

APPENDIX “A”

Glossary of Defined Terms

<u>Term</u>	<u>Definition</u>
A&M	Alvarez & Marsal Canada ULC
A&M Report	collectively, the report of the proposed receiver dated May 19, 2009 and a supplementary report to that report dated May 20, 2009
Appointment Order	Amended and Restated Appointment Order issued June 2, 2009
APS	Agreements of purchase and sale
Assets	All the property, assets and undertakings The Rosseau Resort Developments Inc.
Baker Price List	The price list developed by Baker Real Estate to be utilized in connection with the sale of the Unsold Units and as approved by the Court
Baker Real Estate	Baker Real Estate Incorporated
BIA	<i>Bankruptcy and Insolvency Act</i> (Canada)
CJA	<i>Courts of Justice Act</i> (Canada)
CLA	<i>Construction Lien Act</i> (Ontario)
Colliers	Colliers MaCaulay Nicolls (Ontario) Inc.
Committee	Ad Hoc Committee of Unit Owners
Company	The Rosseau Resort Developments Inc.
Court	Ontario Superior Court of Justice
Current HMA	Amended and Restated Hotel Management Agreement among RRDI, RRMSI and Marriott Hotels dated October 6, 2006
Current RPMA(s)	The form of rental pool management agreement Unit Owners have entered into with RRMSI, as Rental Pool Manager
DAF	Dispute Analysis and Forensics group
Declaration	The Rosseau Resort Condominium Declaration, made pursuant to the <i>Condominium Act</i> , 1998
Disclosure Documentation	Form of disclosure statement and related documentation
Effective Date	The proposed date of repudiation of the Current HMA to be effective at 11:59 pm on Friday, September 18, 2009, to correspond with a 30 day notice of termination to be delivered by Marriott Hotels to RRDI and RRMSI, jointly as Owners pursuant to the Current HMA
Exemption Ruling	A ruling made on April 13, 2004 by the OSC which authorized RRMSI to enter into the Current RPMA with Unit Owners and to permit RRDI to market for sale the Hotel Units
Existing Unit Purchasers	Existing purchasers who have not yet closed outstanding APS's with RRDI
First Report	collectively, the report of the interim receiver dated May 27, 2009 and a supplementary report to that report dated May 29,

	2009
Fourth Report	This report dated August 12, 2009
Fowler Related Releasees	RRMSI, Ken Fowler Enterprises Ltd., Red Leaves Partnership, Kenneth A. Fowler, and Peter Fowler as releases
Hotel	221 unit condominium hotel complex located on the property owned by RRDI situated along the north-west end of Lake Rosseau in Muskoka, Ontario
IHLC	International Hotel Licensing Company S.a.r.l, an affiliate of Marriott Hotels
Indulgence Cards	A certain form of Purchaser Incentive whereby certain Unit Purchasers received cards which could be used as a “currency” for use to pay for items and/or services at the Hotel
Interim Receiver	Collectively, Alvarez & Marsal Canada ULC (“A&M”) and McIntosh & Morawetz Inc. as trustee and interim receiver, respectively
KFE	Ken Fowler Enterprises Ltd.
Livia	Livia Capital Management Inc.
Marriott Hotels	Marriott Hotels of Canada, Ltd.
McCarthys	McCarthy Tetrault LLP
New HMA	A New Hotel Management Agreement that will be based on the template of the Current Hotel Management Agreement and as modified by the Side Letter, the financial terms and conditions of which are set out in the Summary of Terms, all subject to Court approval
New Marriott Agreements	Other New Marriott Agreements together with the New HMA
New RPMA	New forms of Rental Pool Management Agreements agreed upon by the Committee and RRDI, subject to Court approval
New Unit Purchasers	All potential new purchasers of Units
Operating Profit	As is defined in the Current HMA - “with respect to any given period of time, the excess Gross Revenues over Deductions (each calculated in accordance with this Agreement and the Uniform System of Accounts)”
OSC	Ontario Securities Commission
Other Current Marriott Agreements	Royalty and Licensing Agreement between RRDI, RRMSI and IHLC dated October 6, 2006, and any other current agreements between RRDI, RRMSI, and Marriott Hotels or its affiliates
Priority Lien Claims	The portion of construction trade lien claims which are determined to have priority over all mortgages registered on title to the real property of RRDI
Purchaser Incentive Proposal	A draft proposal, made on a without prejudice basis, from the Receiver to address the Purchaser Incentives
Purchaser Incentives	Several types of incentives provided to Unit purchasers
Receiver	collectively, the Interim Receiver and the Receiver and Manager
Receiver and Manager	Alvarez & Marsal Canada ULC in its capacity as receiver and

	manager
Release	The full and final release proposed to be provided by each Unit Owner and Existing Unit Purchaser in favour of RRDI, the Syndicate, the Receiver and certain other parties which may include the Fowler Related Releasees
Rental Pool	The rental pool in which all Unit Owners are required to participate in
Rental Pool Covenant	A Rental Pool covenant registered on title to all Units which covenant, among other things, requires that all Unit Owners place their Units in the Rental Pool
RPMA(s)	Rental Pool Management Agreement(s)
Rental Pool Management Fee	Rental Pool Manager receives a fee from Unit Owners out of the Adjusted Gross Revenue available for distribution.
Rental Pool Manager	Rental pool manager
Retail Marketing Program	Proposed marketing and promotional program being undertaken in connection with the Retail Sales Program by Baker Real Estate
RRCI	Rock Ridge Contractors Inc.
RRDI	The Rosseau Resort Developments Inc.
RRMSI	The Rosseau Resort Management Services Inc.
Sales and Marketing Order	The Order issued by the Court on July 8, 2009
Second Report	The Receiver's second report dated July 3, 2009 and a supplementary report to that report dated July 7, 2009.
Section 39 Memorandum	Independent legal counsel to the Receiver provided all lien claimants who had made Section 39 Requests with an information memorandum
Section 39 Requests	Requests for information made under S. 39 of the CLA
Settlement Agreements	A package of settlement documents delivered to all Unit Owners and Existing Unit Purchasers containing either a Unit Owner Settlement Agreement or a Unit Purchaser Settlement Agreement, among other things
Side Letter	A certain letter agreement between RRDI, by its Receiver and Marriott Hotels, which modifies the terms of the New HMA, specifically in respect of these receivership proceedings
Summary of Terms	A summary document setting out the principal financial terms and conditions in respect of the New HMA
Syndicate	Lender Syndicate
Tarion	Tarion Warranty Corporation
Third Report	The Receiver's third report dated July 21, 2009
Travelers	Travelers Guarantee Company of Canada
Unit Owner Settlement Agreement	Settlement agreements with Unit Owners substantially on the terms as set out in the forms of Unit Owner Settlement Agreement, subject to Court approval
Unit Owners	Current owners of Units at the Hotel

Unit Owners' Charge	Charge granted on the Assets of RRDI in favour of the Unit Owners
Unit Purchaser Settlement Agreement	Settlement agreements with Existing Unit Purchasers substantially on the terms as set out in the forms of Unit Purchaser Settlement Agreement, subject to Court approval
Units	The 221 condominium units of the Hotel
Unsold Units	84 unsold condominium units at the Hotel
WestLB	WestLB AG, Toronto Branch, as agent for the Lender Syndicate

APPENDIX “B”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

WESTLB AG, TORONTO BRANCH

Applicant

and

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

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

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

JULY 3, 2009

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1.0 Introduction

- 1.1 On May 22, 2009, the Ontario Superior Court of Justice (the “Court”) issued an order appointing Alvarez & Marsal Canada ULC (“A&M”) and McIntosh & Morawetz Inc., as trustee and interim receiver, respectively (collectively the “Interim Receiver”) pursuant to Section 68 of the *Construction Lien Act (Ontario)* (“CLA”) and Section 47(1) of the *Bankruptcy and Insolvency Act* (“BIA”) of all the property, assets and undertakings (the “Assets”) of The Rosseau Resort Developments Inc. (“RRDI” or the “Company”). On June 2, 2009, the Court issued an Amended and Restated Appointment Order (the “Appointment Order”) appointing A&M as receiver and manager (the “Receiver and Manager”) pursuant to Section 101 of the *Courts of Justice Act* (“CJA”) and pursuant to the CLA of the Assets of RRDI (the Interim Receiver and the Receiver and Manager hereinafter collectively defined as the “Receiver”). A copy of the Appointment Order is attached as Appendix “A”, without schedules attached.
- 1.2 A&M, as proposed receiver, filed a report dated May 19, 2009 and a supplementary report dated May 20, 2009 (collectively the “A&M Report”) in these proceedings in support of the application brought before this Honourable Court by WestLB AG, Toronto Branch (“WestLB”), as agent for the Lender Syndicate of WestLB AG, Toronto Branch and CIT Financial Ltd. (the “Syndicate”) for the appointment of the Receiver. The A&M Report contains relevant background with respect to the Company. A copy of the A&M Report can be found at the Receiver’s website, www.alvarezandmarsal.com/rosseau.

1.3 On May 27, 2009, the Interim Receiver filed its first report with this Honourable Court and on May 29, 2009, the Interim Receiver filed a supplementary report to its first report (the first report and the supplementary report being collectively defined as the “First Report”). The First Report provided this Honourable Court with, among other things, an update on the Interim Receiver’s activities from the date of its appointment as Interim Receiver to the date of the First Report.

