

TAB H

THE ROSSEAU – a JW MARRIOTT RESORT

SHARED FACILITIES AGREEMENT

This agreement is made as of March 9th, 2009 among:

**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., a corporation
incorporated under the laws of Ontario

(hereinafter referred to as the "Developer")

of the second part,

- and -

1515511 ONTARIO INC., a corporation incorporated under
the laws of Ontario

(hereinafter referred to as the "Golf Course Owner")

of the third part,

whereas:

- (a) the Developer has constructed the Hotel comprised of the Longview building and Paignton House and owns the Development Lands on which it is intended that additional buildings may be constructed, together forming part of the Resort (all as hereinafter defined);
- (b) the Developer intends to construct certain commercial facilities on the shore of Lake Rosseau on part of the Development Lands for the benefit of the Resort and for use by the public including a dock and restaurant facilities;
- (c) the Golf Course Owner owns the Golf Course Lands (as hereinafter defined) on which the Golf Course is located in part adjacent to the Development Lands and in part on the opposite side of Juddhaven Road;
- (d) the parties hereto desire to enter into an agreement governing the integrated use, operation and maintenance of the Resort and the sharing of certain costs in respect thereof; and
- (e) the Developer and the Golf Course Owner are entering into this Agreement for the purpose of binding the Development Lands and the Golf Course Lands and with the intention of having the Condominiums that may be created thereon assume this Agreement.

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 1**DEFINITIONS, INTERPRETATION AND SCHEDULES****1.01 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 an agreement substantially in the form of Schedule D attached hereto (with the necessary amendments) to be entered into by a Corporation after the applicable Condominium has been registered and prior to the transfer by the Developer or the Golf Course Owner, as the case may be, of any unit therein.
- (e) "Commercial Condominium" means the units and common elements of the proposed condominium intended to be registered by the Developer against part of the Development Lands.
- (f) "Common Elements" means the common elements of each of the Condominiums as the case may be.
- (g) "Condominium Act" means the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended or replaced from time to time.
- (h) "Condominiums" means, collectively, the Resort Condominium, the Commercial Condominium after it has been registered and each of the condominiums located on the Development Lands or the Golf Course Lands, as and when such condominiums have been created.
- (i) "Corporation" means the condominium corporation created under the *Condominium Act* upon registration of each Condominium.
- (j) "Declarations" means the registered declaration for each of the Condominiums.
- (k) "Development Lands" means the lands owned by the Developer and described in Schedule A annexed hereto.
- (l) "Easements" means all easements, right of way and rights of support which will serve the Resort and includes the easements, rights of way and rights of support in favour of each of the Condominiums as set forth or referred to in this Agreement.
- (m) "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.
- (n) "Golf Course" means the 18-hole golf course located on the Golf Course Lands known as "The Rock".

- (o) **"Golf Course Lands"** means the lands owned by the Golf Course Owner and described in Schedule B attached hereto.
- (p) **"Hotel"** means the hotel project constructed by the Developer known as "The Rosseau – a JW Marriott Resort" as further defined in the Hotel Management Agreement and which includes the Resort Condominium and will include the Commercial Condominium when it is registered.
- (q) **"Hotel Easement and Restrictive Covenant Agreements"** means, collectively, the agreements by that name entered into between The Rosseau Resort Developments Inc. and the Resort Condominium and to be entered into between the Commercial Condominium after it has been registered and The Rosseau Resort Developments Inc.
- (r) **"Hotel Management Agreement"** means the agreement for the operation and management of the Hotel made between the Developer, 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.
- (s) **"Hotel Operator"** means Marriott Hotels of Canada, Ltd. and includes any permitted replacement therefor.
- (t) **"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 Resort, in each case which materially adversely affects the Shared Facilities or the Easements; provided that the original construction of the Structures or restoration or repair following damage or destruction (where the original plans and specifications are substantially re-utilized) shall not constitute a Major Change.
- (u) **"Party"** means a party to this Agreement from time to time.
- (v) **"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.
- (w) **"Property Manager"** means the property manager retained from time to time by the Resort Corporation to manage the Resort Condominium.
- (x) **"Resort"** means the mixed use development being constructed by the Developer which includes the Hotel and the Golf Course and will include further developments to be constructed on the Development Lands and the Golf Course Lands.
- (y) **"Resort Condominium"** means the units and Common Elements of Muskoka Standard Condominium Plan No. 62.
- (z) **"Retail Changes"** means the changes to the units and Common Elements for the benefit of the Commercial Units referred to in Section 8.04 hereof.
- (aa) **"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 Sections 3.04 and 3.05.

- (bb) "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.
- (cc) "Structure" means any of the buildings (including the respective units and common elements included therein) and the other facilities forming part of the Resort from time to time as the context may require.
- (dd) "Support Facilities" means those elements or aspects of the Resort which are required to furnish support to another part of the Resort 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;
- (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);
- (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 Development Lands
- B - Description of Golf Course Lands
- C - Shared Facilities Costs
- D - 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 Resort 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 and every part of the Resort.

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 Resort 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 Structures (or any part thereof) of the requesting Party) and provided that the request 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 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 Structures of each Party located in or on, in whole or in part, the Structures 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 Resort 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, that can only be achieved by crossing, travelling or drilling through the component of the Resort 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 Development Lands, the Golf Course Lands or to the Common Elements and the units in the 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 Structures.

2.05 General Construction Easements

The Developer shall have the right, from time to time at its sole discretion, to construct other buildings and facilities within the Resort. In connection therewith, each of the Parties grants to the Developer temporary easements over its Common Elements or their respective lands, as the case may be, as are reasonably necessary for the purpose of carrying out such construction including, without limitation;

- (a) the right to enter upon such Common Elements or lands with workmen, servants, agents, contractors and employees and their vehicles and equipment and to excavate and place fill thereon;
- (b) the right to temporarily interrupt the use of any Easement; and
- (c) the right to relocate any Easement,

all for the purposes of constructing other buildings and facilities as part of the Resort. The Developer covenants and agrees that, after completion of the exercise of its rights hereunder from time to time, it will restore the Common Elements or lands, as the case may be, as nearly as reasonably possible to their previous condition.

2.06 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 Structures 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 the intended purposes of the Structures affected by such Easement.

2.07 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.

2.08 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 Development Lands and every part thereof without the necessity of any further transfer of any of the Easements.

2.09 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 upon registration of one or more plans of condominium against title to the Development Lands.

2.10 Municipal Easements

The Parties acknowledge that:

- (a) at the date of this Agreement, the Hotel is being serviced by temporary water and sewage treatment facilities; and
- (b) the Developer or an affiliate thereof intends to construct, and transfer to the District of Muskoka (the "District") a permanent water and sewage treatment facility which will replace the temporary facilities.

Each of the parties acknowledges that the District may require the transfer to it of easements for the water and/or sewer pipes and agrees to grant such easements forthwith upon request of the Developer.

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 Resort 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 Structures, Common Elements or lands, as the case may be. 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 Parties 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. Each of the other Parties 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. Until registration of the Commercial Condominium and the entering into of an Assumption Agreement, the Developer shall be responsible for the Commercial Condominium Portion of the Shared Facilities Costs set forth in Schedule C. For greater certainty, each Party shall pay to each other Party the appropriate amount so that the cost borne by each Party for the Shared Facilities in its Structures, Common Elements or lands, as the case may be, equals the portion attributable to it under Schedule C.
- (b) The parties acknowledge and agree that upon substantial completion of a new Structure which is ready for occupancy, the Shared Facilities will be deemed to include the additional facilities located in that Structure or on the lands associated therewith 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. The Developer agrees that, until the execution of an Assumption Agreement in accordance with Section 9.01 (and the substitution of a restated and amended Schedule C hereto covering such additional facilities), it will pay a share of the Shared Facilities Costs, such share to be determined by the Developer, acting reasonably, on the same basis that will be used by it in restating and amending Schedule C.

