

TAB B

\$113,519,301

CREDIT AGREEMENT,

dated as of February 1, 2007,

by and among

THE ROSSEAU RESORT DEVELOPMENTS INC.,
as the Borrower,

VARIOUS FINANCIAL INSTITUTIONS,
as the Lenders,

WESTLB AG, Toronto Branch
as the Arranger and
Administrative Agent for the Lenders,

CIT FINANCIAL LTD.,
as the Syndication Agent for the Lenders,

and

RAIFFEISEN ZENTRALBANK ÖSTERREICH AG,
as the Documentation Agent.

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT, dated as of February 1, 2007, by and among **THE ROSSEAU RESORT DEVELOPMENTS INC.**, an Ontario corporation (the "**Borrower**"), the various financial institutions as are or may become parties hereto (collectively, the "**Lenders**") and **WESTLB AG, Toronto Branch ("WestLB")**, as the issuer of the Letters of Credit (as such term is defined in Section 1.1; each capitalized term not otherwise defined shall have the meaning ascribed to such term in Section 1.1) (in such capacity, the "**Issuer**") and as the administrative agent (in such capacity, the "**Administrative Agent**") for the Lenders, **CIT FINANCIAL LTD.**, as syndication agent (in such capacity, the "**Syndication Agent**") for the Lenders and **RAIFFEISEN ZENTRALBANK ÖSTERREICH AG**, as documentation agent (in such capacity, the "**Documentation Agent**") for the Lenders.

WITNESSETH:

WHEREAS, the Borrower is the record legal title holder of the Land for development of The Rosseau Hotel and Residences which shall be comprised of:

(a) a main upper hotel/condominium consisting of 178 Residential Condominium Units including an approximately 20,000 square foot conference facility, an approximately 13,500 square foot spa, food and beverage facility that will include a casual dining restaurant with a 60 seat outdoor terrace, a 40 seat lounge adjacent to the upper hotel, a 40 seat fine dining restaurant with a 20 seat outdoor terrace ("**Longview**") and certain common property together with related facilities and amenities;

(b) a lower hotel/condominium lodge consisting of 43 Residential Condominium Units resulting from the construction of a new building to be named "**Paignton House**" including a pool/bar restaurant ("**Paignton House**") and certain common property together with related facilities and amenities;

(c) up to 31 Residential Condominium Units between Longview and Lake Rosseau together with a boathouse (the "**Waterfront Residences**") and certain other common property together with related facilities and amenities;

(d) up to 6 "Meadow" residences, 21 "Wedge" golf villas, and 24 "Bunker" golf villas built along "The Rock" golf course (the "**Golf Residences**") and certain common property together with related facilities and amenities;

in each case, which shall, after registration as a Condominium Regime, have specified reciprocal easements and parking rights within the all seasons destination resort to be known as The J.W. Marriott Rosseau Resort (the "**Resort**"); and

WHEREAS, the portion of the Improvements comprised of Longview and Paignton House is to be constructed as part of the Longview/Paignton Construction Phase, and the Borrower expects to fund certain acquisition costs with respect to the Land upon which Longview and Paignton House are to be constructed and the Project Costs with respect to the

Longview/Paignton Construction Phase which are expected to cost \$135,183,406.00 in the aggregate, by

(a) contributing the Longview/Paignton House Equity (which may include the application of Available Longview/Paignton House Deposits in an aggregate amount not to exceed \$10,048,666); and

(b) obtaining the Longview/Paignton House Commitments from the Lenders;
and

WHEREAS, the portion of the Improvements comprised of the Waterfront Residences is to be constructed as part of the Waterfront Residences Construction Phase, and the Borrower expects to fund certain acquisition costs with respect to the Land upon which the Waterfront Residences are to be constructed and the Project Costs with respect to the Waterfront Residences Construction Phase which are expected to cost \$21,201,405.00 in the aggregate, by

(c) contributing the Waterfront Equity (which may include the application of Available Waterfront Deposits in an aggregate amount not to exceed \$5,529,690.00); and

(d) obtaining the Waterfront Residences Commitments from the Lenders; and

WHEREAS, the portion of the Improvements comprised of the Golf Residences is to be constructed as part of the Golf Residences Construction Phase, and the Borrower expects to fund certain acquisition costs with respect to the Land upon which the Golf Residences are to be constructed and the Project Costs with respect to the Golf Residences Construction Phase which are expected to cost \$27,599,681.00 in the aggregate, by

(a) contributing the Golf Residences Equity (which may include the application of Available Golf Residences Deposits in an aggregate amount not to exceed \$4,370,100.00); and

(b) obtaining the Golf Residences Commitments from the Lenders; and

WHEREAS, from time to time on and after the Initial Credit Extension Date and prior to the Commitment Termination Date, the Borrower wishes to obtain

(a) from the Issuer, Letters of Credit in a maximum aggregate Stated Amount at any time outstanding not to exceed \$10,000,000.00; and

(b) from the Lenders, Credit Extensions not to exceed (i) \$83,808,008.00 with respect to the Longview/Paignton House Construction Phase, (ii) \$12,775,312.00 with respect to the Waterfront Residences Construction Phase, and (iii) \$16,935,981.00 with respect to the Golf Residences Construction Phase.

all subject, however, to the limitation that the sum at any time of (x) the aggregate original principal amount of all Loans plus (y) the principal amount of all outstanding Bankers' Acceptances plus (z) all Letter of Credit Outstandings shall not exceed \$113,519,301.00; and

WHEREAS, the Lenders and the Issuer are willing, on the terms and subject to the conditions hereinafter set forth (including Article V), to enter into such Commitments and make such Loans to the Borrower, accept such Bankers' Acceptances, and issue (or participate in) such Letters of Credit for the account of the Borrower; and

WHEREAS,

(a) the proceeds of the Loans and Bankers' Acceptance Proceeds will be applied (x) towards payment of the Project Costs in respect of which such Loans were advanced by the Lenders and Bankers' Acceptance Proceeds were made available to the Borrower, (y) prior to the Substantial Completion Date, for payments of interest in respect of the Loans made hereunder and (z) in addition to the foregoing purposes, towards the payment of Letter of Credit Outstandings and reimbursement obligations arising from matured Bankers' Acceptances; and

(b) the Letters of Credit will be issued for the account of the Borrower for the purposes set forth in clause (c) of Section 8.1.2.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.1 Defined Terms. The following terms (whether or not in bold) when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"Additional Contract Certificate" means an Additional Contract Certificate substantially in the form of Exhibit Q hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Administrative Agent" is defined in the preamble and includes each other Person as shall have subsequently been appointed as the successor Administrative Agent pursuant to Section 10.4.

