than a Loan Party or an Affiliate of a Loan Party) (each of such commercial banks and other Persons being herein called a "**Participant**") participating interests in any of such Lender's Commitments, Loans, Bankers' Acceptance Obligations, or Letter of Credit Outstandings hereunder; provided, however, that

- (a) no participation contemplated in this Section shall relieve such Lender from its Commitments, Bankers' Acceptance Obligations, Letter of Credit Outstandings or its other obligations hereunder or under any other Loan Document;
- (b) such Lender shall remain solely responsible for the performance of its Commitments, Bankers' Acceptance Obligations, Letter of Credit Outstandings and such other obligations;
- (c) the Loan Parties, the Administrative Agent and the Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and each of the other Loan Documents;
- (d) no Participant, unless such Participant is an Affiliate of such Lender or an Approved Fund or is itself a Lender, shall be entitled to require such Lender to take or

refrain from taking any action hereunder or under any other Loan Document, except that such Lender may agree with any Participant that such Lender will not, without such Participant's consent, take any actions of the type described in clause (a), (b), (f) or, to the extent requiring the consent of such Lender, clause (c) of Section 11.1; and

(e) other than with respect to the Tranche B Lenders, the Borrower shall not be required to pay any amount under this Agreement that is greater than the amount which it would have been required to pay had no participating interest been sold.

The Borrower acknowledges and agrees that each Participant, for purposes of Sections 4.2, 4.3, 4.4 or 4.7 shall be considered a Lender. Each Participant (other than any Participant of a Tranche B Lender) shall only be indemnified for increased costs pursuant to Sections 4.2, 4.3 or 4.4 if and to the extent that the Lender (other than the Tranche B Lenders) which sold such participating interest to such Participant concurrently is entitled to make, and does make, a claim on the Borrower for such increased costs. Any Lender that sells a participating interest in any of its Loans, Bankers' Acceptance Obligations, Commitments, Letter of Credit Outstandings or other interest to a Participant under this Section 11.12.2 shall indemnify and hold harmless the Borrower, the Administrative Agent and the Issuer from and against any taxes, penalties, interest or other costs or losses (including reasonable attorneys' fees and expenses) incurred or payable by the Borrower, the Administrative Agent or the Issuer as a result of the failure of the Borrower, the Administrative Agent to comply with its obligations to deduct or withhold any Taxes from any payments made pursuant to this Agreement to such Lender, the Administrative Agent or the Issuer, as the case may be.

SECTION 11.13 Other Transactions. Nothing contained herein shall preclude the Administrative Agent, the Issuer or any other Lender from engaging in any transaction, in addition to those contemplated by this Agreement or any other Loan Document, with the Borrower or any of its Affiliates in which the Borrower or such Affiliate is not restricted hereby from engaging with any other Person.

SECTION 11.14 Execution by Authorized Representative. Any signature by any Authorized Representative on this Agreement, any Loan Document and any other instrument and certificate executed or to be executed pursuant to or in connection with this Agreement or such other Loan Documents is provided only in such Authorized Representative's capacity as an officer or member of the Person in question, and not in any way in such Authorized Representative's personal capacity.

SECTION 11.15 Forum Selection and Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, THE LENDERS, THE ISSUER OR THE BORROWER IN CONNECTION HERewith OR THEREwith SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (UNLESS SUCH COURT DOES NOT HAVE JURISDICTION IN WHICH CASE SUCH LITIGATION SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK); PROVIDED, HOWEVER, THAT ANY SUIT

SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE ADMINISTRATIVE AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE PERSONAL JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR, IF APPLICABLE, THE COURTS OF THE STATE OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION, SUBJECT TO THE BORROWER'S RIGHT TO CONTEST SUCH JUDGMENT BY MOTION OR APPEAL ON ANY GROUNDS NOT EXPRESSLY WAIVED IN THIS SECTION 11.15. THE BORROWER HEREBY IRREVOCABLY APPOINTS CT CORPORATION SYSTEM (THE "PROCESS AGENT"), WITH AN OFFICE ON THE DATE HEREOF AT 111 EIGHTH AVENUE, NEW YORK, NEW YORK 10011 AS ITS AGENT TO RECEIVE, ON THE BORROWER'S BEHALF AND ON BEHALF OF THE BORROWER'S PROPERTY, SERVICE OF COPIES OF THE SUMMONS AND COMPLAINT AND ANY OTHER PROCESS WHICH MAY BE SERVED IN ANY SUCH ACTION OR PROCEEDING. SUCH SERVICE MAY BE MADE BY MAILING OR DELIVERING A COPY OF SUCH PROCESS TO THE BORROWER IN CARE OF THE PROCESS AGENT AT THE PROCESS AGENT'S ABOVE ADDRESS, AND THE BORROWER HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS THE PROCESS AGENT TO ACCEPT SUCH SERVICE ON ITS BEHALF. AS AN ALTERNATIVE METHOD OF SERVICE, THE BORROWER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR OUTSIDE THE STATE OF NEW YORK AT THE ADDRESS FOR NOTICES SPECIFIED IN SECTION 11.2. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT THE BORROWER HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE BORROWER HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

SECTION 11.16 Waiver of Jury Trial. THE ADMINISTRATIVE AGENT, THE LENDERS, THE ISSUER AND THE BORROWER 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 AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, THE LENDERS, THE ISSUER OR THE BORROWER IN CONNECTION HERewith OR

THEREWITH. THE BORROWER ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT, THE LENDERS AND EACH ISSUER ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

SECTION 11.17 Maximum Rate of Interest. Nothing contained in this Agreement or in any other Loan Documents shall be construed to permit the Lenders to charge or receive at any time interest, fees or other charges in excess of the amounts which the Lenders are legally entitled to charge and receive under any law to which such interest, fees or charges are subject. In no contingency or event whatsoever shall the compensation payable to the Lenders by any Person, howsoever characterized or computed, hereunder or under any of the other Loan Documents, exceed the highest rate permissible under any law to which such compensation is subject. There is no intention that the Lenders shall contract for, charge or receive compensation in excess of the highest lawful rate, and, in the event it should be determined that the Lenders have contracted for any rate of interest in excess of the highest lawful rate, then ipso facto such rate shall be reduced to the highest lawful rate so that no amounts shall be charged or received which are in excess thereof, and, in the event it should be determined that any excess over such highest lawful rate has been charged or received, the Lenders shall promptly refund such excess to the Person entitled thereto; provided, however, that, if lawful, any such excess shall be paid by the Borrower to the Lenders as additional interest (accruing at a rate equal to the maximum legal rate minus the rate provided for hereunder) during any subsequent period when regular interest is accruing hereunder at less than the maximum legal rate.

