

# TAB E

## Resort Condominium First Year Operating Budget

<b>Revenues</b>	
Common Expense Contributions	1,874,929
Reciprocal Expense Contributions from Commercial Space	77,211
	<b>1,952,140</b>
<b>Services</b>	
Common area cleaning	110,000
Window cleaning	16,000
Elevator maintenance	28,000
Fire safety maintenance	8,000
HVAC maintenance	33,000
Parking maintenance	6,000
Exterior building maintenance	8,000
General repairs and maintenance	47,000
Garbage removal	40,000
Recreation facilities maintenance	43,000
Grounds maintenance	164,000
Snow removal	27,000
Decorations	10,000
Security	57,000
Docks, beach and waterfront maintenance (shared facilities)	12,000
Miscellaneous contingency	13,000
	<b>622,000</b>
<b>Administration</b>	
Office supplies	5,000
Legal & audit	13,000
Insurance	92,000
Meeting costs	5,000
Management fees	84,000
Performance audit	26,000
Telephone	3,000
Reserve fund study	13,000
	<b>241,000</b>
<b>Utilities</b>	
Water and sewer	160,000
Hydro	329,000
Propane	322,000
	<b>811,000</b>
<b>SUB TOTAL</b>	<b>1,674,000</b>
Reserve fund contribution (10%)	167,400
GST (excluding insurance and reserve fund contribution)	110,740
<b>TOTAL</b>	<b>1,952,140</b>

## Resort Condominium First Year Operating Budget Notes

Item	Description
<b>Revenues</b>	
Common Expense Contributions	Common expenses are shared amongst resort units on a proportionate basis. Each unit is assessed based upon percentage interest in total resort unit area.
Reciprocal Expense Contributions from Commercial Space	The Commercial Space reimburses reciprocal expenses to the Resort Condominium Corporation for services paid for by the Resort Condominium Corporation that benefit both as detailed in the Reciprocal Agreement.
<b>Services</b>	
Common area cleaning	Cleaning of building lobby and lounges, conference and meeting rooms, washrooms, corridors, stairways, elevators and other common areas on a daily basis.
Window cleaning	Exterior window cleaning twice a year.
Elevator maintenance	Inspection and maintenance of 10 elevators (4 hydraulic elevators and 6 geared elevators) as required by law.
Fire safety maintenance	Annual inspection and maintenance of fire safety equipment.
HVAC maintenance	Inspection and maintenance of all mechanical infrastructure used in the generation of building heat, cooling and ventilation.
Parking maintenance	Estimate for underground and surface parking maintenance including power sweeping and line painting as required.
Exterior building maintenance	Estimate for exterior maintenance and repairs to windows, siding and roof as required.
General repairs and maintenance	Estimate for minor repairs to the common element areas as required including window and door locks, carpet cleaning, electrical supplies, generator maintenance, pest control.
Garbage removal	Estimate for contract charges for hotel garbage removal.
Recreation facilities maintenance	Estimate for daily cleaning and maintenance of pool, hot tub, exercise room and other recreational amenities, including trail maintenance
Grounds maintenance	Estimate for contract charges relating to landscaping, roadways, exterior lighting and irrigation system.
Snow removal	Estimate for contract charges for snow removal relating to roadways, driveways, surface parking, walkways and exits.
Decorations	Estimate for seasonal building decorations.
Security	Estimate for monitoring and maintenance of security systems.
Docks, beach and waterfront maintenance (shared facilities)	Resort Condominium portion only representing 75% of the estimated maintenance costs relating to these Shared Facilities as will be detailed in the Shared Facilities Agreement
Miscellaneous contingency	Estimate for unbudgeted items.
<b>Administration</b>	
Office supplies	Estimate for office expenses of Resort Condominium
Legal & audit	Estimate of annual audit fees of the Resort Condominium as required by the Condominium Act and authorized legal expenses.
Insurance	Estimated annual premium for property and all risk liability insurance, boiler and machinery, loss of rental income and contents based on current insurance rates.
Meeting costs	Estimate of expenses for the annual meeting of the Resort Condominium.
Management fees	Charges of \$32 per unit per month for management services provided to the Resort Condominium for administering the affairs of condominium corporation.
Performance audit	Estimated cost of an engineering study to review and report on the common elements for warranty purposes during the first year following registration.
Telephone	Estimate for telephone costs for management office of the Resort Condominium.
Reserve fund study	Estimate of annual capital reserve fund study as required by the Condominium Act (Ontario)
<b>Utilities</b>	
Water and sewer	The Declarant is responsible for the operation and maintenance of the sewer and water plant until such time that responsibility is assumed by the Township. The Declarant will provide water and sewer facilities to the Resort Condominium.
Hydro	Estimated cost for metered consumption of electricity relating to the resort units and common areas (excluding commercial space which will be separately metered).
Propane	Estimated cost for supply and delivery of propane required to heat the resort units, suite fireplaces, pool and other common areas of the building (excluding commercial space).

### Reserve fund contribution (10%)

Section 93 of the Condominium Act (Ontario) defines the Reserve Fund as a fund set up by the Residential Condominium Corporation in a special account for the major repair and replacement of common elements and assets of the Corporation. The Act requires that a minimum of 10% of common expenses be allocated to the Reserve. Future amounts will be dictated by the reserve fund study which will be conducted in the first year following registration.

To the best of the Declarant's knowledge, there are existing and potential pending lawsuits material to the property in respect of trade contractor claims under the Construction Lien Act and potentially other claims in connection with operation of the Rental Pool under the existing Rental Pool Management Agreement; the insolvency of the Declarant and its ability to meet its financial and other obligations under existing agreements and its statutory requirements, in relation to the sale of Resort Units and the operation of the Hotel. There are no current or expected fees or charges to be paid by unit owners for the use of Resort Common Elements. Except as disclosed in this budget and the Disclosure Statements, there are no services not included in the foregoing budget that the Declarant provides, or expenses that the

Declarant pays and that might reasonably be expected to become, at any subsequent time, a Resort Common Expense. As of the date of the foregoing budget, the Resort Corporation has been created and, accordingly, there is \$65,700 in the Reserve Fund. The Resort Unit owners shall be responsible for payment of a portion of the shared expenses relating to Shared Facilities and the Corporation will be reimbursed for a portion of the reciprocal expenses by the owner of the Commercial Space.

# TAB F

THE ROSSEAU - a JW MARRIOTT RESORT  
Resort Condominium

HOTEL EASEMENT AND RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is dated the 9<sup>th</sup> day of March, 2009.

BETWEEN:

MUSKOKA STANDARD CONDOMINIUM  
CORPORATION NO. 62

(the "Resort Corporation")

AND:

THE ROSSEAU RESORT DEVELOPMENTS INC.

(the "Owner")

WHEREAS:

- A. The Resort Corporation is responsible for the control, management and administration of the common elements of the condominium described as Muskoka Standard Condominium Plan No. 62 (the "Resort Condominium") forming part of the project known as 'The Rosseau - a JW Marriott Resort' (the "Hotel") located in the Township of Muskoka Lakes, District of Muskoka. The common elements are legally described as:

All of the common elements of Muskoka Standard Condominium  
Plan No. 62

(the "Common Elements"),

registered in the Land Registry Office for the Land Titles Division of Muskoka (the  
"Land Registry Office").

- B. The Owner intends to register a condominium covering the commercial portions of the Hotel and to cause it to enter into an agreement similar to this Agreement.
- C. The Owner is the owner of the condominium unit in the Resort Condominium legally described as:

Unit 28, Level 1  
Muskoka Standard Condominium Plan No. 62

(the "Hotel Management Unit").

- D. The Hotel Management Unit is used in connection with the management and operation of the Hotel and the rental pool relating thereto (the "Rental Pool") and has been leased to Hotel Operator pursuant to the Hotel Management Unit Lease for such purposes.
- E. The Owner requires an easement over the Common Elements, including those portions which have been designated as exclusive use common elements, to permit the Owner or the tenant or occupier from time to time of the Hotel Management Unit responsible for the operation and management of the Hotel to carry out its duties, responsibilities and functions relating thereto.
- F. The parties also wish to record in this Agreement certain agreements they have reached regarding the required standards of maintenance of the Common Elements.

- G. It is desirable that certain restrictions be placed on the use of the Common Elements to ensure there is only one rental pool manager for the Hotel.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises, the sum of \$1.00 now paid by each party to the other, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), each party hereto covenants and agrees with the other as follows:

1. **Definition.** In this Agreement,

"Corporation" means the Resort Corporation;

"Hotel FF&E" means the furniture fixtures, equipment, signs, supplies, materials, improvements and property owned by the Corporation which are used in connection with the operation and management of the Resort Condominium as part of the Hotel and the Rental Pool;

"Hotel Management Agreement" means the agreement for the operation and management of the Hotel made between the Owner, the Hotel Operator and the Rental Pool Manager, as the same may be amended, extended, restated or replaced from time to time and includes any subsequent agreement with a permitted replacement for the Hotel Operator pursuant to the Rental Pool Management Agreements;

"Hotel Management Unit Lease" means the lease, from time to time, of the Hotel Management Unit in favour of the Hotel Operator;

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

"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;

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

"Rental Pool Manager" means The Rosseau Resort Management Services Inc. and includes any replacement therefor pursuant to the Rental Pool Management Agreements;

"Resort Units" means, collectively, all of the units in the Resort Condominium save and except the Hotel Management Unit;

2. **Grant of Easement.** The Corporation hereby grants, transfers and conveys to the Owner, for the benefit of and to be appurtenant to the Hotel Management Unit, the non-exclusive, full, free, continuous and uninterrupted right, licence, liberty, easement and right of way for the Owner, its successors and assigns, and its employees, servants, agents, contractors, subcontractors, tenants, invitees, licensees, permittees and guests, in perpetuity and at all times hereafter, by day and by night, and at its will and pleasure, to enter upon, go across, pass over and repass over, within, upon and along its Common Elements, including those portions designated for the exclusive use of some or all of the Resort Units for the purposes of carrying out the normal duties and functions associated with the Rental Pool and maintaining, managing and operating the Hotel. The Hotel Operator may grant or licence concessions to third parties for use of the Common Elements in connection with the operations of the Hotel. The Owner, the Rental Pool Manager or the Hotel Operator and its licensees may (i) install, locate, maintain and replace its equipment, machinery, fixtures and furnishings on the Common Elements (including exclusive use Common Elements), which are commercially reasonably required for managing and operating the Rental Pool or for maintaining, managing and operating the Hotel at a standard consistent with the Hotel Standards; and (ii) exclude

others from using or entering upon the parts of the Common Elements which are being used for the purpose; aforesaid.