- (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) An Assumption Agreement executed and delivered by a Condominium in accordance with Section 9.01 hereof shall have attached thereto an amended and restated Schedule C prepared by the Developer setting forth the Shared Facilities (including any new ones) and an amended and restated statement of the proportionate liability of each of the parties hereto for sharing the cost of items listed therein.
- (d) In any of the situations described in subparagraphs 3.04 (a), (b) and (c), Schedule C shall thereby be deemed to be amended in accordance with such written agreement.

3.05 Disputes in Allocation of Shared Facilities

Either 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 (including an amended and restated schedule pursuant to an Assumption Agreement),

shall first give notice to the other Parties and to the Property Manager, and if such other Parties 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 Resort 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 Resort.

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 Parties hereto.

4.03 Construction Liens

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

4.04 Disturbances

Subject to Section 2.05, each Party covenants and agrees not to cause, authorize or condone any undue disturbance, noise or vibrations from its Structures, Common Elements or lands or from any part over which such Party has an easement, to the detriment of the other Parties or any of them. Nothing in this Section 4.04 shall in any way be construed to restrict the reasonable intended uses of the Structures, the Common Elements, the Development Lands, the Golf Course Lands, the units within the Condominiums or the Easements or construction pursuant to Section 2.05 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 or lands, covenants and agrees to use, manage, operate, maintain, repair, restore, reconstruct and perform replacement work to its Common Elements or lands in the aforesaid manner, including, without limitation, keeping its Common Elements or lands 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 any 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, any of the other Parties (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 12 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

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.

- (a) The Developer, 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 the Developer or Property Manager.
- (b) 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 part of the Resort 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 the separate parts of the Resort shall not be assessed separately, then the owners of the commonly assessed parts 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 11.

5.03 Separate Assessments with Combined Taxation

If parts of the Resort are separately assessed, but if any two or more parts are not taxed separately, then the Party responsible for the part not separately taxed shall pay that amount as shall bear the same proportion to the total tax for the parts not separately taxed as the

assessed valuation of each such part shall bear to the total assessed valuation of the parts 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 Resort, or any share thereof as provided in this Article V, and if such unpaid tax or charge is a lien or encumbrance upon the Resort 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 any 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 or Parties 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 Structures including the Shared Facilities located therein and on its Common Elements or lands as the case may be. Such insurance shall include the following provisions:
 - (i) a waiver of subrogation against each of the other Parties and the owners and, as applicable, the tenants of units in its Condominium, including their respective agents and employees;
 - (ii) a "stated amount clause" to the effect that the insurer agrees that the amount of insurance is sufficient and not subject to further verification;
 - (iii) 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
 - (iv) 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 Condominiums acknowledges and agrees that the proceeds of insurance with respect to damage to or destruction of their respective Structures and Shared Facilities (or any part thereof) will be dealt with under and in accordance with the terms of the applicable insurance trust agreement. 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 Structures.

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 the parking facilities located on its Common Elements.

- (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 Separate Policies

- (a) The Parties may arrange for each type of insurance to be in one policy provided that:
 - (i) such insurance is available from the insurance industry in one policy; and
 - (ii) the cost of the premium for obtaining such insurance in one policy does not exceed one hundred and ten percent (110%) of the total cost of the premiums if each Party had obtained such insurance of each of their respective Structures.
- (b) If separate policies of insurance must be arranged, then each separate policy shall:
 - (i) if possible, be placed with the same insurers;
 - (ii) as nearly as possible contain identical provisions and conditions.

Each of the Parties shall be solely responsible for the cost of the premium for any separate insurance policy relating to its own Structures.

6.04 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 others 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.

6.05 General

- (a) The property 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 Condominiums 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 agreement.

- (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 AND DESTRUCTION

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 any part of the Resort 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 Resort 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 each Party with respect to its Structures or Shared Facilities.
- (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 Construction 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 Structure, 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 Parties by the Party performing the work for their 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 any Structure within which another 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 provided for 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 each 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 any of its Structures, no Condominium shall terminate the application of the *Condominium Act* to its property unless each of the other Condominiums also approve the termination of the *Condominium Act* to its property. 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 all of the other Condominiums.

ARTICLE 8

ALTERATIONS

8.01 Right to Make Alterations

Subject to the provisions of Sections 8.02, 8.03 and 8.06 hereof, each Party may, at any time and at its expense, make alterations, additions or improvements to its Structures (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 Resort.

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 Resort by their occupants and during time periods which will not cause inconvenience or nuisance to the occupants of the other parts of the Resort.

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 Resort 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 Resort 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 Parties 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 Parties' portions of the Resort 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 Parties with a set of the plans and specifications showing in reasonable detail the

proposed Major Change. If any 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 another Party gives notice as aforesaid, the Changing Owner shall not commence any Major Change until all of the other Parties have 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 Resort by their occupants and during time periods which will not cause inconvenience or nuisance to the occupants of the other parts of the Resort.
- (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 Parties, as joint insureds and their respective 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 commercial purposes. The Easements referred to in Section 2.05 are intended to accommodate the Retail Changes. Without limiting any other provision of this Agreement, the Resort Corporation agrees, at the request of the Commercial Corporation, 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. By way of example and without intending to limit the generality of the foregoing, Retail Changes includes additional service systems for retail tenants of the Commercial Condominium.

8.05 Original Construction

Nothing in this Article 8 shall restrict or prevent the construction of the balance of the Resort by the Developer, its successors and assigns, or require the consent of the other Parties, nor shall any amendment to or modification of the plans and specifications therefor be construed as or deemed to be a Major Change. For the purposes of such original construction, Developer may temporarily interrupt or suspend the use of the Easements hereby created and the utility and other systems servicing the Condominiums provided that the Developer shall use reasonable efforts to minimize the interruption or suspension and the effects thereof on the owners of units in the Condominiums.

8.06 Lobby

The Resort Condominium acknowledges that the appearance of the main lobby will affect the restaurant businesses carried on in and from proposed Units 1, 2 and 3, Level 1 in the Commercial Condominium. The Resort Condominium agrees that it will not make any changes to or to the appearance of the lobby without the prior written approval of the Commercial Condominium, such consent not to be unreasonably withheld.

ARTICLE 9

ASSUMPTION

9.01 Assumption by New Condominium

Each of the Developer and the Golf Course Owner covenants and agrees upon registration of a Condominium on any part of the Development Lands or the Golf Course Lands, as the case may be, it will not transfer any unit therein until it has caused such Condominium to execute an Assumption Agreement, such agreement to be effective as of the date of registration of the Condominium.

9.02 Assumption by Transferee

Each of the Developer and the Golf Course Owner covenants and agrees not to transfer its lands or any part thereof without first having the transferee execute and deliver an Assumption Agreement (with the necessary amendments) agreeing to be bound by all of the terms and conditions set forth in this Agreement insofar as the same pertains to the Lands or part thereof transferred to it.

9.03 Release

Upon execution and delivery of an Assumption Agreement by a Condominium pursuant to Section 9.01 or 9.02, the Developer or the Golf Course Owner, as the case may be, shall thereupon be released from its obligations hereunder with respect to the property of such Condominium.

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 Resort, 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 Resort 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 remaining 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;

- (iii) the relation that any such part of the expropriated land may bear to the overall appearance or design of the Resort.

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 any of 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 Parties 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 Resort.
- (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 any 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 Lien Survive Termination

Notwithstanding any termination of this Agreement, any lien which shall have arisen prior to such termination pursuant to 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 Lien 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 another 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 another 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 any of the Condominiums shall be deemed to an encumbrance against each unit within that Condominium and its appurtenant common interest therein.