SECTION 11.18 Time of Essence. Time is of the essence as to all times and dates set forth in this Agreement or from notices from the Administrative Agent with respect to all payments of Debt Service to be made by or on behalf of the Borrower under the Loan Documents; provided, however, that whenever any payment to be made under the Loan Documents shall be stated to be due on a day other than a Business Day, such payment may be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest payable hereunder.

SECTION 11.19 Consent or Approval of the Administrative Agent and the Lenders.
(a) Any request by the Borrower for consent or approval by the Administrative Agent and/or the Lenders under this Agreement or any of the other Project Documents shall be given in writing in accordance with Section 11.2. Except where a specific time period for response is provided in this Agreement, the Administrative Agent and the Lenders, as applicable, shall have fifteen (15) days to grant or deny any such request. If the Administrative Agent or the Lenders, as applicable, fail to respond to any such request in writing within such fifteen (15) day period, the Borrower's request shall be deemed disapproved.

(b) Any request by the Administrative Agent for consent or approval by the Lenders under this Agreement or any of the other Project Documents shall be given in writing in accordance with Section 11.2. Except where a specific time period for response is provided in this Agreement, each Lender shall have five (5) Business Days to grant or deny any such request.

If such Lender fails to respond to any such request in writing within such five (5) Business Day period, such Lender shall be deemed to have approved such request.

(c) No Claims may be made by the Borrower or any other Person against the Administrative Agent, the Issuer, the Lenders, any Affiliate of the foregoing, or the officers, directors, employees, attorneys, consultants or agents of any of them for consequential or punitive damages in respect of any Claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or by the other Project Documents, or an act, omission, or event occurring in connection therewith; and the Borrower, for itself and for all Persons claiming by, through and under it, waives, releases, and agrees not to sue upon any Claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

SECTION 11.20 No Third Party Beneficiary. All conditions of the obligations of the Lenders to make Loans, create Bankers' Acceptances and make Credit Extensions hereunder, and of the Issuer to issue Letters of Credit or extend a Stated Expiry Date, are imposed solely and exclusively for the benefit of the Lenders and the Issuer, respectively, and neither the GMP Contractor nor any other Person (x) shall have standing to require satisfaction of such conditions or be entitled to assume that the Lenders will refuse to make Credit Extensions or the Issuer refuse to issue Letters of Credit or extend a Stated Expiry Date, as applicable, in the absence of strict compliance with any or all of such conditions or (y) shall, under any circumstances, be deemed to be a beneficiary under this Agreement or of such conditions, any or all of which may be waived in whole or in part by the Administrative Agent or the Lenders at any time if they, in their sole discretion, deem it advisable to do so. Any such waiver of such conditions shall be deemed to be made pursuant to, and not in modification of, this Agreement.

SECTION 11.21 Cumulative Remedies. No right or remedy conferred upon the Administrative Agent, the Issuer or the Lenders in this Agreement is intended to be exclusive of any other right or remedy contained in the other Loan Documents or at law and equity and every such right and remedy shall be cumulative and shall be in addition to every other right or remedy contained in the other Loan Documents and as now or hereafter available to the Administrative Agent, the Lenders or the Issuer at law or in equity, by statute or otherwise.

SECTION 11.22 Estoppel Certificates. The Borrower shall execute and deliver, or cause to be executed and delivered, to the Administrative Agent all instruments and certificates as the Administrative Agent may reasonably request (including estoppel certificates certifying that the Loans, Bankers' Acceptance Obligations, Letter of Credit Outstandings and each of the Loan Documents are in full force and effect setting forth the unpaid principal amount of the Loans, the Bankers' Acceptance Obligations, the Letter of Credit Outstandings, and the accrued interest and fees payable pursuant to Section 3.3, and after the occurrence of an Event of Default under this Agreement, a statement stating the nature of any defenses, offsets, claims or counterclaims) to effect, confirm or assure the rights, remedies and Liens intended to be granted to the Lenders and the Issuer under the Loan Documents. From time to time upon request of the Borrower, the Administrative Agent shall execute and deliver to the Borrower a statement stating the then outstanding principal amount of the Loans and the amount of Bankers' Acceptance Obligations and Letter of Credit Outstandings.

SECTION 11.23 Confidentiality. Each Lender that receives non-public information which has been obtained pursuant to the requirements of or in connection with this Agreement which has been identified as such by the Borrower (whether regarding the Borrower, the Guarantor or the Premises) agrees to keep confidential such non-public information in accordance with such Lender's customary procedures for handling confidential information of such nature; provided, however, that such information may be distributed by any Lender (i) pursuant to a court order or a demand made by any Governmental Instrumentality or otherwise as required by an unrelated Person in connection with litigation or as otherwise required by applicable Legal Requirements, (ii) to such Lender's consultants or professionals, as necessary, who will be instructed in connection with their engagement as to the provisions of this Section, (iii) in connection with a sale or participation of such Lender's interest in the Loan (provided the recipient thereof agrees in writing to the provisions of this Section 11.23), and (iv) to examiners and regulators in connection with audits. The Administrative Agent and each Lender, as the case may be, shall endeavor to notify the Borrower of any request by any Governmental Instrumentality or representative thereof (unless specifically prohibited by applicable Legal Requirements and except for requests in connection with an examination of the financial condition of such Lender by such Governmental Instrumentality) for disclosure of any such non-public information prior to disclosure thereof. In no event shall the Administrative Agent or any Lender be obligated or required to return any materials furnished by the Borrower.