3. **Corporation's Covenants.** The Corporation covenants and agrees:
  - (a) at all times to maintain its Common Elements and common facilities and equipment at a standard consistent with the Hotel Standards and to approve any Annual Budget (as hereinafter defined) and any other expenditures proposed by the Rental Pool Manager or the Hotel Operator if and to the extent such expenditures are necessary to comply with this obligation;
  - (b) not to make changes to any of its Common Elements or to install or permit to be installed any equipment, fixtures or other improvements in, on or to any of its Common Elements without the prior written consent of the Hotel Operator, such consent not to be unreasonably withheld (it being acknowledged that it will not be unreasonable for the Hotel Operator to withhold its consent if it is of the opinion that such changes, equipment, fixtures or improvements are not in compliance with the Hotel Standards or will adversely affect the operations of the Hotel);
  - (c) not to do, or knowingly permit to be done, any act or thing which will or may interfere with the right, licence and easement herein granted except as permitted hereby; and
  - (d) from time to time and at all times upon every reasonable request and at the cost and expense of the Owner, to do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, conveyances, and assurances in law whatsoever for the better assuring unto the Owner of the non-exclusive right, licence and easement herein granted.
4. **Grantee's Right to Maintain.** The parties acknowledge and agree that if the Corporation does not maintain its Common Elements at all times at a standard consistent with the Hotel Standards as required by subsection 3(a) of this Agreement then, upon giving not less than seven days' written notice to the Corporation (or in case of emergency without notice), the Owner, the Rental Pool Manager or the Hotel Operator may carry out, at the sole cost of the Corporation, any maintenance of, repairs to or replacements of its Common Elements required in order to meet the Hotel Standards, and the Corporation will reimburse such person forthwith upon demand for any costs and expenditures incurred in connection therewith, together with interest thereon at the Prime Rate plus 5% per annum calculated from the date of demand until the date of payment. "Prime Rate" as used in this section 5 means the rate of interest used by the main branch in Toronto, Ontario of the Owner's principal lender as a reference rate for establishing rates of interest for Canadian dollar commercial loans payable on demand, in effect from time to time and designated by the Owner's principal lender as its "prime rate".
5. **Rules and Regulations.** The Hotel Operator shall have the right from time to time to make reasonable rules and regulations regarding the use of the Common Elements for the purpose of maintaining, managing and operating the Hotel in a manner consistent with its rights and obligations under the Hotel Management Agreement. The Corporation agrees to abide by such rules and regulations and to use reasonable efforts to cause others using the Common Elements to do so.
6. **Annual Budget.** The Corporation will consult with the Rental Pool Manager in connection with the establishment of the annual budget (the "Annual Budget") for the Corporation and the parties will cooperate with each other during such consultation so as to ensure that sufficient operating funds and contingency reserve funds are allocated in the Annual Budget to the maintenance, repair and replacement of the Common Elements, the Hotel FF&E and the other assets of the Corporation, in order to allow the same to be maintained and operated at a standard consistent with the Hotel Standards. The Annual Budget will include an allowance of 5% of the operating expenses to provide available funds for operating contingencies. The Rental Pool Manager will submit a proposed annual budget (the "Proposed Budget") to the board of directors of the Corporation, no later than December 15 in each calendar year and the board of directors will have 30 days after receipt thereof to approve the Proposed Budget or propose changes to the portions thereof which are relevant to each. The board of directors shall not withhold approval of the Proposed

Budget if the expenditures contemplated therein are necessary to ensure the operation and maintenance of the Common Elements, the Hotel FF&E and the other assets of the Corporation at a standard consistent with the Hotel Standards. If the board of directors proposes changes to the Proposed Budget, the parties will cooperate, act reasonably and negotiate in good faith with the objective of reaching agreement on the Proposed Budget on the basis contemplated in this section 5 but, regardless of whether or not they are able to do so, within 15 days after the board of directors gives its proposed changes, the Proposed Budget (which shall include any changes proposed by the board of directors and agreed to by the Rental Pool Manager) will be circulated promptly for consideration by the members of the Resort Condominium at the annual general meeting or a special general meeting to be held within 30 days of a request therefor by the Rental Pool Manager. The Corporation and the members of the Resort Condominium will not withhold their approval of such Proposed Budget if the expenditures contemplated therein are necessary to ensure the operation and maintenance of the Common Elements and other assets of the Corporation at a standard consistent with the Hotel Standards. The Rental Pool Manager or one or more of the Rental Pool Manager's representatives shall be entitled to attend each general meeting for the purpose of presenting at such meeting such Proposed Budget. If the members of the Resort Condominium do not approve such Proposed Budget at the annual or a special general meeting, then any party to this Agreement may submit to arbitration in accordance with section 7 hereof the question of whether the expenditures in such Proposed Budget, or any of the expenditures, are necessary to maintain and operate the Common Elements and the other assets of the Corporation at a standard consistent with the Hotel Standards. A determination by the arbitrator that they are will constitute approval by the Corporation of such Proposed Budget and a determination by the arbitrator that they are not will be deemed to be a rejection by the Corporation of such Proposed Budget or the particular expenditures in dispute (and approval of any expenditures therein which are not in dispute).

7. **Grantee's Covenants.** The Owner covenants and agrees:
  - (a) to use or cause the Common Elements to be used for the purpose of managing and operating the Hotel at a standard consistent with the Hotel Standards;
  - (b) to indemnify and save harmless the Corporation from all loss, damage, costs, actions and suits which the Corporation suffers or incurs arising out of or in connection with any loss or damage to persons (including bodily injury and death) or property on the Common Elements to the extent caused by the gross negligence or wilful misconduct of the Owner.
8. **Arbitration.** Except as otherwise provided in this section 7, all disputes, controversies, claims or disagreements arising out of or relating to this Agreement (singularly, a "Dispute" and collectively, "Disputes"), will be settled by arbitration as follows:
  - (a) such Dispute may be submitted to arbitration by any party to this Agreement giving written notice to the other parties 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 parties of the name of the person it nominates to carry out the arbitration, then any 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;
  - (b) 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 8 will be final and binding upon the parties hereto;
  - (c) the arbitration will be held in Toronto, Ontario; and



- (d) no limitation imposed by or pursuant to the *Arbitrations Act* (Ontario) 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 *Arbitrations Act* (Ontario), as the same may be amended or replaced from time to time.

Notwithstanding anything contained in this section 7, each of the parties hereto will 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 (i.i) join any arbitration proceeding arising out of this Agreement with any other arbitration proceeding arising out of this Agreement.

9. **Restrictive Covenant.** The Corporation covenants and agrees that, for the benefit of and to be appurtenant to the Hotel Management Unit, it will not occupy, use or permit to be occupied or used, all or any portion of its Common Elements, directly or indirectly, (i) for purposes of providing front desk check in/check out, reservation, rental management or other services or functions relating to accommodation or suite rentals, except by the Owner, the Rental Pool Manager or the Hotel Operator in conjunction with the provision of such services therefrom in relation to the Resort Units in the Hotel; (ii) in any manner which interferes with the rights of the Owner hereunder or the operation of the Hotel in a manner consistent with the Hotel Standards; or (iii) contrary to the purpose for which such Common Elements are intended.
10. **Remedies.** The Corporation and the Owner acknowledge and agree that any breach or violation of the covenant contained in section 8 hereof will cause irreparable damage and harm to the Owner and the Hotel Management Unit, and that such breach or violation will not be adequately relieved by way of damages alone and that in addition to any other remedies to which the Owner may at any time be entitled at law or in equity, the Owner will be entitled to obtain injunctive relief in any court of competent jurisdiction to prevent any such breach or violation and to specifically enforce the covenant contained in section 8 hereof, and the Corporation hereby agrees not to oppose any application by the Owner for injunctive relief.
11. **Further Assurances.** Each party hereto will at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents which may be necessary to give proper effect to the intent of this Agreement.
12. **Run with the Land.** This Agreement will charge the Common Elements and the burden of all the covenants herein will run with the Common Elements and every part thereof.
13. **Amendment.** No amendment to this Agreement is valid unless in writing and executed by the Owner and the Corporation and approved in writing by the Rental Pool Manager and the Hotel Operator.
14. **Binding Effect.** This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. The Rental Pool Manager and the Hotel Operator shall be entitled to enjoy and exercise all of the rights and benefits of the Owner hereunder as if the Owner, the Rental Pool Manager and the Hotel Operator were one and the same.
15. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario.
16. **Notices.** Any demand or notice to be given pursuant to this Agreement will be duly and properly given if delivered, transmitted by telecopy or sent by postage prepaid mail and addressed, in the case of the Corporation, to the address for the Corporation as follows:

Muskoka Standard Condominium Corporation No. 62  
P.O. Box 86  
1050 Paignton House Road  
Minett, ON POB 1G0  
Attention: President

Telecopy: 705-765-1493

and to the Owner as follows:

The Rosseau Resort Developments Inc.  
P.O. Box 30  
1112 Juddhaven Road  
Minett, ON POB 1G0  
Attention: President

Telecopy: 705-765-1493

or such other address as a party may from time to time designate by notice in writing to the other party. The time of giving and receiving any such demand or notice will be deemed to be on the day of delivery or transmittal if delivered or sent by telecopy, or on the third business day after the day of mailing thereof if sent by mail. In the event of any disruption of mail services, all demands or notices will be delivered or sent by telecopy rather than mailed.

17. Interpretation.

- (a) Whenever the singular or masculine is used in this Agreement, the same will be deemed to include the plural or the feminine or the body politic or corporate as the context so requires.
- (b) The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provisions hereof.

18. 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.

19. Severability. The provisions hereof are severable and if any of them is found to be void or unenforceable at law, the remaining provisions hereof will not be affected thereby.

IN WITNESS WHEREOF the parties have executed this Agreement.

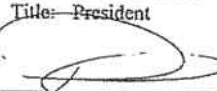
MUSKOKA STANDARD CONDOMINIUM  
CORPORATION NO. 62

Per:



Name: Robin Connors  
Title: President

Per:

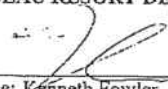


Name: Rupert McNay  
Title: Treasurer

We have authority to bind the corporation.

THE ROSSEAU RESORT DEVELOPMENTS INC.

Per:

  
Name: Kenneth Fowler  
Title: A.S.O.

I have authority to bind the corporation.

THE ROSSEAU - a JW MARRIOTT RESORT  
Resort Condominium

HOTEL EASEMENT AND RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is dated the 9<sup>th</sup> day of March, 2009.

BETWEEN:

MUSKOKA STANDARD CONDOMINIUM  
CORPORATION NO. 62

(the "Resort Corporation")

AND:

THE ROSSEAU RESORT DEVELOPMENTS INC.

(the "Owner")

WHEREAS:

- A. The Resort Corporation is responsible for the control, management and administration of the common elements of the condominium described as Muskoka Standard Condominium Plan No. 62 (the "Resort Condominium") forming part of the project known as 'The Rosseau - a JW Marriott Resort' (the "Hotel") located in the Township of Muskoka Lakes, District of Muskoka. The common elements are legally described as:

All of the common elements of Muskoka Standard Condominium  
Plan No. 62

(the "Common Elements"),

registered in the Land Registry Office for the Land Titles Division of Muskoka (the  
"Land Registry Office").

- B. The Owner intends to register a condominium covering the commercial portions of the Hotel and to cause it to enter into an agreement similar to this Agreement.
- C. The Owner is the owner of the condominium unit in the Resort Condominium legally described as:

Unit 28, Level 1  
Muskoka Standard Condominium Plan No. 62

(the "Hotel Management Unit").

- D. The Hotel Management Unit is used in connection with the management and operation of the Hotel and the rental pool relating thereto (the "Rental Pool") and has been leased to Hotel Operator pursuant to the Hotel Management Unit Lease for such purposes.
- E. The Owner requires an easement over the Common Elements, including those portions which have been designated as exclusive use common elements, to permit the Owner or the tenant or occupier from time to time of the Hotel Management Unit responsible for the operation and management of the Hotel to carry out its duties, responsibilities and functions relating thereto.
- F. The parties also wish to record in this Agreement certain agreements they have reached regarding the required standards of maintenance of the Common Elements.

