

Appendix “E”

THE ROSSEAU
- a JW Marriott Resort
RENTAL POOL MANAGEMENT AGREEMENT

This Agreement dated as of _____, 2009.

BETWEEN the Owner and the Rental Pool Manager

“Owner”: _____

“Rental Pool Manager”: **THE ROSSEAU RESORT DEVELOPMENTS INC., by Alvarez & Marsal Canada ULC, solely in its capacity as receiver and manager of the Assets of The Rosseau Resort Developments Inc., and not in its personal capacity**
Royal Bank Plaza, 200 Bay Street, Suite 2000
Toronto, ON M5J 2J1

“Unit”: Suite No. _____, being Unit _____, Level _____, in the 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 Owner’s GST Registration Number is: _____

WHEREAS:

A. By order dated May 22, 2009 (the **“Initial Appointment Order”**), the Ontario Superior Court of Justice (the **“Court”**) appointed Alvarez & Marsal Canada ULC (**“A&M”**) and McIntosh & Morawetz Inc. as trustee and interim receiver, respectively, pursuant to section 68 of the *Construction Lien Act* (Ontario) and section 47(1) of the *Bankruptcy and Insolvency Act* (Canada), of all property, assets and undertakings (the **“Assets”**) of The Rosseau Resort Developments Inc. (**“RRDI”**). By amended and restated appointment order dated June 2, 2009 (the **“Appointment Order”**), the Court continued the appointments made by the Initial Appointment Order and also appointed A&M as receiver and manager of the Assets of RRDI pursuant to section 101 of the *Courts of Justice Act* (Ontario) (**“CJA”**). By order dated •, A&M in its capacity as receiver and manager of the Assets of RRDI appointed pursuant to the CJA (including any successor or replacement of A&M, as receiver and manager pursuant to the

Appointment Order, the “**Receiver**”), and not in its personal capacity, was authorized to enter into this Agreement on behalf of RRDI ;

B. The Owner is the transferee and the registered owner of the Unit and, as such, is a member of the Resort Corporation;

C. 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

D. 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) “**Adjusted Unit Revenue Share**” has the meaning ascribed to such term in subsection 3.2(4);
- (5) “**Affiliate**” means, with respect to any Person, any other Person controlling, controlled by or under common control with such first Person;
- (6) “**Annual FF&E Estimate**” means the annual estimate prepared by the Hotel Operator or Rental Pool Manager as described in section 5.2;

- (7) “**Annual Operating Statement**” has the meaning ascribed to it in subsection 3.7(2);
- (8) “**Appointment Order**” has the meaning ascribed to it in Recital A;
- (9) “**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;
- (10) “**Assets**” has the meaning ascribed to it in Recital A;
- (11) “**Base Royalty Fee**” has the meaning ascribed thereto in section 3.3(1);
- (12) “**Basic Daily Housekeeping**” means maid and linen services provided on any Day;
- (13) “**Board**” means the board of directors of the Resort Condominium;
- (14) “**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;
- (15) “**Commercial Space**” means the commercial space comprised of that portion of the Hotel located both at and below grade and designated as such that is used or intended to be used for retail, food and beverage, conference and spa facilities and which may be registered under the Condominium Act;
- (16) “**Commercial Space Owner**” means the owner from time to time of the Commercial Space;
- (17) “**Common Elements**” means all of the property within the Resort Condominium other than the Resort Units and the Hotel Management Unit;
- (18) “**Condominium Act**” means the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended from time to time;
- (19) “**Conference Centre**” means that portion of the Commercial Space so designated and comprised of meeting rooms, ballrooms, pre-function space and storage space, which may or may not be contained within a registered condominium;
- (20) “**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;

- (21) **“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;
- (22) **“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;
- (23) **“Gross Rental Pool Revenue”** has the meaning ascribed to such term in subsection 3.2(1);
- (24) **“Gross Unit Revenue”** has the meaning ascribed to such term in subsection 3.2(6);
- (25) **“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 Space, a dock and beach area located at the lakefront;
- (26) **“Hotel Easement and Restrictive Covenant Agreement”** means the agreement entered into under which an easement for hotel use was granted for the benefit of the Hotel Management Unit over the Common Elements and the Resort Corporation has agreed to maintain the Common Elements and common facilities and equipment at a standard consistent with the Hotel Standards;
- (27) **“Hotel Management Agreement”** means the management agreement between the Hotel Operator 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);
- (28) **“Hotel Management Unit”** means Unit 28, Level 1 of the Resort Condominium which is leased to the Hotel Operator that includes 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;