SECTION 11.24 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intentions and no rule of strict construction shall be applied to any party. Moreover, no inference in favor of any party shall be drawn from the fact that such party has drafted all or any portion of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

**THE ROSSEAU RESORT DEVELOPMENTS
INC.**

By: 

Name: James Farrar

Title: A.S.O.

Address: 110 Hannover Drive,
Suite 203B
PO Box 24091
St. Catharines, Ontario
L2W 1A4

Facsimile No.: 905-688-3060

Attention: President

with a copy to: Stikeman Elliott LLP
199 Bay Street
Commerce Court West
Suite 5300
Toronto, Ontario
M5L 1B9

Facsimile No.: 416-947-0866

Attention: John R. Dow

WESTLB AG, TORONTO BRANCH

By: _____

Name: _____

Title: _____

Robert L. Dyck
Director, Corporate Finance

By: _____

Name: _____

Title: _____

Alik A. Kassner
Principal Officer

Addresses for Notices:

WestLB AG, Toronto Branch
Royal Bank Plaza, North Plaza
Suite 2301, Box 41
200 Bay Street
Toronto, Ontario M5J 2J1
Facsimile No.: (416)-216-5020
Attention: Mr. Robert Dyck

with a copy to

WestLB AG, New York Branch
1211 Avenue of the Americas
New York, New York 10036
Facsimile No.: (212) 302-7946
Attention: Middle Office Agency Group

Commitment	Amount
Golf Residences Tranche A Commitment	\$10,968,368
Golf Residences Tranche B Commitment	\$2,983,806
Longview/Paignton Tranche A Commitment	\$54,277,168
Longview/Paignton Tranche B Commitment	\$14,765,420
Waterfront Residences Tranche A Commitment	\$8,273,765
Waterfront Residences Tranche B Commitment	\$2,250,774

CIT FINANCIAL LTD.

By: _____

Name: J. DARYL MACLELLAN
Title: President

Addresses for Notices:

CIT Financial Ltd.
207 Queens Quay West
Suite 700
Toronto, Ontario M5J 1A7
Facsimile No.: (416) 594-5995
Attention: Mr. Daryl MacLellan; Mr. John Robson

with a copy to

CIT Group Inc.
Commercial Real Estate
505 Fifth Avenue, 14th Floor
New York, New York 10002
Facsimile No.: (212)-771-9554
Attention: Mr. George Raddatz

Commitment	Amount
Golf Residences Tranche A Commitment	\$2,983,806
Golf Residences Tranche B Commitment	0
Longview/Paignton Tranche A Commitment	\$14,765,420
Longview/Paignton Tranche B Commitment	0
Waterfront Residences Tranche A Commitment	\$2,250,774
Waterfront Residences Tranche A Commitment	0

FIRST AMENDMENT TO CREDIT AGREEMENT

Dated as of June 6, 2007

(amending the Credit Agreement,
dated as of February 1, 2007)

by and between

THE ROSSEAU RESORT DEVELOPMENTS INC.,
as the Borrower,

and

WESTLB AG, TORONTO BRANCH,
as the Administrative Agent for the Lenders.

FIRST AMENDMENT TO CREDIT AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT (this "Amendment") dated as of June 6, 2007, by and among THE ROSSEAU RESORT DEVELOPMENTS INC., an Ontario corporation (the "Borrower") and WESTLB AG, TORONTO BRANCH ("WestLB"), as the issuer of the Letters of Credit (as such term is defined in Section 1.1 of the Credit Agreement; each capitalized term not otherwise defined shall have the meaning ascribed to such term in Section 1.1)(in such capacity, the "Issuer") and as the administrative agent (in such capacity, the "Administrative Agent") for the various financial institutions (collectively, the "Lenders") as are or may become parties to the Credit Agreement (defined below).

In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

W I T N E S S E T H:

WHEREAS, the Borrower, the Lenders, the Issuer and the Administrative Agent have heretofore entered into that certain Credit Agreement, dated as of February 1, 2007 (the "Credit Agreement"); and

WHEREAS, the Borrower has requested that the amendments set forth in this Amendment be made to the Credit Agreement; and

WHEREAS, the Administrative Agent has been directed by the Required Lenders to enter into this Amendment with the Borrower; and

WHEREAS, reference is made to the Mezzanine Loan Agreement (defined below) whereby subordinate loans in the aggregate principal amount of \$25,500,000 will be made to Borrower.

NOW, THEREFORE, in consideration of the agreements contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Defined Terms. Capitalized terms used but not defined herein shall have the meanings assigned to them in the Credit Agreement and the rules of construction set forth in Article I of the Credit Agreement shall apply to this Amendment.

ARTICLE II

AMENDMENTS

SECTION 2.1. Amendments. The following amendments shall be made to the Credit Agreement as of the First Amendment Effective Date (as defined in Section 3.1 of this Amendment):

SECTION 2.1.1 The following definitions shall be added to Section 1.1 of the Credit Agreement:

"First Amendment Effective Date" means the date on which each condition to effectiveness of the First Amendment to Credit Agreement has been satisfied by the Borrower.

"First Amendment to Credit Agreement" means the First Amendment to Credit Agreement by and between the Borrower and WestLB, in its capacity as the Administrative Agent, for the benefit of the Lenders, dated as of June 6, 2007.

"Guarantees" means each of the Completion Guaranty, the Payment Guaranty, the Non-Recourse Pledge Guaranty and the Non-Recourse Carve Out Guaranty.

"Mezzanine Agent" means Fortress Credit Corp., as administrative agent under the Mezzanine Loan Agreement.

"Mezzanine Lenders" means the lenders from time to time party to the Mezzanine Loan Agreement.

"Mezzanine Loan" means that certain indebtedness owed by the Borrower to the Mezzanine Lenders evidenced by the Mezzanine Loan Documents.