13.08 Subordination

Each Corporation, including the Resort Corporation (and RRDI until such time as a Corporation of a Condominium on any part of the Development Lands has entered into an Assumption Agreement, and the Golf Course Owner until such time as a Corporation of a Condominium on any part of the Golf Course Lands has entered into an 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 Resort 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 postponement 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:

P.O. Box 86
1050 Paignton House Road
Minett, ON P0B 1G0

Attention: President

TO: the Golf Course Owner:

P.O. Box 30
1112 Juddhaven Road
Minett, ON P0B 1G0

Attention: President

TO: the Developer:

P.O. Box 30
1112 Juddhaven Road
Minett, ON P0B 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 Resort 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 Resort or to any mortgagee of any part of the Resort, 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 Parties but has not yet charged to such other Parties, 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 one or more of the other Parties 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

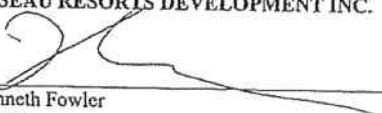
The Parties hereto do not in any way whatsoever or for any purpose become partners of each other, or joint ventures or members of a joint enterprise, nor is the relationship or principal or agent created.

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.

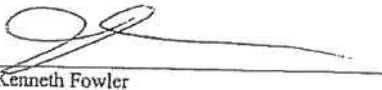
In witness whereof the Parties have executed this Agreement as of the date set forth on the first page hereof.

THE ROSSEAU RESORTS DEVELOPMENT INC.

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



I have authority to bind the Corporation.

1515511 ONTARIO INC.

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

I have authority to bind the Corporation

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

SCHEDULE A

DESCRIPTION OF DEVELOPMENT LANDS

Part of PIN 48143-0266 (LT)

Firstly: Part of Lot 25, Concession 11 Medora, part of the Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704), designated as Part 2 on Reference Plan 35R-21398;

Part of Lot 25, Concession 11 Medora, part of the Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704), designated as Part 3 on Reference Plan 35R-21398, SUBJECT to Easement as in ME5721;

Part of Lot 25, Concession 11 Medora, part of the Road Allowance between Lots 25 and 26, Concession 11 Medora (Closed by By-law 72-34, Instrument DM105704), part of Lot 25, Concession 10 Medora, part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 25 (Closed by By-law 190, Instrument ME1289), part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 24 (Closed by By-law 744, Instrument DM12512), designated as Part 4 on Reference Plan 35R-21398;

Part of Lot 25, Concession 11 Medora, part of Lot 25, Concession 10 Medora, part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 25 (Closed by By-law 190, Instrument ME1289), part of the Road Allowance between Concessions 10 and 11 Medora in front of Lot 24 (Closed by By-law 744, Instrument DM12512) designated as Part 10 on Reference Plan 35R-21398;

all in the Township of Muskoka Lakes, in the District Municipality of Muskoka

Secondly: Part of Lot 24, Concession 11 Medora, designated as Part 8 on Reference Plan 35R-20257, in the Township of Muskoka Lakes, in the District Municipality of Muskoka

Thirdly: Part of Lot 24, Concession 11 Medora, designated as Part 7 on Reference Plan 35R-20257, in the Township of Muskoka Lakes, in the District Municipality of Muskoka

TOGETHER WITH an easement over Part of Lot 24, Concession 11 Medora, designated as Part 5 on Reference Plan 35R-7066 as in LT103789

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

TOGETHER WITH an easement over Part of Lot 24, Concession 11 Medora, as in LT22475

Fifthly: Part of Lot 24, Concession 11 Medora, designated as Part 2 on Reference Plan 35R-3373, in the Township of Muskoka Lakes, in the District Municipality of Muskoka

SAVE AND EXCEPT Parts 13, 21, 22, 24, 25, 37, 38, 40, 41, 48, 49, 50 and 52 on Reference Plan 35R-22417 being Units 1 to 39, both inclusive, Level 1; Units 1 to 66, both inclusive, Level 2; Units 1 to 67, both inclusive, Level 3; Units 1 to 50, both inclusive, Level 4; Muskoka Standard Condominium Plan No. 62; together with their appurtenant interests.

SCHEDULE BDESCRIPTION OF GOLF COURSE LANDS

PIN 48143-0504

Part of Lots 24 and 25, Concession 12 and part of Lot 25, Concession 11 Medora designated as Parts 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 on Reference Plan 35R-17316, Part 1 on Reference Plan 35R-19995 and Part 2 on Reference Plan 35R-17901, and part of the Road Allowance between Lots 25 & 26, Concession 12 Medora, closed by By-law 2000-86 (DM347050) designated as Part 1 on Reference Plan 35R-17901.

PIN 48143-0260

Part of Lot 25, Concession 11 Medora and part of the Road Allowance between Lots 25 & 26, Concession 11 Medora, closed by By-law 72-34 (DM105704) designated as Part 1 on Reference Plan 35R-21398.

PIN 48142-0341

Part of Lots 26 and 27, Concession 12 Medora designated as Parts 1, 2 and 3 on Reference Plan 35R-12393.

PIN 48143-0201

Part of Lot 24, Concession 11 Medora designated as Part 4 on Reference Plan 35R-19477.

PIN 48143-0269

Part of Lot 24, Concession 11 Medora closed by By-law 2003-67 (LT235179) designated as Parts 2, 3 and 5 on Reference Plan 35R-19477.

all in the Township of Muskoka Lakes, in the District Municipality of Muskoka.

**SCHEDULE C
SHARED FACILITY COSTS**

THE ROSSEAU RESORT

Shared Costs	Resort Condominium Portion	Commercial Condominium Portion	Developer	Golf Course Owner
1. SERVICES				
(a) Grounds maintenance	81.75%	18.25%	nil	nil
(b) Snow removal	81.75%	18.25%	nil	nil
(c) Seasonal decorations	81.75%	18.25%	nil	nil
(d) Security services	81.75%	18.25%	nil	nil
2. SEPARATE SERVICES				
(a) Public liability	Separate insurance	Separate insurance		
(b) Docks, beach and waterfront maintenance	nil	nil	100%	nil

Notes:

- (i) In *Part I – Services* - all items are based on the relative gross floor area of each Condominium

SCHEDULE D

ASSUMPTION AGREEMENT

SHARED FACILITIES AGREEMENT

This agreement is made as of •,

AMONG:

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

(hereinafter referred to as "Developer")

of the first part,

**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 "New 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 referred to as the "Resort Corporation")

of the third part,

whereas:

- (a) the Developer entered into an agreement made as of •, 200• with Muskoka Standard Condominium Corporation No. 62 (the "Shared Facilities Agreement"), which was registered in the Land Registry Office for the Land Titles Division of Muskoka as No. •;
- (b) unless otherwise defined herein, the capitalized terms used herein shall have the meanings attributed thereto in the Shared Facilities Agreement;
- (c) under the Shared Facilities Agreement, the Developer agreed to cause each condominium corporation registered against the Development Lands to assume the Shared Facilities Agreement;
- (d) the New Condominium has been registered against the lands described in Schedule A attached hereto (the "Condominium Lands");
- (e) the New Corporation is executing this agreement for the purpose of assuming the Shared Facilities Agreement.

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 New Corporation acknowledges receipt of a copy of the Shared Facilities Agreement and confirms that it is familiar with the terms thereof.
2. The Developer assigns to the New Corporation its rights and obligations under the Shared Facilities Agreement insofar as the same affect the Condominium Lands.