1.4 This purpose of this report (the “Second Report”) is to:

- Provide the Court with an update on the status of the Receiver’s activities since the date of the First Report, including an update on the status of construction of the hotel/condominium complex known as “The Rosseau” (the “Hotel”) and the anticipated timing of construction completion;
- Describe the Receiver’s proposed sales and marketing strategy (the “Sales and Marketing Process”) with respect to the Assets and seek this Honourable Court’s approval authorizing the Receiver to commence the Institutional Sales Process and the Retail Sales Program, both as defined herein;
- Describe to the Court the various agreements entered into between Marriott Hotels of Canada Ltd. (“Marriott Hotels”) and/or its affiliates and the Company and seek the authorization of this Honourable Court to permit the Receiver to enter into the New Marriott Marketing License Agreement as defined herein;
- Describe to the Court the arrangements between the Company and an affiliated company, The Rosseau Resort Management Services Inc. (“RRMSI”), to act as

rental pool manager, and to seek direction on distributions, if any, to be made by Marriott Hotels;

- Request that this Court establish a claims process for construction lien claimants, to be conducted by the Receiver;
- Request that this Honourable Court permit the Receiver to distribute certain funds, currently being held by McCarthy Tetrault LLP (“McCarthys”) in connection with closing costs associated with condominium purchases that were completed prior to the date of the receivership, to those parties for whom the Receiver believes the funds are being held in trust; and
- Request that this Honourable Court approve the activities of the Receiver from the date of the First Report to the date of this Second Report.

2.0 Terms of Reference

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

3.0 Status of Construction of the Hotel and Anticipated Timing of Unit Closings

- 3.1 As described in the First Report, upon its appointment, the Interim Receiver discontinued all construction activities at the Hotel to provide it with time to negotiate and enter into new arrangements with those trade contractors, architects, engineers and design consultants that were required to complete construction of the Hotel. Furthermore, until the granting of the Appointment Order, the Interim Receiver was only authorized to utilize the Receiver's Borrowings for specific purposes, including payroll and related expenses, utilities payments and other urgent payments. Accordingly, the Receiver was not in a position to allow ongoing work to continue until such time as it was certain that it would be able to make payment for any future services rendered or work performed, through the priority Receiver's Borrowings authorized by the Appointment Order.
- 3.2 Given the quantum of outstanding amounts owing to many trade contractors, the status of their respective lien claims, the relatively short timelines for which to complete construction of the Hotel and the determination by the Receiver and its construction consultant, Altus, of many technical issues that the Receiver had not been made aware of by the Company prior to its appointment, the negotiations with many of the parties required to complete construction of the Hotel were difficult and complicated. Nonetheless, immediately upon the granting of the Appointment Order and this Honourable Court's authorization to permit the Receiver to utilize the full amount of the Receiver's Borrowings, the Receiver commenced entering into those arrangements necessary to allow for construction to be completed on a timely basis.

3.3 As at the date of this Second Report, the Receiver has entered into arrangements with all major trade contractors, architects, engineers and design consultants required to complete construction of the Hotel. In addition, the Receiver has been able to negotiate with the suppliers of the furniture, fixtures and equipment (“FF&E”) for the Hotel. Many of the suppliers of FF&E had been holding the FF&E in their possession due to the failure of the Company to make payment for the release and delivery of the FF&E which were required to make the uncompleted portions of the Hotel ready for occupancy.

3.4 In general, the Receiver was able to enter into arrangements with those same contractors who had been providing their construction and related services to the Company prior to the receivership. The Receiver views this positively as it has allowed for continuity of construction and the preservation of the majority of warranties on work previously conducted as well as work still to be performed. Notwithstanding the foregoing, the largest single trade contract to be awarded by the Receiver related to completion of the outdoor landscaping in and around the Hotel. Given the quantum of the landscaping work to be completed, the stand-alone nature of this work and certain other issues, the Receiver considered it prudent to undertake a bid process specifically for the completion of this outstanding work. Accordingly, with the assistance of Altus, as well as MDP Landscape Consultants Ltd., the landscape architect engaged by the Receiver, the Receiver sought and obtained bids for the landscaping work to be completed. These bids were received on June 22, 2009 and on June 23, 2009, the Receiver awarded the landscape contract to Advanced Landscaping Ltd. (the “Landscape Contractor”). The arrangements with the

Landscape Contractor call for the substantial completion of all landscape work by July 23, 2009, subsequent to which a non-completion penalty clause will take effect for each day the works remain unfinished (subject to reasonable allowances for weather delays and other acts of God).

3.5 Altus has advised the Receiver that it believes that all construction will be substantially complete at the Hotel by July 31, 2009. The Receiver believes that the trades are on schedule to meet this timeframe. Marriott Hotels is scheduled to take possession of Paignton House on July 5, 2009, at which point Marriott Hotels will commence the process of undertaking the final fit out of the guest suites and making its pre-opening preparations. Marriott Hotels has been working closely with the Receiver and Altus to oversee completion of construction and has advised the Receiver that it is pleased with the progress to date and the quality of the product. It is anticipated that the unfinished components of the Hotel will be fully operational by July 31, 2009.

3.6 Altus has also advised the Receiver that it believes that the major construction works will be completed within budget in accordance with the updated construction forecast as described in the A&M Report.

3.7 The Receiver has commenced the process of scheduling pre-delivery inspections ("PDIs") with those unit purchasers who purchased condominium units in Paignton House prior to the receivership. PDIs are scheduled to commence on July 15, 2009. Subsequent to completion of the PDI process, the Receiver will be in a position to commence unit closings at Paignton House. There are currently 25 units located at

Paignton House which are subject to an agreement of purchase and sale with RRDI (“APS”) but not yet closed.

- 3.8 While the Appointment Order authorized the Receiver to take those actions necessary to complete the unit purchase transactions which had not been completed prior to the receivership, since the commencement of the receivership the Receiver has not yet closed on any such transactions. As described in the A&M Report and the First Report, there are currently 64 unclosed transactions. Of the 64 unclosed transactions, 25 relate to units which are situated in Paignton House for which closings cannot occur until completion of construction and 30 transactions are Sale Leaseback Transactions (as defined herein) for units located in Longview¹. While Longview is complete, the Receiver did not believe it was appropriate to compel purchasers to close until a proposal could be made with respect to the treatment of the Sale Leaseback Transactions and other Purchaser Incentives (as defined herein). As well, a significant number of the 64 purchasers with unclosed transactions have entered into rental pool management agreements with RRMSI which, as described below, need to be addressed.

¹ Note that there are a total of 33 Sale Leaseback Transactions which have not yet been closed; 30 of which are located in Longview and 3 of which are located in Paignton House.

4.0 Issues Relating to Unit Purchaser Incentives

4.1 During the course of its sale of condominium units, the Company provided unit purchasers with several types of incentives and benefits to entice unit purchasers to enter into an APS. Several types of incentives (the “Purchaser Incentives”) were provided to unit purchasers, including the Company’s agreement to pay unit purchasers’ condominium fees and expenses and the issuance of certain “indulgence cards” which provide holders with a “currency” for use at the Hotel to pay for discretionary expenses. One specific form of Purchaser Incentive offered by the Company was a sale leaseback program (the “Sale Leaseback Program”). While there were approximately five versions of the Sale Leaseback Program offered to purchasers, in general, the Sale Leaseback Program allowed a purchaser (the “Leaseback Unit-Owner”) to purchase a unit and then lease it back to the Company (a “Sale Leaseback Transaction”), the general terms of which are described as follows:

- A Leaseback Unit-Owner would forego substantially all of his or her rights to occupy the purchased unit either for a term of three or four years.
- In exchange for foregoing occupancy rights to the unit, the Leaseback Unit-Owner would receive an annual rent, payable by the Company, ranging between 6% and 8% per annum of the purchase price (the “Annual Return”), depending on the “version” of the Sale Leaseback Transaction entered into by the Leaseback Unit-Owner.

- Leaseback Unit-Owners executed rental pool management agreements with RRMSI, but waived any distributions from the rental pool operation of their unit as a result of the Annual Return anticipated from the Sale Leaseback Transaction.
- In addition to the Annual Return, certain Leaseback Unit-Owners received other incentives as well, such as the Company's commitment to pay condominium fees and expenses and realty taxes throughout the term of the Sale Leaseback Transaction.

4.2 The Company entered into a total of 67 Sale Leaseback Transactions with the Leaseback Unit-Owners, of which 34 Sale Leaseback Transactions have previously closed and 33 Sale Leaseback Transactions have not yet closed. The Receiver has been advised by its legal counsel that all Purchaser Incentives, including the claims of the Leaseback Unit-Owners against the Company relating to the Sale Leaseback Transactions, for those unit purchasers who have closed are unsecured claims against the Company. There may be some possible claims of purchasers who have closed to certain funds held by RRDI's legal counsel McCarthy Tetrault LLP, as described below. The Receiver has been advised by its legal counsel that it could compel a unit purchaser, who received a lease from the Company on entering into interim occupancy, to complete the closing of a Sale Leaseback Transaction which has not yet closed, even if the lease previously delivered by RRDI on interim occupancy is in default and no further payments will be made by RRDI. Such default is not a basis to terminate the APS. In the case of a unit which has already closed, the Receiver is entitled to repudiate a Purchaser Incentive granted by RRDI, for which the unit purchaser would have an unsecured claim against the Company. It is the Receiver's

view however, that if it were not able to reach agreement with unit purchasers who hold a Purchaser Incentive or had entered into a Sale Leaseback Transaction, then (a) those unit purchasers who have already closed on their units could, in the case of a Sale Leaseback Transaction, be put in jeopardy of defaulting on their existing unit mortgage financing; and (b) those unit purchasers that have not already closed may resist closing, resulting in significant costs and delays to the Receiver in connection with either litigating against such unit purchasers or ultimately remarketing such units if seeking to close these transactions becomes too difficult.