"Mezzanine Loan Agreement" means that certain Mezzanine Loan and Security Agreement, dated as of June 6, 2007, among the Borrower, the Guarantor, the Mezzanine Lenders and the Mezzanine Agent.

"Mezzanine Loan Documents" means the Mezzanine Loan Agreement and each other document evidencing, securing or otherwise relating to the Mezzanine Loan, as the same may be modified, amended or restated from time to time as set forth in the Subordination Agreement.

"Mezzanine Loan Event of Default" means an "Event of Default" as such term is defined in the Mezzanine Loan Agreement.

"Subordination Agreement" means that certain Subordination Agreement, dated as of June 6, 2007, among the Borrower, the Guarantor, the Mezzanine Agent and the Administrative Agent, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

SECTION 2.1.2 The word "and" at the end of the definition of "Loan Documents" in Section 1.1 of the Credit Agreement shall be deleted, and the period at the end of the definition of "Loan Documents" shall be deleted and replaced with "and the Subordination Agreement."

SECTION 2.1.3 The word "and" at the end of item (ii) of clause (e) of the definition of "Permitted Lien" in Section 1.1 of the Credit Agreement shall be deleted, the period at the end of item (iii) of clause (e) of the definition of "Permitted Lien" in Section 1.1 of the Credit Agreement shall be deleted and replaced with "; and" and the following shall be inserted immediately after such item (iii):

"(iv) clause (i) of Section 8.2.2, subject to the terms of the Subordination Agreement."

SECTION 2.1.4 Clause (o) of Section 8.1.1 of the Credit Agreement shall be amended by inserting the clause "the Mezzanine Loan Documents," immediately after the clause "the ECD Insurance Documents,".

SECTION 2.1.5 Section 8.1.3 of the Credit Agreement shall be amended by inserting the clause "the Mezzanine Loan Documents," immediately after the clause "the Condominium Documents,".

SECTION 2.1.6 The word "and" at the end of clause (g) of Section 8.2.2 of the Credit Agreement shall be deleted, the period at the end of clause (h) of Section 8.2.2 of the Credit Agreement shall be deleted and replaced with "; and" and the following shall be inserted immediately after such clause (h):

"(i) Indebtedness of the Borrower under the Mezzanine Loan Documents, in accordance with the terms of the Subordination Agreement, in the aggregate principal amount no greater than \$25,500,000, plus interest in accordance with Section 2.2 of the Mezzanine Loan Agreement, plus an increase in the Indebtedness of the Borrower under the Mezzanine Loan Documents to the extent not prohibited by Section 8(b)(ii)(1)(B) of the Subordination Agreement."

SECTION 2.1.7 The following shall be inserted immediately after Section 8.2.20 of the Credit Agreement:

"SECTION 8.2.21 Mezzanine Loan.

(a) The Borrower shall not:

(i) make any payment or prepayment of principal of, or make any payment of interest on, any Indebtedness of the Borrower under the Mezzanine Loan Documents except as permitted under the Subordination Agreement; and

(ii) contribute additional collateral to secure any Indebtedness of the Borrower under the Mezzanine Loan Documents, except as provided under the Mezzanine Loan Documents.

(b) The Borrower shall not use or apply the proceeds of the Mezzanine Loan other than in accordance with Section 2.1.5 of the Mezzanine Loan Agreement."

SECTION 2.1.8. The following shall be inserted immediately after Section 9.1.19 of the Credit Agreement:

"SECTION 9.1.20. Mezzanine Loan. (a) The occurrence and continuance of any Mezzanine Loan Event of Default.

(b) The Borrower shall (i) fail to pay any principal or interest, regardless of amount, due in respect of the Mezzanine Loan Agreement, when and as the same shall become due and payable, or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in the Mezzanine Loan Agreement if the effect of any failure referred to in this clause (ii) is to cause, or to permit the Mezzanine Agent, the Mezzanine Lenders or a trustee on their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity."

ARTICLE III

CONDITIONS PRECEDENT TO FIRST AMENDMENT EFFECTIVE DATE

SECTION 3.1 Conditions to Effectiveness. This Amendment shall be and become effective as of the date (the "**First Amendment Effective Date**") on which each of the following conditions precedent shall have been satisfied or waived in writing by the Administrative Agent after direction from the Required Lenders.

SECTION 3.1.1 Consents. The Administrative Agent shall have received consents and/or approvals of this Amendment from all Persons from which consent or approvals is required including, without limitation, the Required Lenders.

SECTION 3.1.2 No Restrictions. No order, judgment or decree of any Governmental Instrumentality shall purport to enjoin or restrain the Borrower, the Lenders or the Administrative Agent from entering into this Amendment.

SECTION 3.1.3 No Violation of Certain Regulations. The entering into of this Amendment shall not violate any law, including F.R.S. Board Regulation U or Regulation X.

SECTION 3.1.4 Execution of Amendment. The Administrative Agent shall have received counterparts of this Amendment duly executed by the Borrower, the Guarantor and the Administrative Agent.

SECTION 3.1.5 Fees. The Borrower shall have paid all fees, expenses and other charges then due and payable by it under the Credit Agreement, this Amendment and each of the other Loan Documents, including all fees, costs and expenses due and payable pursuant to Section 11.3 of the Credit Agreement all other reasonable expenses of the Administrative Agent in connection with the negotiation, execution and delivery of this Amendment.

SECTION 3.1.6 Opinions of Counsel. The Administrative Agent shall have received opinions, dated the First Amendment Effective Date and addressed to the Administrative Agent and all Lenders, from Lancaster Brooks & Welch LLP, corporate counsel to the Borrower, in the form attached hereto as Exhibit A.

SECTION 3.1.7 Mezzanine Loan Documents. The Borrower shall have provided the Administrative Agent with true, correct, complete and final executed copies of each Mezzanine Loan Document.

SECTION 3.1.8 Subordination Agreement. The Subordination Agreement shall have been executed and delivered by each party thereto and the Subordination Agreement shall be enforceable against each such party in accordance with its terms.

SECTION 3.1.9 Other Documents. The Administrative Agent shall have received such other documents and evidence as the Administrative Agent may reasonably request in connection with this Amendment.