- (29) **“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;
- (30) **“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;
- (31) **“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;
- (32) **“Incentive Royalty Fee”** means the amount payable to International Hotel Licensing Company S.À R.L. as described in section 3.3(1)(b);
- (33) **“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;
- (34) **“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 3% per annum;
- (35) **“International Services Agreement”** means the agreement between 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;
- (36) **“License and Royalty Agreement”** means the agreement between 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;
- (37) **“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;
- (38) **“Marketing Fee”** has the meaning ascribed thereto in section 3.3(1)(d);

- (39) **“Marriott”** means Marriott Hotels of Canada, Ltd. and its successors and permitted assigns;
- (40) **“Opening Date”** means December 22, 2008;
- (41) **“Operating Account”** means the trust account or accounts maintained by the Rental Pool Manager in accordance with section 3.1;
- (42) **“Operating Loss”** means a negative Operating Profit;
- (43) **“Operating Profit”** means, with respect to any given period of time, the excess of Gross Revenues (as defined in the Hotel Management Agreement) over Deductions (as defined in the Hotel Management Agreement) (each calculated in accordance with the Hotel Management Agreement and the Uniform System of Accounts);
- (44) **“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;
- (45) **“Other Corporate Charges”** has the meaning ascribed thereto in section 3.3(1)(e);
- (46) **“Owners”** means all of the owners of Resort Units and, prior to the transfers of the Resort Units means the purchasers of such Resort Units under existing agreements of purchase and sale or the declarant, as the case may be;
- (47) **“Owner’s Net Rental Revenue”** has the meaning ascribed to such term in subsection 3.2(5);
- (48) **“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, which Unit Factors are described as Common Interest percentages in the registered declaration of the Resort Corporation;
- (49) **“Parking Stalls”** means all of the parking stalls in the Resort Condominium from time to time which have been 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;
- (50) **“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;

- (51) **“Property Management Agreement”** means the property management agreement 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;
- (52) **“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;
- (53) **“Quarter”** means three (or in the case of the last Quarter of the Fiscal Year, four) consecutive Accounting Periods commencing on either, as the case may be (i) the day immediately following the end of the prior Fiscal Year, and (ii) the day immediately following the end of each of the third, sixth and ninth consecutive Accounting Period, for each Fiscal Year;
- (54) **“Receiver”** has the meaning ascribed to it in Recital A;
- (55) **“Rental Pool”** means the rental pool management arrangement undertaken by the Rental Pool Manager in accordance with this Agreement and the agreements between the Rental Pool Manager and other owners of Resort Units within the Resort Condominium on terms and conditions consistent with this Agreement;
- (56) **“Rental Pool Covenant”** means the covenant in respect of the rental of the Resort Units registered against title to the Unit in favour of the Hotel Management Unit and the other Resort Units as Instrument No. MT63507;
- (57) **“Rental Pool Management Fee”** means the management fee payable to the Rental Pool Manager, as described in section 4.1;

- (58) “**Reservation Fees**” has the meaning ascribed thereto in section 3.3(1)(c);
- (59) “**Resort Condominium**” means Muskoka Standard Condominium Plan No. 62 being the condominium registered under the Condominium Act for that portion of the Hotel used or intended to be used for hotel/lodging rooms and includes 178 Resort Units in the Longview building and 43 Resort Units in Paignton House, the Hotel Management Unit, the Parking Stalls and any other facilities contained within such condominium plan;
- (60) “**Resort Corporation**” means Muskoka Standard Condominium Corporation No. 62;
- (61) “**Resort Units**” means at any time all of the units within the Resort Condominium but does not include the Hotel Management Unit;
- (62) “**RRDI**” has the meaning ascribed to it in Recital A;
- (63) “**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;
- (64) “**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;
- (65) “**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, harmonized sales or other taxes similar to any of the foregoing;
- (66) “**Term**” means the initial term and any subsequent extension provided for in section 2.6;
- (67) “**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;