- G. It is desirable that certain restrictions be placed on the use of the Common Elements to ensure there is only one rental pool manager for the Hotel.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises, the sum of \$1.00 now paid by each party to the other, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), each party hereto covenants and agrees with the other as follows:

1. **Definition.** In this Agreement,

"Corporation" means the Resort Corporation;

"Hotel FF&E" means the furniture fixtures, equipment, signs, supplies, materials, improvements and property owned by the Corporation which are used in connection with the operation and management of the Resort Condominium as part of the Hotel and the Rental Pool;

"Hotel Management Agreement" means the agreement for the operation and management of the Hotel made between the Owner, the Hotel Operator and the Rental Pool Manager, as the same may be amended, extended, restated or replaced from time to time and includes any subsequent agreement with a permitted replacement for the Hotel Operator pursuant to the Rental Pool Management Agreements;

"Hotel Management Unit Lease" means the lease, from time to time, of the Hotel Management Unit in favour of the Hotel Operator;

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

"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;

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

"Rental Pool Manager" means The Rosseau Resort Management Services Inc. and includes any replacement therefor pursuant to the Rental Pool Management Agreements;

"Resort Units" means, collectively, all of the units in the Resort Condominium save and except the Hotel Management Unit;

2. **Grant of Easement.** The Corporation hereby grants, transfers and conveys to the Owner, for the benefit of and to be appurtenant to the Hotel Management Unit, the non-exclusive, full, free, continuous and uninterrupted right, licence, liberty, easement and right of way for the Owner, its successors and assigns, and its employees, servants, agents, contractors, subcontractors, tenants, invitees, licensees, permittees and guests, in perpetuity and at all times hereafter, by day and by night, and at its will and pleasure, to enter upon, go across, pass over and repass over, within, upon and along its Common Elements, including those portions designated for the exclusive use of some or all of the Resort Units for the purposes of carrying out the normal duties and functions associated with the Rental Pool and maintaining, managing and operating the Hotel. The Hotel Operator may grant or licence concessions to third parties for use of the Common Elements in connection with the operations of the Hotel. The Owner, the Rental Pool Manager or the Hotel Operator and its licensees may (i) install, locate, maintain and replace its equipment, machinery, fixtures and furnishings on the Common Elements (including exclusive use Common Elements), which are commercially reasonably required for managing and operating the Rental Pool or for maintaining, managing and operating the Hotel at a standard consistent with the Hotel Standards; and (ii) exclude

others from using or entering upon the parts of the Common Elements which are being used for the purposes aforesaid.

3. **Corporation's Covenants.** The Corporation covenants and agrees:
- (a) at all times to maintain its Common Elements and common facilities and equipment at a standard consistent with the Hotel Standards and to approve any Annual Budget (as hereinafter defined) and any other expenditures proposed by the Rental Pool Manager or the Hotel Operator if and to the extent such expenditures are necessary to comply with this obligation;
  - (b) not to make changes to any of its Common Elements or to install or permit to be installed any equipment, fixtures or other improvements in, on or to any of its Common Elements without the prior written consent of the Hotel Operator, such consent not to be unreasonably withheld (it being acknowledged that it will not be unreasonable for the Hotel Operator to withhold its consent if it is of the opinion that such changes, equipment, fixtures or improvements are not in compliance with the Hotel Standards or will adversely affect the operations of the Hotel);
  - (c) not to do, or knowingly permit to be done, any act or thing which will or may interfere with the right, licence and easement herein granted except as permitted hereby; and
  - (d) from time to time and at all times upon every reasonable request and at the cost and expense of the Owner, to do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, conveyances, and assurances in law whatsoever for the better assuring unto the Owner of the non-exclusive right, licence and easement herein granted.
4. **Grantee's Right to Maintain.** The parties acknowledge and agree that if the Corporation does not maintain its Common Elements at all times at a standard consistent with the Hotel Standards as required by subsection 3(a) of this Agreement then, upon giving not less than seven days' written notice to the Corporation (or in case of emergency without notice), the Owner, the Rental Pool Manager or the Hotel Operator may carry out, at the sole cost of the Corporation, any maintenance of, repairs to or replacements of its Common Elements required in order to meet the Hotel Standards, and the Corporation will reimburse such person forthwith upon demand for any costs and expenditures incurred in connection therewith, together with interest thereon at the Prime Rate plus 5% per annum calculated from the date of demand until the date of payment. "Prime Rate" as used in this section 5 means the rate of interest used by the main branch in Toronto, Ontario of the Owner's principal lender as a reference rate for establishing rates of interest for Canadian dollar commercial loans payable on demand, in effect from time to time and designated by the Owner's principal lender as its "prime rate".
5. **Rules and Regulations.** The Hotel Operator shall have the right from time to time to make reasonable rules and regulations regarding the use of the Common Elements for the purpose of maintaining, managing and operating the Hotel in a manner consistent with its rights and obligations under the Hotel Management Agreement. The Corporation agrees to abide by such rules and regulations and to use reasonable efforts to cause others using the Common Elements to do so.
6. **Annual Budget.** The Corporation will consult with the Rental Pool Manager in connection with the establishment of the annual budget (the "Annual Budget") for the Corporation and the parties will cooperate with each other during such consultation so as to ensure that sufficient operating funds and contingency reserve funds are allocated in the Annual Budget to the maintenance, repair and replacement of the Common Elements, the Hotel FF&E and the other assets of the Corporation, in order to allow the same to be maintained and operated at a standard consistent with the Hotel Standards. The Annual Budget will include an allowance of 5% of the operating expenses to provide available funds for operating contingencies. The Rental Pool Manager will submit a proposed annual budget (the "Proposed Budget") to the board of directors of the Corporation, no later than December 15 in each calendar year and the board of directors will have 30 days after receipt thereof to approve the Proposed Budget or propose changes to the portions thereof which are relevant to each. The board of directors shall not withhold approval of the Proposed

Budget if the expenditures contemplated therein are necessary to ensure the operation and maintenance of the Common Elements, the Hotel FF&E and the other assets of the Corporation at a standard consistent with the Hotel Standards. If the board of directors proposes changes to the Proposed Budget, the parties will cooperate, act reasonably and negotiate in good faith with the objective of reaching agreement on the Proposed Budget on the basis contemplated in this section 5 but, regardless of whether or not they are able to do so, within 15 days after the board of directors gives its proposed changes, the Proposed Budget (which shall include any changes proposed by the board of directors and agreed to by the Rental Pool Manager) will be circulated promptly for consideration by the members of the Resort Condominium at the annual general meeting or a special general meeting to be held within 30 days of a request therefor by the Rental Pool Manager. The Corporation and the members of the Resort Condominium will not withhold their approval of such Proposed Budget if the expenditures contemplated therein are necessary to ensure the operation and maintenance of the Common Elements and other assets of the Corporation at a standard consistent with the Hotel Standards. The Rental Pool Manager or one or more of the Rental Pool Manager's representatives shall be entitled to attend each general meeting for the purpose of presenting at such meeting such Proposed Budget. If the members of the Resort Condominium do not approve such Proposed Budget at the annual or a special general meeting, then any party to this Agreement may submit to arbitration in accordance with section 7 hereof the question of whether the expenditures in such Proposed Budget, or any of the expenditures, are necessary to maintain and operate the Common Elements and the other assets of the Corporation at a standard consistent with the Hotel Standards. A determination by the arbitrator that they are will constitute approval by the Corporation of such Proposed Budget and a determination by the arbitrator that they are not will be deemed to be a rejection by the Corporation of such Proposed Budget or the particular expenditures in dispute (and approval of any expenditures therein which are not in dispute).

7. **Grantee's Covenants.** The Owner covenants and agrees:
  - (a) to use or cause the Common Elements to be used for the purpose of managing and operating the Hotel at a standard consistent with the Hotel Standards;
  - (b) to indemnify and save harmless the Corporation from all loss, damage, costs, actions and suits which the Corporation suffers or incurs arising out of or in connection with any loss or damage to persons (including bodily injury and death) or property on the Common Elements to the extent caused by the gross negligence or wilful misconduct of the Owner.
8. **Arbitration.** Except as otherwise provided in this section 7, all disputes, controversies, claims or disagreements arising out of or relating to this Agreement (singularly, a "Dispute" and collectively, "Disputes"), will be settled by arbitration as follows:
  - (a) such Dispute may be submitted to arbitration by any party to this Agreement giving written notice to the other parties 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 parties of the name of the person it nominates to carry out the arbitration, then any 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;
  - (b) 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 8 will be final and binding upon the parties hereto;
  - (c) the arbitration will be held in Toronto, Ontario; and

- (d) no limitation imposed by or pursuant to the *Arbitrations Act* (Ontario) 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 *Arbitrations Act* (Ontario), as the same may be amended or replaced from time to time.

Notwithstanding anything contained in this section 7, each of the parties hereto will 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. **Restrictive Covenant.** The Corporation covenants and agrees that, for the benefit of and to be appurtenant to the Hotel Management Unit, it will not occupy, use or permit to be occupied or used, all or any portion of its Common Elements, directly or indirectly, (i) for purposes of providing front desk check in/check out, reservation, rental management or other services or functions relating to accommodation or suite rentals, except by the Owner, the Rental Pool Manager or the Hotel Operator in conjunction with the provision of such services therefrom in relation to the Resort Units in the Hotel; (ii) in any manner which interferes with the rights of the Owner hereunder or the operation of the Hotel in a manner consistent with the Hotel Standards; or (iii) contrary to the purpose for which such Common Elements are intended.
10. **Remedies.** The Corporation and the Owner acknowledge and agree that any breach or violation of the covenant contained in section 8 hereof will cause irreparable damage and harm to the Owner and the Hotel Management Unit, and that such breach or violation will not be adequately relieved by way of damages alone and that in addition to any other remedies to which the Owner may at any time be entitled at law or in equity, the Owner will be entitled to obtain injunctive relief in any court of competent jurisdiction to prevent any such breach or violation and to specifically enforce the covenant contained in section 8 hereof, and the Corporation hereby agrees not to oppose any application by the Owner for injunctive relief.
11. **Further Assurances.** Each party hereto will at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents which may be necessary to give proper effect to the intent of this Agreement.
12. **Run with the Land.** This Agreement will charge the Common Elements and the burden of all the covenants herein will run with the Common Elements and every part thereof.
13. **Amendment.** No amendment to this Agreement is valid unless in writing and executed by the Owner and the Corporation and approved in writing by the Rental Pool Manager and the Hotel Operator.
14. **Binding Effect.** This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. The Rental Pool Manager and the Hotel Operator shall be entitled to enjoy and exercise all of the rights and benefits of the Owner hereunder as if the Owner, the Rental Pool Manager and the Hotel Operator were one and the same.
15. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario.
16. **Notices.** Any demand or notice to be given pursuant to this Agreement will be duly and properly given if delivered, transmitted by telecopy or sent by postage prepaid mail and addressed, in the case of the Corporation, to the address for the Corporation as follows:



Muskoka Standard Condominium Corporation No. 62  
P.O. Box 86  
1050 Paignton House Road  
Minett, ON P0B 1G0  
Attention: President

Telecopy: 705-765-1493

and to the Owner as follows:

The Rosseau Resort Developments Inc.  
P.O. Box 30  
1112 Juddhaven Road  
Minett, ON P0B 1G0  
Attention: President

Telecopy: 705-765-1493

or such other address as a party may from time to time designate by notice in writing to the other party. The time of giving and receiving any such demand or notice will be deemed to be on the day of delivery or transmittal if delivered or sent by telecopy, or on the third business day after the day of mailing thereof if sent by mail. In the event of any disruption of mail services, all demands or notices will be delivered or sent by telecopy rather than mailed.