"Advance" means an advance of Bankers' Acceptance Proceeds or Loans (including Loans resulting from a Conversion or Rollover (whether requested or deemed to have been requested hereunder) or otherwise effected pursuant hereto).

"Affected Lender" is defined in clause (a) of Section 4.9; provided, however, that in no event shall any Tranche B Lender be an Affected Lender.

"Affiliate" means, relative to any Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person (excluding, however, any trustee under, or any committee with responsibility for administering, any Plan). With respect to any Lender, Approved Fund, or Issuer, a Person shall be deemed to be "controlled by"

another Person if such other Person possesses, directly or indirectly, power to vote more than 50% of the securities (on a fully diluted basis) having ordinary voting power for the election of directors, managing general partners or managers, as the case may be. With respect to all other Persons, a Person shall be deemed to be "controlled by" another Person if such other Person possesses, directly or indirectly, power

(a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors, managing general partners or managers, as the case may be; or

(b) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

For clarity, it is acknowledged that natural persons shall not be considered Affiliates.

"Affiliate Transaction" is defined in Section 8.2.11.

"Agreement" means, on any date, this Credit Agreement, as originally in effect on the Effective Date, and as thereafter from time to time amended, supplemented, amended and restated, or otherwise modified.

"Anti-Terrorism Laws" shall mean any laws relating to terrorism or money laundering, including Executive Order No. 13224 and the USA Patriot Act.

"Applicable Prime Rate Margin" means, (i) as to Tranche A Borrowings, 1.75%, and (ii) as to Tranche B Borrowings, 2.1778%.

"Applicable B.A. Rate Margin" means (i) as to Tranche A Borrowings, 2.50%, and (ii) as to Tranche B Borrowings, 2.9278%.

"Applicable Percentage" means the percentage of Direct Costs actually paid or payable by the Borrower to the GMP Contractor pursuant to a GMP Contract or, if applicable, to a Major Contractor pursuant to a Major Contract, after taking into account the Holdback Amount.

"Appraisal" means an appraisal of the Premises commissioned by the Administrative Agent that (i) is prepared by an MAI certified appraiser, (ii) complies with the appraisal standards set forth in FIRREA, (iii) is prepared in accordance with the Uniform Standards of Professional Appraisal Practice as promulgated by The Appraisal Foundation and the Standards of Professional Appraisal Practice and Code of Ethics of the Appraisal Institute, and (iv) is otherwise in form and content reasonably satisfactory to the Administrative Agent.

"Appraiser" means the Person designated from time to time by the Administrative Agent to serve as the appraiser under this Agreement.

"Approved Unit Purchase Agreement" means a form of purchase agreement substantially similar to the form that has been reasonably approved by the Administrative Agent to be used by the Borrower in connection with the sale of a Unit to a Qualified Purchaser, which conditions the Qualified Purchaser's obligation thereunder to purchase the Unit covered thereby

only upon Substantial Completion of construction of such Unit and the appurtenances thereto in accordance with the Condominium Documents (or if such Unit is not part of a Condominium Regime, in accordance with such purchase agreement), and provides for Closing Costs which individually do not exceed eight percent (8%) of the sales price applicable to the Unit covered thereby; provided, however, that notwithstanding the foregoing, the aggregate amount of Closing Costs for all of the Units shall not exceed six percent (6%) of the aggregate sales prices of all Units.

"Approved Fund" means, relative to any Lender that is a fund that invests in bank loans, any other fund that invests in bank loans and is advised or managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Appurtenant Rights" means (x) all agreements, Easements (including the Easement Agreement), rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and the benefits at any time belonging to or affecting the Borrower or the owner of a Unit and pertaining to the Premises or the Unit, including the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent, contiguous or within the Premises and (y) all permits, licenses and rights held by or for the benefit of the Borrower or the owner of a Unit, whether or not of record, appurtenant to the Premises, as the case may be.

"Architect" means in respect of the Longview/Paignton House Construction Phase, Stone McQuire Vogt, and in respect of the Waterfront Residences Construction Phase and the Golf Residences Construction Phase (for which no architect has been engaged as of the Effective Date), Stone McQuire Vogt or such other qualified architect as may be selected by the Borrower and approved by the Administrative Agent, such approval not to be unreasonably withheld or delayed.

"Architect Consent and Acknowledgment" means the Consent and Acknowledgment by the Architect in favor of the Lenders and the Administrative Agent to be delivered on or before the Initial Construction Phase Credit Extension Date.

"Architect's Agreement" means, the agreement pursuant to which the Architect has agreed with the Borrower to provide the services described therein in connection with the construction of the portion of the Improvements covered thereby.

"Architect's Closing Certificate" means a closing certificate substantially in the form of Exhibit J hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Assignee Lender" is defined in Section 11.12.1.

"Assignment of Architect Agreement" means, on any date, the Assignment of Architect Agreement, as originally in effect on the Initial Credit Extension Date, between the Borrower and the Administrative Agent, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Assignment of Contracts" means an assignment of the Project Documents, the Permits and approvals and consents (in each case to the extent assignable), including the rights of the Borrower thereunder, as originally in effect on the Initial Credit Extension Date, between the Borrower and the Administrative Agent, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof. Such Assignment of Contracts shall include appropriate continuation agreements by each of the Major Contractors.

"Assignment of GMP Contract" means, on any date, the Assignment of GMP Contracts, as originally in effect on the Initial Credit Extension Date, between the Borrower and the Administrative Agent and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Assignment of Hotel Management Agreement" means, on any date, the Assignment of Hotel Management Agreement, as originally in effect on the Initial Credit Extension Date, between the Borrower and the Administrative Agent and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Assignment of Rate Protection Agreements" means, on any date, the Assignment of Rate Protection Agreements, as originally in effect on the Initial Credit Extension Date, between the Borrower and the Administrative Agent, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Authorized Representative" means, relative to any Person, those of its officers or managing members (in the case of a limited liability company) whose signatures and incumbency shall have been certified to the Administrative Agent and the Lenders in a certificate of such Person delivered to the Administrative Agent.

"Available Deposits" means, as the context may require, the Available Golf Residences Deposits, the Available Longview/Paignton House Deposits and the Available Waterfront Residences Deposits.