- ii -

3. The New Corporation hereby agrees to be bound by and to perform all of the provisions of the Shared Facilities Agreement and to perform the obligations of the Developer insofar as the same relates to or affect the Condominium Lands as if it were an original signatory to the Shared Facilities Agreement.
4. The New Corporation hereby confirms the Easements described in the Shared Facilities Agreement and, for greater certainty, transfers to each of the other parties to the Shared Facilities Agreement the non-exclusive easements described in the Shared Facilities Agreement over its Common Elements.
5. In accordance with Section 3.04(c) of the Shared Facilities Agreement, the parties hereto agree that the amended and restated Schedule C attached hereto shall be substituted for and shall replace Schedule C of the Shared Facilities Agreement.
6. The Parties acknowledge, confirm and agree that, in accordance with the Shared Facilities Agreement, the Developer is hereby released from its obligations under the Shared Facilities Agreement insofar as the same relate or pertain to the Condominium Lands.
7. The New Corporation agrees to register this agreement or notice thereof against title to the Condominium Lands.
8. For the purposes of any notice under or in respect of the Shared Facilities Agreement, the addresses of the Developer and the Corporation are as follows:
 - (a) if to the Developer, at:
 -
 - Attention: •
 - (b) if to the New Corporation, at:
 -
 - Attention: •
9. This agreement shall enure to the benefit of and be binding upon the respective successors and assigns to the parties hereto.

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: _____

Per

Name: _____

Title: _____

We 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

TABLE OF CONTENTS

ARTICLE 1	DEFINITIONS, INTERPRETATION AND SCHEDULES	2
1.01	Definitions	2
1.02	Interpretation	4
1.03	Schedules	4
ARTICLE 2	EASEMENTS, RIGHTS OF WAY, RESERVATIONS	5
2.01	Acknowledgement	5
2.02	General Easements for Services	5
2.03	General Easement of Support	5
2.04	General Easement of Access	5
2.05	General Construction Easements	6
2.06	General Reservation and Covenants	6
2.07	Obligations to Restore	6
2.08	Extent of Easements	6
2.09	Further Assurances	6
2.10	Municipal Easements	6
ARTICLE 3	SHARED FACILITIES	7
3.01	Maintenance, Repair and Replacement	7
3.02	Discretionary Payment	7
3.03	Prompt Payment of Shared Facilities Costs	7
3.04	Re-adjustment of Shared Facilities	8
3.05	Disputes in Allocation of Shared Facilities	8
3.06	Parties to Execute Agreements	9
ARTICLE 4	OPERATION	9
4.01	Compliance with Law	9
4.02	Compliance with Agreement	9
4.03	Construction Liens	9
4.04	Disturbances	9
4.05	Performance of Work and Maintenance Standards	9
4.06	Self Help	9
ARTICLE 5	TAXES	10
5.01	Separate Assessments	10
5.02	Combined Assessment	10
5.03	Separate Assessments with Combined Taxation	10
5.04	Failure to Pay Taxes	11
ARTICLE 6	INSURANCE	11
6.01	Property Insurance	11
6.02	Liability Insurance	11
6.03	Separate Policies	12
6.04	Premiums	12
6.05	General	12
ARTICLE 7	DAMAGE AND DESTRUCTION	13
7.01	Damage or Destruction	13
7.02	Commencement and Completion	13
7.03	Original Construction Plans	13
7.04	New Easements	13
7.05	Section 127(1) of the <i>Condominium Act</i>	13
7.06	Expeditious Decisions and Actions	14
7.07	Termination upon Destruction	14

<u>ARTICLE 8 ALTERATIONS</u>	14
8.01 Right to Make Alterations.....	14
8.02 Undertaking Alterations.....	14
8.03 Right to Make Major Changes.....	14
8.04 Retail Changes	15
8.05 Original Construction.....	15
8.06 [Lobby].....	15
<u>ARTICLE 9 ASSUMPTION</u>	16
9.01 Assumption by New Condominium.....	16
9.02 Assumption by Transferee	16
9.03 Release	16
<u>ARTICLE 10 EXPROPRIATION</u>	16
10.01 Co-operation	16
10.02 Expropriation Proceeds.....	16
<u>ARTICLE 11 FORCE MAJEURE</u>	17
11.01 Force Majeure	17
<u>ARTICLE 12 ARBITRATION</u>	17
12.01 Arbitration Tribunal.....	17
<u>ARTICLE 13 LIENS, DEBTS AND INTEREST</u>	18
13.01 Liens.....	18
13.02 Enforcement of Lien	18
13.03 Liens Survive Termination	18
13.04 Liens Survive Conveyance	18
13.05 Interest and Costs.....	18
13.06 Mortgagee's Right to Assignment of Lien	19
13.07 Lien Encumbrance against Unit.....	19
<u>ARTICLE 14 TERMINATION</u>	19
14.01 Termination of Agreement.....	19
14.02 Termination of Certain Rights and Obligations.....	19
14.03 Debts and Liens Survive	19
<u>ARTICLE 15 MISCELLANEOUS</u>	20
15.01 Notices	20
15.02 Provisions Run with the Land.....	20
15.03 Assignments of Rights to Lessees, Mortgagees.....	20
15.04 Certificate of Compliance	21
15.05 Planning Act.....	21
15.06 Time of the Essence	21
15.07 No Partnership or Agency.....	21
15.08 Further Assurances.....	22
SCHEDULE A - DESCRIPTION OF THE DEVELOPMENT LANDS	
SCHEDULE B - DESCRIPTION OF GOLF COURSE LANDS	
SCHEDULE C - SHARED FACILITIES COSTS	
SCHEDULE D - ASSUMPTION AGREEMENT	

TAB I

WATER/SEWAGE TREATMENT SERVICES AGREEMENT

THIS AGREEMENT MADE as of the 9th day of February, 2009.

BETWEEN

THE ROSSEAU RESORT DEVELOPMENTS INC.,

(hereinafter referred to as the "Supplier")

- and -

**MUSKOKA STANDARD CONDOMINIUM
CORPORATION NO. 62,**

(hereinafter referred to as "Customer")

WHEREAS the Supplier has agreed to supply potable water and wastewater treatment services to the Units and common elements of the Customer, and the Supplier has also agreed to operate, maintain and repair, to Acceptable Standards, the Water System and Wastewater System in accordance with the terms and conditions of the Developer's Responsibility Agreement and any further requirements of the Ministry of the Environment and the District Municipality of Muskoka;

AND WHEREAS the capitalized terms used above are hereinafter defined;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration and the sum of TEN (\$10.00) DOLLARS of lawful money of Canada now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby covenant and agree, to and with each other, as follows:

ARTICLE I - RECITALS

- 1.01 The parties hereto hereby confirm the veracity of the foregoing recitals, and agree with same, both in substance and in fact.
- 1.02 The parties hereto hereby covenant and agree that in the event of any conflict between this Agreement and the Developer's Responsibility Agreement (as hereinafter defined), the Developer's Responsibility Agreement shall govern and this Agreement is hereby amended accordingly.
- 1.03 The Customer acknowledges that it has received a copy of the Developer's Responsibility Agreement.

ARTICLE II - DEFINITIONS

2.01 Specific Terms

In addition to any other words, terms or phrases specifically defined elsewhere in this Agreement, the terms or phrases set out below shall have the meanings respectively ascribed to them as follows:

- (a) **"Acceptable Standards"** shall mean, with respect to the operation, maintenance, repair and replacement of the Systems, the standards prescribed by the Ministry of the Environment and in accordance with the Developer's Responsibility Agreement, including the Operation and Maintenance Program as defined in the Developer's Responsibility Agreement;
- (b) **"Agreement"** shall mean the within agreement and all written amendments hereto and all schedules referred to herein;
- (c) **"Business Day"** means a day other than a Saturday or Sunday or a statutory holiday in the Province of Ontario;
- (d) **"Commencement Date"** means the date of this Agreement;
- (e) **"Commercial Space"** means those parts of the lands and buildings forming part of the Development which are intended to be included in the commercial condominium to be registered after the date hereof;
- (f) **"Development"** means the lands and buildings comprising the hotel property known as the "The Rosseau – a JW Marriott Resort" located in the Township of Muskoka Lakes, District of Muskoka and includes both the lands and buildings of the Customer and the Commercial Space;
- (g) **"Developer's Responsibility Agreement"** means the agreement with the District Municipality of Muskoka dated January 23, 2009 and registered in the Land Registry Office of Muskoka on February 9, 2009 as No. MT62543 as amended and supplemented by a Supplemental Agreement dated February 18, 2009 and registered on February 20, 2009 as No. MT62918, governing the obligations of the Supplier to operate, maintain, repair and replace the Systems in accordance with Acceptable Standards, and providing, *inter alia*, for the provision of an Operating and Maintenance Works Manual and the establishment of a capital works Reserve Fund (as defined therein) as continuing security for the performance by the Supplier of its obligation to maintain, repair and replace the Systems in accordance with Acceptable Standards;
- (h) **"Emergency"** shall mean any circumstance(s) or event(s) involving danger to, or the safety of, persons, danger of property damage or loss and/or the suspension of the Services whether actually occurring or imminent;