SECTION 3.1.10 No Events of Default or Material Adverse Effect. No Default, Event of Default or Material Adverse Effect shall have occurred and be continuing or, after giving effect to this Amendment, could reasonably be expected to result.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders to direct the Administrative Agent to enter into this Amendment, the Borrower hereby represents and warrants to the Lenders and the Administrative Agent as set forth in this Article IV.

SECTION 4.1 Loan Documents. Each Loan Document is in full force and effect, without amendment since the respective date of its execution and delivery (other than amendments which are permitted by the Credit Agreement or which have otherwise been approved by the Administrative Agent and, in each case, which have been delivered to the Administrative Agent), and in a form which was approved by the Administrative Agent, except as otherwise permitted pursuant to the Credit Agreement. All obligations and requirements thereunder which are to be performed or satisfied, as the case may be, have been performed and satisfied in all material respects and no Default exists both before and after giving effect to this Amendment.

SECTION 4.2 Representations and Warranties. As of the date of this Amendment (except to the extent specifically related to a different date), all representations and warranties of the Borrower contained in the Credit Agreement and the other Loan Documents are true and correct in all material respects and the Borrower hereby confirms each such representation and warranty made by it with the same effect as if set forth in full herein.

SECTION 4.3 Material Adverse Effect. There is no act, event or condition which could reasonably be expected to result in a Material Adverse Effect.

SECTION 4.4 No Default. No Default or Material Adverse Effect has occurred or could reasonably be expected to result.

SECTION 4.5 Fees and Enforcement. Other than amounts that have been paid in full or will have been paid in full by the date of this Amendment or the date when due for same, no fees or Taxes, including stamp, transaction, registration or similar taxes, are required to be paid for the legality, validity or enforceability of this Amendment.

SECTION 4.6 Offsets and Defenses. The Borrower has no offsets or defenses to its obligations under the Loan Documents or the documents evidencing and securing the Obligations and no claims or counterclaims against any the Administrative Agent or the Lenders.

ARTICLE V

MISCELLANEOUS PROVISIONS

SECTION 5.1 Reservation of Rights. The Borrower agrees that neither this Amendment nor the Administrative Agent's consent hereto either before or after the First Amendment Effective Date shall constitute (x) a waiver or forbearance by any Lender or the Administrative Agent under any of the Loan Documents, (y) the acceptance by any Lender or the Administrative Agent of any course of conduct by the Borrower or any other Person or (z) an agreement by the Administrative Agent to amend any of the Loan Documents without all required approvals including, without limitation, approval from the Required Lenders. The Borrower further agrees that the Administrative Agent and each Lender reserve all rights, remedies and options under the Loan Documents to require the Borrower to perform all of its obligations under the Loan Documents which are then due and owing or are susceptible of performance, as the case may be.

SECTION 5.2 Ratification of and References to the Credit Agreement. This Amendment shall be deemed to be an amendment to the Credit Agreement, and the Credit Agreement, as amended hereby, shall continue in full force and effect and is hereby ratified, reaffirmed, approved and confirmed in each and every respect. All references to the Credit Agreement in any other document, instrument, agreement or writing shall hereafter be deemed to refer to the Credit Agreement as amended hereby.

SECTION 5.3 Severability. Any provision of this Amendment 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 Amendment or any other Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 5.4 Headings. The various headings of this Amendment are inserted for convenience only and shall not affect the meaning or interpretation of this Amendment or any provisions hereof.

SECTION 5.5 Execution in Counterparts. This Amendment 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.

SECTION 5.6 Governing Law. THIS AMENDMENT 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).

SECTION 5.7 Loan Document. This Amendment is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated therein) be construed, administered and applied in accordance with the terms and provisions of the Credit Agreement

SECTION 5.8 Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the Borrower, the Lenders and the Administrative Agent and their respective successors and assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

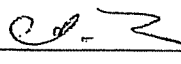
BORROWER:

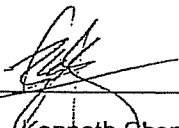
**THE ROSSEAU RESORT DEVELOPMENTS
INC.**

By: _____
Name:
Title:

ADMINISTRATIVE AGENT:

**WESTLB AG, TORONTO BRANCH, as
Administrative Agent and Lender**

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

By:  _____
Name: Kenneth Chan
Title: Director, Credits America

The undersigned Lender hereby
consents to this Amendment and to the
Administrative Agent entering into this
Amendment on behalf of the Lenders:

CIT FINANCIAL LTD.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

BORROWER:

**THE ROSSEAU RESORT DEVELOPMENTS
INC.**

By: _____
Name: _____
Title: _____

ADMINISTRATIVE AGENT:

**WESTLB AG, TORONTO BRANCH, as
Administrative Agent and Lender**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**The undersigned Lender hereby
consents to this Amendment and to the
Administrative Agent entering into this
Amendment on behalf of the Lenders:**

CIT FINANCIAL LTD.

By: _____

Name: Daryl MacLellan
Title: President

GUARANTOR:

By its signature below, Guarantor hereby ratifies and reaffirms its respective obligations under the Completion Guaranty, the Payment Guaranty, the Non-Recourse Carve Out Guaranty, the Non-Recourse Pledge Guaranty and the Environmental Indemnity in connection with the Credit Agreement, as amended by this Amendment.

KEN FOWLER ENTERPRISES LIMITED

By: 

Name:

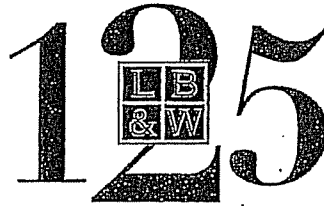
Title:

James Fowler
ASO

EXHIBIT A

FORM OF OPINION

Attached



1882-2007

June 6, 2007

WestLB AG, Toronto Branch
Royal Bank Plaza, North Tower
Suite 2301, Box 41
200 Bay Street
Toronto, Ontario
M5J 2J1

Mayer Brown Rowe & Maw LLP
1675 Broadway
New York, New York
10019-5820

Phillips Lytle LLP
3400 HSBC Center
Buffalo, New York
14203-2887

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

Blake Cassels & Graydon LLP
199 Bay Street
Suite 2800 Commerce Court West
Toronto, Ontario
M5L 1A9

Dear Sirs and Mesdames:

Re: The Rosseau Resort Developments Inc.