- (68) “**Unit**” means the Resort Unit described on page 1 of this Agreement;
- (69) “**Unit Expenses**” has the meaning ascribed to such term in subsection 6.1(18);
- (70) “**Unit Factor**” in respect of any Unit means the factor set out opposite the number of such Resort Unit in Schedule A hereto;
- (71) “**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;
- (72) “**Unit FF&E Reserve Fund**” means the fund established by the Rental Pool Manager pursuant to section 3.4;
- (73) “**Unit Revenue Share**” has the meaning ascribed to that term in subsection 3.2(3); and
- (74) “**Waterfront**” means the waterfront area adjacent to the Resort Condominium, intended for both recreational and commercial purposes.

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 subject to a rental pool management agreement with the Rental Pool Manager 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, the Receiver 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 registered declaration, 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, the Receiver and the Hotel Operator or any of their respective Affiliates, to employees or agents of the Resort Corporation, 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 date of execution hereof 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 to which it is a party relating to the Rental Pool in the Resort Condominium effective as of (a) 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 90 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; or (b) while RRD1 is the Rental Pool Manager and is in receivership pursuant to the terms of the Appointment Order, such earlier date as may be approved by order of the Court.

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 who have rental pool management agreements with the Rental Pool Manager 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 with the Rental Pool Manager 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 who have rental pool management agreements with the Rental Pool Manager to enter into rental pool management agreements with the same Person. Subject to the rights of the Hotel Operator herein, such Owners may, with the approval of at least three-quarters of the Owners who have rental pool management agreements with the Rental Pool Manager, 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 such Owners shall be forthwith transferred to the replacement rental pool manager under the new rental management agreements and otherwise shall be paid to such Owners.

Notwithstanding anything else contained in this section 2.9 and subject to the Appointment Order, the Owner acknowledges and agrees that during (and only during) such time as RRDI is the Rental Pool Manager and is in receivership pursuant to the terms of the Appointment Order the provisions set out in subsections 2.9(2) and 2.9(3) above shall not be operative as against the Rental Pool Manager and shall not form a basis upon which the Owner may terminate this Agreement.

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 the Receiver 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 expiry or 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 employer 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 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 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 by or under the 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 who have a rental pool management agreement with the Rental Pool Manager 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 the Rental Pool Manager, or (d) a Person that acquires all or substantially all of the assets (which, for greater certainty, may or may not include some or all of the Additional Development Lands) or shares of the Rental Pool Manager and either operates a hotel management business either on its own or in conjunction with its Affiliates or appoints a Qualified Operator to perform some or all of the obligations of the Rental Pool Manager hereunder, 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 to which the Rental Pool Manager is a party.
- (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 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. During such time as RRDI is the Rental Pool Manager and is in receivership pursuant to the terms of the Appointment Order, the Rental Pool Manager shall only be required to give at least 30 days prior written notice under this subsection 2.11(2).

- (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. The foregoing provisions of this subsection 2.11(4) shall be suspended and shall not be operative during such time as RRDI is the Rental Pool Manager and is in receivership pursuant to the terms of the Appointment Order, provided that the Receiver obtains court approval for any such assignee, replacement, agent, delegatee or subcontractor.
- (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 who have rental pool management agreements with the Rental Pool Manager. The foregoing provisions of this subsection 2.11(6) shall be suspended and shall not be operative during such time as RRDI is the Rental Pool Manager and is in receivership pursuant to the terms of the Appointment Order, provided that the Receiver obtains court approval for any such assignee or subcontractor.

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 (or of the Receiver, while RRDI is in receivership) as designated by it will have sole signing authority. The Rental Pool Manager agrees and acknowledges that the funds held in the Operating Account specifically in respect of the Owner's Net Rental Revenue are held in trust for the benefit of the Owner, such trust funds are not assets which form part of the estate of the Rental Pool Manager, and the commingling of these trust funds with other funds does not affect their status as trust funds.