- 4.3 Accordingly, the Receiver, in consultation with the Syndicate and Fortress, has met with a representative group of unit purchasers (the “Ad Hoc Committee”) and its legal counsel in an attempt to formulate a draft proposal of the Receiver to address the Purchaser Incentives (the “Purchaser Incentive Proposal”). Progress has been made and the Receiver is hopeful it will be able to provide an update to the Court in a Supplemental Report to the Court before the July 8, 2009 motion.

5.0 The Receiver's Proposed Sales and Marketing Process

- 5.1 Upon authorization from this Honourable Court, the Receiver intends to commence a Sales and Marketing Process in respect of the Assets of the Company. In connection with the Sales and Marketing Process, the Receiver has consulted with various industry experts, including hotel real estate consultants and advisors, real estate brokers and Marriott Hotels. Given the nature of the Assets to be marketed, consisting of (a) individual unsold condominium units; (b) development lands surrounding the Hotel (approximately 50 lots); and (c) the residual interest in the Hotel itself, the Receiver intends to undertake a “twin track process” as described herein.
- 5.2 The Receiver intends, upon Court approval, to retain Colliers International Hotels (“Colliers”), a brokerage house with international expertise in the marketing of hotel resort properties throughout the world, to undertake a sales and marketing process of all of the Assets on an en bloc basis (the “Institutional Sales Process”). The Receiver also intends, upon Court approval, to retain Baker Real Estate Incorporated (“Baker Real Estate”), a well-respected, Toronto based real estate brokerage firm to implement a retail sales and marketing program of the Company’s unsold condominium units, as well as potentially the development lands surrounding the Hotel, on an individual unit or lot basis (the “Retail Sales Program”).
- 5.3 In connection with the Institutional Sales Process, the Receiver held discussions and received proposals from two experienced brokerage houses. Meetings were held with each group, and the Receiver ultimately concluded that Colliers was the most suitable broker in the circumstances to be retained. In connection with the Retail Sales

Program, the Receiver met with four brokerage groups and obtained detailed proposals from each regarding specifically, how the unsold condominium units would be marketed for sale. Based on its due diligence, the Receiver concluded that Baker Real Estate would be the most suitable party to administer the Retail Sales Program.

The Institutional Sales Process:

5.4 Upon the Receiver obtaining Court approval, Colliers will commence the preparation of marketing materials in connection with the en bloc sale of the Assets. The Institutional Sales Process will seek to identify parties interested in the purchase of the Assets on an en bloc basis. Such a purchaser would essentially be acquiring the 84 unsold condominium units in the Hotel, plus the residual interest in the Hotel, which includes the Hotel's various commercial amenities such as its three restaurants, 15,000 square foot spa and 20,000 square foot conference centre, plus the undeveloped lands surrounding the Hotel. Colliers intends to undertake a robust sales and marketing process for the Assets which will include contacting all parties throughout the world which Colliers believes may have an interest in acquiring the Assets. In addition to utilizing its own database, Colliers intends to advertise the property for sale in various relevant industry publications and by way of email notification to institutional investors and high net-worth individuals. The Receiver has also been contacted by certain parties who have expressed interest in the Assets; these parties will also be included in the Institutional Sales Process.

5.5 In connection with the Institutional Sales Process, the Receiver and its legal counsel will work with Colliers to prepare all relevant sales and marketing materials,

including investment overview documents, offering memoranda, an appropriate form of confidentiality agreement, a draft form of asset purchase agreement for use by potential purchasers when submitting bids and a secure electronic dataroom to permit purchasers to conduct due diligence. On the advice of Colliers, the Receiver does not intend to set an asking price for the Assets, nor does it intend to set a date for submission of bids. Given the current economic environment and the nature of the Assets, it is Colliers' opinion, and the Receiver agrees, that either setting an asking price or a bid date at this time, may discourage interested parties from bidding on the Assets.

- 5.6 Prior to commencing the formal marketing of the Assets, the Receiver and Colliers have agreed to work jointly to seek to obtain expressions of interest from lenders and other sources of debt capital financing who may have an interest in working with an equity sponsor to acquire the Assets. It is the Receiver's view that, to the extent such a source of capital could be pre-identified and pre-qualified, it may reduce the likelihood of a transaction not being completed due to a purchaser's inability to secure financing. In addition, the pre-identification and pre-qualification of available financing will assist to confirm value by indicating to purchasers the quantum of debt financing available to fund a transaction.
- 5.7 Given the nature of the Institutional Sales Process, the Receiver believes that offers for the Assets would likely not be received until later this year. The timing of receipt of offers pursuant to the Institutional Sales Process will allow for the completion of a full unit sales selling season pursuant to the Retail Sales Program.

Retail Sales Program:

- 5.8 Upon the Receiver obtaining Court approval, Baker Real Estate will commence its advertising program and pre-launch sales administration in preparation for its major product launch, planned to be held onsite on August 13 and 15, 2009. Baker Real Estate will be working closely in conjunction with an advertising and marketing agency and the Receiver in the development of promotional material and the implementation of activities to increase awareness and generate sales leads for the unsold units prior to holding the major sales events at the Hotel. In addition, the Receiver plans to discuss and develop with Baker Real Estate a strategy to sell the undeveloped lands surrounding the Hotel, on a lot by lot basis.
- 5.9 In connection with the marketing of the unsold condominium units, Baker Real Estate and the Receiver will consider the Company's most recent pricing of the units, current market conditions, and appropriate terms to offer purchasers. The Receiver does not plan to undertake any liquidation sale of the unsold units. The Receiver plans to have unit sales conducted in an orderly manner, recognizing current market conditions.
- 5.10 The Receiver intends to arrange for representatives of Baker Real Estate to be located onsite at the Hotel to interact with Hotel guests and prospective purchasers, and to highlight the experience and opportunity of condominium ownership at the Hotel.
- 5.11 Baker Real Estate specializes in the project marketing and sales of new home communities, including condominiums, townhouses, and single family homes, as well as hotel condominiums and resort properties. In addition, Baker Real Estate has

worked on a number of real estate projects with receivers and is familiar with marketing and sales programs that are subject to a Court process. Baker Real Estate is experienced in the development and implementation of marketing and sales strategies, project sales and sales management, each an essential function necessary to succeed in this challenging marketplace.

Sales and Marketing Process Summary:

- 5.12 The Receiver believes that a “twin track process” will provide it with the greatest level of flexibility to maximize value to stakeholders. Due to the nature of both the Institutional Sales Process and the Retail Sales Program and the method of Asset sales to be employed (i.e. en bloc versus unit by unit), it is possible that the Retail Sales Program may yield total sale proceeds that, in the aggregate, would be greater than that realized by the Institutional Sales Process. However, the Retail Sales Program could take more time to complete, be more costly and result in a requirement by the Receiver to continue to fund any net operating losses of the Hotel throughout 2010.
- 5.13 The Receiver believes that by undertaking a twin track process throughout the summer/early fall of 2009, it will be in a better position to assess whether a Retail Sales Program will ultimately be successful in maximizing recoveries to stakeholders, or whether the Institutional Sales Process should continue to be pursued.
- 5.14 The Receiver plans to file before the return of this motion on July 8, 2009, a confidential supplementary report outlining the financial terms of the listing and marketing agreements with Colliers and Baker Real Estate.

6.0 Marriott Operating Agreements & Rental Pool Management

- 6.1 The following is a description of the principal agreements governing the management of the Hotel and the rental pool of condominium units.

Marriott Agreements:

- 6.2 In connection with the planning, development, construction, completion, and subsequent management and operation of the Hotel, RRDI entered into a Hotel Management Agreement (the “Hotel Management Agreement”) with Marriott Hotels along with other ancillary agreements with Marriott Hotels and/or its affiliates, as described below. The Receiver is including in this report descriptions of these agreements and the involvement of RRMSI which have been provided to the Receiver by its counsel.
- 6.3 In addition to the Hotel Management Agreement, certain related or supplementary agreements were also executed with Marriott Hotels and/or its affiliates. These consist of a license and royalty agreement (the “License Royalty Agreement”), an international services agreement (the “International Services Agreement”), a technical services agreement (the “Technical Services Agreement”) and a marketing license agreement (the “Marketing License Agreement”) (all of these agreements together with the Hotel Management Agreement, collectively referred to herein as the “Marriott Agreements”). RRMSI and RRDI are both parties to all of the Marriott Agreements except for the Technical Services Agreement and the Marketing License Agreement, to which RRDI is a party alone.

6.4 For its services, Marriott Hotels and/or its affiliates are entitled pursuant to the Marriott Agreements to the payment of various fees which are not disclosed in this report given confidentiality restrictions. In general, the various fees Marriott Hotels and/or its affiliates are entitled to receive include a management fee, base royalties, incentive royalties if certain operating profit thresholds are exceeded, chain services fees, technical service fees during the construction of the Hotel and Introduction Fees (defined and described in more detail below) associated with the sale of Hotel units.