17. Interpretation.

- (a) Whenever the singular or masculine is used in this Agreement, the same will be deemed to include the plural or the feminine or the body politic or corporate as the context so requires.
- (b) The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provisions hereof.

18. 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.

19. Severability. The provisions hereof are severable and if any of them is found to be void or unenforceable at law, the remaining provisions hereof will not be affected thereby.

IN WITNESS WHEREOF the parties have executed this Agreement.

**MUSKOKA STANDARD CONDOMINIUM  
CORPORATION NO. 62**

Per: \_\_\_\_\_

Name: Robin Conners  
Title: President

Per: \_\_\_\_\_

Name: Rupert McNay  
Title: Treasurer

We have authority to bind the corporation.

THE ROSSEAU RESORT DEVELOPMENTS INC.

Per:

Name: Kenneth Fowler

Title: A.S.O.

I have authority to bind the corporation.

# TAB G

THE ROSSEAU - a JW MARRIOTT RESORTRECIPROCAL AGREEMENT

This agreement is made as of March 9<sup>th</sup>, 2009 between:

**MUSKOKA STANDARD CONDOMINIUM CORPORATION**  
NO. 62, a corporation created upon registration of a declaration and  
description pursuant to the *Condominium Act*

(hereinafter referred to as the "Resort Corporation")

of the first part,

- and -

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

(hereinafter referred to as "RRDI")

of the second part,

Whereas:

- A. The Development contains the Resort Condominium as well as commercial space intended to form part of the Commercial Condominium (all as hereinafter defined); and
- B. The parties hereto desire to enter into an agreement governing the integrated use, operation and maintenance of the Development and the sharing of certain costs in respect thereof.

Now therefore this agreement witnesses that in consideration of the premises and mutual covenants and agreements herein contained, the parties hereto hereby declare, covenant and agree each with the others, as follows:

ARTICLE 1DEFINITIONS, INTERPRETATION AND SCHEDULES1.01 Definitions

In and for the purposes of this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms and expressions shall have the meanings indicated:

- (a) "Accounting Period" means the 12-month period commencing upon January 1 in a calendar year and ending on December 31 in the same calendar year, or such other 12-month period as may be designated by the parties in writing and any period of less than 12 months as a result of such designation.
- (b) "Agreement" means this Agreement including all the Schedules which are annexed hereto, all amendments, if any, as evidenced by memoranda in writing duly executed by the parties hereto, and any documents which are herein referred to and stipulated to form part of this Agreement.
- (c) "Arbitration Tribunal" means the arbitrators designated pursuant to Article 12.
- (d) "Assumption Agreement" means the form of assumption agreement and attached as Schedule D hereto.
- (e) "Commercial Condominium" means the proposed commercial condominium intended to cover the commercial space being constructed by RRDI on the Commercial Lands to be registered under the *Condominium Act* after completion.
- (f) "Commercial Lands" means the lands described in Schedule B annexed hereto.

- (g) **"Common Elements"** means, in the case of the Resort Condominium, the common elements of the Resort Condominium and, in the case of the Commercial Condominium, those parts of the Commercial Lands intended to be common elements upon registration of the Commercial Condominium.
- (h) **"Condominium Act"** means the *Condominium Act, 1998*, R.S.O. 1998, c. 19, as amended or replaced from time to time and the regulations made thereunder.
- (i) **"Condominiums"** means, collectively, the Commercial Condominium and the Resort Condominium.
- (j) **"Corporation"** means each of the Resort Corporation and the Commercial Corporation (after it has been registered), as the case may be.
- (k) **"Declaration"** means the declaration for each Condominium registered under the *Condominium Act*.
- (l) **"Development"** means the development constructed on the Resort Lands and the Commercial Lands comprising the buildings known as "Longview" and "Paignton House"; which buildings include the Resort Condominium and the Commercial Condominium.
- (m) **"Easements"** means all easements, right of way and rights of support which will serve the Development and includes the easements, rights of way and rights of support in favour of each of the Condominiums as set forth in this Agreement or in the Declarations and referred to in this Agreement.
- (n) **"Force Majeure"** means war or other catastrophe, act of the Queen's enemies, riot or insurrection, strike, lockout, labour disturbance, inability to obtain materials, goods, equipment, services or utilities required, or any law, municipal by-law, governmental regulation or order, or inability to obtain any permission or authority required thereby or any other event or occurrence beyond the control of the party seeking to rely on Force Majeure save and except for financial inability.
- (o) **"Hotel"** means the hotel property known as "The Rosseau – a JW Marriott Resort" and comprising the Condominiums and the dock, boathouse, beach and water sports area located at the lakefront adjacent to the Condominiums.
- (p) **"Hotel Easement and Restrictive Covenant Agreements"** means, collectively, the agreements by that name entered into between RRDI and the Resort Condominium and to be entered into between the Commercial Condominium after it has been registered and RRDI.
- (q) **"Hotel Management Agreement"** means the agreement for the operation and management of the Hotel made between RRDI, the Hotel Operator and The Rosseau Resort Management Services Inc., as the same may be amended, extended, restated or replaced from time to time and includes any subsequent agreement with a permitted replacement for the Hotel Operator.
- (r) **"Hotel Operator"** means Marriott Hotels of Canada, Ltd. and includes any permitted replacement therefor.
- (s) **"Major Change"** means any alteration, addition, change or improvement (including but not limited to structural changes but not including minor changes in details) or the demolition or material partial demolition of any part of the Development, in each case which materially adversely affects the Shared Facilities or the Easements; provided that the original construction of the Development or restoration or repair following damage or destruction (where the original plans and specifications are substantially re-utilized) shall not constitute a Major Change.
- (t) **"Party"** means a party to this Agreement from time to time.

- (u) **"Prime Rate"** means the rate of interest that is declared by the Bank of Nova Scotia or its successors, head office branch, in Toronto, Ontario, to be the rate of interest charged by it to its largest commercial borrowers of the highest credit standing for unsecured Canadian dollar demand loans in Canada, in effect at 12:00 o'clock noon (Toronto time) on the first working day of each month and the declaration by the Bank of Nova Scotia or its successors shall in the absence of manifest error be final and conclusive. If the Bank of Nova Scotia or its successors does not declare said rate then, the Prime Rate shall mean the average of the rates of interest charged by the three Canadian banks having the greatest assets at the particular time to their largest commercial borrowers of the highest credit standing for unsecured Canadian dollar demand loans in Canada.
- (v) **"Property Manager"** means the property manager retained from time to time by the Resort Corporation to manage the Resort Condominium.
- (w) **"Resort Condominium"** means the units and common elements of Muskoka Standard Condominium Plan No. 62 registered against the Resort Lands.
- (x) **"Resort Lands"** means the lands described in Schedule A annexed hereto.
- (y) **"Retail Changes"** means the changes to the units and Common Elements of the Commercial Condominium referred to in Section 8.04 hereof.
- (z) **"Shared Facilities"** means every service, utility, facility and system set out in Schedule C or which may be added to such Schedule pursuant to the provisions of Section 3.04 or 3.05.
- (aa) **"Shared Facilities Costs"** means the costs of managing, supplying, operating, maintaining, repairing, replacing and insuring the Shared Facilities and shall include applicable goods and services tax.
- (bb) **"Structure"** means either the Commercial Condominium or the Resort Condominium (including the respective units and Common Elements of each) as the context may require.
- (cc) **"Support Facilities"** means those elements or aspects of the Development located within a Structure which are required to furnish adequate support to another Structure including the Easements.

#### 1.02 Interpretation

This Agreement shall be interpreted and construed in accordance with the following provisions:

- (a) the captions to sections and any provided table of contents are for convenience of reference only and in no way define, limit, enlarge or affect the scope of, or intent of, this Agreement or its interpretation;
- (b) this Agreement is to be construed and enforced in accordance with the laws of the Province of Ontario as an Ontario contract;
- (c) the invalidity or unenforceability of any provision of this Agreement or any covenant herein shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained, but shall be deemed to be severable, except where such invalid or unenforceable provision or covenant is expressed to be a condition or has a conditional operation;
- (d) this Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, undertakings and negotiations, whether oral or written, and there are no present warranties, representations or other agreements between the parties in connection with the subject matter except as specifically set forth or referred to herein;

- 4 -

- (e) no supplement, modification or waiver of or under this Agreement shall be binding unless executed in writing by the party to be bound thereby, and no waiver by a party of any provision of this Agreement shall be deemed or shall constitute a waiver by such party of any other provision or constitute a continuing waiver unless otherwise expressly provided;
- (f) all the terms and provisions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns (but this shall not permit or imply any permission enabling any party to assign its rights under this Agreement except pursuant to the express provisions of this Agreement); and
- (g) all references in this Agreement to dollar amounts shall be deemed to be a reference to such amounts expressed in Canadian dollars.

#### 1.03 Schedules

The schedules to this Agreement comprise part hereof, and are entitled as follows:

- A - Description of the Resort Lands
- B - Description of the Commercial Lands
- C - Shared Facilities
- D - Form of Assumption Agreement

### ARTICLE 2

#### EASEMENTS, RIGHTS OF WAY, RESERVATIONS

##### 2.01 Acknowledgement

Each of the Parties hereto acknowledges and confirms that this Agreement is intended to provide for the integrated use, operation, maintenance, repair, replacement and reconstruction, if necessary, of the Development including the Shared Facilities and the allocation of costs respecting same as well as the provision of Easements necessary or reasonably desirable for the use, operation, maintenance, repair, replacement and reconstruction thereof, if necessary, of each of the Structures for their intended use.

Each of the Parties hereto further acknowledges, confirms and agrees that the Easements and the other covenants and agreements created or referred to herein are intended to apply to and to benefit each of the Structures.

Each of the Parties hereto agrees that it shall from time to time at the request of any other Party transfer, or consent to, such other easements, rights of way and rights of access for repairing and maintaining services and maintaining the Development as may be reasonably necessary in the circumstances of the requesting Party (provided that the request does not result from a material change in use of the Structure (or any part thereof) of the requesting Party) and does not have a material adverse affect on any other Party.

##### 2.02 General Easements for Services

The Parties agree that the Easements for services and Shared Facilities over the Common Elements of each Party set forth in the Declarations are subject to the terms of this Agreement and are for the purpose of installing, maintaining, using, operating, managing, inspecting, repairing and replacing all or any part of the Shared Facilities and all or any part of any service, utility, fixture, facility or system serving the Structure of each Party located in or on, in whole or in part, the Structure of the respective transferor or which may in the future be required from time to time in or on the Condominiums (excluding the units) for the better operation thereof.

##### 2.03 General Easement of Support

The Parties agree that the Easements for support set forth in the Declarations are subject to the terms and conditions of this Agreement and are for support of the portion of the Development in which each Party has an interest.

2.04 **General Easement of Access**

The Parties agree that the Easements for access set forth in the Declarations are subject to the terms and conditions of this Agreement and are for the purpose of allowing each of the Parties benefiting from such Easements, in the exercise of its respective rights and performance of its respective duties under this Agreement, to have:

- (a) all necessary and reasonable access together with supplies, machinery, equipment, servants, agents and workmen, to the Structures subject to such Easements that can only be achieved by crossing, travelling or drilling through the components of the Development subject to such Easements;
- (b) emergency fire route access over the corridors and stairs, in compliance with applicable fire regulations, of the Structures subject to such Easements;
- (c) access to the Common Elements and the units in its Condominium (if applicable) subject to such Easements; and
- (d) the right to affix or install fixtures to or in ceilings or walls of the Common Elements subject to such Easements as may be necessary for the reasonable use and enjoyment of that Party's Structure.