The Owner acknowledges and agrees that the Operating Account may contain funds in respect of the revenues derived from the Commercial Space 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 Space Owner, 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 who have a rental pool management agreement with the Rental Pool Manager, 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, subject to the limitations set out in section 3.7, to the Owner in respect of the Owner's Net Rental Revenue as set out in section 3.7 and to such other Owners in accordance with the Rental Pool.

The Rental Pool Manager will hold and disburse or deduct amounts in the Operating Account specifically in respect of the Owner's Net Rental Revenue 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 and is subject to the limitations set out in section 3.7.

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 or the Hotel Operator, on its behalf, 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 and spa services;
 - (b) income derived from or in relation to the Commercial Space (other than revenue from the rental of meeting rooms and ballrooms (to the extent not included in the revenue from the rental of Resort Units)), 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) such other fees and charges (and applicable Taxes) payable to or deducted by, as the case may be, the Hotel Operator 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 except as expressly set forth in this Agreement;
 - (g) all of the costs of the registered owner relating to the Conference Centre including, without limitation, common expenses, reserve fund payments, the cost of repairs and replacements to the Conference Centre (including the furniture, fixtures and equipment located therein), realty taxes and insurance;
 - (h) 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;
 - (i) 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;
 - (j) a corporate advertising charge payable to the Rental Pool Manager equal to 1.0% of Gross Rental Pool Revenue for each Fiscal Year of the Term (or any portion thereof);
 - (k) 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;
 - (l) fees, royalties and other charges which may be payable to the Red Leaves Resort Association;
 - (m) 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;
 - (n) 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
 - (o) 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 or the Hotel

Operator, on its behalf, on the days the Unit is in the Rental Pool, that is, in general terms, such Adjusted Gross 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 in the Rental Pool on such days;

(4) “**Adjusted Unit Revenue Share**” means, for any time period, the LESSER of the following:

- (a) the Unit Revenue Share less the following (without duplication):
 - (i) the Rental Pool Management Fee pursuant to section 4.1;
 - (ii) the Owner's contribution to the Unit FF&E Reserve Fund pursuant to section 3.4; and
 - (iii) the Owner's contribution to telecommunications services costs pursuant to section 5.6; and
- (b) the Owner's Share of that amount that is equal to 95% of the Operating Profit, if any, calculated by the Hotel Operator pursuant to the Hotel Management Agreement and distributed to the Rental Pool Manager by the Hotel Operator in accordance with and pursuant to the terms of the Hotel Management Agreement;

(5) “**Owner's Net Rental Revenue**” means, for any time period, the Adjusted Unit Revenue Share less the following (without duplication): 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, HST (when applicable), 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) Owner personal use housekeeping charges	5.7 and 7.4

(6) “**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.

- (7) **“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 is 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 purposes 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 Revenue 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 Revenue 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, 5% of Gross Rental Pool Revenue for each Fiscal Year; and
 - (ii) commencing with the fourth full Fiscal Year following the opening of Paignton House, 4.0% 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) \$2.82 U.S. per Resort Unit per Accounting Period; and
 - (ii) \$4.47 U.S. 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 Reservation 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 0.83% of the Gross Rental Pool Revenue for each Accounting Period during the Term provided that the Hotel Operator may change such Marketing 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 deducted from Gross Rental Pool Revenue. These charges and expenses include the 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 Unit Revenue Share 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>
2009	4.5%
2010	5.5%
2011 and each Fiscal Year thereafter	6%

(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 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 who have a rental pool management agreement with the Rental Pool Manager as part of a reserve (the "**Unit FF&E Reserve Fund**") comprising similar funds collected from all such 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 such 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 100% 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 Rental Pool 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, 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.

- (1) To the extent of no more than the Owner's Share of 95% of the available Operating Profit, if any, with respect to each Quarter calculated on a cumulative basis from the first day of the Quarter to the last day of the Quarter by the Hotel Operator and distributed by the Hotel Operator to the Rental Pool Manager pursuant to the Hotel Management Agreement, the Rental Pool Manager will pay to the Owner the Owner's Net Rental Revenue for each such Quarter within 30 days after the end of every Quarter during the Term. Such quarterly interim payments shall be subject to adjustment in accordance with subsection 3.7(2). Payment under this subsection 3.7(1) shall not be made unless the amount due to the Owner exceeds \$100 for such Quarter. Payment under this subsection 3.7(1) 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.