We have acted as counsel to The Rosseau Resort Developments Inc. (the "Borrower") in connection with the First Amendment to Credit Agreement dated as of June 6, 2007 (the "First Amendment to Credit Agreement") among The Rosseau Resort Developments Inc., (the Borrower), and WestLB AG, Toronto Branch, ("WestLB") which amends the Credit Agreement dated as of February 1st, 2007 (the "Credit Agreement") among the Borrower, as borrower, WestLB AG, Toronto Branch and CIT Financial Ltd., as lenders ("collectively, the

Lancaster Brooks & Welch LLP

PO Box 790, 80 King Street, St. Catharines, Ontario L2R 6Z1 Tel. 905.641.1551, Fax 905.641.1830
PO Box 67, 247 East Main Street, Welland, Ontario L3B 5N9 Tel. 905.735.5684, Fax 905.735.3340
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Rodger A. Gordon, QC
David L. Edwards*
Sheila P. Marcantonio
Leanne E. Standryk

Malte von Anrep, QC**
H. Christina MacNaughton***
R. Bruce Smith
Stanleigh E. Palka

H. E. Thorsteinson, QC
Robert B. Reid
Del C. Daignault

Gary L. Black
Thomas A. Bielby
Thomas G. Hanrahan

Bruce S. Wornald
Robert W. P. Welch
Michael A. Mann

Geoffrey F. Brooks, QC (retired); Robert S. K. Welch, OC, QC, LLD (1928 - 2000)

*Certified by the Law Society as a Specialist in Corporate and Commercial Law **Certified by the Law Society as a Specialist in Civil Litigation ***Certified by the Law Society as a Specialist in Family Law

"Lender"), WestLB AG, Toronto Branch, as Issuer and Administrative Agent, CIT Financial Ltd., as Syndication Agent, and Raiffeisen Zentralbank Osterreich AG, as Documentation Agent.

We have also acted as counsel to Ken Fowler Enterprises Limited (the "Guarantor") in connection with certain guarantees by it of the obligations of the Borrower to the Lender.

Capitalized terms used in this opinion that we do not define have the meanings given to them in the Credit Agreement.

We have examined an executed copy of the First Amendment to Credit Agreement.

For the purposes of this opinion, we have also examined originals or copies, certified or otherwise identified to our satisfaction, and relied upon the following corporate documents (collectively, the "Corporate Documents") without independent investigation of the matters provided for in the Corporate Documents:

- (a) the articles of incorporation of the Borrower, and the Guarantor and the articles of amendments thereto;
- (b) the by-laws of the Borrower and the Guarantor;
- (c) certain resolutions of the directors of the Borrower and the Guarantor relating to the First Amendment to Credit Agreement;
- (d) the minute books of the Borrower and the Guarantor in our possession; and
- (e) certificates of status dated as of the date of this opinion provided by governmental authorities of Ontario with respect to the Borrower and the Guarantor;

In examining all documents we have assumed that:

- (a) all individuals had the requisite legal capacity;
- (b) all signatures are genuine;
- (c) all documents submitted to us as originals are complete and authentic and all photostatic, certified, telecopied, notarial or other copies conform to the originals;
- (d) all facts set forth in the official public records, certificates and documents supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate; and
- (e) the certificate of incorporation of each of the Borrower and the Guarantor is conclusive evidence that it is incorporated under the Ontario *Business Corporations Act*.

We have also examined such other documents and certificates and have made such investigations and enquiries and considered such questions of law as we have deemed relevant and necessary as the basis for our opinions.

Our opinion below is expressed only with respect to the laws of the province of Ontario. Any reference to the laws of Ontario includes the laws of Canada that apply in Ontario. Our opinion is expressed with respect to the laws of Ontario in effect on the date of this opinion and we do not accept any responsibility to inform the addressees of any change in law subsequent to this date that does or may affect the opinions we express.


Based on the above, we are of the opinion that:

1. The Borrower (a) is a corporation incorporated and existing under the laws of Ontario, and (b) has the corporate power to own its property and assets, to carry on its business as now being conducted by it and to enter into and perform its obligations under the First Amendment to the Credit Agreement to which it is a party.
2. The Guarantor (a) is a corporation incorporated and existing under the laws of Ontario, and (b) has the corporate power to own its property and assets, to carry on its business as now being conducted by it and to enter into and perform its obligations under the First Amendment to the Credit Agreement to which it is a party.
3. The execution and delivery of and performance by the Borrower of the First Amendment to Credit Agreement to which it is a party and the consummation of the transactions contemplated by it has been authorized by all necessary corporate action on the part of the Borrower.
4. The execution and delivery of and performance by the Guarantor of the First Amendment to Credit Agreement to which it is a party and the consummation of the transactions contemplated by it has been authorized by all necessary corporate action on the part of the Borrower.
5. The execution and delivery of and performance by the Borrower of the First Amendment to Credit Agreement to which it is a party does not constitute or result in a violation or breach of or a default under its articles of incorporation or by-laws.
6. The execution and delivery of and performance by the Guarantor of the First Amendment to the Credit Agreement to which it is a party does not constitute or result in a violation or breach of or a default under its articles of incorporation or by-laws.
7. The First Amendment to Credit Agreement to which it is a party has been duly executed and delivered by the Borrower in compliance with the laws of Ontario and the provisions of its articles of incorporation and its by-laws.

8. The First Amendment to Credit Agreement to which it is a party has been duly executed and delivered by the Guarantor in compliance with the laws of Ontario and the provisions of its articles of incorporation and its by-laws.