The Hotel Management Agreement:

- 6.5 The Hotel Management Agreement is the key agreement governing the relationship between RRDI, as the owner of the Hotel property and Marriott Hotels, as Hotel operator. The initial term of the Hotel Management Agreement is 25 years after the year in which the Hotel opens, with automatic renewal terms for each of four successive periods of ten years, unless Marriott Hotels elects not to renew the initial term or any renewal term. RRMSI is also a party to the Hotel Management Agreement and RRDI and RRMSI are collectively defined as the “Owner” therein.
- 6.6 Under the Hotel Management Agreement, the operation of the Hotel is placed under the exclusive supervision and control of Marriott Hotels. In fulfilling its obligations and in keeping with the “Marriott” system standards, Marriott Hotels has discretion and control in all matters relating to management and operation of the Hotel, subject to certain consultation rights provided to Owner.
- 6.7 As manager and operator, Marriott Hotels undertakes responsibility for all aspects of the Hotel operations, from employing the staff, to booking the facilities, to marketing

and promotion. In fulfilling its obligations under the Hotel Management Agreement, Marriott Hotels is not required to fund expenses of the Hotel and Marriott Hotels is not obliged to incur any liability or obligation with respect to the Hotel. Marriott Hotels collects all revenue of the Hotel and is responsible for applying it and distributing it in accordance with the Hotel Management Agreement. In the event that Marriott Hotels incurs any liability or obligation, Marriott Hotels is entitled to deduct these amounts from future distributions to the Owner if it has not otherwise been reimbursed.

6.8 The treatment of gross revenue from the operations of the Hotel and distribution of operating profit, if any, and treatment of operating losses are outlined in the Hotel Management Agreement. Generally, Marriott Hotels is entitled to deduct all of the costs and expenses properly incurred in connection with the operation and management of the Hotel as a deduction from gross revenues. Any remaining amounts constitute operating profit, which is to be distributed to the Owner in accordance with the provisions of the Hotel Management Agreement. The Hotel Management Agreement does not specify which Owner (RRDI or RRMSI) is to receive payment of the operating profit, but permits Marriott Hotels to treat either Owner as the Owner for any purposes under the Hotel Management Agreement.

6.9 To the extent that deductions exceed gross revenues, the Hotel will incur an operating loss. Additional funds in the amount of any such operating loss must be provided by the Owner within thirty (30) days after requested in writing by Marriott Hotels. If the Owner does not fund such an operating loss within the thirty (30) day time period, Marriott Hotels has the right to withdraw an amount to cover such operating losses

from future distributions of funds otherwise due to the Owner. In addition to funding operating losses, the Owner is responsible for providing Marriott Hotels with sufficient working capital to carry on operations at the Hotel, to the extent that gross revenues are an insufficient source of cash for doing so.

- 6.10 Operating losses have been consecutively incurred at the Hotel since it opened in December 2008. While the Hotel is forecast to generate modest operating profits throughout the summer months of July to September 2009, these operating profits will not be sufficient to offset the operating losses incurred prior to July 2009, or forecast to be incurred during the balance of the year subsequent to September. In April 2009, the Syndicate funded the sum of approximately \$1.9 million to RRDI to reimburse Marriott Hotels for operating losses incurred to that point and to provide working capital for the period to May 31, 2009. In June 2009, the Receiver funded a further sum of approximately \$550,000 for additional operating losses and working capital requirements.

The Rental Pool:

- 6.11 The Hotel is a mixed-use condominium development. The units when purchased are owned by individual unit owners (the “Unit Owners”), who purchase the units as investments. Units are required to be included in a rental pool, by which units are to be made available for rent by guests at the Hotel. This requirement is key to the operation of the Hotel. All of the units are required to be available for rent to the public except during periods of Unit Owner use as agreed with each of the Unit Owners.

- 6.12 Under the Hotel Management Agreement, the Owner is obligated to require that all Unit Owners execute and deliver a rental pool management agreement (the “Rental Pool Management Agreement”) as a condition to the Unit Owner’s purchase. The Owner is obligated to maintain and keep in full force and effect each of the Rental Pool Management Agreements, comply with all the obligations under each of the Rental Pool Management Agreements and take such actions as may be necessary to ensure compliance by the Unit Owners with respect to their obligations under the Rental Pool Management Agreements.
- 6.13 Consistent with these provisions of the Hotel Management Agreement, Unit Owners have been required by the terms of their APS to enter into a Rental Pool Management Agreement pursuant to which a rental pool manager was engaged to manage the rental of the Hotel units. The typical requirement in the APS is attached as Appendix “B”. Among other things, Unit Owners are prohibited from leasing or permitting occupation of their units except as permitted by the Rental Pool Management Agreement; this is a fundamental requirement for the operation of the Hotel. The standard form of Rental Pool Management Agreement executed by purchasers on closing or on interim occupancy is attached as Appendix “C”.

The Rental Pool Manager:

- 6.14 To date, the Rental Pool Management Agreements executed by Unit Owners each appoint RRMSI as the exclusive rental pool manager (the “Rental Pool Manager”).

- 6.15 According to the condominium disclosure documents provided to each purchaser, RRDI “arranged” for RRMSI to act as the Rental Pool Manager with the exclusive right to manage the rental of the Hotel units as part of the rental pool in the Hotel.
- 6.16 RRMSI is a sister corporation of RRDI. As Rental Pool Manager, RRMSI was characterized in the condominium disclosure documents as a newly incorporated entity that had no prior history of managing rentals or rental pools. RRMSI was described as a single purpose entity which had no assets, and that its ability to fulfill its obligations to fund the ongoing operations of the rental pool may depend on its ability to arrange other sources of financing.
- 6.17 Given its status as Rental Pool Manager, RRMSI is a party to the Hotel Management Agreement. RRMSI is identified therein as the “Rental Pool Manager”, and, jointly with RRDI, is identified as the Owner.
- 6.18 The obligations of RRDI and RRMSI under the Hotel Management Agreement are joint and several. The rights of either RRDI or RRMSI as the Owner can be exercised by either RRDI or RRMSI and any act or failure to act by, or with respect to either of them is treated as an act or failure to act by, or with respect to each of them and of the Owner. In its dealings with RRDI and/or RRMSI under the Hotel Management Agreement, Marriott Hotels is entitled to deal and interact with, and otherwise treat either of RRDI and RRMSI as the Owner.
- 6.19 Under the Hotel Management Agreement, RRMSI, as the Rental Pool Manager, delegated to Marriott Hotels substantially all of its obligations under the Rental Pool Management Agreements, except the obligation to provide periodic financial

statements to Unit Owners and to make distributions to Unit Owners, if and when available. As a result of this delegation, Marriott Hotels is generally responsible for managing the rental of the units in accordance with the requirements of the Rental Pool Management Agreements entered into with the Unit Owners and employs all staff necessary for the management and operation of the Hotel. The Receiver understands that RRMSI has one employee for the purposes of preparing periodic financial statements for Unit Owners.

- 6.20 To date, notwithstanding its joint obligation under the Hotel Management Agreement, RRMSI has not participated in the funding of any net operating losses, working capital deficiencies or pre-opening expenses that have been incurred by Marriott Hotels. To the extent payments have been made to Marriott Hotels, these expenses have been borne solely by RRDI and the Receiver.

The Rental Pool Management Agreements:

- 6.21 The Rental Pool Management Agreement contains provisions with respect to the periods of personal use by the Unit Owner and availability of the unit for rent to the public as part of the rental pool.
- 6.22 The Rental Pool Management Agreement outlines the duties and obligations of RRMSI as Rental Pool Manager, which includes the provision of services to the units, the accounting and distribution of proceeds to Unit Owners and other related services. As noted above, substantially all of these obligations have been delegated to Marriott Hotels under the terms of the Hotel Management Agreement.

6.23 The Rental Pool Management Agreements provide that in the event that in a fiscal year, costs exceed revenue, the Rental Pool Manager agrees that it will be responsible for and will pay such costs to the extent of such deficiency. Given that the calculation of Owner's Net Rental Revenue pursuant to and as defined in the Rental Pool Management Agreement is different, and in some ways entirely unrelated, to the calculation of operating profits or operating losses pursuant to the Hotel Management Agreement, the structure of the Rental Pool Management Agreement is such that it is possible for RRMSI to be obligated to make distributions to Unit Owners regardless of whether or not operating profits are payable to the Owner by Marriott Hotels pursuant to the Hotel Management Agreement. The Receiver does not believe that RRMSI has any resources to meet such an obligation.

6.24 Under the Rental Pool Management Agreement, RRMSI and the Unit Owner confirm that Marriott Hotels, although not a party to the Rental Pool Management Agreement, is nevertheless a third party beneficiary thereof. As such, the parties confer on Marriott Hotels the benefit of the covenants of the Unit Owner in favour of the Rental Pool Manager, and the ability to enforce the rights and privileges of the Rental Pool Manager against the Unit Owner. As a result, Marriott is granted the right to enforce all obligations of the Unit Owners.

Rental Pool Covenant:

6.25 In addition to the requirement in each APS for the purchaser to enter into a Rental Pool Management Agreement, a rental pool covenant (the "Rental Pool Covenant") has been registered on title to the units and common elements of the condominiums,

for the purposes of facilitating the operation of the Hotel and the rental pool. A copy of the Rental Pool Covenant is attached as Appendix “D”.