- (2) For purposes of this Agreement, calculations and payments of (a) the fees and charges set out in subsection 3.2(2) and (b) the Rental Pool Management Fee, and distributions of the Owner's Net Rental Revenue made with respect to each Quarter shall be accounted for cumulatively within a Fiscal Year, but shall not be cumulative from one Fiscal Year to the next. Within 120 days after the end of each Fiscal Year, the Hotel Operator is obligated to deliver to the Rental Pool Manager an annual operating statement (the "**Annual Operating Statement**") summarizing the operations of the Hotel for the immediately preceding Fiscal Year, including the actual Operating Profit (or Operating Loss) for such Fiscal Year. Within twenty (20) business days after the Rental Pool Manager's receipt of the Annual Operating Statement, the Rental Pool Manager shall advise the Owner of any adjustments required to be made to the Owner's Net Rental Revenue for such Fiscal Year. If the adjustment is in favour of the Owner, the Rental Pool Manager shall pay the amount of the adjustment to the Owner as soon as possible. If the adjustment is in favour of the Rental Pool Manager, the Rental Pool Manager shall deduct such amount from any future Owner's Net Rental Revenue payable in respect of the Unit. The Owner shall not be entitled to see the Annual Operating Statement.

3.8 Statements to Owner. Concurrently with the payment of the Owner's Net Rental Revenue in accordance with subsection 3.7(1), 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, the Adjusted 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 Quarter. The statement will be prepared substantially in the form of the example attached as Schedule G hereto. 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 who have rental pool management agreements with the Rental Pool Manager, 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 such other Owners of Resort Units in accordance with sections 77 and 79 of the *Securities Act* (Ontario) within 60 days after the end of each Quarter; and
- (2) the Rental Pool Manager will provide to the Owner, at the cost of the Owner and such 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) prepared and delivered in accordance with sections 78 and 79 of the *Securities Act* (Ontario).

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 other Resort Units subject to a rental pool management agreement with the Rental Pool Manager. The Rental Pool Manager may deduct such cost from the Owner's Net Rental Revenue.

3.9 GST, HST 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 Canada Revenue Agency or any other relevant authority any amount required to be withheld or remitted in respect of goods and services tax, harmonized sales 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 which have not otherwise been paid by the Owner to the Resort Corporation. 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 irrevocably 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 Revenue.

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 Fiscal Year 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)	26%
Option 2 (14 Days)	28%
Option 3 (21 Days)	30%

The Rental Pool Management Fee will be paid on the 30th day following the end of each Quarter, in respect of the Unit Revenue Share for the immediately preceding Quarter. 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, use its reasonable commercial efforts to:
 - (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) subject to the right to terminate the Hotel Management Agreement in accordance with its terms and as contemplated pursuant to the terms of section 2.11, 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 (which shall be kept on an accrual basis) and such other reasonable records reflecting the Operating Account, the Gross Rental Pool Revenue, the Adjusted Gross Revenue, the Unit Revenue Share, the Adjusted 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 registered declaration, bylaws and applicable rules and regulations in place from time to time 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.\$10,000,000 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 \$10,000,000 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 commercially reasonable 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 Rental Pool Manager, as 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 who have a rental pool management agreement with the Rental Pool Manager 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 such 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 the Rental Pool Manager or a Qualified Operator in accordance with section 2.11 or otherwise 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 the 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 the applicable FF&E Estimate, unless there has been a change in circumstances) from time to time make 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. Except as set forth in section 5.5, 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 the Unit Revenue Share 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 2 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 Receiver 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 the Receiver or its respective officers, directors or 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 Covenant.** 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 75% 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;
- (13) indemnify and save the Rental Pool Manager, the Receiver, the Hotel Operator and those for whom in law the Rental Pool Manager, the Receiver or the Hotel Operator is responsible harmless from any claim, damage and cost incurred by the

Rental Pool Manager or the Receiver 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 Receiver, 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, the Receiver and the Hotel Operator as additional insureds;

- (14) be liable for and indemnify the Rental Pool Manager, the Receiver 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(4) and (5), (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 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 in subsection 6.3(6)(c) 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 in subsection 6.3(6)(c) 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 an 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 1:00 p.m. 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 E 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, as owner of the Conference Centre, has made 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 all of the costs of the owner relating to the Conference Centre 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 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 Space Owner will be obligated to contribute to the cost thereof on an equitable basis based on estimated usage.