This opinion is solely for the benefit of the addressees and not for the benefit of any other person except that it may be relied on by any Lender from time to time under the Credit Agreement and its successors and assigns, and its counsel for the purpose of advising this Lender with respect to the transactions to which it relates. It is rendered solely in connection with the transactions to which it relates. It may not be quoted, in whole or in part, or otherwise used for any purpose without our prior written consent.

Yours very truly,
LANCASTER, BROOKS & WELCH LLP
Per:



(David L. Edwards)

2nd Amendment

October 19, 2007

The Rosseau Resort Developments Inc.
110 Hanover Drive, Suite 203B
P.O. Box 24091
St. Catharines, Ontario
L2W 1A4

- and -

Ken Fowler Enterprises Limited
110 Hanover Drive, Suite 203B
P.O. Box 24091
St. Catharines, Ontario
L2W 1A4

- and -

Ken Fowler
110 Hanover Drive, Suite 203B
P.O. Box 24091
St. Catharines, Ontario
L2W 1A4

Dear Sirs:

Re: Credit Agreement dated as of February 1, 2007, by and among THE ROSSEAU RESORT DEVELOPMENTS INC., an Ontario corporation (the "Borrower") and WESTLB AG, TORONTO BRANCH ("WestLB"), as the issuer of Letters of Credit (in such capacity, the "Issuer") and as the administrative agent (in such capacity, the "Administrative Agent") for the various financial institutions (collectively, the "Lenders") as are or may become lenders under the Credit Agreement (as amended by a First Amendment to Credit Agreement dated as of June 6, 2007, and as further amended from time to time, the "Credit Agreement")

All capitalized terms used herein shall have the meanings ascribed thereto in the Credit Agreement.

You have advised the Administrative Agent that the Guarantor wishes to enter into a financing in the maximum principal amount of Cdn.\$30,000,000, plus capitalized interest, to a maximum amount of principal and capitalized interest not exceeding Cdn.\$45,000,000 (collectively, the "TD Obligations") with TD Capital Mezzanine Partners Management Ltd. ("TD"), as agent on its own behalf and on behalf of certain other lenders (together with their successors and assigns, collectively, the "TD Lenders") pursuant to a credit agreement (the "TD Credit Agreement") dated on or about October 22, 2007 between, inter alia, the Guarantor, TD and the TD Lenders.

In connection therewith, you have represented and warranted to the Administrative Agent, and covenant and agree, that (i) as of the date of the advance of proceeds by the TD Lenders to the Guarantor under the TD Credit Agreement, the Guarantor has no Indebtedness owing to Ken Fowler ("KAF"), and (ii) the proceeds of the loan (the "**Loan Proceeds**") to be advanced to the Guarantor pursuant to the TD Credit Agreement shall be used strictly in accordance with the permitted uses in Section 3.1 of the TD Credit Agreement as it exists on the date hereof (the "**Sources and Uses**").

Based and relying upon the representations, warranties, covenants and agreements contained in this letter, the Borrower and the Administrative Agent agree that the Credit Agreement and the Payment Guaranty are hereby amended on the following terms and conditions:

1. A new section 8.1.26 is hereby added to the Credit Agreement as follows:

"8.1.26 Covenant Concerning Proceeds of TD Credit Agreement.

All TD Loan Proceeds shall be used strictly in accordance with the Sources and Uses. Any agreement with TD and/or the TD Lenders whatsoever to amend, modify or supplement, or any waiver by TD of the requirement that the Guarantor comply with, the Sources and Uses, Schedule "T" of the TD Credit Agreement or section 11.21 of the TD Credit Agreement without the prior written consent of Administrative Agent (not to be unreasonably withheld) or any use of the TD Loan Proceeds for any use or purpose other than set out in the Sources and Uses and Schedule "T" of the TD Credit Agreement, shall constitute an Event of Default."

2. New Sections 9.1.20 and 9.1.21 are hereby added to the Credit Agreement as follows:

"SECTION 9.1.20 Guarantor Indebtedness Incurrence. If the Guarantor incurs any Indebtedness to KAF or guarantees the repayment of any Indebtedness owing by KAF to any Person, unless the holder of such Indebtedness or guarantee (including, without limitation, KAF or any assignee or creditor of KAF) has agreed to defer, postpone and subordinate all rights it may have in and to the payment of such Indebtedness (and any and all security granted by the Guarantor as security for repayment of such Indebtedness) to the prior repayment in full of all amounts owing by the Guarantor to the Lenders in accordance with the terms of the subordination agreement dated April 20, 2007 among KAF, the Guarantor and the Administrative Agent.

SECTION 9.1.21 TD Obligations. If the amount of the TD Obligations exceeds Cdn.\$45,000,000 at any time."

3. The following definitions are hereby added to the Credit Agreement in their proper alphabetical order:

"KAF" means Kenneth Alfred Fowler.

"TD Credit Agreement" means that credit agreement dated on or about October 22, 2007 among, *inter alia*, the Guarantor, TD Capital Mezzanine Partners Management Ltd., as agent on its own behalf and on behalf of certain other lenders (together with their successors and assigns) (the "TD Lenders") and the TD Lenders, as amended from time to time not in contravention of this Agreement.

"TD Loan Proceeds" means all proceeds of the loan to be advanced to the Guarantor pursuant to the TD Credit Agreement."

"Sources and Uses" means the permitted uses in Section 3.1 of the TD Credit Agreement as it exists on the date hereof."

4. A new section 3.11 is hereby added to the Payment Guaranty as follows:

"3.11 Application of TD Loan Proceeds.

The Guarantor shall deliver to Administrative Agent, no later than forty-five (45) days of the end of each month following the initial advance of the TD Loan Proceeds, a certificate (the "Sources and Uses Certificate") executed by the chief financial or accounting officer of the Guarantor confirming that all TD Loan Proceeds have been used strictly in accordance with the Sources and Uses, and showing (in reasonable detail) the specific application of such Loan Proceeds as of the end of such month.