"Available Funds" means, at any time as to a Construction Phase, the cash portion of the Equity Contribution for such Construction Phase (other than Available Deposits for such Construction Phase), the aggregate of the unutilized Commitments for such Construction Phase (including Holdback Amounts but excluding, however, the Commitments of all Defaulting Lenders), Available Deposits for such Construction Phase, and amounts available in the Project Account to pay Project Costs, in each case, as allocated to the applicable Construction Phase, and with respect to the payment of Operating Expenses, Debt Service and Impositions, shall include Net Operating Income.

"Available Golf Residences Deposit" means the deposits of Dollars made by a Qualified Purchaser under its Bona Fide Sales Contract covering a Unit in the Golf Residences but only if (x) such portion of such deposits can be applied in accordance with the *Condominium Act* (Ontario) against Project Costs incurred by the Borrower with respect to the Golf Residences and (y) the refunding of such deposits by the Borrower is insured by the ECD Insurance Provider;

provided, however, that prior to the time that the Borrower has delivered its certification in accordance with Section 6.5.18 that Pre-Sales of Units covered by Bona Fide Sales Contracts in the Golf Residences Construction Phase are seventy-five percent (75%) or more of the budgeted percentage of aggregate net sales for the Golf Residences Construction Phase set out in the Budget for such Construction Phase (i.e. gross sales net of purchase price discounts or cash incentives), the Available Golf Residences Deposits shall be limited to fifty percent (50%) of such deposits. The aggregate amount of Available Golf Residences Deposits shall not exceed \$4,370,100.00.

"Available Longview/Paignton House Deposits" means the deposits of Dollars made by a Qualified Purchaser under its Bona Fide Sales Contract covering a Unit in Longview or Paignton House but only if (x) such portion of such deposits can be applied in accordance with the *Condominium Act* (Ontario) against Project Costs incurred by the Borrower with respect to Longview/Paignton House Construction Phase and (y) the refunding of such deposits by the Borrower is insured by the ECD Insurer; provided, however, that prior to the time that the Borrower has delivered its certification in accordance with Section 6.5.18 that Pre-Sales of Units covered by Bona Fide Sales Contracts in the Longview/Paignton House Construction Phase are seventy-five percent (75%) or more of the budgeted percentage of aggregate net sales for the Longview/Paignton House Construction Phase set out in the Budget for such Construction Phase (i.e. gross sales net of purchase price discounts or cash incentives), the Available Longview/Paignton House Deposits shall be limited to fifty percent (50%) of such deposits. The aggregate amount of Available Longview/Paignton House Deposits shall not exceed \$10,048,666.00.

"Available Waterfront Residences Deposits" means fifty percent (50%) of the deposits of Dollars made by a Qualified Purchaser under its Bona Fide Sales Contracts covering a Unit in the Waterfront Residences but only if (x) such portion of such deposits can be applied in accordance with the *Condominium Act* (Ontario) against Project Costs incurred by the Borrower with respect to the Waterfront Residences Construction Phase and (y) the refunding of such deposits by the Borrower is insured by the ECD Insurer; provided, however, that prior to the time that the Borrower has delivered its certification in accordance with Section 6.5.18 that Pre-Sales of Units covered by Bona Fide Sales Contracts in the Waterfront Residences Construction Phase are seventy-five percent (75%) or more of the budgeted percentage of aggregate net sales for the Waterfront Residences Construction Phase set out in the Budget for such Construction Phase (i.e. gross sales net of purchase price discounts or cash incentives), the Available Waterfront Residences Deposits shall be limited to fifty percent (50%) of such deposits. The aggregate amount of Available Waterfront Deposits shall not exceed \$5,529,690.00.

"B/A Equivalent Loan" is defined in clause (i) of Section 2.3.3.

"Bankers' Acceptance" means a depository bill, as defined by the DBNA, drawn by the Borrower, denominated in Dollars and created by a Lender (or Participant) as a bankers' acceptance, as evidenced by such Lender's (or Participant's) endorsement thereof at the request of the Borrower pursuant to a Bankers' Acceptance Request and includes a Bankers' Acceptance resulting from a Conversion or Rollover.

"Bankers' Acceptance Obligation" is defined in clause (d) of Section 2.3.3.

"Bankers' Acceptance Proceeds" means the cash proceeds realized on creation of a Bankers' Acceptance by a Bank on the date of such creation.

"Bankers' Acceptance Request" means a request for a Bankers' Acceptance and certificate substantially in the form of Exhibit B-3 (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Base Fee" is defined in the Hotel Management Agreement

"Beneficiary" means, in respect of any Letter of Credit, the beneficiary specified therein.

"Blocked Person" is defined in clause (b) of Section 7.24.

"Bona Fide Sales Contract" means a duly executed Approved Unit Purchase Agreement between the Borrower and a Qualified Purchaser of a Unit entered into in compliance with the OSC Ruling (and such Qualified Purchaser has no right of rescission under the Interstate Land Sales Act) pursuant to which, following the Rescission Period, the Borrower is obligated to sell, and the Qualified Purchaser thereunder is obligated to purchase, such Unit, for at least the Minimum Sales Price and which provides inter alia that such Qualified Purchaser shall make the following deposits to be held pursuant to the applicable ECD Insurance Deposit Trust Agreement: (i) ten percent (10%) of the purchase price shall be payable upon execution of each such Approved Unit Purchase Agreement, (ii) five percent (5%) of the purchase price shall be payable within fifteen (15) days after the Borrower has notified the Qualified Purchaser that the foundation of the building in which such Unit is to be located has been laid, and (iii) five percent (5%) of the purchase price shall be payable within fifteen (15) days after the Borrower has notified the Qualified Purchaser that the building in which such Unit is to be located has been constructed to grade.

"Borrower" is defined in the preamble.

"Borrower's Closing Certificate" means a closing certificate substantially in the form of Exhibit I hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Borrower's Substantial Completion Certificate" means a certificate substantially in the form of Exhibit L hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Borrower's Final Completion Certificate" means a certificate substantially in the form of Exhibit N hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Borrowing" means, as the context may require, a Tranche A Borrowing or a Tranche B Borrowing.

"Budget" means, a budget in substantially the form of Schedule VIII (as amended from time to time in accordance with Section 8.2.18) which shall include (w) a breakdown of all Direct Costs and Indirect Costs by Line Items, together with a schedule of costs by trades and

Project Costs for each Construction Phase (including such Project Costs incurred prior to, as well as after, the Effective Date) which (1) are to be paid from the Available Funds allocated to such Construction Phase and (2) are to be constructed and paid for by the Borrower, (x) a schedule setting forth the FF&E for each Construction Phase which is to be purchased from the proceeds of the Loans or Bankers' Acceptance Proceeds allocated to such Construction Phase, (y) a drawdown schedule for Advances for each Construction Phase necessary to achieve Final Completion of such Construction Phase and such other information relative to such Project Costs and the funding thereof as the Administrative Agent may reasonably require and (z) a balanced statement of sources and uses of proceeds (and any other funds necessary to complete each Construction Phase and the Improvements), broken down by Line Item and Line Item Category for each Construction Phase.