2.05 **General Reservation and Covenants**

Each Party hereby reserves its rights over the areas in its Structures affected by the Easements and agrees to abide by all reasonable rules and regulations of the Party owning the Structure subject to the Easements, so long as such rules and regulations (a) are notified to the transferee of the Easements in writing from time to time; and (b) do not interfere with the reasonable and intended use and enjoyment of the Easements. Such rules and regulations may regulate, without limitation, the time (except in an emergency) during which, and manner in which, the Easements may be used. In their use of the Easements, the Parties shall act in a prudent and reasonable manner so as to minimize the interference occasioned to the other Parties by such use. Each Party benefiting from an Easement agrees that it will use reasonable efforts, in the exercise of its rights respecting the Easement, not to materially adversely affect the reasonable enjoyment for its intended purpose of the Structure affected by such Easement.

2.06 **Obligations to Restore**

If damage is caused to property subject to an Easement as the result of its use by a transferee, the Party that caused the damage shall repair the damage forthwith. Such repair shall include any redecoration necessary to restore the damaged property to its previous condition.

2.07 **Extent of Easements**

Each of the Parties hereto acknowledges and agrees that the Easements referred to herein shall extend to and both benefit and bind the Resort Lands and the Commercial Lands without the necessity of any further transfer of any of the Easements.

2.08 **Further Assurances**

With respect to each of the Easements referred to in this Article, each Party shall at its expense (other than the cost of preparing the legal description of such Easement which shall be borne by the transferee) execute such further assurances and do such other acts, as may be reasonably necessary to give proper effect to such Easement including, without limiting the generality of the foregoing, if requested by another Party, the execution of a transfer or transfers of Easement in registrable form. Without limiting the generality of the foregoing, each of the Parties agrees to execute and deliver, upon the request of another Party, such documents or transfers as may reasonably be requested to confirm the Easements herein described.



**ARTICLE 3****SHARED FACILITIES****3.01 Maintenance, Repair and Replacement**

All Parties confirm and acknowledge their understanding that certain work in connection with the management, operation, maintenance, repair and replacement of various portions of the Development and of the Shared Facilities will benefit the Parties to varying degrees. The Property Manager will be responsible for managing the operation, maintenance, repair and replacement of the Shared Facilities and Support Facilities from time to time.

**3.02 Discretionary Payment**

Each Party shall be entitled to review all bills, invoices and receipts relating to any Shared Facilities Costs to which such Party is required to contribute. Subject to the terms hereof, each of the Parties will pay for the costs of operating, maintaining, repairing, replacing and insuring the Shared Facilities located within its Structure. If the Property Manager is of the opinion that, in its sole discretion, it is more efficient and cost effective to carry the operation, maintenance, repair and replacement of a Shared Facility under a single contract, the Resort Condominium will enter into such contract (on terms approved by the Property Manager in its reasonable discretion) and shall be entitled to reimbursement from the other Party in accordance with Section 3.03. It is therefore acknowledged and agreed that the amount of any cost for any service or work so performed shall not be challenged unless such cost has been clearly demonstrated to be in excess of the reasonable costs which would properly have been paid had due diligence been exercised. The other Party to this Agreement shall pay to the Resort Condominium the amounts determined by the Property Manager, including a share of the fees of the Property Manager so that the Resort Condominium does not incur an inequitable share of such fees relating to the performance of the Property Manager's duties under this Agreement.

**3.03 Prompt Payment of Shared Facilities Costs**

- (a) Each Party shall promptly pay its share of each Shared Facilities Cost as allocated in Schedule C and applicable goods and services tax when request is made by the Property Manager and any cost of collection, including all legal expenses incurred on a solicitor and his client basis, shall be the sole liability of the Party who has omitted or neglected to pay promptly upon request, and such defaulting Party shall be solely liable for any interest or penalty charges incurred as a result of its failure to pay promptly. For greater certainty, each Party shall pay to the other Party the appropriate amount so that the cost borne by each Party for the Shared Facilities in its Structure equals the portion attributable to it under Schedule C.
- (b) The Parties acknowledge and agree that upon substantial completion of the Development when it is ready for occupancy, the Shared Facilities will be deemed to include the additional facilities located therein which are intended to form part of the Shared Facilities. The rights and responsibilities of the Property Manager shall thereupon extend to and include such additional facilities.
- (c) The Property Manager shall prepare a budget for each Accounting Period based on its estimate of the Shared Facilities Costs for such Accounting Period (and may adjust same from time to time) and shall provide a copy thereof to each Party to this Agreement. The Parties shall pay to the other Parties as the Property Manager may designate their respective shares of the estimated Shared Facilities Costs as allocated in Schedule C based on such budget in equal monthly instalments in advance on the first day of each month during the Accounting Period (or in such other amounts and at such other times as may be specified by the Property Manager). The Property Manager shall provide to each Party a statement of the actual Shared Facilities Costs for each Accounting Period that were incurred hereunder within 120 days after the end of each Accounting Period. The Parties shall make payments to the others within 30 days of receipt of the statement as requested to ensure that each Party has paid its share of the costs of the Shared Facilities for such Accounting Period in accordance with Schedule C.

**3.04 Re-adjustment of Shared Facilities**

- (a) The Parties may from time to time agree in writing to adjust their respective proportionate liability for sharing the cost of any item in Schedule C.
- (b) The Parties may agree in writing to include in Schedule C and to allocate among themselves the cost for any item not included in Schedule C.
- (c) In any of the situations described in subparagraphs 3.04(a) or (b), Schedule C shall thereby be deemed to be amended in accordance with such written agreement.

**3.05 Disputes in Allocation of Shared Facilities**

Any Party (the "Disputing Party") who:

- (a) has incurred, or is obliged to contribute to, the costs of any item in Schedule C, and
- (b) wishes to add to or vary any item in Schedule C, or
- (c) wishes to change the allocation of the cost of any item in Schedule C,

shall first give notice to the other Party and to the Property Manager, and if such other Party and the Disputing Party cannot agree within thirty (30) days of the giving of such notice, then the Disputing Party may apply to have the matter determined by the Arbitration Tribunal. In making its determination the Arbitration Tribunal shall have regard for the integrated operation of the Development with a view to the equitable sharing of costs among the Parties in relation to their use and enjoyment of the Shared Facilities. Until the matter is finally determined by the Arbitration Tribunal, the Disputing Party shall continue to pay all amounts required to be paid by it in accordance with Schedule C. The Parties shall continue to be governed by the provisions of Schedule C and following the determination by the Arbitration Tribunal, the appropriate payments and reimbursement between the Parties shall be made forthwith to recognize and give effect to the determination of the Arbitration Tribunal.

**3.06 Parties to Execute Agreements**

The Parties hereto shall execute any further agreement or amendments to this Agreement required further to evidence or register notice thereof.

**ARTICLE 4****OPERATION****4.01 Compliance with Law**

Each Party in performing its obligations and exercising its rights under this Agreement covenants and agrees to comply with all laws, rules, orders, ordinances, regulations and requirements of The Township of Muskoka Lakes, the District of Muskoka, the Province of Ontario or any governmental board or authority, or any agency thereof having jurisdiction over the Development.

**4.02 Compliance with Agreement**

Each Party covenants and agrees to comply with all of the provisions herein contained and no Party will authorize or permit any breach hereof by any resident, occupant, visitor, guest, servant, agent, tenant, licensee or permittee. The Resort Corporation agrees to cause the Property Manager to observe and perform the responsibilities allocated to it under this Agreement and shall be entitled to enforce the rights of the Property Manager set forth herein against the other Party hereto.

#### 4.03 Construction Liens

Each Party covenants and agrees to remove any construction liens registered against all or any part of the Development relating to work performed on or with respect to its Structure within thirty (30) days of request from the other Party. In any event, no Party shall permit a construction lien to be enforced against the Development or any part thereof.

#### 4.04 Disturbance;

Each Party covenants and agrees not to cause, authorize or condone any undue disturbance, noise or vibrations from its Structure or from any part of any other Structure over which such Party has an easement, to the detriment of the other Party. Nothing in this Section 4.04 shall in any way be construed to restrict the reasonable intended uses of the Development, the units within the Condominiums or the Easements and construction therein from time to time.

#### 4.05 Performance of Work and Maintenance Standards

All work required to be performed pursuant to this Agreement shall be performed in a manner equivalent to standards from time to time maintained in other first-class comparable buildings in The Township of Muskoka Lakes in a good and workmanlike manner and in compliance with all applicable laws. Each Party, with respect to its Common Elements, covenants and agrees to use, manage, operate, maintain, repair, restore, reconstruct and perform replacement work to its Common Elements in the aforesaid manner, including, without limitation, keeping its Common Elements clean and tidy, providing all necessary services and utilities, promptly removing all garbage and refuse and providing all necessary security.

#### 4.06 Self Help

- (a) If a Party (the "Defaulting Party") fails to perform any of its obligations under this Agreement, in addition to any other right or privilege specifically provided for in the Agreement, the other Party (the "Requesting Party") may give the Defaulting Party notice outlining the nature of the default and requesting that the Defaulting Party perform its obligation.
- (b) If, without reasonable cause, the Defaulting Party has not, within ten (10) days following receipt of such notice, disputed the alleged default and moved within such period to resolve the matter by arbitration pursuant to Article 13 or commenced, and thereafter is not taking all reasonable steps necessary, to cure the default set out in such notice, the Requesting Party may take all reasonable steps necessary to cure the default outlined in such notice, including, without limitation, the payment of any cost or expense required to be paid by the Defaulting Party, the performance of maintenance, repair, restoration, reconstruction or replacement work, the hiring of contractors, the entry into the Structure of the Defaulting Party, the exercise of any right of access of such Defaulting Party, the payment of any sum secured by lien and the filing of a bond to discharge a lien. The Defaulting Party will pay directly to the Requesting Party any cost or expense actually paid or incurred by the Requesting Party in performing the obligations of the Defaulting Party from the Requesting Party either pursuant to this Agreement or otherwise, together with interest at the rate specified in Section 13.05, from the date such payment is made from the Requesting Party until reimbursement is made to the Requesting Party.

#### 4.07 Hotel Management Agreement

- (a) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree, that so long as the Hotel Management Agreement is in effect, the following terms and conditions shall apply.
- (b) RRDI, in its capacity as the initial Property Manager, may delegate certain of the rights and obligations of the Property Manager under this Agreement to the Hotel Operator with respect to the operation, repair, maintenance and replacement of the Hotel. The Hotel Operator shall be an independent contractor and not an agent of any of the Parties. The Parties acknowledge that the Hotel Operator has no liability to the Parties under this Agreement and that any action or claim the

Parties may have for non-performance of the obligations of the Property Manager hereunder or otherwise at contract or in tort may be made solely against RRDI or the Property Manager.

- (c) The rights and obligations of the Parties under this Agreement, including the Easements, (i) shall be exercised in a manner that minimizes any disruption to Hotel guests or any adverse effects on the operations of the Hotel, and (ii) shall be subject to and read together with the provisions of the Hotel Easement and Restrictive Covenant Agreements.