5. Based and relying upon the representations, warranties, covenants and agreements contained in this letter, the amendments contained herein shall be effective strictly on the basis that the Borrower and the Guarantor are in compliance with the foregoing and on the basis that the following additional conditions precedent have been satisfied or waived in writing by the Administrative Agent after direction from the Required Lenders:

- (a) the Administrative Agent shall have received consents and/or approvals of this letter from all Persons from which consent or approval is required including, without limitation, the Required Lenders.
- (b) no order, judgment or decree of any Governmental Instrumentality shall purport to enjoin or restrain the Borrower, the Lenders or the Administrative Agent from entering into this letter.
- (c) the entering into of this letter shall not violate any law, including F.R.S. Board Regulation U or Regulation X.
- (d) the Borrower shall have paid all fees, expenses and other charges then due and payable by it under the Credit Agreement, this letter and each of the other Loan Documents, including all fees, costs and expenses due and payable pursuant to

Section 11.3 of the Credit Agreement and all other reasonable expenses of the Administrative Agent in connection with the negotiation, execution and delivery of this letter.

- (e) no Default, Event of Default or Material Adverse Effect shall have occurred and be continuing or, after giving effect to this letter, could reasonably be expected to result either on the date of effectiveness of this letter or on the date of the advance of proceeds by the TD Lenders to the Guarantor under the TD Credit Agreement.
 - (f) each of you acknowledge and confirm your agreement with the terms of this letter by signing where indicated below and delivering four (4) original copies hereof to the Administrative Agent;
 - (g) the Borrower and the Guarantor have executed and delivered to the Administrative Agent a certificate of their respective senior officers, including (without limitation) certified copies of resolutions authorizing, *inter alia*, the execution, delivery and performance of this letter, each in form and content satisfactory to the Administrative Agent (acting reasonably); and
 - (h) all representations and warranties set forth in any of the Loan Documents or referred to herein shall be true and correct as of the date hereof and as of the date of the advance of proceeds by the TD Lenders to the Guarantor under the TD Credit Agreement (except for such representations and warranties which are stated specifically to be as of an earlier date, which shall be true and correct as of such earlier date).
6. In order to induce the Lenders to direct the Administrative Agent to enter into this letter, the Borrower hereby represents and warrants to the Lenders and the Administrative Agent as follows:
- (a) Each Loan Document is in full force and effect, without amendment since the respective date of its execution and delivery (other than amendments which are permitted by the Credit Agreement or which have otherwise been approved by the Administrative Agent and, in each case, which have been delivered to the Administrative Agent), and in a form which was approved by the Administrative Agent, except as otherwise permitted pursuant to the Credit Agreement. All obligations and requirements thereunder which are to be performed or satisfied, as the case may be, have been performed and satisfied in all material respects and no Default exists both before and after giving effect to this letter.
 - (b) As of the date of this letter (except to the extent specifically related to a different date), all representations and warranties of the Borrower contained in the Credit Agreement and the other Loan Documents are true and correct in all material respects (except for such representations and warranties which are stated specifically to be as of an earlier date, which shall be true and correct as of such earlier date) and the Borrower hereby confirms each such representation and warranty made by it with the same effect as if set forth in full herein.

- (c) There is no act, event or condition which could reasonably be expected to result in a Material Adverse Effect.
 - (d) No Default or Material Adverse Effect has occurred or could reasonably be expected to result.
 - (e) Other than amounts that have been paid in full or will have been paid in full by the date of this letter or the date when due for same, no fees or Taxes, including stamp, transaction, registration or similar taxes, are required to be paid for the legality, validity or enforceability of this letter.
 - (f) The Borrower has no offsets or defenses to its obligations under the Loan Documents or the documents evidencing and securing the Obligations and no claims or counterclaims against any the Administrative Agent or the Lenders.
7. Except as provided in paragraphs 1 through 4 above, this letter shall not constitute any amendment to, or waiver of, any of the terms of the Credit Agreement or any of the other Loan Documents.
8. This letter shall be deemed to be an amendment to the Credit Agreement, and the Credit Agreement, as amended hereby, shall continue in full force and effect and is hereby ratified, reaffirmed, approved and confirmed in each and every respect. All references to the Credit Agreement in any other document, instrument, agreement or writing shall hereafter be deemed to refer to the Credit Agreement as amended hereby.
9. Any provision of this letter 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 letter or any other Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.
10. The various headings of this letter are inserted for convenience only and shall not affect the meaning or interpretation of this letter or any provisions hereof.
11. **THIS LETTER 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).**

By signing below, each of you further acknowledge, confirm and agree that nothing contained herein shall alter any of your obligations under any Loan Document to which you are a party, including (without limitation) any of the Guarantees to which you are a party, and hereby reaffirms, ratifies and confirms in all respects (i) each and every obligation and covenant made by each of you in the Loan Documents to which you are a party, including (without limitation) the Credit Agreement, as amended hereby, and all Guarantees to which you are a party, (ii) that all such Loan Documents remain the legal, valid and binding obligation of each of you enforceable against each of you in accordance with their respective terms.

This letter is and shall be deemed to be a Loan Document. This letter may be executed in one or more counterparts and by facsimile, each of which counterparts and facsimile copies shall be deemed an original and all of which taken together, shall constitute one and the same agreement. This letter shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page to this letter by facsimile or by a pdf document via e-mail shall be effective as delivery of a manually executed counterpart of this letter.

[Remainder of Page intentionally left blank]

If you are in agreement with the foregoing, please acknowledge and confirm your agreement by signing were indicated below.

Dated this 19 day of October, 2007.

WESTLB AG, TORONTO BRANCH on its
own behalf and as Administrative Agent for
the Lenders under the Credit Agreement

Per: _____

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

Per: _____

Name: Kenneth Chan
Title: Director, Credits America

Acknowledged and Agreed to this _____ day of October, 2007.

**THE ROSSEAU RESORT
DEVELOPMENTS INC.**

Per: _____

Name: _____
Title: _____

Per: _____

Name: _____
Title: _____

KEN FOWLER ENTERPRISES LIMITED

Per: _____

Name: _____
Title: _____

Per: _____

Name: _____
Title: _____

Witness

Ken Fowler