"Budget/Schedule Amendment Certificate" means a Budget/Schedule Amendment Certificate substantially in the form of Exhibit S hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Building Department" means the Building Department of the Township of Muskoka Lakes.

"Business Day" means any day which is neither a Saturday or Sunday nor a legal holiday on which banks are authorized or required to be closed in New York, New York or Toronto, Canada.

"Canadian GAAP" is defined in Section 1.4.

"Canadian Resident" means, at any time, a resident of Canada for the purposes of the *Income Tax Act (Canada)* and an authorized foreign bank which at all times holds its interest in the Credit Extensions in the course of its Canadian banking business for the purposes of the *Income Tax Act (Canada)*.

"Canadian Tax" means any tax, levy, imposition, fee, assessment, stamp tax or other government charge imposed on the seller of a Unit in connection with the conveyance thereof, and any premium, including interest, penalties and additions in connection therewith.

"Capital Expenditures" means, for any period, the aggregate amount of all expenditures of the Borrower for fixed or capital assets made during such period which, in accordance with Canadian GAAP, would be classified as capital expenditures.

"Capital Stock" means, relative to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's capital, whether now outstanding or issued after the Effective Date.

"Capitalized Lease Liability" means, relative to any Person, any monetary obligation of such Person under any leasing or similar arrangement which, in accordance with Canadian GAAP, would be classified as a capitalized lease, and, for purposes of the Loan Documents, the amount of such obligation shall be the capitalized amount thereof, determined in accordance with Canadian GAAP, and the stated maturity thereof shall be the date of the last payment of rent or

any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a premium or a penalty.

"Cash Equivalent Investment" means, at any time, (u) Dollars, (v) securities issued or directly and fully guaranteed or insured by Canada or any province of Canada or any agency or instrumentality thereof (provided that the full faith and credit of Canada or such province, as applicable, is pledged in support thereof) having maturities of not more than six months from the date of acquisition, (w) certificates of deposit with maturities of six months or less from the date of acquisition, bankers' acceptances with maturities not exceeding six months and overnight bank deposits, in each case, with any Canadian domestic commercial bank having capital and surplus in excess of \$500 million and a Thompson Bank Watch Rating of "B" or better, (x) repurchase obligations with a term of not more than seven days for underlying securities of the types described in items (v) and (w) entered into with any financial institution meeting the qualifications specified in item (w), (y) commercial paper having the highest rating obtainable from DBRS, Moody's or S&P and, in each case, maturing within six months after the date of acquisition and (z) money market funds at least 95% of the assets of which constitute Cash Equivalent Investments of the kinds described in items (w)-(y) of this definition.

"CDOR Rate" means, on any day and for any period, the annual rate of interest determined by the Administrative Agent which is equal to the average of the yield rates per annum (calculated on the basis of a year of 365 or 366 days, as applicable) applicable to Bankers' Acceptances having, where applicable, identical issue and comparable maturity dates as the Bankers' Acceptances proposed to be issued by the Borrower displayed and identified as such on the "CDOR Page" (or any display substituted therefor) of Reuters Monitor Money Rates Service at approximately 10:00 a.m. (Toronto time) on that day or, if that day is not a Business Day, then on the immediately preceding Business Day (as adjusted by the Administrative Agent after 10:00 a.m. (Toronto time) to reflect any error in a posted rate of interest or in the posted average annual rate of interest); provided, however, if those rates do not appear on that CDOR Page, then the CDOR Rate shall be the discount rate (expressed as a rate per annum on the basis of a year of 365 or 366 days, as applicable) applicable to those Dollar bankers' acceptances in a comparable amount and with a comparable maturity date to the Bankers' Acceptance proposed to be issued by the Borrower quoted by the Administrative Agent as of 10:00 a.m. (Toronto time) on that day, or if that day is not a Business Day, then on the immediately preceding Business Day. Each determination of the CDOR Rate shall be conclusive and binding, absent manifest error, and may be computed using any reasonable averaging and attribution method.

"Change in Control" means any of:

(a) the failure of Ken Fowler or members of his Family, directly or indirectly, to own beneficially, (x) 100% of the issued and outstanding shares of the Capital Stock of the Guarantor and to Control the Guarantor or (y) 90% of the issued and outstanding shares of the Capital Stock of the Borrower and to Control the Borrower;

(b) so long as Red Leaves Resort Partnership owns, directly or indirectly, Capital Stock of the Borrower, (x) the failure of Ken Fowler or members of his Family to own, directly or indirectly, more than 90% of the Capital Stock of, and to Control, the Red Leaves Resort Partnership or (y) the failure of Red Leaves Resort Partnership to own, directly or indirectly, its

Capital Stock of the Borrower free and clear of all Liens (other than Liens in favor of the Administrative Agent for the benefit of the Secured Parties);

(c) if Red Leaves Resort Partnership no longer owns, directly or indirectly, Capital Stock of the Borrower, the failure of the holders of Capital Stock of the Borrower to own their Capital Stock, directly or indirectly, free and clear of all Liens (other than Liens in favor of the Administrative Agent for the benefit of the Secured Parties); or

(d) the failure of the Borrower to own free and clear of all Liens (other than Permitted Liens) the fee interest in the Premises (other than Dispositions permitted under clause (c) of Section 8.2.10).

"Change Order" means, at any time, an adjustment made to a GMP Contract or the Contract Time with respect to changes in the Work which

(a) increases or decreases the estimated time of performance of the Work covered by such GMP Contract by five (5) or more Business Days; or

(b) increases or decreases the cost to the GMP Contractor of the Work covered by such GMP Contract by more than \$100,000.

"CIT" means CIT Financial Ltd., a subsidiary of CIT Group Inc.

"Claim" means, relative to any Person, any and all present and future claims, expenses, obligations, liabilities, losses, damages, injuries (to person, property, or natural resources), penalties, stamp or other similar taxes, actions, suits, judgments, reasonable costs and expenses (including reasonable attorney's fees) of whatever kind or nature, whether or not well founded, meritorious or unmeritorious, demanded, asserted or claimed against such Person including any liability resulting from any delay or omission to pay any such stamp or other similar taxes.