- (i) **"Force Majeure"** means any cause beyond the reasonable control of and without the fault, negligence or wilful misconduct of the party claiming Force Majeure including, without limitation, acts of God, fires, floods, storms, hurricanes, strikes, labour disputes, riots, insurrections, terrorism, epidemics, acts of war (whether declared or otherwise), inability to obtain and maintain easements, rights of way, permits, licences and other authorizations or real property interests from any local, provincial or federal government, agency, instrumentality or other person required to supply, install, construct and maintain the Systems, or to provide the Services hereunder, inability to procure gas, water, electricity or other supplies, material change in applicable statutory, regulatory, administrative or other relevant law which prohibits or restricts the operation of the Systems or the ability of the Supplier to perform its obligations hereunder and equipment failure. Notwithstanding the foregoing, Force Majeure does not include: (i) unavailability of funds or financing; or (ii) the failure to properly maintain equipment;
- (j) **"Prime Rate"** means the rate of interest expressed as an annual percentage rate announced from time to time by The Bank of Nova Scotia (or any successor bank) as its reference rate then in effect for determining interest rates on commercial demand loans made in Canada;
- (k) **"Services"** means, collectively, the supply of Treated Water to, and the treatment of wastewater from, the Development;
- (l) **"Systems"** means, collectively, the Wastewater System and the Water System;
- (m) **"Term"** shall have the meaning ascribed thereto in Section 3.02;
- (n) **"Treated Water"** means water which has been treated in compliance with Applicable Law so that it is fit for human consumption;
- (o) **"Units"** means, collectively, the condominium units included in Muskoka Standard Condominium Plan No. 62 (not including the management unit) and in the condominium to be created upon registration of the commercial condominium covering the Commercial Space;
- (p) **"Wastewater System"** means the system described as the "Shared Facilities – Sanitary Sewage Works" in Schedule C to the Developer's Responsibility Agreement;
- (q) **"Water System"** means the system described as the "Shared Facilities – Waterworks" in Schedule B to the Developer's Responsibility Agreement;

2.02 Extended Meanings

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

ARTICLE III - SUPPLY OF TREATED WATER

3.01 Supply of Services

Subject to the terms and conditions hereof, commencing upon the Commencement Date and continuing thereafter throughout the Term, the Supplier shall supply to the Customer, Treated Water and Wastewater treatment for the Development, and the Customer shall accept and purchase from the Supplier, Treated Water used in the Development.

3.02 Term

The term of this Agreement (the "Term") shall commence on the date hereof and continue from year to year until terminated in accordance with Section 6.02 hereof.

ARTICLE IV – SUPPLIER'S COVENANTS

4.01 Covenants of the Supplier

The Supplier agrees with the Customer that, from and after the Commencement Date and during the Term, it will:

- (a) use commercially reasonable efforts to provide a uniform and uninterrupted supply of Treated Water to the Development;
- (b) use commercially reasonable efforts to treat wastewater received from the Development;
- (c) use commercially reasonable efforts to maintain and repair the Systems and keep them in good working order in accordance with the Developer's Responsibility Agreement to Acceptable Standards; and
- (d) not suffer or permit any construction lien to be registered against the Development by reason of work, labour, services or materials supplied to or for the Supplier and, if any such construction lien is at any time registered against the Development, the Supplier will at its sole cost and expense cause the same to be discharged or vacated within 20 days after request from the Customer.

ARTICLE V – CHARGES AND MEASUREMENT

5.01 Charges

- (a) Subject to the provisions of this Section 5.01, the Customer shall pay for the Services as invoiced from time to time by the Supplier, together with all applicable taxes.
- (b) The Customer and the Supplier acknowledge that:
 - (i) the Services supplied under this Agreement will include Services for the Commercial Space;

- (ii) the invoices to the Customer will include charges for the Services benefitting the Commercial Space;
 - (iii) the owner of the Commercial Space (or the condominium corporation covering the Commercial Space once it is registered) is responsible for a share of such invoices in accordance with the Reciprocal Agreement of even date herewith made between the Customer and the Supplier, as owner of the Commercial Space; and
 - (iv) part of the property of the Customer known as "Paignton House" is not, as of the date of this Agreement, ready for occupation and, as a result, the extent of the Services to the Development and the charges therefor will be reduced until Paignton House is ready for occupancy.
- (c) Charges for the Services will not, during the Term; exceed the following:
- (i) until an occupancy permit is issued for Paignton House, the Customer's share of invoices for the Services (exclusive of the share for the Commercial Space) will not exceed \$60 per month times the number of Units in the building known as Longview (being 179 Units);
 - (ii) thereafter and until December 31, 2009, the Customer's share of invoices for the Services (exclusive of the share for the Commercial Space) will not exceed \$60 per month times the total number of Units in the Development (being 222 Units); and
 - (iii) thereafter, charges for the Services will not exceed the charges levied from time to time by the District Municipality of Muskoka to its customers for equivalent services.
- (d) Notwithstanding the foregoing, the parties acknowledge and agree that the charges for the Services will at all times be subject to the approval of Marriott Hotels of Canada, Ltd., as Operator of the Development, under and in accordance with the Amended and Restated Hotel Management Agreement dated October 6, 2006 made between it, the Supplier and The Rosseau Resort Management Services Inc.

5.02 Payment and Invoicing

- (a) Invoices for the Services and any other amounts due hereunder shall be issued by the Supplier monthly to the Customer and shall, subject to Section 5.01(c) and (d), be in amounts determined by the Supplier in its sole and unfettered discretion. The invoices shall be due and payable by the Customer within 30 days of the date on which the invoice is issued.
- (b) Any amount payable by the Customer to the Supplier pursuant to this Agreement and not paid when due will bear interest from the due date to the date such payment is actually received by the Supplier at a rate per annum equal to the Prime Rate, in

effect of such time, plus five percent per annum, together with interest on such interest compounded monthly.

5.03 Metering

- (a) The Supplier shall install a meter as part of the Water System to measure the actual supply of Treated Water to the Customer. In the event the metering equipment fails to operate or to accurately record the amount of Treated Water supplied, the Supplier shall, acting reasonably, estimate the amount of Treated Water supplied to the Customer for the period in which the meter failure occurred having regard to factors including, without limitation, the Customer's past consumption for the corresponding period during prior years, current operating conditions and readings of the Customer's check meters, if any. The Supplier shall maintain the metering equipment in accordance with good utility practices and shall immediately repair or replace inoperative metering equipment.
- (b) The Customer may, at its option and expense, install check meters. The Customer shall maintain such meters in accordance with good utility practices.

5.04 Suspension of Services

Notwithstanding any other term of this Agreement, the Supplier shall have the right to suspend the supply of the Services or either of them if, in its reasonable opinion,

- (a) it is unsafe to supply such Services for any reason including, without limitation, if the Treated Water is not fit for human consumption, or
- (b) suspension of the Services is required in order to perform maintenance, repair or replacement work on the Systems in accordance with Section 7.01(b); or
- (c) suspension of the Services is required for any other reason.

The Supplier shall give the Customer written notice of the need to suspend supply of the Services together with the reasons in as much detail as available therefor as soon as reasonably possible under the circumstances.