- 6.26 The Rental Pool Covenant restricts a unit from, among other things, being used for any purpose other than the personal use permitted by the Rental Pool Management Agreement or for rent to the public as part of the rental pool under the Rental Pool Management Agreement. In addition, the covenant requires that each Hotel unit must only be available and offered for rent to the public as part of the rental pool as operated and managed by the rental pool manager. “Rental Pool Manager” is defined in the covenant as the person named as rental pool manager from time to time under the Rental Pool Management Agreements whose responsibility it is to manage and operate the Hotel and the rental pool and includes any person to whom its responsibilities have been delegated in accordance with the Rental Pool Management Agreements.

Assignment of Hotel Management Agreement:

- 6.27 RRDI and RRMSI have each assigned to WestLB, as administrative agent for the Syndicate, all of their right, title and interest in and to the Hotel Management Agreement and all monies or sums payable to them thereunder, for its benefit and the benefit of the Syndicate (the “Assignment”), a copy of which is attached as Appendix “E”, as security for the funds advanced to RRDI under the credit agreement executed by RRDI and WestLB (the “Credit Agreement”). Marriott Hotels has consented to such assignment pursuant to the Subordination, Non-Disturbance and Attornment Agreement, a copy of which is attached as Appendix “F”.

Credit Agreement:

- 6.28 Under the Credit Agreement between RRDI and the Syndicate dated February 1, 2007, WestLB agreed to permit RRDI to enter into certain “Affiliate Transactions” with affiliates of RRDI, as set out on Schedule II to the Credit Agreement. The Credit Agreement provides that “all rights and remedies and options under an Affiliate Transaction may be terminated by the Administrative Agent without premium or penalty after an Event of Default has occurred and is continuing.”
- 6.29 Schedule II identifies the Affiliate Transactions. Included on that Schedule is the following: “The Rosseau Resort Management Services Inc. will provide any services required in the areas of Rental Pool and/or Property Management responsibilities.”
- 6.30 It does not appear that there is a written agreement between RRDI and RRMSI delegating the role of Rental Pool Manager to RRMSI. It appears from the disclosure statements, the Hotel Management Agreement, and the reference in the Credit Agreement that there is an implied agreement as between RRDI and RRMSI to delegate the responsibilities as Rental Pool Manager to RRMSI, which were then delegated to Marriott Hotels.

7.0 Issues in Respect of Rental Pool Management Agreements

- 7.1 In order to effectively sell the Assets, the Receiver needs to address the Rental Pool Management Agreements, which are inconsistent with the Hotel Management Agreement and are with a party outside of the receivership, and has commenced discussions with the stakeholders in this regard.
- 7.2 In light of the Assignment of the Hotel Management Agreement in favour of WestLB and the delegation of substantially all management responsibilities to Marriott Hotels, it appears as though RRMSI has no further practical ability to continue to perform any services as Rental Pool Manager under the Rental Pool Management Agreements. Furthermore, the Receiver understands that RRMSI has no ability to fund any distributions to Unit Owners pursuant to the Rental Pool Management Agreements in respect of the calculation of Owner's Net Rental Revenue.
- 7.3 By letter dated June 8, 2009, counsel to the Receiver wrote to counsel for RRMSI asking for RRMSI's consensual agreement to assign the Rental Pool Management Agreements to RRDI for the effective administration of the receivership. A copy of the letter is attached as Appendix "G". At a meeting with representatives of Ken Fowler Enterprises Inc. ("KFE") and Stikeman Elliott LLP, KFE's legal counsel, on or about June 19, 2009, this issue, among other things, was discussed. It is the intention of the Receiver to communicate further with legal counsel to KFE and RRMSI to renew its request for arrangements to be put in place on a co-operative basis for the effective management of the rental pool and to facilitate a transfer of the business and the rental pool in a sale process, without having to assert various legal remedies available to the Receiver and WestLB.

- 7.4 Of immediate concern is the possibility of distribution of operating profits. Marriott is required to pay Operating Profits, as defined in and in accordance with the Hotel Management Agreement, to the Owner, without specification as to whether the payee is RRDI or RRMSI. Marriott is entitled to treat either RRDI or RRMSI as the Owner and understandably seeks certainty as to whom it should pay Operating Profits, if and when any are payable.
- 7.5 The Receiver seeks direction from the Court that Marriott Hotels be directed to pay any Operating Profits that may be payable under the Hotel Management Agreement to the Receiver, subject to further directions from the Court, should Operating Profits be generated over the summer months and Marriott Hotels elects not to apply such profits against previously incurred Operating Losses as defined in the Hotel Management Agreement, as it has the right to do pursuant to the Hotel Management Agreement.
- 7.6 Marriott Hotels has advised the Receiver, and it is the Receiver's opinion, based on its independent review of the Hotel's operating forecast, that the Hotel will generate Operating Profits between July and September 2009, but will then subsequently incur Operating Losses for the balance of 2009. The Operating Profits generated during the July to September 2009 period are not expected to be sufficient to offset the Operating Losses that the Hotel has already incurred during the year or is forecast to incur during the balance of the year.

8.0 Interim Arrangements with Marriott Hotels

- 8.1 As noted above, the Hotel Management Agreement has a term of 25 years, with successive automatic renewal terms. The Receiver is not in a position to assume and adopt the Hotel Management Agreement, as it is not practical or appropriate for the Receiver to undertake such a long term obligation. In addition, the Receiver intends to market the property for sale, pursuant to the Sales and Marketing Process. While the Sales and Marketing Process will seek to identify purchasers interested in retaining Marriott Hotels as the Hotel operator, it is possible that a purchaser may wish to install its own Hotel operator. While Marriott Hotels has expressed its desire to the Receiver to continue to operate the Hotel, the Receiver must maintain its ability to repudiate the Marriott Agreements.
- 8.2 In order to proceed with the Sales and Marketing Process, it was necessary for the Receiver to address the Marketing License Agreement, pursuant to which International Hotel Licensing Company s.a.r.l (“IHLC”) licensed important rights to RRDI for the purposes of marketing and selling the Hotel units using the “Marriott” trademarks (the “Marriott Trademarks”). RRDI was granted a non-exclusive, non-transferable license within Ontario and the United Kingdom to use the Marriott Trademarks in written materials prepared in connection with the sale of Hotel units. The Marketing License Agreement also provides IHLC with various approval rights. In consideration for the rights granted to RRDI pursuant to the Marketing License Agreement, RRDI is required to pay to IHLC an “Introduction Fee” on the sale of each unit calculated on the gross sale proceeds generated for a particular unit, in

excess of a price of \$450 per square foot, less agreed upon taxes, commissions and closing costs, up to a cumulative total cap on Introduction Fees of \$1.2 million.

- 8.4 Arrears are currently outstanding under the Marketing License Agreement in the amount of approximately \$675,000, for amounts due and owing by RRDI arising prior to the receivership.

The New Marriott Marketing License Agreement:

- 8.5 The Receiver has conducted extensive negotiations with Marriott Hotels since the commencement of the receivership with a view to normalizing arrangements with Marriott Hotels, without adopting or affirming any of the Marriott Agreements. It is anticipated that the Receiver will shortly conclude an arrangement with Marriott Hotels for the interim management and operation of the Hotel by Marriott Hotels during the course of the receivership, for which it will seek Court approval.
- 8.6 In the meantime, the conclusion of arrangements with Marriott Hotels in respect of the Marketing License Agreement is of particular importance in connection with the Sales and Marketing Process. Without the benefit of the rights licensed pursuant to the Marketing License Agreement, the Receiver is not entitled to market or sell any of the unsold Hotel units using the Marriot Trademarks.
- 8.7 In order to facilitate the commencement, as soon as possible, of the Sales and Marketing Process, the Receiver, Marriott Hotels and IHLC have, subject to Court approval, agreed to the terms of an agreement (the “New Marriott Marketing License Agreement”) whereby the Receiver will be permitted to use the Marriott Trademarks,

in consideration of the payment of an increased introduction fee per unit closing (the “New Introduction Fee”) that recognizes the past due amount owing to IHLC under the Marketing License Agreement, and the amount that will arise on the sale and be payable on the closing of future Unit transactions.