"Closing Costs" means brokerage commissions (including selling commissions payable to employees of a Loan Party or of Affiliates of a Loan Party) and other reasonable and projected closing costs (other than Canadian Tax) customarily payable by a seller of a Unit in the Province to Persons which are not Affiliates of any Loan Party.

"Commercial Condominium Unit" means a separate Condominium Unit constituting a portion of the Condominium Regime which is to be used for commercial purposes in accordance with the Condominium Documents, together with the undivided fractional interests appurtenant to such Condominium Unit in the common elements and special common elements (including any easement, patio, storage or parking allocated to such Condominium Unit).

"Commercial Condominium Unit Owner" means, the Borrower in its capacity as the owner of the Commercial Condominium Unit.

"Commitment" means, as the context may require, the Golf Residences Commitment, the Longview/Paignton House Commitment, or the Waterfront Residences Commitment, in each case, which the Lenders are obligated to make pursuant to Section 2.1, as the same may be permanently reduced in accordance with clause (a) of Section 2.2 or, in the case of the Golf

Residences Commitment and the Waterfront Residences Commitment; may be adjusted in accordance with clause (b) of Section 2.2.

"Commitment Amount" means, as the context may require, the Golf Residences Commitment Amount, the Longview/Paignton House Commitment Amount, or the Waterfront Residences Commitment Amount.

"Commitment Fee" is defined in Section 3.3.1.

"Commitment Termination Date" means the date on which any Commitment Termination Event occurs.

"Commitment Termination Event" means

- (a) April 30, 2007, unless the Initial Credit Extension has been made on or before such date;
- (b) the date which is thirty-six (36) months after the Effective Date;
- (c) the occurrence of any Event of Default described in clauses (a) through (e) of Section 9.1.10;
- (d) the occurrence of an event under clause (e) of Section 3.1.1; or
- (e) the occurrence and continuance of any other Event of Default and either (x) all or any portion of the Obligations becoming immediately due and payable pursuant to Section 9.3 or (y) the giving of notice by the Administrative Agent, acting at the direction of the Required Lenders, to the Borrower that the Commitments have been terminated.

Upon the occurrence of any event described in clauses (a), (b), (c), (d) or (e), the Commitments shall terminate automatically and without any further action.

"Completion Guaranty" means, on any date, the Guaranty of Completion and Performance, as originally in effect on the Initial Credit Extension Date, by the Guarantor in favor of the Lenders, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Compliance Certificate" means a certificate duly completed and executed by an Authorized Representative of the Borrower substantially in the form of Exhibit D hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Condominium Act" means Condominium Act, 1998, S.O. 1998, Chapter 19, as amended from time to time, and the rulings issued thereunder. References to sections of the Condominium Act also refer to any successor sections thereto.

"Condominium By-laws" means the by-laws applicable to the Condominium Regime and the ownership, use and operation of the Units.

"Condominium Declarations" means the declarations and descriptions of Condominium against the Land and the Improvements, as originally in effect on the date such declarations and descriptions are registered with the Land Registrar after satisfaction of the conditions in Section 8.2.3, together with any and all consents, joinders and other Instruments executed in connection therewith, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with this Agreement.

"Condominium Documents" means the Condominium Declarations, the Condominium By-laws, the Easement Agreement (once executed, delivered and recorded against the Land), the Sales Materials and all other Instruments related to the creation and conversion of the Land and the Improvements to the Condominium Regime and the ownership, operation and use thereof after such conversion thereunder and under applicable Legal Requirements:

"Condominium Regime" means the condominiums lawfully created pursuant to the Condominium Documents.

"Condominium Unit" means, as the context may require, a Residential Condominium Unit, a Commercial Condominium Unit or a Hotel Management Condominium Unit.

"Condominium Unit Owner" means the owner of a Condominium Unit.

"Consent" means a consent, substantially in the form of Exhibit P hereto, to the collateral assignment by the Borrower of the Project Documents (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Construction Phase" means, as the context may require, the Longview/Paignton House Construction Phase, the Waterfront Residences Construction Phase or the Golf Residences Construction Phase.

"Construction Schedule" means the schedule covering each Construction Phase for construction of the Improvements that are a part of such Construction Phase and Final Completion thereof.

"Consulting Engineer" means Merritt & Harris, Inc. or such other Person designated from time to time by the Administrative Agent to serve as the Consulting Engineer under this Agreement.

"Consulting Engineer Engagement Agreement" means the Engagement Letter by and between the Consulting Engineer and the Administrative Agent.

"Consulting Engineer's Advance Certificate" means a certificate substantially in the form of Exhibit H hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Consulting Engineer's Closing Certificate" means a closing certificate substantially in the form of Exhibit K hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Consulting Engineer's Substantial Completion Certificate" means a certificate substantially in the form of Exhibit M hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Consulting Engineer's Final Completion Certificate" means a certificate substantially in the form of Exhibit O hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Consulting Engineer's Report" means, with respect to a particular Construction Phase, a report of the Consulting Engineer which shall include an analysis of the Plans and Specifications, the Budget, the Construction Schedule, the Contracts, the GMP Contracts and all other reports submitted to the Administrative Agent with respect to a particular Construction Phase and stating, among other things, that (x) the Consulting Engineer has reviewed the Project Documents and the Condominium Documents with respect to such Construction Phase, and other material information deemed necessary by the Consulting Engineer for the purpose of evaluating whether the Improvements to be constructed as part of such Construction Phase can be constructed and completed in the manner contemplated by the Project Documents and the Condominium Documents applicable to such Construction Phase and (y) based on its review of such information, the Consulting Engineer is of the opinion that such Improvements to be constructed as part of such Construction Phase can be so constructed and Final Completion can occur within the parameters for such Improvements set by the Construction Schedule and the Budget applicable thereto. Such report shall contain an analysis reasonably satisfactory to the Administrative Agent demonstrating the adequacy of such Budget to Final Completion of such Improvements and such Construction Phase in accordance with the Construction Schedule applicable thereto, confirmation that such Construction Schedule is realistic, and verifying that the information delivered by the Borrower relating to such Improvements and such Construction Phase and the construction thereof are accurate.

"Contingent Liability" means, relative to any Person, any agreement, undertaking or arrangement by which such Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount of the debt, obligation or other liability guaranteed thereby.

"Contract" means a contract entered into from time to time by the Borrower with any Contractor for the sale of goods or performance of services in connection with the construction, operation or maintenance of the Improvements, including all warranties and guarantees.