5.05 Cessation of Supply for Payment Default

If any amount payable by the Customer to the Supplier pursuant to the terms hereof is not paid on or prior to the due date for such amount, the Supplier, or any person acting under its authority, on giving 15 days' prior written notice to the Customer, may stop the supply of Services or any of them to the Development. The Customer shall be liable to the Supplier for the charges due up to that time together with the reasonable direct and indirect expenses incurred by the Supplier in connection with the disconnection or discontinuance of the Services and the expense of re-connecting the Services to the Development. The Supplier shall not thereafter be obligated to supply Services until all amounts then outstanding are paid in full to the Supplier (including expenses incurred by the Supplier in connection with the disconnection or discontinuing of the Services together with the expense of re-connecting

the Services. Upon payment of all amounts then outstanding in full (including any amounts payable pursuant to this Section 5.05), the Supplier shall again supply Services in accordance with the provisions of this Agreement, unless this Agreement has been terminated in accordance with the provisions hereof.

ARTICLE VI – DEVELOPER’S RESPONSIBILITY AGREEMENT

6.01 Compliance with Agreement

The Supplier agrees that, during the Term of this Agreement, it will comply with all of the obligations imposed under the Developer’s Responsibility Agreement on Developer No. 1 (as defined therein) including, without limitation, all the obligations relating to the construction, operation, maintenance, repair and replacement of the Systems or cause such obligations to be complied with. Without limiting the foregoing, the Supplier acknowledges and agrees that the Systems must be operated in compliance with applicable laws by a person who has the necessary qualifications and holds the appropriate licenses.

6.02 Termination

The Customer acknowledges and agrees that this Agreement will be terminated as of the date that municipal water and sewage services become available for the Development. The Customer agrees that it will connect to the municipal water and sewage services at the earliest opportunity provided that the Supplier will be responsible for any costs associated therewith. The Customer agrees that it will co-operate with the Supplier and do all things necessary to permit the Supplier to decommission the Systems in accordance with Developer’s Responsibility Agreement and to obtain the return of the Reserve Fund therein described.

6.03 Grant Easements

The Customer acknowledges that it may be required, pursuant to the Developer’s Responsibility Agreement, to convey certain property interests to the District Municipality of Muskoka and agrees to do so promptly upon request.

6.04 On Termination

In the event of termination of this Agreement, the obligation to make any payment pursuant to the terms hereof relating to the period prior to termination will survive the termination of this Agreement.

ARTICLE VII – REPAIRS AND ACCESS

7.01 Maintenance and Repairs by Supplier

- (a) The Supplier shall maintain, repair and replace as necessary and keep in a good state of repair the Systems in accordance with Acceptable Standards including good utility practice, applicable laws and applicable engineering codes and standards. Without limiting the Supplier’s rights in Sections 7.01(b) and (c), in the event that either of

the Systems fails and results in the Supplier not being able to supply the Services or either of them, the Supplier shall use commercially reasonable efforts to expeditiously remedy the failure.

- (b) The Supplier shall have the right, upon reasonable notice to the Customer, to suspend the supply of Services for the purpose of carrying out any connections or necessary repairs, replacements or maintenance to the Systems including, without limitation, its mains and service pipes. The Supplier will consult with the Customer to develop a coordinated maintenance schedule for each year of the Term identifying scheduled repair periods. The Supplier shall give the Customer thirty (30) days notice of any regularly scheduled maintenance that will affect the supply of the Services hereunder or the Customer's operations. During regularly scheduled maintenance periods, the Supplier shall use commercially reasonable efforts to not disrupt the supply of Services to the Development and will perform this work at a time, or on a day, or during a time of the year when disruption will be minimized.
- (c) Notwithstanding any other provision of this Agreement, in the case of an emergency (including unsafe or dangerous conditions) as determined by the Supplier acting reasonably and with notice to the Customer, the Supplier may suspend the supply of Services to the Development to the Development without prior notice and without liability to the Customer. The Supplier shall use its best efforts to reinstate the Services once the emergency conditions have been addressed.

7.02 Maintenance and Repairs by Customer

The Customer shall maintain, repair, replace as necessary and keep in a good state of repair the water and drainage systems located within the Development in accordance with good utility practice, applicable laws and applicable engineering codes and standards. The Customer shall use commercially reasonable efforts to expeditiously effect all necessary repairs and replacements thereto.

7.03 Access

The Supplier, its officers, servants, employees, agents and contractors may from time to time, at all reasonable times and with reasonable prior notice (i) before the termination or expiry of this Agreement, enter into and upon the Development for the purpose of reading meters and (ii) after the termination or expiry of this Agreement, enter into and upon the Development for the purpose of capping its pipes and mains at the property line.

7.04 Rules and Regulations

The Supplier shall have the right from time to time to establish reasonable rules and regulations respecting the use of the Systems including, without limitation, rules and regulations respecting the type of materials that can be deposited in the Wastewater System and limitations on the use of the Water System. Without limitation, such rules and regulations may be for the purposes of protecting the Systems and ensuring they operate properly or for conservation. The Customer agrees that it will use reasonable efforts to cause

those using the Units to abide by such rules and regulations and that it will, upon request by the Supplier, incorporate such rules and regulations within the rules of the Corporation.

ARTICLE VIII- INDEMNIFICATION

8.01 By Customer

- (a) The Customer will from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the Supplier, its directors, officers, employees, and agents or any of them from and against all claims, demands, losses, costs, damages, and expenses whatsoever (including legal fees) which the Supplier, its directors, officers, employees and agents or any of them may from time to time hereafter bear, sustain, suffer, or be put unto arising out of or in connection with this Agreement as a result of the negligence, wilful neglect, or default of the Customer or its directors, officers, employees, agents, or the owners of Units and their respective invitees or those for whom it is responsible in law; provided, however, that the Customer will not be liable under this Agreement for any claims, demands, losses, costs, charges, damages or expenses occasioned or caused by the negligence, wilful neglect or default of the Supplier, its officers, directors or agents.
- (b) The Supplier shall be deemed to hold the provisions of this clause that are for the benefit of the Supplier's officers, directors, employees, agents and invitees in trust for the Supplier's officers, directors, employees and agents as third party beneficiaries of this Agreement.

8.02 By Supplier

- (a) The Supplier will from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the Customer, its directors, officers, employees and agents or any of them from and against all claims, demands, losses, costs, damages, and expenses whatsoever (including legal fees) which the Customer, its directors, officers, employees and agents or any of them may from time to time hereafter bear, sustain, suffer, or be put unto arising out of or in connection with this Agreement as a result of the negligence, wilful neglect, or default of the Supplier or its directors, officers, employees or agents or those for whom it is responsible in law; provided, however, that the Supplier will not be liable under this Agreement for any claims, demands, losses, costs, charges, damages or expense occasioned or caused by the negligence, wilful neglect or default of the Customer, its officers, directors, employees or agents.
- (b) The Customer will be deemed to hold the provisions of this clause that are for the benefit of the Customer's officers, directors, employees and agents in trust for the Customer's officers, directors, employees and agents as third party beneficiaries of this Agreement.

8.03 Indemnification Procedure

In the event any claim is asserted or any suit is filed against either party for which the other party may be required to provide indemnification hereunder, then the party against whom the claim is so asserted shall promptly notify the other party of such claim or suit as soon as may be practicable but in any event not more than 20 days after its receipt thereof, whereupon the other party may undertake, in conjunction with the party against whom the claim has been asserted, the defence of such suit or the settlement of any such claim at its own cost and expense; provided that the failure to provide notice as aforesaid shall not invalidate or affect any obligation to indemnify except to the extent that the party giving such indemnification has been prejudiced thereby.