8.3 **Swimming Pools and Exercise Room.** The Owner agrees that the Rental Pool Manager shall have the right to administer and manage the swimming pools 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 in place from time to time 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.

Notwithstanding anything else contained in this section 9.1 and subject to the Appointment Order, the Owner acknowledges and agrees that during such time as RRDI is the Rental Pool Manager and is in receivership pursuant to the terms of the Appointment Order, the Receiver shall have the option, by notice in writing to the Owner, to have such Dispute resolved by notice of motion to the Ontario Superior Court of Justice.

9.2 **Arbitration.** Except as otherwise provided in section 9.1, 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 Space Owner 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 registered declaration, 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 Rental Pool 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 Rental Pool 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, the Receiver 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 Receiver, 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. 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 3.3 (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 may not be amended unless the same amendments are simultaneously being made to all rental pool management agreements between the Rental Pool Manager and such other Owners of 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 who have a rental pool management agreement with the Rental Pool Manager, whether or not the Owner voted in favour of such amendment.

10.23 **Audit.** The Rental Pool Manager has the right to audit the Annual Operating Statement provided by the Hotel Operator pursuant to the terms of the Hotel Management Agreement. The Rental Pool Manager agrees to notify the Hotel Operator of its intention to conduct such an audit if, within fifteen (15) business days after the Rental Pool Manager advises the Owner of any adjustments required to be made to the Owner's Net Rental Revenue for such Fiscal Year pursuant to subsection 3.7(2), the Rental Pool Manager is requested to conduct such an audit by an audit request approved by a seventy-five percent (75%) vote of the Owners who have a rental pool management agreement with the Rental Pool Manager.

If any audit of the Annual Operating Statement by the Rental Pool Manager (or by a designate of the Rental Pool Manager chosen in the Rental Pool Manager's sole discretion) discloses an understatement of any amounts due to the Rental Pool Manager, the Rental Pool Manager shall advise the Owner of any further adjustments required to be made to the Owner's Net Rental Revenue for such Fiscal Year. If the adjustment is in favour of the Owner, the Rental Pool Manager shall make such payment to the Owner promptly after receiving the amounts found to be due from the Hotel Operator. If the adjustment is in favour of the Rental Pool Manager, the Rental Pool Manager shall deduct such amount from any future Owner's Net Rental Revenue payable in respect of the Unit.

The Owner shall not be entitled to see the results of the audit. Instead, the Rental Pool Manager agrees to provide a certification on the results of the audit, in form acceptable to both the Rental Pool Manager and the Hotel Operator, to the Board of the Resort Condominium.

10.24 **Limitation of Receiver's Liability.** Alvarez & Marsal Canada ULC is signing this Agreement in its capacity as receiver and manager of the Assets of RRDI and shall have no personal liability hereunder for any payment or for any other obligation. The Owner shall have no recourse in respect of this Agreement against any property or asset except for an unsecured claim against RRDI's existing and after-acquired assets, provided that, on and after the assignment by the Rental Pool Manager of its rights and interests pursuant to this Agreement to an assignee, RRDI shall have no further liability hereunder and the assignee shall be personally liable for all obligations of the Rental Pool Manager hereunder.

10.25 **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.

10.26 **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
- Schedule F - Additional Development Lands
- Schedule G - Form of Rental Pool Statement

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
DEVELOPMENTS INC., by Alvarez &
Marsal Canada ULC, solely in its capacity as
receiver and manager of the Assets of THE
ROSSEAU RESORT DEVELOPMENTS
INC., and not in its personal capacity**

By: _____

By: _____

BY THE OWNER:

If an individual:

Signed, Sealed and Delivered)
in the presence of)
)
)

Witness

Name

Name:

Signed, Sealed and Delivered)
in the presence of)
)
)

Witness

Name

Name

If a corporation:

Name

By: _____
Name: _____
Title: _____

I have the authority to bind the corporation