"Contract Amendment Certificate" means a Contract Amendment Certificate substantially in the form of Exhibit R hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Contract Time" means "Contract Time" as defined in the applicable GMP Contract.

"Contractor" means any architect, consultant, designer, contractor, subcontractor, supplier, laborer or any other Person engaged by the Borrower in connection with the construction, operation or maintenance of the Improvements or in connection with a Restoration (excluding, however, the GMP Contractor).

"Control" means, relative to any Person, the possession of the power (directly or indirectly) to direct or cause the direction of all material decisions regarding the existence and operations of such Person and to control all material decisions regarding such Person to be made by the owners thereof. **"Controlling"** and **"Controlled"** have meanings correlative thereto.

"Conversion" means a conversion of a Loan to a Bankers' Acceptance in accordance with Section 2.4 and vice-versa.

"Conversion/Rollover Notice" means a notice of Conversion or Rollover and certificate duly executed by an Authorized Representative of the Borrower substantially in the form of Exhibit G hereto (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Credit Extension" means, as the context may require,

- (a) the making of a Loan by a Lender;
- (b) the creation of a Bankers' Acceptance; or
- (c) the issuance of any Letter of Credit, or the extension of any Letter of Credit Stated Expiry Date, by an Issuer.

"Credit Extension Date" means the date on which a Borrowing occurs pursuant to Article V.

"Credit Extension Request" means any Loan Request, Letter of Credit Issuance Request or Bankers' Acceptance Request.

"DBNA" means the *Depository Bills and Notes Act* (Canada).

"DBRS" means Dominion Bond Rating Service Limited or any successor thereto.

"Debt Service" means all principal repayments or Interest Expense and other amounts payable or accrued from time to time under the Loan Documents.

"Debt Service Coverage Ratio" means, at the close of any calendar month, the ratio computed for the period consisting of such calendar month (or such shorter portion of any calendar month after the occurrence therein of the Substantial Completion Date) and each of the eleven immediately prior calendar months (or such lesser number of calendar months to have closed since the Substantial Completion Date) of:

- (a) Net Operating Income of the Premises for such period

to

(b) the sum of (x) the Interest Expense of the Borrower for such period plus
(y) all other Debt Service for such period;

provided, however, that in computing the Debt Service Coverage Ratio for any such period ending on or prior to the first anniversary of the Substantial Completion Date, the amount determined pursuant to clause (b) shall equal the product of (x) the sum of Interest Expense and other Debt Service for such period multiplied by (y) a fraction, the numerator of which is equal to 365 or 366, as the case may be, and the denominator of which is equal to the number of days that have elapsed in such period.

"Debt Service Reserve Account" means the account established with the Depository pursuant to the Debt Service Reserve Account Agreement.

"Debt Service Reserve Account Agreement" means that certain cash collateral account agreement, as originally in effect on the Initial Credit Extension Date, between the Borrower, the Administrative Agent for the benefit of the Lenders, and the Depository, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Default" means any Event of Default or any condition, occurrence or event which, after notice or lapse of time or both, would constitute an Event of Default.

"Defaulting Lender" means any Lender with respect to which a Lender Default is in effect.

"Deposit" means each deposit of Dollars (x) made by a Qualified Purchaser under a Bona Fide Sales Contract or (y) released by the ECD Insurance Escrow Agent in accordance with the ECD Direction Letter.

"Deposit Account" means the account established with the Depository pursuant to the Deposit Account Agreement.

"Deposit Account Agreement" means that certain cash collateral account agreement, as originally in effect on the Initial Credit Extension Date, between the Borrower, the Administrative Agent for the benefit of the Lenders, and the Depository, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Depository" means a bank or other financial institution acceptable to the Administrative Agent, acting reasonably.

"Deposits" means all deposits of Dollars made by Qualified Purchasers under all Bona Fide Sales Contracts.

"Detached Unit" means a separate cottage residence which is either (x) a Condominium Unit constituting a portion of the Condominium Regime that is described as a cottage residence

in the Condominium Documents, together with the undivided fractional interests appurtenant to such Detached Unit in the common elements and special common elements (including any easement, patio, storage or parking allocated to such Detached Unit) or (y) a portion of the Improvements that is not a part of the Condominium Regime together with all Appurtenant Rights thereto which are to be owned in fee simple by the purchaser thereof.

"Direct Costs" means all Project Costs expended or incurred by the Borrower for labor, services, materials, tools, utilities, equipment, fixtures and furnishings in connection with the construction of Improvements or the applicable Construction Phase, all as set forth on the Budget.

"Disbursement Account" means the account established with the attorneys for the Administrative Agent pursuant to which proceeds of the Loans and Bankers' Acceptance Proceeds will be deposited.

"Disclosure Schedule" means the Disclosure Schedule attached hereto as Schedule I, as it may be amended, supplemented, amended and restated or otherwise modified from time to time by the Borrower with the written consent of the Administrative Agent.

"Disposition" is defined in Section 8.2.10.

"Documentation Agent" is defined in the preamble.

"Dollar" and the symbol "\$" mean lawful money of Canada.

"Drawing" means the creation or making of one or more Bankers' Acceptances pursuant to Section 2.3.3 and includes a Bankers' Acceptance resulting from a Conversion or Rollover.

"Easement" means any easement appurtenant, easement in gross, license agreement or other right running for the benefit of, or placing a burden upon, the Land or appurtenant to the Land, including the Easement Agreement and those easements and licenses described in each Title Insurance Policy.

"Easement Agreement" means, the Hotel Easement and Restrictive Covenant Agreement covering the Premises, as originally in effect on the date it is registered with the Land Registrar, between the condominium corporations, the Unit Owners and other owners of a Detached Unit or Townhouse Unit, together with any and all joinders, consents and Instruments executed in connection therewith, and as thereafter amended, supplemented, amended and restated or otherwise modified in accordance with this Agreement.

"ECD Direction Letter" means the letter from the Borrower to the ECD Insurance Escrow Agent directing irrevocably the ECD Insurance Escrow Agent to pay the Deposits not otherwise used to pay Project Costs (or portions thereof) pursuant to this Agreement to the Administrative Agent if, as and when such Deposits are to be delivered to the Borrower by the ECD Insurance Escrow Agent.

"ECD Insurance" means (x) the deposit receipts supplied by Tarion Warranty Company and (y) the excess deposit insurance provided by Travelers Guarantee Company of Canada, in each case, covering the Deposits to the extent that such Deposits are used to pay Project Costs.