8.04 Limitation of Liability

Notwithstanding anything to the contrary contained in this Agreement, in no event, whether as a result of breach of contract, breach of warranty, negligence, nuisance, failure to warn, strict liability, liability without fault or any other liability, shall the Supplier be liable to the Customer or the Customer be liable to the Supplier, or their respective officers, directors, employees, servants and agents, or any of them or any other person, for incidental, indirect, consequential, special or punitive damages (including, without limitation, loss of profit, loss of revenue, loss of use of buildings, structures or equipment, business interruption, cost of capital, cost of substituted facilities or services, downtime costs, costs of labour, loss of goodwill, or economic losses of any nature whatsoever) howsoever caused or arising and whether suffered by the Customer or the Supplier or by others.

ARTICLE IX – FORCE MAJEURE

9.01 Force Majeure

Notwithstanding any other provision of this Agreement, the Supplier shall not be liable to the Customer, its officers, directors, employees, agents or invitees, or any of them, and the Customer shall not be liable to the Supplier, its officers, directors, employees and agents, or any of them, for any failure or delay in performance under this Agreement if such failure or delay is due in whole or in part to Force Majeure. The party affected by the Force Majeure shall use commercially reasonable efforts to overcome or mitigate the effects of such occurrence as soon as reasonably practicable.

ARTICLE X – MISCELLANEOUS

10.01 Notice

Any notice which may be or is required to be given or made pursuant to this Agreement shall be given in writing and must be given by delivery, by registered mail or by facsimile addressed to the recipient as follows:

- (a) in the case of the Supplier, addressed to it at:

P.O. Box 30
1112 Juddhaven Road
Minett, ON P0B 1G0

Attention: President
Facsimile No: (705) 765-1493

- (b) in the case of the Customer, addressed to it at:

P.O. Box 86
1050 Paignton House Road
Minett, ON P0B 1G0

Attention: President
Facsimile No.: (705) 765-1493

or such other address or individual as may be designated by notice by either party to the other. Any communication given by delivery will be conclusively deemed to have been given on the day of actual delivery thereof or, if given by registered mail, on the fifth Business Day following the deposit thereof in the mail. If the party giving any communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such communication must not be mailed but must be given by delivery or by electronic means of communication. If given by electronic means of communication, the communication will be deemed to have been given on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which normal business hours next occur if not given during such hours on any day. For greater certainty, any notice or communication given pursuant to this Agreement shall not be delivered electronically by e-mail.

10.02 Assignment and Assumption

- (a) The Customer shall not be entitled to assign its rights or obligations hereunder without the prior written consent of the Supplier, which consent may be reasonably withheld. No permitted assignment by the Customer shall be effective unless the Customer shall first obtain and deliver to the Supplier an assumption agreement, in a form satisfactory to the Supplier whereby the assignee agrees with the Supplier to assume all obligations of the Customer under this Agreement.
- (b) The Supplier shall not sell or transfer the Systems without first obtaining an agreement from the purchaser or transferee agreeing to assume and be bound by this Agreement.
- (c) The Supplier may only assign its rights or obligations hereunder: (i) with the consent of the Customer, not to be unreasonably withheld; or (ii) to a lender as collateral security on notice to the Customer, or (iii) to the purchaser of all, or substantially all, of the assets of the Supplier on notice to the Customer.

10.03 Further Assurances.

Each party shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

10.04 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understanding or agreement between the parties hereto with respect to the subject matter hereof. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as set forth in this Agreement.

10.05 Amendment and Waiver

No modification of or amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties hereto and no waiver of any breach of any term or provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

10.06 Benefit of the Agreement

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

10.07 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

10.08 Continuance After End of Term


If the Supplier continues to provide Services following the end of the Term hereof, then such shall be provided on the terms and conditions hereof. Such arrangement may be cancelled at any time by either party on 10 days prior written notice.

10.09 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

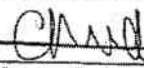
IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.


**THE ROSSEAU RESORT
DEVELOPMENTS INC.**

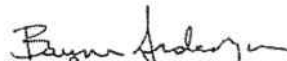
Per: 
Name: Kenneth Fowler
Title: Authorized Signing Officer

**MUSKOKA STANDARD
CONDOMINIUM CORPORATION NO.
62**

~~Per: _____
Name: Robin Connors
Title: President~~

~~Per: 
Name: Cathy Richardson
Title: Treasurer~~

Per: 
NAME STEVE TAGGART
TITLE SECRETARY
Dir. of Sales & Marketing

Per: 
NAME ELAINE ANDERSON
TITLE PRESIDENT

Per: 
NAME MONICA SACHSE
TITLE TREASURER

TAB J

Shared Facility Costs Allocation
Unaudited

	% of Actual Costs Provided by Marriott	Costs provided by Marriott ¹ (Mar 9, 2009 - Mar 8, 2010)	Allocation to Resort Corporation	Notes	Resort Corporation Share
Shared Facilities					
Common area maintenance	100.00%	185,398	81.75%	2,3	151,563
Window cleaning	100.00%	5,000	81.75%	3	4,088
Elevator maintenance	100.00%	28,157	50.00%	3	14,078
Fire safety maintenance	100.00%	20,090	81.75%	3	16,424
HVAC maintenance	100.00%	18,172	81.75%	3	14,856
Parking maintenance	100.00%	-	81.75%	3	-
Exterior building maintenance	100.00%	11,592	81.75%	3	9,476
Garbage removal	100.00%	39,675	50.00%	3	19,837
Pool maintenance	100.00%	42,173	100.00%	3	42,173
Grounds maintenance	100.00%	81,843	81.75%	4	66,907
Snow removal	100.00%	31,081	81.75%	4	25,409
Decorations	100.00%	13,104	81.75%	4	10,712
Security	100.00%	207,068	81.75%	4	169,278
Docks, beach and waterfront maintenance	100.00%	10,100	0.00%	4	-
		693,453			544,801

Utilities					
Water and sewer	100%	130,357	52.00%	3	67,786
Hydro	100%	610,898	81.75%	5	499,409
Propane	100%	529,099	Oct-Apr - 34.6%, Apr-Oct 18.8%	3	158,613
		1,270,354			725,808

Subtotal 1,963,807 1,270,609

Other Shared Facility Costs incurred by RRDI directly on behalf of Resort Corporation

Propane		52,500	26.70%	6	14,018
Elevator (TSSA)		1,000	50.00%	3	500
Total		2,017,307			1,285,127

Notes:

Note 1: Costs were provided by Marriott by 4 week period (13 periods in a year). For periods that extended outside of the Resort Corporation's fiscal year, amounts were pro-rated based on the number of days in the period.

Note 2: Common Area Maintenance includes Common Area Cleaning and General Repairs & Maintenance from schedules provided by Marriott. The Common Area Cleaning number provided by Marriott has been grossed up to 100% to account for the fact that they provided a number that was 82% of the total cost.

Note 3: Costs allocated based on percentages as outlined in the Reciprocal Agreement - Schedule C - Shared Facility Costs.

Note 4: Costs allocated based on percentages as outlined in the Shared Facilities Agreement.

Note 5: According to Schedule C - Shared Facility Costs, of the Reciprocal Agreement, Hydro was to be allocated based on meters, however, meters were never installed on a unit by unit basis or in a way that could be used to track usage between the Residential and Commercial spaces. According to the Director of Engineering at Marriott allocating hydro based on square footage was a feasible and reasonable alternative in the absence of meters.