## ARTICLE 5

### TAXES

#### 5.01 Separate Assessments

The Parties shall do all acts and things necessary or desirable so that each Structure will be assessed separately on the assessment rolls of the taxing authority and taxed separately based upon such assessments.

#### 5.02 Combined Assessment

If at any time the whole or part of any Structures shall not be assessed separately, then the owners of the commonly assessed Structures shall use their respective best efforts to agree on an equitable division of the realty tax liability imposed and shall share the payment of such taxes in the manner agreed upon. If the owners are unable to reach an agreement within thirty (30) days from the receipt of the notice of combined assessment, then any of them may seek a decision by arbitration in accordance with Article 12. For greater certainty for any Structure which is exempt from the payment of realty taxes, the Party otherwise responsible for the payment of taxes for such exempt Structure shall not be responsible for the payment of any realty taxes therefor, but may be liable for its share of realty taxes attributable to easements appurtenant to such Structure and common areas.

#### 5.03 Separate Assessments with Combined Taxation

If the Structures are separately assessed but are not taxed separately, then the Party responsible for the Structure not separately taxed shall pay that amount as shall bear the same proportion to the total tax for the Structures not separately taxed as the assessed valuation of each such Structure shall bear to the total assessed valuation of the Structures not separately taxed and any such taxes shall be paid immediately when due.

#### 5.04 Failure to Pay Taxes

If any Party shall fail to pay any tax or other charge which is due in respect of its interest in the Development, or any share thereof as provided in this Article 5, and if such unpaid tax or charge is a lien or encumbrance upon the Development or any part thereof or if any lawful authority would thereafter have the right to sell or otherwise foreclose by reason of such non-payment, then the other Party hereto may, after ten (10) days' notice to the defaulting Party, pay such tax or charge or the share thereof, together with any interest and penalties thereon, and the defaulting Party shall upon demand, reimburse the Party making such payment for the amount of such payment and for all costs incurred, together with interest and costs as provided in Section 13.05.

## ARTICLE 6

### INSURANCE

#### 6.01 Property Insurance

- (a) Each of the Parties shall at all times jointly take out and maintain the property insurance described in the Condominium Act (including as appropriate boiler and machinery insurance) with respect to its Structure including the Shared Facilities located therein. Such insurance shall include the following provisions:

- (i) each policy shall name the Parties as insured;
- (ii) a waiver of subrogation against the other Party and the owners and, as applicable, the tenants of units in its Condominium, including their respective agents and employees;
- (iii) a "stated amount clause" to the effect that the insurer agrees that the amount of insurance is sufficient and not subject to further verification;
- (iv) with respect to each of the Condominiums, a waiver of the insurer's option to repair, rebuild or replace the Condominium if, after damage, the government of any part of the Condominium is terminated pursuant to the *Condominium Act*; and
- (v) a by-law clause.

The Property Manager will have the responsibility to arrange the insurance required under this Section 6.01.

- (b) Each of the Parties acknowledges and agrees that the proceeds of insurance with respect to damage to or destruction of their respective Structures (or any part thereof) will be dealt with under and in accordance with the terms of the insurance trust agreement applicable to each of the Condominiums. Each Party agrees and, if applicable, agrees to direct its insurance trustee to apply the proceeds of insurance to the repair or replacement of the Shared Facilities located within its Structure.

#### 6.02 Liability Insurance

- (a) Each Party shall at all times take out and maintain a comprehensive general liability policy covering claims for personal injury, death or property damage or loss in an amount that prudent owners of comparable properties would carry.
- (b) The Resort Condominium shall maintain standard garage-keepers liability insurance and non-owned automobile coverage for any claims for personal injury, death or property damage occurring within any parking facilities located on the Resort Lands.
- (c) Each liability policy shall include as additional insureds each of the other Parties and their respective servants and employees while acting in the course of their employment and their respective managing agents and their servants and employees while acting in the course of their employment.
- (d) Each liability insurance policy shall include the following provisions:
  - (i) that the policy shall be primary with respect to the property and operations of the named insured;
  - (ii) a cross-liability clause to the effect that the insurance shall apply in respect to any claim or action brought against any one insured Party by any other insured Party, or by any employee of such other insured Party; and
  - (iii) provisions prohibiting the lapse, cancellation or material modification of the liability insurance without first giving at least sixty (60) days' written notice by registered mail to all Parties whose interests appear thereon.

#### 6.03 Premiums

- (a) Each of the Parties agrees to be responsible for its share of the insurance premiums for the property insurance described in Section 6.01 in the proportions set forth in Schedule C (which the Parties acknowledge are intended to be based on the relative replacement cost value of each Structure). Upon the request of any Party from time to time, the Property Manager may, acting reasonably, change the proportions payable by each of the Parties. In determining each Party's share of

the premiums, the Property Manager may rely on the allocation thereof, if any, made by the applicable insurance company or may obtain an appraisal (the cost of which will be shared in the same proportions as the premiums after amendment thereof).

- (b) Any Party may upon notice to the other request a re-allocation taking into account the "experience rating" applicable to each Party, the replacement value of the property of each Party and any other relevant factors. If the Parties are unable to agree to the re-allocation of any premium, the premium shall be re-allocated by a decision of the Arbitration Tribunal.

#### 6.04 General

- (a) The building insurance, liability insurance and any other insurance maintained in accordance with this Agreement shall comply with the requirements of the *Condominium Act*, the Hotel Management Agreement and the Declarations of the Resort Condominium and the Commercial Condominium and, subject as aforesaid, shall contain such other provisions as would be included by prudent owners, or condominium corporations, in comparable buildings in the District of Muskoka. The Parties acknowledge that the provisions set forth in this Article 6 are minimum requirements and are not intended to restrict or reduce any of the Party's obligations respecting insurance under any other agreements.
- (b) Nothing in this Agreement shall be construed to prohibit any of the Parties from obtaining at its expense any other insurance coverage.

### ARTICLE 7

#### DAMAGE TO THE BUILDING

##### 7.01 Damage or Destruction

- (a) Subject to the terms of the *Condominium Act* and Section 7.07 hereof, in the event of damage to or destruction of the Development or any part thereof by any cause whatsoever the "Obligated Party" (as defined in subparagraph (b) below) shall forthwith proceed at its expense to repair, replace, restore or reconstruct the affected portion of the Development to the condition that existed immediately prior to the occurrence of such damage or destruction.
- (b) For the purposes of this Section 7.01, the expression "Obligated Party" shall mean:
  - (i) the Resort Corporation with respect to the Resort Condominium;
  - (ii) the Commercial Corporation with respect to the Commercial Condominium; and
  - (iii) RRDI with respect to that portion of the Development which is not, at the relevant time, included in the Commercial Condominium.
- (c) Subject to the cost allocations set out herein, the Property Manager will be responsible for arranging for the repair and reconstruction of Shared Facilities and the Support Facilities.

##### 7.02 Commencement and Completion

All repairs, replacement, restoration or reconstruction shall be commenced as expeditiously as possible under the circumstances, and shall be proceeded with continuously and expeditiously in order to be completed as soon as reasonably possible and in a good and workmanlike manner.

7.03 Original Building Plans

All repairs, replacements, restoration or reconstruction shall be effected and performed substantially in accordance with the original plans, specifications, drawings and designs used in the original construction of the Development, except as modified by any alterations, additions, changes or improvements made in accordance with this Agreement. If such original plans cannot be functionally or practically re-utilized, there shall be submitted to the other Party by the Party performing the work for its approval, not be unreasonably withheld, detailed plans and specifications in duplicate of the proposed replacement, restoration or reconstruction.

7.04 New Easements

The owner of a Structure within which the other Party must perform repair, restoration, reconstruction, replacement or other like functions will transfer such new easements over that Structure to any Party whose Structure benefits from such work as will enable such Party to enjoy all of the benefits intended to be granted by the Easements. Such new easements will be subject to the provisions of this Agreement and will have the same force and effect as the Easements described or referred to in Article 2.

7.05 Section 127(1) of the Condominium Act

For purposes of Section 127(1) of the *Condominium Act*, the obligations created by this Article 7 shall be deemed to be encumbrances against each unit of the Resort Condominium and its appurtenant common interest and against each unit of the Commercial Condominium and its appurtenant common interest.

7.06 Expeditious Decisions and Actions

Damage and destruction of a significant nature will result in complicated decisions. It is, however, the desire and intention of the Parties that any decisions to be made pursuant to this Article 7 as a result of damage and destruction be made as expeditiously as is reasonably possible under the circumstances and that any work resulting from such decisions be carried out and completed as expeditiously as is reasonably possible. Any Party which is of the opinion that another Party or Parties is or are not proceeding in as expeditious a manner as is reasonably possible under the circumstances may refer the matter to the Arbitration Tribunal. The Arbitration Tribunal shall be authorized to determine whether all Parties are acting as expeditiously as is reasonably possible under the circumstances and (subject to any legal prohibition permitting it from so doing) to make any decision which any of the Parties are entitled to take pursuant to this Article 7 if the Arbitration Tribunal is of the opinion that it is appropriate for the Arbitration Tribunal to make such a decision.

7.07 Termination upon Destruction

Upon damage to or destruction of its Structure, none of the Condominiums shall terminate the application of the *Condominium Act* to its Structure unless the other Condominium also approves the termination of the *Condominium Act* to its Structure. Any approval to terminate by a Condominium pursuant to sections 122 or 123 of the *Condominium Act* shall be conditional upon approval to terminate being given by the other Condominium.

ARTICLE 8

ALTERATIONS

8.01 Right to Make Alterations

Subject to the provisions of Sections 8.02 and 8.03 hereof, each Party may, at any time and at its expense, make alterations, additions or improvements to its Structure (including, without limitation, Retail Changes), provided however, that such alterations, additions or improvements (hereinafter referred to as the "Alterations") shall not, without the written consent of any Party affected by such Alterations, materially diminish the benefits afforded to such affected Party by any of the Easements, or interrupt the use thereof by such other Party (other than temporarily during construction and renovation from time to time), or materially adversely affect any of the Shared Facilities or other common systems within the Development.



#### 8.02 Undertaking Alterations

Each Party shall, to the extent reasonably practicable (having regard to the fact that the making of Alterations necessarily involves noise, vibration and some interference with use), make Alterations in such a manner as to minimize noise, vibration and other interference with the use and enjoyment of the other parts of the Development by their occupants and during time periods which will not cause inconvenience or nuisance to the occupants of the other parts of the Development.

#### 8.03 Right to Make Major Changes

- (a) Each Party may, at any time and at its expense, make a Major Change to the portion of the Development in which it has an interest as owner (but not as the transferee of an Easement) and in connection therewith may relocate an Easement within its portion of the Development provided, however, that such Major Change shall not, without the written consent of any Party affected thereby diminish in any material way the benefit afforded to the other Party by such Easement or unreasonably interrupt the use of such Easement by such other Party or diminish in any material way the value of the other Party's portions of the Development or materially adversely interfere with the use of any Shared Facilities.
- (b) If a Party proposes to make a Major Change, then, before commencing such Major Change, such Party (the "Changing Owner") shall provide the other Party with a set of the plans and specifications showing in reasonable detail the proposed Major Change. If the other Party, within thirty (30) days after its receipt of such plans and specifications shall not give to the Changing Owner notice specifying the aspect in which the proposed Major Change will violate the provisions of this Section 8.03, or any other rights of such Party under this Agreement, then such other Party shall be conclusively deemed to have agreed that such Major Change does not constitute such a violation, so long as the Major Change actually made is, in all material respects, as shown on such plans and specifications. If the other Party gives notice as aforesaid, the Changing Owner shall not commence any Major Change until the other Party has agreed to a resolution of the question or issue raised in such notice, or until the disagreement has been resolved by the Arbitration Tribunal.
- (c) Each Party shall, to the extent reasonably practicable (having regard to the fact that the making of a Major Change necessarily involves noise, vibration and some interference with use), make Major Changes in such a manner as to minimize noise, vibration or other interference with the use or enjoyment of other portions of the Development by their occupants and during time periods which will not cause inconvenience or nuisance to the occupants of the other parts of the Development.
- (d) Before commencing any Major Change, the Changing Owner shall obtain at its own expense those kinds of insurance as would be obtained by a prudent contractor under the circumstances, including builders' risk insurance, public liability and property damage insurance indemnifying the other Party, as joint insureds and its mortgagees and as is consistent with standard construction industry practice at the time.