"ECD Insurance Deposit Trust Agreement" means, on any date, the deposit trust agreement, originally in effect on the Initial Credit Extension Date, by and among the Borrower, the ECD Insurance Provider and the ECD Insurance Escrow Agent covering the Deposits and the disbursements thereof.

"ECD Insurance Documents" means the ECD Insurance Loan Agreement, the ECD Insurance Mortgage, the ECD Insurance Deposit Trust Agreement, the ECD Insurance Priority Agreement and all other documents evidencing and securing the Borrower's obligations thereunder.

"ECD Insurance Escrow Agent" means Baker, Schneider Ruggiero or such other law firm in Ontario designated as the escrow agent in the ECD Insurance Deposit Trust Agreement by the ECD Insurance Provider to hold the Deposits.

"ECD Insurance Loan Agreement" means, on any date, the loan agreement, originally in effect on the Effective Date, between the Borrower and the ECD Insurance Provider.

"ECD Insurance Mortgage" means, on any date, the mortgage and assignment of leases and rents, originally in effect on the date on which it is registered with the Land Registrar, made by the Borrower, as mortgagor, to the ECD Insurance Provider, as the mortgagee, covering the Premises and the other property described therein, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified.

"ECD Insurance Priority Agreement" means, on any date after it becomes effective, the priority agreement between the ECD Insurance Provider and the Administrative Agent, on behalf of the Lenders, as from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"ECD Insurance Provider" means Travelers Guarantee Company of Canada or another insurance company approved by the Administrative Agent in its sole discretion.

"Effective Date" means the Business Day on which this Agreement becomes effective pursuant to Section 11.8.

"Eligible Assignee" means (A) (i) a commercial bank organized under the laws of Canada or the United States or any province or state thereof; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof (provided that (x) such bank is acting through a branch or agency located in Canada or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country and has a combined capital and surplus of at least \$500,000,000) and such branch or agency is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of business; (iv) any other entity which is an "accredited investor" (as defined in Section 1.1 of Ontario Securities

Commission Rule 45-501) which extends credit or buys loans as one of its businesses including insurance companies, mutual funds and lease financing companies; (B) any Lender and any Affiliate of any Lender or an Approved Fund; or (C) any other Person (other than a natural Person) approved by (i) the Administrative Agent and the Issuer, and (ii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval by the Borrower not to be unreasonably withheld or delayed); provided, however, that none of the Loan Parties or any of their respective Affiliates shall be an Eligible Assignee.

"Encroachment Land" means the encroachment on the Land to the extent of approximately 1.6 metres, as shown on Reference Plan 35R-21398.

"Environmental Claim" means any and all obligations, liabilities, losses, administrative, regulatory or judicial actions, suits, demands, decrees, claims, Liens, judgments, warning notices, notices of noncompliance or violation, investigations, proceedings, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements, attorneys' or consultants' fees, relating in any way to any Environmental Law or any Permit issued under any such Environmental Law including (x) any and all Claims by Governmental Instrumentalities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (y) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Consultant" means the Person designated from time to time by the Administrative Agent to serve as the Environmental Consultant which shall be reasonably satisfactory to the Borrower.

"Environmental Indemnity" means, on any date, the Environmental Indemnity Agreement, as originally in effect on the Initial Credit Extension Date, from the Borrower and the Guarantor for the benefit of the Administrative Agent on behalf of the Lenders, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Environmental Law" means any of:

- (a) the Atomic Energy Control Act (Canada);
- (b) the *Canadian Environmental Protection Act, 1999* (Canada);
- (c) the *Dangerous Goods Transportation Act* (Ontario);
- (d) the *Environmental Protection Act* (Ontario);
- (e) the *Fisheries Act* (Canada);
- (f) the *Nuclear Safety and Control Act*;

- (g) the *Nutrient Management Act* (Ontario);
- (h) the *Occupational Health and Safety Act* (Ontario);
- (i) the *Ontario Water Resources Act* (Ontario);
- (j) the *Pesticides Act* (Ontario);
- (k) the *Safe Drinking Water Act* (Ontario);
- (l) the *Technical Standards and Safety Act* (Ontario);
- (m) the *Transportation of Dangerous Goods Act* (Canada);
- (n) the *Migratory Birds Protection Act, 1994* (Canada);
- (o) the *Species at Risk Act* (Canada);
- (p) the *Hazardous Products Act* (Canada);
- (q) the *Canada Wildlife Act* (Canada); and
- (r) all other federal and provincial Legal Requirements which govern Hazardous Substances, and the regulations adopted and publications promulgated pursuant to all such foregoing laws;

in each case, as amended by an amendment thereto or succeeded by a successor law, statute or regulation thereto.

“Environmental Matter” means any:

- (a) release, emission, entry or introduction into the air including the air within buildings and other natural or man-made structures above ground;
- (b) discharge, release or entry into water including into any river, watercourse, lake or pond (whether natural or artificial or above ground or which joins or flows into any such water outlet above ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer, lake or the sea;
- (c) deposit, disposal, keeping, treatment, importation, exportation, production, transportation, handling, processing, carrying, manufacture, collection, sorting or presence of any Hazardous Substance (including, in the case of waste, any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it reusable or reclaiming substances from it) and any substance or article which is required to be disposed of as being broken, worn out, contaminated or otherwise spoiled);
- (d) nuisance, noise, defective premises, health and safety at work, industrial illness, industrial injury due to environmental factors, environmental health problems

(including asbestosis or any other illness or injury caused by exposure to asbestos) or genetically modified organisms;

(e) conservation, preservation or protection of the natural or man-made environment or any living organisms supported by the natural or man-made environment; or

(f) other matters howsoever directly or indirectly affecting the environment or any aspect of it.

"Equipment" means all of the Borrower's now owned or hereafter acquired right, title and interest with respect to equipment, machinery, tools, motors, furniture, furnishings, fixtures, vehicles (including motor vehicles), tools, parts, goods (other than consumer goods, farm products or Inventory), pumping equipment, water and sewer lines, wherever located, including all attachments, accessories, accessions, replacements, substitutions, additions and improvements to any of the foregoing.

"Equator Principles" means the environmental and social policies and guidelines known as the Equator Principles which were promulgated by the World Bank Group's International Finance Corporation on June 4, 2004, as amended on July 6, 2006, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified.

"Equity Contribution" means, as the context may require, the Golf Residences Equity, the Longview/Paignton House Equity and the Waterfront Residences Equity.

"Equity Interest" means, relative to any Person, Capital Stock and all warrants, options or other rights to acquire Capital Stock (excluding, however, any debt security that is convertible into, or exchangeable for, Capital Stock until such time of conversion or exchange as the case may be) of such Person.