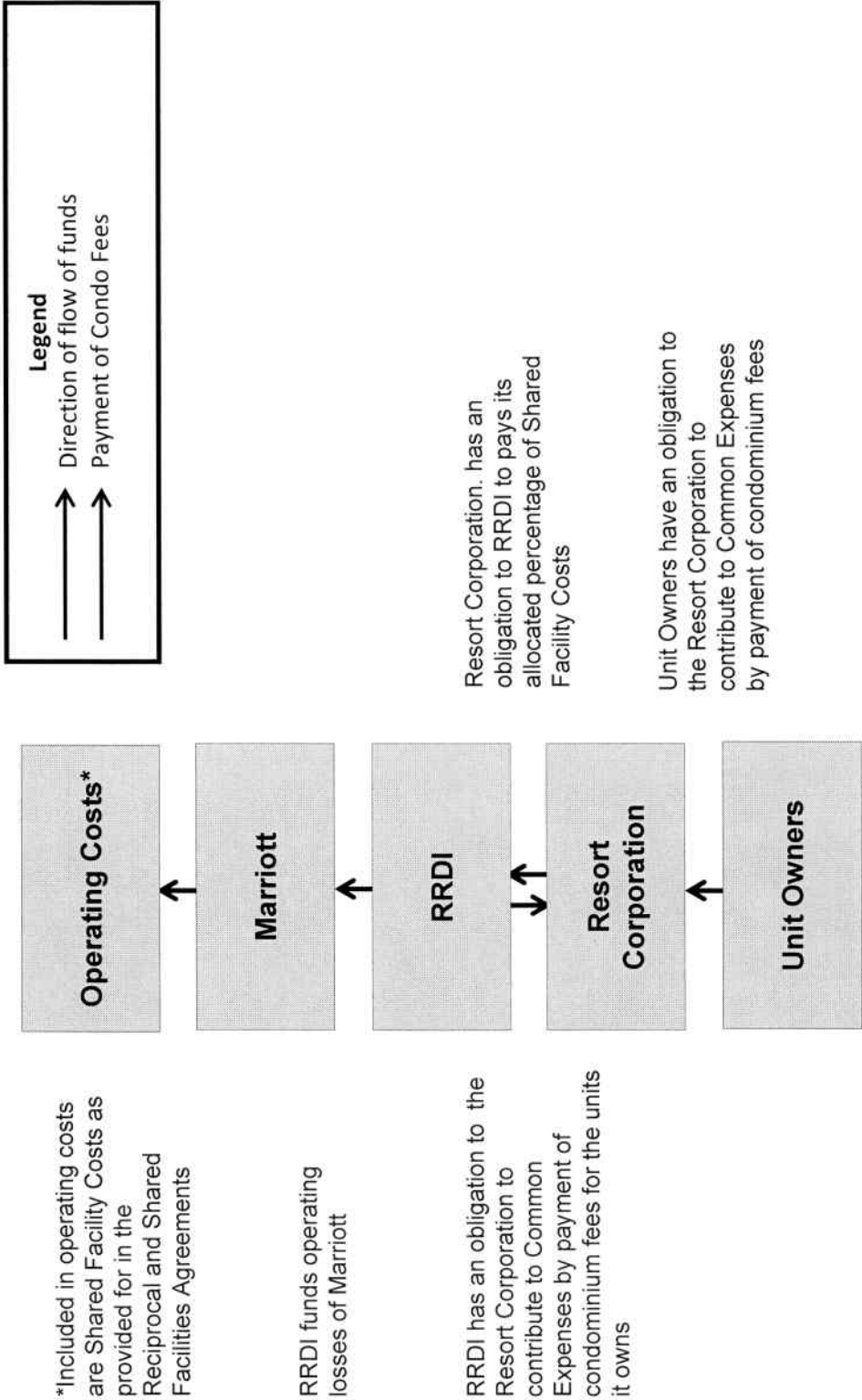
Hydro includes Hydro & Other from schedules provided by Marriott as "Other" relates to the cost to fill the generator with fuel.

Note 6: These costs were not paid directly by Marriott as the agreements governing these services were entered into by RRDI; however, the allocation of these costs is covered under the Reciprocal Agreement noted in Note #3 above.

Note 7: Propane service contract has been allocated at 27%, which is the average percentage allocation in respect of propane usage as per above.

TAB K

I. Current Operating Structure



TAB L

Summary of Direct Costs Paid by RRDI

Cash transfer to fund reserve fund	25,950.00
Insurance	94,387.59
Accounting software	225.99
Meeting expense	575.12

Total	\$121,138.70

TAB M

Muskoka Standard Condominium Corporation No. 62 *

Balance Sheet

As of March 8, 2010

178

Mar 8, 10

ASSETS

Current Assets

Chequing/Savings

Muskoka Condo Corp. - Operating 264,856.77

Muskoka Condo Corp. - Reserve 163,138.33

Total Chequing/Savings 427,995.10

Accounts Receivable

Accounts Receivable 193,729.89

Total Accounts Receivable 193,729.89

Other Current Assets

Prepays 36,834.28

Trust Funds (Asset) - CES 253,205.74

Trust Funds (Asset) - Ind Cards 138,651.34

Trust Funds (Asset) - Mod APS 27,041.49

Undeposited Funds 52,997.25

Total Other Current Assets 508,730.10

Total Current Assets 1,130,455.09

TOTAL ASSETS 1,130,455.09

LIABILITIES & EQUITY

Liabilities

Current Liabilities

Other Current Liabilities

Accrued Liabilities 32,473.00

Payable to AON 819.62

Payable to RRDI 241,617.95

Trust Funds (Liab) - CES 253,205.74

Trust Funds (Liab) - Ind Cards 138,651.34

Trust Funds (Liab) - Mod APS 27,041.49

Total Other Current Liabilities 693,809.14

Total Current Liabilities 693,809.14

Total Liabilities 693,809.14

Equity

Reserve Fund 167,400.00

Reserve Fund Float 117,303.64

Retained Earnings 149,476.85

Net Income 2,465.46

Total Equity 436,645.95

TOTAL LIABILITIES & EQUITY 1,130,455.09

179.

Muskoka Standard Condominium Corporation No. 62 *

Profit & Loss

March 9, 2009 through March 8, 2010

	Mar 9, '09 - Mar 8, 10
Ordinary Income/Expense	
Income	
Common Expense Fee Revenue	
Comm Exp Fee Rev - Mngmnt Unit	45,558.36
Comm Exp Fee Rev - Res Alloc	-167,400.00
Comm Exp Fee Rev - Sold Units	531,948.36
Comm Exp Fee Rev - Unsold Units	1,297,412.92
Total Common Expense Fee Revenue	1,707,519.64
Total Income	1,707,519.64
Expense	
Administration Costs	
Insurance	58,372.93
Legal and Audit	18,000.00
Management Fees	84,864.00
Meeting Costs	1,175.12
Office Supplies and Other	
Bank Service Charges	567.20
Other Office Expenses	1,225.99
Total Office Supplies and Other	1,793.19
Performance Audit	8,367.45
Reserve Fund Study	4,505.55
Total Administration Costs	177,078.24
Reconciliation Discrepancies	-0.01
Services	
Common Area Cleaning	130,874.72
Decorations	10,712.00
Elevator Maintenance	14,578.61
Exterior Building Maintenance	9,476.11
Fire Safety Maintenance	16,423.16
Garbage Removal	19,837.21
General Repairs and Maintenance	20,688.48
Grounds Maintenance	66,907.07
HVAC Maintenance	14,855.93
Parking Maintenance	0.00
Rec. Fac. Maintenance	126,536.03
Security	169,278.65
Snow Removal	25,409.02
Waterfront Maintenance	7,575.00
Window Cleaning	4,088.00
Total Services	637,239.99
Utilities	
Hydro	498,714.36
Other Utilities	2,215.00
Propane	172,630.74
Water and Sewer	67,786.14
Total Utilities	741,346.24
Total Expense	1,555,664.46
Net Ordinary Income	151,855.18
Other Income/Expense	
Other Income	
Interest Income	87.13
Total Other Income	87.13
Net Other Income	87.13
Net Income	151,942.31

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

WESTLB AG, TORONTO BRANCH

V.

THE ROSSEAU RESORT DEVELOPMENTS INC.

Applicant

Respondent

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD
(Returnable December 7, 2010)**

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Alvarez & Marsal Canada Inc., in their respective capacities as
Court-appointed Receiver and Manager, Trustee, and Interim
Receiver