8.8 The following terms will form the basis for the New Marriott Marketing License Agreement:

(a) The New Introduction Fee will be paid by the Receiver for each unit closing on the basis of a calculation of 5% of unit gross sale revenue (“Unit Gross Revenue”) for the remaining 64 units that are subject to APS but have not yet closed (the “64 Units”). Unit Gross Revenue does not include the cost of sale/leaseback obligations, mortgage rate pay-downs, or other rebates or sale incentives resulting in a reduction of the amounts payable on closing for the 64 Units;

(b) The total New Introduction Fee will not exceed \$1.2 million (this cap is in the same amount as was provided for in the Marketing License Agreement with RRDI);

(c) Out of each New Introduction Fee for each of the 64 Units closing, the Receiver will withhold the sum equal to 20% of the New Introduction Fee, subject to an aggregate cap on such holdback in the amount of \$200,000 (the “Holdback”);

(d) The Holdback shall be payable to IHLC at the end of 2009, if, for the periods 7 to 13 of the Hotel’s operations (the “Holdback Period”), as such periods are provided for in Marriott Hotels’ annual forecast, there is no loss on a cumulative basis. If no loss is realized, IHLC will be entitled to receive the full amount of the Holdback. If the

entire projected loss for the period of approximately \$304,000 is realized (the “Projected Loss”), IHLC will forfeit the whole amount of the Holdback. Any partial reduction of the Projected Loss will entitle IHLC to payment of a portion of the Holdback calculated on the basis of the percentage that the Projected Loss has been reduced;

(e) In the event that IHLC does not earn New Introduction Fees up to the cap of \$1.2 million from the closing of the 64 Units, IHLC will be entitled to earn the balance of the New Introduction Fee on the closing of the sale of the remaining Units to be sold by the Receiver, which are not yet subject to agreements of purchase and sale (the “Remaining Units”), provided that, any amount of the Holdback that has been forfeited as provided for at paragraph (d) above, shall not be recoverable on the closings of the Remaining Units;

(f) It is a condition of the New Marriott Marketing License Agreement to obtain, as part of the Court Order approving these terms, a provision barring any claims against Marriott Hotels, IHLC, and affiliates, that may be asserted relating to the use of the Marriott Trademarks by the Receiver or any of its agents in their promotion, marketing, and sale of the Remaining Units. The Receiver has agreed with IHLC that the Retail Sales Program using the Marriott Trademarks will only be conducted in Canada; and

(g) The New Marketing License Agreement will be in a form agreeable to the parties, either as a new agreement, or as an amendment to the existing Marketing License Agreement.

8.9 Marriott Hotels acknowledges that the Receiver has not, by entering into the New Marketing License Agreement, adopted or affirmed any of the Marriott Agreements, and reserves all rights of repudiation. The parties intend to continue negotiations and discussions in respect of an interim arrangement for the management and operation of the Hotel.

9.0 Distribution of Condominium Closing Costs Held by McCarthy Tetraault LLP

- 9.1 In order to facilitate final closings of the Hotel condominium units, RRDI needed to agree on a protocol with the Syndicate, Fortress Credit Corp. ("Fortress") and Travelers Guarantee Company of Canada ("Travelers") (ie, the three mortgage lenders) to determine the basis upon which net closing proceeds would be distributed in return for such mortgage lenders discharging their mortgage security over the sold units.
- 9.2 The Receiver's counsel advises that the agreed protocol with the Syndicate, Fortress and Travelers included the following documents and terms. RRDI and McCarthys signed and delivered three joint undertakings (collectively, the "joint undertakings"), one dated March 25, 2009, one dated April 9, 2009 and one dated April 20, 2009, each in favour of the Syndicate, and its solicitors, Blake, Cassels & Graydon LLP, Travelers, and its solicitors, Baker Schneider Ruggiero LLP, and Fortress, and its solicitors, Goodmans LLP. A copy of the three joint undertakings is attached as Appendix "H". Each of the joint undertakings is identical in form and substance, other than the reference in paragraph 1(b) thereof to a particular authorization and direction from WestLB to McCarthys setting out the terms upon which McCarthys was authorized to discharge the Syndicate security.
- 9.3 Pursuant to the joint undertakings, RRDI and McCarthys undertook and agreed that as long as any amounts continued to be owed to the Syndicate under the Syndicate's security, McCarthys would remit the Net Closing Proceeds (as defined therein) received by McCarthys in connection with the final closing of each unit sale

transaction by wire transfer to the Syndicate within one business day after McCarthys' receipt of such funds.

- 9.4 Pursuant to paragraph 1(c) of each of the joint undertakings "Net Closing Proceeds" is defined as follows:

“(c) for the purposes hereof, “Net Closing Proceeds” for any unit means the balance due on closing in accordance with the final Statement of Adjustments related to the sale of that unit less the following:

- (i) any goods and services taxes (“GST”), retail sales taxes and non-resident withholding taxes included therein;
- (ii) an amount equal to 4.5% of the net sales price for that unit (net of incentives, including sale-leaseback incentives credited to the purchaser on closing) (the “Closing Costs Holdback”). The Closing Costs Holdback shall be held in trust by McCarthy deposited into an account to be specified by WestLB (which shall be pledged in favour of WestLB) and shall be used to pay closing costs comprised of brokerage commissions and other reasonable closing costs (including legal fees and disbursements) subject to the prior approval of WestLB acting reasonably and without delay in accordance with a control agreement in favour of WestLB, provided that McCarthy shall be entitled to deduct and to pay the following on closing:

- A. brokerage commissions which are required to be paid as a term of the agreement of purchase and sale for the unit plus GST; and

- B. the levy payable to the Law Society of Upper Canada respecting the sale of the unit plus GST;
- (iii) amounts collected from purchasers on account of estimated realty taxes which shall be held in trust by McCarthy and paid to the Township of Muskoka Lakes to be applied against the realty taxes attributable to the unit (including realty taxes pursuant to a supplementary tax bill when issued);
- (iv) the entry fees agreed to be paid by RRDI pursuant to the applicable sale agreement payable to Red Leaves Resort Association on behalf of the purchaser and RRDI being a total of 0.5% of the sale price of the unit (excluding furniture and equipment) plus GST;
- (v) the following amounts (plus GST) agreed to be paid by RRDI pursuant to the applicable sale agreement in respect of certain Hotel units:

A. the estimated realty taxes attributable to the unit covering the period of three years following the occupancy date to be paid by McCarthys to the Township of Muskoka Lakes for credit to the tax account for the unit;

B. the estimated common expenses attributable to the unit for the period from the closing date until the third anniversary of the occupancy date of the unit to be paid by McCarthy to Muskoka Standard Condominium Corporation No. 62 for credit to the account of that unit;

C. the estimated fees for telecommunications service (including telephone, satellite television and internet service) attributable to the unit for the period from the closing date until the third anniversary of the occupancy date of the unit to be paid by McCarthy to the Rental Pool Manager, The Rosseau Resort Management Services Inc., in trust, for credit to the account for that unit; and

D. the basic annual fee payable to the Red Leaves Resort Association (being \$1.00 per annum per square foot of the area of the unit for the period of three years following the occupancy date of the unit to be paid by McCarthy to Red Leaves Resort Association for credit to the account for that unit;

(vi) [a certain sum] agreed to be paid by RRDI pursuant to the applicable sale agreement to cover the fees payable for Marriott Gold membership for a period of two years as listed on the spreadsheet provided to WestLB entitled Minimum Sales Prices – Schedule VII dated March 16, 2009 (the “**Spreadsheet**”) to be paid by McCarthy to Marriott Hotels of Canada Limited;

(vii) the value of the Indulgence Card agreed to be issued pursuant to the applicable sale agreement to the purchaser of the unit on closing, if any, as shown on the Spreadsheet with such amount to be paid by McCarthy to RRDI to be held in trust and applied to satisfy amounts charged against the Indulgence Card. Upon request by WestLB, RRDI will transfer or cause

McCarthy to transfer the amounts deducted hereunder less any amounts previously paid to satisfy amounts charged against the Indulgence Card to an account designated by WestLB provided that such account will be subject to a control agreement between WestLB and RRDI in form satisfactory to both acting reasonably and which will, *inter alia*, provide for payment of amounts charged against the Indulgence Card;

(viii) [a certain sum] agreed to be paid by RRDI pursuant to the applicable sale agreement to cover the fees for two years membership in the Resort to Resort Program as listed on the Spreadsheet to be paid by McCarthy to Intrawest Resort to Resort; and

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

9.5 McCarthys is holding \$1,411,626.66 on account of the Closing Costs Holdback (as defined in paragraph 1(c)(ii) of each joint undertaking) in respect of the 73 unit sale transactions that have closed. Pursuant to paragraph 1(c)(ii) of each joint undertaking, the Closing Costs Holdback was to be used to pay closing costs comprised of brokerage commissions and other reasonable closing costs (including legal fees and disbursements) subject to the prior approval of the Syndicate, acting reasonably. Closing costs also specifically included the levy payable to the Law Society of Upper Canada respecting the sale of each unit plus GST. \$3,832.50, in the

aggregate, is due to the Law Society of Upper Canada in respect of the 73 completed unit sale transactions(the “Law Society Levy”).

- 9.6 By e-mail transmission dated April 17, 2009 from McCarthys to the Syndicate’s legal counsel, McCarthys provided (i) a list of real estate commissions payable in respect of sales completed in March 2009 showing an aggregate amount owing of \$97,969.77 (based on information received from their client), and (ii) a copy of their accounts respecting closing (invoice no. 2314578 dated March 20, 2009 in the amount of \$37,835.18 and invoice no. 2318439 dated April 8, 2009 in the amount of \$107,049.24). By subsequent e-mail transmission dated April 30, 2009 from McCarthys to the Syndicate’s legal counsel, McCarthys sent a revised list of real estate commissions owing in respect of March sales in the revised aggregate amount of \$90,372.82.
- 9.7 By e-mail transmission dated May 1, 2009 from McCarthys to the Syndicate’s legal counsel, McCarthys provided a list of real estate commissions payable in respect of sales completed in April 2009 showing an aggregate amount owing of \$906,417.69, resulting in a total of \$996,790.51 in respect of real estate commissions owing in respect of March and April closings.
- 9.8 The Receiver was subsequently advised by McCarthys that RRDI had reviewed the amount of the real estate commissions and determined that the total liability was substantially less.
- 9.9 By letter dated May 8, 2009, McCarthys forwarded to the Syndicate’s legal counsel a statement of their outstanding and unpaid invoices (together with copies of the

invoices) which McCarthys stated was to be covered by the Closing Costs Holdback. The invoices were in the aggregate amount of \$538,630.13. Of that amount, \$220,183.13 is in respect of closing costs related to closing the specific unit sale transactions and are comprised of the two invoices previously forwarded to the Syndicate's legal counsel on April 17, 2009, together with an additional invoice dated May 6, 2009 in the amount of \$75,298.71. The Receiver's legal counsel has been advised by McCarthys that \$314,240.48 is in respect of costs related to the condominium as a whole (i.e. the legal work required in connection with the registration of the resort condominium) and the remaining \$4,206.52 is in respect of other matters including trademark matters and securities law matters.