#### 8.04 Retail Changes

The Resort Corporation acknowledges that there will be, from time to time, changes to the Commercial Condominium (the "Retail Changes") to accommodate new tenants or to enhance the use of the Commercial Condominium for retail and commercial purposes. Without limiting any other provision of this Agreement, the Resort Corporation agrees, at the request of the Commercial Corporation or RRDI, as the case may be, to grant specific easements from time to time over the Common Elements of the Resort Condominium as may be required for the Retail Changes provided such easements do not materially adversely affect the use of the Resort Condominium.



ARTICLE 9

ASSUMPTION

9.01 Assumption

RRDI covenants and agrees that, upon the registration of a Declaration against the Commercial Lands, it will cause the Commercial Corporation to execute the Assumption Agreement, such agreement to be effective as of the date of registration of the Declaration. The Resort Corporation agrees to execute the Assumption Agreement without delay upon request made by RRDI.

9.02 Release

Upon execution and delivery of the Assumption Agreement pursuant to Section 9.01, RRDI shall thereupon be released from its obligations hereunder.

ARTICLE 10

EXPROPRIATION

10.01 Co-operation

The Parties agree to co-operate with each other in respect of any expropriation of any part of the Development, so that each may receive the maximum award to which they are respectively entitled at law.

10.02 Expropriation Proceeds

- (a) If and to the extent that any part or parts of the Development are expropriated and to the extent that such part so expropriated (whether or not the same represents the whole part so expropriated) is not affected by the Easements, the full proceeds accruing therefrom awarded as a result thereof shall enure to the benefit of, belong to, and be paid to the Party who has an interest therein and the other Party will abandon or assign to the Party so entitled to receive such award any rights which such other Party may have or acquire by operation of law to such proceeds or award and will execute such documents as in the opinion of the Party entitled to such proceeds or award are or may be necessary to give effect to this intention.
- (b) If and to the extent that any part or parts of the Development are expropriated and to the extent that such part so expropriated is affected by any of the Easements, the full proceeds accruing therefrom or awarded as a result thereof relating to the part affected by the Easements shall be allocated amongst the Parties as agreed upon by them or as determined by the Arbitration Tribunal, which shall determine the sum of money which should be allocated to each Party, and in so doing shall consider and have regard to the following factors:
  - (i) the Party which has an interest in each affected part of expropriated land;
  - (ii) the nature and frequency of use over such part of the expropriated land by each Party under the Easements or under any other easements to which each Party may be entitled to by law; and
  - (iii) the relation that any such part of the expropriated land may bear to the overall appearance or design of the Development.

ARTICLE 11

FORCE MAJEURE

11.01 Force Majeure

Whenever and to the extent any Party is prevented, hindered or delayed in the fulfillment of any obligation hereunder of the doing of any work or the making of any repairs or

replacements by reason of Force Majeure, that Party's obligation shall be postponed and such Party shall be relieved from any liability in damages or otherwise, for breach thereof, for so long as and to the extent such prevention, hindrance or delay continues to exist.

## ARTICLE 12

### ARBITRATION

#### 12.01 Arbitration Tribunal

Except where expressly prohibited if any dispute arises under this agreement between the Parties hereto (including, without limitation, a dispute which is expressly referable to the Arbitration Tribunal) then such dispute shall be determined by reference, at the instance of any interested Party, to the Arbitration Tribunal in accordance with the following procedures:

- (a) The Parties involved in the dispute shall agree on the appointment of a sole arbitrator to constitute the Arbitration Tribunal within fifteen (15) days of the date of the notice of such required determination being given by one of the Parties to the other Party involved in the dispute. If the Parties cannot agree on such appointment within such time, then any Party involved in the dispute may request a court to make such selection under the *Arbitrations Act*, R.S.O. 1990, c. A.24 as replaced or amended from time to time.
- (b) The Arbitration Tribunal shall, within fifteen (15) days following its constitution, or such further time as the Arbitration Tribunal determines that is required, convene a hearing affording the Parties involved in the dispute the opportunity to be heard and as soon as reasonably practical thereafter shall make a determination with respect to the dispute. The Arbitration Tribunal shall have the right to add at any time additional parties to the hearing if it determines that such parties will be affected by the decision of the Arbitration Tribunal.
- (c) The decision of the Arbitration Tribunal shall be based on the provisions of this Agreement and on the evidence adduced at the hearing referred to in subsection (b) above. The conclusions of the Arbitration Tribunal shall be supported by written reasons therefor. The arbitration shall be conducted in accordance with the *Arbitrations Act* as replaced or amended from time to time.
- (d) If a dispute is to be determined by reference to the Arbitration Tribunal the giving of its decision shall be a condition precedent to the commencement of an action in respect of the dispute.
- (e) No person shall be appointed to the Arbitration Tribunal who:
  - (i) is then employed by any of the Parties hereto; or
  - (ii) has been employed or retained at any time as a consultant by any of the Parties, or any affiliate of any of the Parties (as affiliate is defined in the *Securities Act* of Ontario) in respect of the planning, development or servicing of the Development.
- (f) Each Party appointing a person to the Arbitration Tribunal shall be solely responsible for his fees and expenses. Each Party shall be entitled, at its own expense, to call its own expert witnesses. The reasonable fees and expenses of the Arbitration Tribunal in hearing and determining the question or questions submitted to it, shall be shared equally by the Parties involved in the arbitration.
- (g) The reference to the Arbitration Tribunal shall be a submission for the purposes of the *Arbitrations Act* and the persons appointed to the Arbitration Tribunal shall be arbitrators.

**ARTICLE 13****LIENS, DEBTS AND INTEREST****13.01      Liens**

If at any time a Party (the "Defaulting Party") shall fail to pay to the other Party hereunder or the Property Manager (the "Creditor Party") any sum of money payable to the Creditor Party pursuant to the provisions of this Agreement then, in addition to any rights of subrogation which the Creditor Party may have by operation of law, the Creditor Party shall (unless otherwise specifically provided herein) have a lien, to secure the payment of such sum of money, together with all costs and interest accruing thereon pursuant to Section 13.05, against the Common Elements of the Defaulting Party. Such lien shall arise immediately upon the giving of notice by the Creditor Party to the Defaulting Party demanding payment and asserting the said lien against the Common Elements of the Defaulting Party. From and after the date upon which such lien arises, the Creditor Party shall be entitled to file a notice of such lien or such other notice as may be permitted by such legislation that may be applicable to the title of the Defaulting Party to its Common Elements.

**13.02      Enforcement of Lien**

If a lien shall arise under Section 13.01 hereof, such lien shall be enforceable in addition to the remedies otherwise available in law or at equity in the following manner:

- (a) by enforcement in the same manner as a mortgage in default, and/or
- (b) if the default giving rise to the lien is not cured within sixty (60) days of notice to the Defaulting Party, by suspension of all rights under this Agreement (including the use of Easements) until the default is cured.

**13.03      Liens Survive Termination**

Notwithstanding any termination of this Agreement, any lien which shall have arisen prior to such termination pursuant to Section 13.01 hereof shall remain in full force and effect until the amount secured thereby shall be paid in full, together with the costs and interest provided for in Section 13.05 hereof.

**13.04      Liens Survive Conveyance**

No transfer or other divestiture of title shall in any way affect or diminish any lien arising pursuant to Section 13.01 and any lien which would have arisen pursuant to Section 13.01 had there been no transfer or other divestiture of title shall not be defeated or otherwise diminished or affected by reason of such transfer or divestiture of title.

**13.05      Interest and Costs**

In each instance when a Party shall be obligated to pay any sum of money to the other Party hereunder, interest shall accrue thereon and be payable hereunder at a rate per annum five percent (5%) above the Prime Rate from the date such sum first became due, calculated and compounded monthly, not in advance. If any legal action, demand or proceeding is brought, instituted or taken by a Party, or if a Party shall cure a default of the other Party, the Party in default shall pay to the other Party all expenses incurred therefor, including a solicitor's fee (on a solicitor and his own client basis) unless a court shall otherwise award.

**13.06      Mortgagee's Right to Assignment of Lien**

Any Party having a lien pursuant to Section 13.01 shall have the right to assign such lien to a mortgagee upon payment by the mortgagee of the amount secured by such lien and the right (and obligation) to give a discharge thereof upon payment of the amount of the lien.

**13.07      Lien Encumbrance against Unit**

For the purposes of Sections 122 through 128 (inclusive) of the *Condominium Act*, a lien against the Resort Condominium or the Commercial Condominium shall be deemed to

an encumbrance against each unit within that Condominium and its appurtenant common interest therein.

**13.08 Subordination**

Each of the Resort Corporation and the Commercial Corporation (and RRDI until such time as the Commercial Corporation has entered into the Assumption Agreement) does hereby respectively postpone and subordinate its liens under Section 13.01 to all mortgages, encumbrances or other bona fide liens or charges of the Development or any part or parts thereof now in existence or which may hereafter come into existence in the future without the requirement of notice. Each of the Parties covenants and agrees to execute, within ten (10) days after request therefor, such postponements and subordination agreements as may be reasonably required by the other Party to evidence the foregoing, provided that the reasonable expenses in connection therewith shall be borne by the Party requesting such agreements.

**ARTICLE 14**

**TERMINATION**

**14.01 Termination of Agreement**

This Agreement cannot be terminated other than by the written consent of all of the Parties hereto and their respective mortgagees to whom an assignment has been made under Section 15.03.

**14.02 Termination of Certain Rights and Obligations**

Notwithstanding Section 14.01, unless the written consent referred to therein includes a mutual and specific surrender of the rights and obligations under Section 4.05 and Schedule C and of the Easements, the termination of this Agreement pursuant to and to the extent provided in Section 14.01 shall not be deemed to terminate with respect to:

- (a) the Easements provided for herein, which shall remain in full force and effect regardless of whether any Structure is in a form similar to that which existed on the date this Agreement came into effect; and
- (b) the rights and obligations of the Parties under Section 4.05 and Schedule C.

**14.03 Debts and Liens Survive**

Notwithstanding the termination of this Agreement, if at the time of such termination, any Party shall be obligated to pay any sum of money pursuant to the provisions hereof, such obligation shall not be extinguished until such sum of money, together with any interest accruing thereon, shall be paid, and any lien securing the payment of such sum of money shall, as provided in Section 13.03, remain in force and effect and continue to secure such payment and any interest which shall accrue thereon.