9.10 McCarthys' position is that the phrase "including legal fees and disbursements" in paragraph 1(c)(ii) of each joint undertaking is entirely general, and is a deemed inclusion into "reasonable closing costs", and thus entitles McCarthys to be paid all of its outstanding accounts from such Closing Costs Holdback. In the event that "legal fees and disbursements" should be limited by the phrase "reasonable closing costs", then McCarthys' position is that "reasonable closing costs" properly includes the legal costs and disbursements of completing the condominium registration. The closing of individual condominium units by a condominium developer necessarily includes and requires such legal costs and disbursements.

9.11 The Receiver's legal counsel has reviewed the language of paragraph 1(c)(ii) of each joint undertaking and has provided the Receiver with its opinion that a trust was created that provided for the Closing Costs Holdback to be used to satisfy certain obligations in respect of closing costs with the remainder to be paid to WestLB.

However, since there is some question as to whether all of McCarthys' legal fees properly comprise "closing costs" and as the liability owed to real estate agents still needs to be verified, the Receiver recommends the following: (1) McCarthys will continue to hold in trust \$538,630.13 of the Closing Costs Holdback representing the amount McCarthys is claiming they are owed from such Closing Costs Holdback, but will not make any distributions from such amount except as set out below; (2) the balance of the Closing Costs Holdback (the "Commission and Levy Funds") will be transferred by McCarthys to the Receiver; (3) the Receiver will be entitled to pay the real estate agents the commission owed to them from the Commission and Levy Funds, on receipt of proof satisfactory to the Receiver of their claim, and the Receiver will be entitled to remit the Law Society Levy provided that the Receiver shall not make any such distributions until (A) all of the real estate agent claims have been ascertained, and (B) the Receiver is satisfied that the amount of Commission and Levy Funds is sufficient to satisfy each proven real estate agent claim and the Law Society Levy. If the Receiver is satisfied that the amount of Commission and Levy Funds is sufficient to satisfy each proven real estate agent claim and the Law Society Levy, then the Receiver requests that this Honourable Court authorize it to direct McCarthys to pay itself \$220,183.13 from the portion of the Closing Costs Holdback retained by them, but McCarthys is not to make any further distributions from such fund without Court approval. If the Receiver is not satisfied that the amount of Commission and Levy Funds is sufficient to satisfy each proven real estate agent claim and the Law Society Levy, then the Receiver will seek further direction of the Court.

Other Incentive Holdbacks:

9.12 As noted in paragraph 9.4 above, in addition to the Closing Costs Holdback, there were several other deductions from the balance due on the closing of each unit sale transaction in determining the "Net Closing Proceeds" that were to be remitted to the Syndicate.

9.13 The Receiver has been advised by its legal counsel that McCarthys has advised it that it is holding the following amounts:

(a) \$15,418.50 on account of GST, and \$92,806.08 on account of RST, as contemplated in paragraph 1(c)(i) of each joint undertaking;

(b) \$211,880.32 representing amounts collected from purchasers on account of estimated realty taxes to be held in trust by McCarthys for such purchasers to be applied against such purchasers' future realty tax liability (as contemplated in paragraph 1(c)(iii) of each joint undertaking);

(c) remaining balance of \$3,263.58 on account of the Red Leaves Resort Association entry fee, as contemplated in paragraph 1(c)(iv) of each joint undertaking (\$48,401.20 was remitted by McCarthys to the Resort Association by cheque dated April 7, 2009 in the amount of \$14,968.14 and cheque dated May 11, 2009 in the amount of \$33,433.06);

(d) \$4,704.00 on account of Marriott Gold membership fee, as contemplated in paragraph 1(c)(vi) of each joint undertaking;

(e) \$26,444.55 on account of the Resort to Resort fee, as contemplated in paragraph 1(c)(viii) of each joint undertaking;

(f) \$210,000.00 on account of indulgence cards, as contemplated in paragraph 1(c)(vii) of each joint undertaking;

(g) \$1,134,407.35 on account of common expenses, as contemplated in paragraph 1(c)(ix) of each joint undertaking; and

(h) the following amounts as contemplated in paragraph 1(c)(v) of each joint undertaking: \$20,813.62 (paragraph 1(c)(v)(A) for realty taxes); \$37,751.32 (paragraph 1(c)(v)(B) for common expenses); \$5,670.00 (paragraph 1(c)(v)(C) for telecommunications fees); and \$2,812.95 (paragraph 1(c)(v)(D) for basic annual fee to Resort Association).

9.14 Other than in respect of the items in paragraphs 9.13(a) and (b) above, where the Receiver has received an opinion from its legal counsel that a trust exists, further review is required to determine if RRDI has any claims with respect to the balance of the funds. The Receiver will be seeking further direction from the Court after such review.

10.0 Proposed Process for Determination of Priority Lien Claims

- 10.1 The Receiver has investigated how best to address the construction lien claims which have been advanced. The CLA provides a complete code for the administration and determination of lien claims, including questions of holdback.
- 10.2 A lien claimant must register a lien claim on title to preserve its claim for lien. The lien claimant then has a limited period of time in which it must “perfect” its lien claim (45 days from the last day on which a lien could be registered), by commencing an action by way of statement of claim (and registering a certificate of action on title). A defendant has 20 days from service of the statement of claim to file a defence. The Appointment Order permits steps being taken by a lien claimant to perfect its claim, but otherwise stays the action against RRDI.
- 10.3 After pleadings have closed, outside of receivership, the normal procedure in Toronto is for a party, generally the lien claimant, to bring a motion before a Judge for a judgment directing a reference pursuant to the CLA and Rules of Civil Procedure.
- 10.4 Such judgment refers the action to a construction lien master. A request is normally made to consolidate all lien actions relating to the same improvement or project. The Receiver could bring a motion seeking a reference and consolidation of all lien actions in respect of the project to a construction lien master or case management master in Toronto.
- 10.5 Instead, the Receiver proposes a claims process for the lien claims in substantially the same manner as a standard claims process in a receivership or CCAA proceeding. In particular, the claims process order would provide the Receiver with the authorization

and direction to review and allow or disallow claims, fully or partially, within a prescribed period of time, during which it would be required to issue notices of disposition in respect of each claim. Lien claimants would have the right to appeal any disallowance by motion to the Commercial List on timetables agreed to by the interested parties and approved by the Court. The claims process order would dispense with the requirement for RRDI, through the Receiver, to deliver statements of defence to each lien claim and would also provide that no parties could commence default proceedings against any defendants in any lien action, so that there is a cost-effective, co-ordinated process supervised by the Receiver.

- 10.6 The Receiver proposes to review with legal counsel for the lien claimants a draft claims process order, for anticipated approval on July 8, 2009.

11.0 Other Activities of the Receiver to Date

- 11.1 In addition to the activities of the Receiver as set out in this Second Report, the following is a summary of other activities that the Receiver has engaged in since the date of the First Report.
- 11.2 Since the date of the First Report, the Receiver has worked closely with its legal counsel to review and respond to various requests for information pursuant to Section 39 of the CLA, submitted by those parties who have registered construction liens against the Assets of the Company. The Receiver has not yet completed its work to respond to all such information requests; however, it is working diligently to do so and intends to be able to respond within the timeframes stipulated in the CLA. Notwithstanding that the Receiver has not yet responded in all cases, the Receiver's counsel has responded to counsel to each of the construction lien claimants requesting information pursuant to the CLA, to advise of the Receiver's obligations and intentions to respond to such requests.
- 11.3 Subsequent to its appointment, the Receiver engaged O'Connor Associates Environmental Inc. ("O'Connor"), environmental consultants and engineers, to undertake a Phase I environmental assessment of the Company's property. O'Connor attended at the property to inspect the lands and review relevant information and documentation. As at the date of this Second Report, the Phase I environmental assessment conducted by O'Connor has been substantially completed. While the assessment did identify some relatively minor environmental issues, a determination by the Receiver and O'Connor on the necessity to proceed with a Phase II

environmental assessment has not yet been made. The Receiver will advise this Honourable Court of the outcome thereof in a subsequent report.

- 11.4 The Receiver has met with and corresponded with both Tarion Warranty Corporation (“Tarion”) and Travelers to discuss relevant issues concerning both the ongoing Tarion warranty coverage and the ultimate release of deposit funds being held by Travelers. In both cases, legal counsel for the Receiver and legal counsel for Travelers and Tarion are continuing to review relevant documentation and agreements. In the interim, the Appointment Order grants a stay against Tarion preventing it from altering or terminating the warranty coverage afforded to the Company and unit purchasers. The Receiver intends to provide this Honourable Court with an update regarding this matter in a subsequent report.
- 11.5 The Receiver has met and held discussions with representatives of KFE on matters relating to the administration of the Company and the Hotel and the ultimate divestiture of the Assets. KFE has advised the Receiver of its interest to work cooperatively with it in maximizing proceeds to all stakeholders. In that regard, the Receiver will continue to maintain an ongoing dialogue with KFE representatives to work through matters relating to maximizing recoveries and also to coordinate addressing the various interconnected issues between the Company and its affiliates.
- 11.6 The Receiver has also met and/or corresponded with various other stakeholders that have an interest in the Company and/or the Hotel and is responding appropriately to all relevant enquiries.