**ARTICLE 15**

**MISCELLANEOUS**

**15.01 Notices**

Any notice or request to be given in accordance with this Agreement shall be in writing and shall be given by delivery, in each case to the following addresses:

TO: the Resort Corporation:

Muskoka Standard Condominium Corporation No. 62  
P.O. Box 86  
1050 Paignton House Road  
Minett, ON P0B 1G0

Attention: President

TO: RRDI:

The Rosseau Resort Developments Inc.  
P.O. Box 30  
1112 Juddhaven Road  
Minett, ON POB 1G0

Attention: President

Any notice or request so given shall be deemed to be received when delivered. Any Party may at any time give notice to the other Party hereto of any change of address of the Party giving such notice and from and after the giving of such notice, the address therein specified shall be deemed to be the address of such Party for the giving of notices herein.

**15.02 Provisions Run with the Land**

- (a) Subject to the express provisions of this Agreement, its provisions are intended to benefit, and to the extent they do so at law or in equity shall run with and be binding upon, the lands of the Development and every part thereof and shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
- (b) The Parties hereto expressly declare their intention and agreement that the principles of benefit and burden shall apply to their relationship, and that therefore the Parties hereby acknowledge and agree that the Easements and the rights and provisions as set forth in this Agreement establish a basis for mutual and reciprocal use and enjoyment of the Structures and as an integral and material consideration for the continuing right to use and enjoyment of the Easements and the rights and provisions each Party hereto shall, and does hereby accept, agree to assume the burden of, and to be bound by each of the covenants entered into by it in this Agreement.

**15.03 Assignments of Rights to Lessees, Mortgagees**

- (a) Subject to subparagraph 15.03(b), any Party may, without the necessity of transferring title, assign or otherwise transfer to any lessee (the term "lessee" where used in this Section 15.03 to include any sub-lessee) of any part of the Development or to any mortgagee of any part of the Development, all or any of the rights, privileges, easements and rights of entry afforded it and applicable to the lands and premises described in the Schedules hereto and any such lessee may in turn assign or otherwise transfer all or any of such rights, privileges, easements and rights of entry to a mortgagee covering the leasehold estate of such lessee, and any such lessee or mortgagee may exercise any such right, privilege, easement and right of entry so assigned or otherwise transferred to it to the same extent as if in each instance this Agreement specifically granted such right, privilege, easement or right of entry or privilege, such lessee or mortgagee shall be subrogated to the rights of his lessor to assert a lien under Section 13.01.
- (b) No Party hereto shall be bound to recognize any such assignment or other transfer, or the exercise or accrual of any rights pursuant to such assignment or other transfer, until such Party receives notice of such assignment or other transfer and, in the case of any lease having a term (including renewals) in excess of 25 years, the lessee enters into an agreement with the Parties to this Agreement agreeing to be bound thereby during the term of such lease and in the case of a mortgagee or a mortgagee of a lease such mortgagee enters into an agreement with the Parties to this Agreement (other than the mortgagor if it is a Party) agreeing to be bound thereby during any period of time that it is in possession of the Structure (or part thereof) on which it holds a mortgage provided that such mortgagee will not be liable for arrears accrued hereunder prior to the period of such possession.

- (c) For greater certainty, any rights afforded a lessee or mortgagee pursuant to this Section 15.03 shall cease to apply upon the expiry of the lease or the discharge of the mortgage, as the case may be.

**15.04 Certificate of Compliance**

Each Party agrees, at any time and from time to time, within ten (10) days after request to execute, acknowledge and deliver to the requesting Party, a certificate stating (1) that this Agreement is unmodified and in force and effect, or if there has been any modification that this Agreement is in force and effect, as modified, and identifying the modification, (2) whether or not there is any existing default hereunder by any Party and if there is any such default, specifying the nature and extent thereof, (3) whether or not the Party executing such certificate has performed or caused to be performed, or is then performing or causing to be performed, any maintenance or other work not in the normal course of operation of its property, the cost of which such Party is or will be entitled to charge in whole or in part to the other Party but has not yet charged to such other Party, and if there be any such maintenance or other work, specifying the nature and extent thereof, and (4) the current address to which notices to the Party executing such certificate are required to be given under Section 15.01.

**15.05 Planning Act**

This Agreement is entered into subject to the express condition that it is to be effective only on obtaining such consents, if any, as may be required under Section 50 of the *Planning Act*, R.S.O. 1990, c. P.13, or any successor legislation or other statute which may hereafter be passed to take the place of the said Act or to amend the same.

It is the intention of the Parties to this Agreement that each of the rights in land granted by one of the Parties to the other Party be in a part of a building or structure.

**15.06 Time of the Essence**

Time shall be of the essence of this Agreement and of each of the provisions hereof.

**15.07 No Partnership or Agency**

The Parties hereto do not in any way whatsoever or for any purpose become partners of each other, or joint ventures or members of a joint enterprise, nor is the relationship or principal or agent created.

**15.08 Further Assurances**

The Parties hereto shall execute such additional instruments, cause such meetings to be held, resolutions passed and by-laws enacted and do and cause to be done and performed such further and other acts or things as may be necessary or desirable from time to time in order to give full effect to this Agreement and each and every part hereof.

In witness whereof the Parties have executed this Agreement as of the date set forth on the first page hereof.

**MUSKOKA STANDARD CONDOMINIUM  
CORPORATION NO. 62**

Per:

Name: Robin Conners  
Title: President

Per:

Name: Rupert McNay  
Title: Treasurer

I/We have authority to bind the corporation

THE ROSSEAU RESORT DEVELOPMENTS INC.

Per:



Name: Kenneth Fowler

Title: A.S.O.

I have authority to bind the Corporation

SCHEDULE ATHE ROSSEAU – a JW MARRIOTT RESORTRESORT LANDS DESCRIPTION

All units and common elements comprising the property included in Muskoka Standard Condominium Plan No. 62, Township of Muskoka Lakes, District of Muskoka.



SCHEDULE B

THE ROSSEAU – a JW MARRIOTT RESORT

COMMERCIAL LANDS DESCRIPTION

Part of PIN 48143-0266 (LT)

All that portion of land and premises situate, lying and being in the Geographic Township of Medora, now in the Township of Muskoka Lakes, District Municipality of Muskoka, being that part of Lot 25, Concession 11 Medora designated as Parts 28, 29, 30, 31, 32, 33, 34, 35, 46 and 51 on Reference Plan 35R-22417

**SCHEDULE C**  
**SHARED FACILITY COSTS**  
**THE ROSSEAU RESORT**

Shared Costs	Resort Condominium Portion	Commercial Condominium Portion
<b>1. SERVICES</b>		
(a) Window cleaning	81.75%	18.25%
(b) Fire safety maintenance	81.75%	18.25%
(c) HVAC maintenance	81.75%	18.25%
(d) Parking maintenance	81.75%	18.25 %
(e) Exterior building maintenance	81.75%	18.25 %
(f) Elevator maintenance	50%	50%
(g) Garbage removal	50%	50%
(h) Common areas maintenance	81.75%	18.25%
<b>2. ADMINISTRATION</b>		
(a) Office supplies	81.75%	18.25%
(b) Legal & audit	81.75%	18.25%
(c) Insurance	81.75%	18.25%
(d) Meeting costs	81.75%	18.25%
(e) Property Management fees	81.75%	18.25%
(f) Performance audit	81.75%	18.25%
(g) Reserve funds study	81.75%	18.25%
<b>3. UTILITIES</b>		
(a) Potable water & sewage treatment	52.00%	48.00%
(b) Electricity	Meter	Meter
(c) Propane	34.6% from October 15 to April 15 and 18.8% from April 15 to October 15	65.4% from October 15 to April 15 and 81.2% from April 15 to October 15
<b>4. SEPARATE SERVICES</b>		
(a) Cabana pool equipment and storage rooms - maintenance	100%	nil
(b) Cabana washrooms - cleaning and maintenance	100%	nil
(c) Access cards	per lock count	per lock count
(d) Public liability insurance	separate insurance	separate insurance

**Notes:**

- (i) In *Part 1* and *Part 2* all items are based on the relative gross floor area of each Condominium except for garbage removal and elevator maintenance.
- (ii) In *Part 3*, the portions are based on consumption volume estimates prepared by MMM Group Limited, Consulting Engineers

SCHEDULE D  
ASSUMPTION AGREEMENT

This agreement is made as of •,

AMONG:

THE ROSSEAU RESORT DEVELOPMENTS INC., a corporation  
incorporated under the laws of the Province of Ontario

(hereinafter referred to as "RRDI")

of the first part,

- and -

MUSKOKA STANDARD CONDOMINIUM CORPORATION  
NO. 62, a corporation created upon registration of a declaration and  
description pursuant to the *Condominium Act*

(hereinafter referred to as the "Resort Corporation")

of the second part,

- and -

MUSKOKA STANDARD CONDOMINIUM CORPORATION  
NO. •, a corporation created upon registration of a declaration and  
description pursuant to the *Condominium Act*

(hereinafter called the "Commercial Corporation")

of the third part,

WHEREAS:

- (a) RRDI entered into an agreement made as of •, 2009 with Muskoka Standard Condominium Corporation No. 62 entitled as the "Reciprocal Agreement" (the "Reciprocal Agreement"), which was registered in the Land Registry Office for the Land Titles Division of • as No. •;
- (b) unless otherwise defined herein, the capitalized terms used herein shall have the meanings attributed thereto in the Reciprocal Agreement; and
- (c) the Commercial Corporation is executing this agreement for the purpose of assuming the Reciprocal Agreement insofar as the same affects and pertains to the lands described in Schedule A attached hereto (the "Lands").

Now therefore in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

1. The Commercial Corporation acknowledges receipt of a copy of the Reciprocal Agreement and confirms that it is familiar with the terms thereof.
2. RRDI hereby assigns to the Commercial Corporation its rights and obligations under the Reciprocal Agreement insofar as the same affect or pertain to the Lands.
3. The Commercial Corporation hereby agrees with each of the Resort Condominium, and RRDI to be bound by and to perform all of the provisions of the Reciprocal Agreement

and to perform the obligations of RRDI, insofar as the same relate to or affect the Lands as if it were an original signatory to the Reciprocal Agreement.

4. The Commercial Corporation hereby confirms the Easements set forth in the declaration creating it and agrees that they are subject to the terms and conditions set forth in the Reciprocal Agreement.
5. The Parties acknowledge, confirm and agree that, in accordance with the Reciprocal Agreement, RRDI is hereby released from its obligations under the Reciprocal Agreement insofar as the same affect or pertain to the Lands.
6. Each of the Resort Corporation and the Commercial Corporation agrees to register this agreement or notice thereof against title to its lands.
7. For the purposes of any notice under or in respect of the Reciprocal Agreement, the addresses of the parties hereto are as follows:
  - (a) if to the Commercial Corporation, at:
    - 
    - Attention: •
    - Facsimile: •
  - (b) if to the Resort Corporation, at:
    - 
    - Attention: •
    - Facsimile: •
  - (c) if to RRDI:
    - 
    - Attention: •
    - Facsimile: •
8. This agreement shall enure to the benefit of and be binding upon the respective successors and assigns to the parties hereto.

[Remainder of page intentionally left blank, signature page follows]

In witness whereof the parties have executed this Agreement as of the date set forth on the first page hereof.

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
I have authority to bind the Corporation.

**MUSKOKA STANDARD CONDOMINIUM CORPORATION NO. 62**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Per \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
We have authority to bind the Corporation

**MUSKOKA STANDARD CONDOMINIUM CORPORATION NO. •**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Per \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
We have authority to bind the Corporation

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