12.0 Conclusions and Recommendations

- 12.1 Attached as Appendix “I” is the Receiver’s statement of Receipts and Disbursements for the period ended June 30, 2009. As previously indicated, Altus has advised the Receiver that it expects that the completion of major construction works will be completed by the end of July 2009, and that the works will be completed within the budget described in the A&M Report.
- 12.2 As described in this Second Report, the Receiver has been working with all of the Company’s various stakeholders to advance construction, stabilize operations, and develop the sales and marketing strategy to maximize realizations for all stakeholders involved.
- 12.3 The Receiver respectfully requests that this Honourable Court:
- Authorize the Receiver to commence the proposed Sales and Marketing Process and to enter into agreements with Colliers and Baker Real Estate;
 - Authorize the Receiver to enter into the New Marriott Marketing License Agreement with Marriott Hotels and/or IHLC;
 - Issue an order directing Marriott Hotels to pay any operating profit that may be payable under the Hotel Management Agreement to the Receiver, pending further order of the Court;
 - Direct McCarthys to transfer to the Receiver the Commission and Levy Funds, and authorize the Receiver to distribute certain of those Commission and Levy Funds on the basis as described in Section 9 herein;

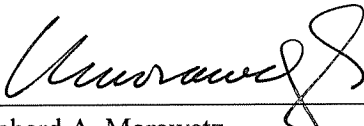
- Approve an Order authorizing and directing the Receiver to implement and administer the construction lien claim process; and
- Approve the Receiver's activities from the date of the First Report to the date of this Second Report.

* * *

All of which is respectfully submitted, this 3rd day of July, 2009

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

Per:

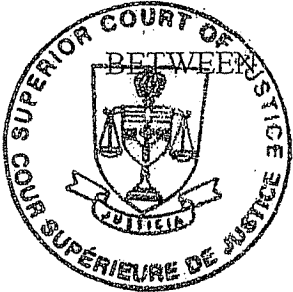

Richard A. Morawetz

APPENDIX “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) TUESDAY, THE 2ND DAY
)
MADAM JUSTICE PEPALL) OF JUNE, 2009

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



WESTLB AG, TORONTO BRANCH

Applicant

- and -

THE ROSSEAU RESORT DEVELOPMENTS INC.

Respondent

AMENDED AND RESTATED APPOINTMENT ORDER

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

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

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

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

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

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

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

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

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

- (m) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00 provided that the aggregate consideration for all such transactions does not exceed \$150,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case (and in the case of sales referred to in subparagraph 3(h) of this Amended and Restated Appointment Order) notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to provide financial reporting at regular intervals to WestLB and Fortress Credit Corp., on a without prejudice basis, consisting of a construction

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

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

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

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

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

GENERAL

27. THIS COURT ORDERS that the First Report are hereby accepted and the activities and conduct of the Interim Receiver, as described in the First Report, are hereby approved.

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

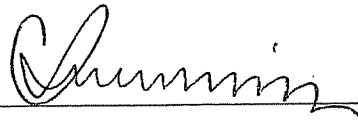
32. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than five (5) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

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


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



Christina Irwin
Registrar, Superior Court of Justice

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

JUN 02 2009

PER / PAR. 

SCHEDULE "B"
RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

DATED the _____ day of _____, 2009.

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

Per: _____

Name:

Title:

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

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

BLAKE, CASSELS & GRAYDON LLP
Box 25, Commerce Court West
Toronto, Ontario M5L 1A9

Pamela Huff LSUC#: 27344V
Tel: (416) 863-2958

Michael McGraw LSUC#46679C
Tel: (416) 863-4247
Fax: (416) 863-2653

Lawyers for the Applicant

APPENDIX “B”

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

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

APPENDIX “C”

THE ROSSEAU
- a JW Marriott Resort
RENTAL POOL MANAGEMENT AGREEMENT

This Agreement dated as of December ____, 2008.

BETWEEN the Owner and the Rental Pool Manager

“Owner”: _____

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

“Unit”: Suite No. ____, being proposed Unit ____, in the proposed Resort
Condominium

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

The Purchaser’s GST Registration Number is: _____

WHEREAS:

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

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

ARTICLE 1
DEFINITIONS

1.1 **Definitions.** In this Agreement the following terms have the following meanings:

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

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

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

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

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

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

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

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

ARTICLE 2
MANAGEMENT, USE, TERM AND TERMINATION

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

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

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

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

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

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

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

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

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

2.8 **Default of Owner.**

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

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

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

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

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

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

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

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

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

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

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

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

2.10 Events upon Termination.

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

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

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

2.11 Assignment and Subcontracting by the Rental Pool Manager.

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

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

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

ARTICLE 3

OPERATING ACCOUNT AND OWNER'S REVENUE

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

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

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

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

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

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

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

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

(n) Taxes on any of the foregoing.

- (3) “**Unit Revenue Share**” means the Owner’s Share, calculated on a daily basis, of the Adjusted Gross Revenue received by the Rental Pool Manager on the days the Unit is in the Rental Pool multiplied by the following fraction:

the Unit Factor for the Unit divided by the total of the Unit Factors for all of the Resort Units in the Rental Pool on such days;

- (4) “**Owner’s Net Rental Revenue**” means, for any time period, the Unit Revenue Share less the following (without duplication):

- (a) the Rental Pool Management Fee pursuant to section 4.1;
- (b) the Owner’s contribution to the Unit FF&E Reserve Fund pursuant to section 3.4; and
- (c) payments due from or made on behalf of the Owner under this Agreement including without limitation payments for the following:

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

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

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

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

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

3.3

Corporate Charges.

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

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

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




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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4

RENTAL POOL MANAGEMENT FEE

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

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

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

ARTICLE 5

RENTAL POOL MANAGER'S RESPONSIBILITIES

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

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

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

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

- (15) take out and maintain at all times during the Term the following insurance, at a minimum, pertaining to the Rental Pool Manager's activities hereunder:
 - (a) comprehensive public liability insurance in an amount of U.S.\$ [REDACTED] per occurrence (or such greater amount as the Hotel Operator may from time to time deem advisable) for claims for personal injury, death, or property damage arising out of any one occurrence; and
 - (b) business interruption insurance including extra expense with policy terms deemed appropriate by the Hotel Operator; and
 - (c) such other insurance as may be deemed appropriate by the Hotel Operator, acting reasonably.
- (16) use commercially reasonable efforts to arrange, on behalf of the Owner, the following insurance in respect of the Unit and the Unit FF&E within the Unit with insurers and on terms and with deductible amounts as are determined by the Hotel Operator from time to time (and to collect the proceeds of all such insurance):
 - (a) property damage insurance for the standard Unit FF&E within the Unit to their full replacement value (but not any other personal property of the Owner which shall be the Owner's sole responsibility);
 - (b) comprehensive public liability insurance in the amount of \$ [REDACTED] per occurrence (or such greater amount as the Hotel Operator may from time to time deem advisable) for claims for personal injury, death or property damage arising out of and in connection with the operation of the Rental Pool; and
 - (c) such other insurance as may be deemed appropriate by the Hotel Operator, acting reasonably,

and if the same is combined with insurance coverage taken out on behalf of the Resort Corporation, then the cost of the foregoing insurance will be a common expense of the Resort Corporation, but otherwise the Rental Pool Manager is authorized to deduct the cost from the Owner's Net Rental Revenue and the Owner will reimburse the Rental Pool Manager for such cost that is not so deducted forthwith upon receipt by the Owner of the Rental Pool Manager's invoice therefor;
- (17) faithfully perform its duties and responsibilities hereunder and otherwise use its best efforts to supervise and direct the rental of the Unit in an efficient and profitable manner consistent with the Hotel Standards, it being the intention of the parties that the Rental Pool Manager will have the control for all customary purposes and the right to determine all operating policies with respect to reasonable standards of operations, quality of services and any other matters affecting the rental of the Unit;
- (18) procure and maintain all such licenses and permits as are necessary in connection with the performance by the Rental Pool Manager of its obligations under this Agreement;

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

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

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

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

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

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

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

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

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

5.7 Maintenance and Housekeeping.

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

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

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

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

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

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

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

ARTICLE 6

OWNER'S RESPONSIBILITIES AND AUTHORIZATIONS

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

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

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

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

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

6.2 Owner's Authorizations. The Owner hereby:

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

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

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

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

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

ARTICLE 7
USE BY OWNER

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

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

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

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

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

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

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

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

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

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

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

7.4 Housekeeping Service.

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

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

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

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

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

ARTICLE 8

CONFERENCE FACILITIES, PARKING AND COMMON AREAS

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

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

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

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

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

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

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

ARTICLE 9

ARBITRATION

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 10

MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BY THE RENTAL POOL MANAGER:

**THE ROSSEAU RESORT MANAGEMENT
SERVICES INC.**

By: _____

BY THE OWNER:

If a corporation:

By: _____

If an individual:

Witness

Print Name: _____

Witness

Print Name: _____