"Event of Default" is defined in Section 9.1.

"Event of Loss" means, relative to any property or asset (tangible or intangible, real or personal), (x) any loss, destruction or damage of such property or asset, (y) any actual expropriation, seizure or taking by exercise of the power of eminent domain or otherwise of all or a part of such property or asset, or confiscation of all or a part of such property or asset or the requisition of the use of all or a part of such property or asset or (z) any settlement in lieu of item (y).

"Executive Order No. 13224" means Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"Expropriation" means a Partial Expropriation or a Total Expropriation.

"Expropriation Proceeds" means relative to any property or asset, all awards, amounts, damages, compensation, payments and proceeds (including Instruments) received by any Person in respect of any Expropriation.

"Existing Indebtedness" means Indebtedness of the Borrower in existence on the Initial Credit Extension Date (after giving effect to payment of Indebtedness that is being discharged and retired on the Initial Credit Extension Date, including all Indebtedness to be Paid) and identified in Item 8.2.2 of the Disclosure Schedule.

"Extension Request" means a request to extend the then applicable Stated Maturity Date and certificate duly executed by an Authorized Representative of the Borrower substantially in the form of Exhibit C hereto.

"Face Amount" means, in respect of a Bankers' Acceptance, the amount payable to the holder thereof on its maturity.

"Family" means, in respect of any natural person, (i) his spouse, child, grandchild or sibling, (ii) any spouse or child of any Person mentioned in clause (i), and (iii) a trust, all the beneficiaries of which are Persons mentioned in clauses (i) or (ii).

"FF&E" means furnishings, fixtures and Equipment acquired by the Borrower in the ordinary course of business for use in the construction of the Improvements or, if applicable, a Construction Phase and business operations of the Borrower permitted under this Agreement.

"FF&E Reserve" means (i) while the Hotel Management Agreement shall be in effect, the FF&E reserve account established pursuant to the Hotel Management Agreement to be funded in accordance therewith and (ii) after the Hotel Management Agreement no longer applies thereto, the cash collateral account established pursuant to the FF&E Reserve Account Agreement.

"FF&E Reserve Account Agreement" means that certain cash collateral account agreement, as originally in effect on the Initial Credit Extension Date, between the Borrower and the Administrative Agent for the benefit of the Lenders, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Final Completion" means that (w) Substantial Completion has occurred and all Punchlist Items have been substantially completed, (x) the Improvements have received a permanent Permission to Occupy from the Building Department (and a copy of each such certificate shall have been delivered to the Administrative Agent), (y) the Borrower has delivered to the Administrative Agent its Final Completion Certificate certifying to the extent set forth therein that the Punchlist Items have been substantially completed and (z) the Consulting Engineer has delivered to the Administrative Agent its Final Completion Certificate in which it verifies the statements in items (w), (x) and (y) and certifies that it is appropriate for the Administrative Agent to rely on the Borrower's Final Completion Certificate delivered to the Administrative Agent pursuant to item (y).

"Final Completion Certificate" means a Borrower's Final Completion Certificate or a Consulting Engineer's Final Completion Certificate.

"Final Completion Date" means the date on which Final Completion first occurs.

"Final Plans" means, relative to any particular portion of a Construction Phase or the Improvements, the applicable Plans and Specifications for such Construction Phase or the Improvements which (x) have received final approval from all Governmental Instrumentalities required to approve such Plans and Specifications prior to Final Completion of such Construction Phase or the Improvements and (y) contain sufficient specificity to permit Final Completion of such Construction Phase or the Improvements.

"FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (United States), and the regulations thereunder, in each case as amended, reformed or otherwise modified from time to time.

"Fiscal Year" means, in respect of the Borrower, the 12-month period from May 1 in any particular year to and including April 30 in the immediately following year.

"Force Majeure Event" means any event which causes a delay in the construction of the Improvements (thereby requiring an extension of the Final Completion Date and the Outside Completion Deadline) and is outside the Borrower's control but only to the extent

(a) such event does not arise out of (w) the negligence or willful misconduct of the Borrower or Default hereunder, (x) late performance by the GMP Contractor or any Contractor, (y) any cause or circumstance resulting in delays, stoppage or any other interference with the construction of the Improvements caused by the insolvency, bankruptcy or any lack of funds by the Borrower, the GMP Contractor, any Contractor or any other Person; and

(b) such event consists of an act of God (such as tornado, flood, hurricane, or other hazardous or inclement weather, etc.), fires and other casualties; strikes, lockouts or other labor disturbances (except to the extent taking place at the Land only); riots, insurrections or civil commotions; embargos, shortages or unavailability of materials, supplies, labor, equipment and systems that first arise after the Effective Date, but only to the extent caused by another act, event or condition covered by this clause (b); sabotage; vandalism; Legal Requirements enacted after the Effective Date (unless the Borrower, in the exercise of due diligence and prudent judgment, should have anticipated such enactment); orders or judgments; or any similar types of events;

provided, however, that (v) the Borrower has taken reasonable steps to mitigate the impact of the delay, (w) any delay resulting from the foregoing shall not exceed 90 days in the aggregate and, as to the portion of the Improvements covered by the Hotel Management Agreement, does not extend beyond June 1, 2009 if less than 90 days, (x) the Consulting Engineer confirms that such extension is reasonably necessary to overcome any delays caused by the Force Majeure Event, (y) such extension does not place the Borrower in contravention of the applicable Project Documents, the Condominium Documents, the purchase agreements covering the Units and the Detached Units and the ECD Insurance Documents, and (z) the period during which a Force Majeure Event exists shall commence on the date set forth in the written notice that the Borrower has given the Administrative Agent within seven days after the occurrence of such Force Majeure Event describing in reasonable detail the event which constitutes a Force Majeure Event and the Administrative Agent has confirmed the existence of such Force Majeure Event on the

date set forth in such notice and shall end on the date that such Force Majeure Event no longer exists, whether or not notice is given to the Administrative Agent, as determined by the Consulting Engineer.

"GMP Consent and Acknowledgment" means the Consent and Acknowledgment by the GMP Contractor in favor of the Lenders and the Administrative Agent to be delivered on or before the date the GMP Contractor commences performance of the Work covered by the applicable GMP Contract.

"GMP Contract" means, as the context may require, the Longview/Paignton House Construction Phase GMP Contract, the Golf Residences Construction Phase GMP Contract or the Waterfront Residences Construction Phase GMP Contract.

"GMP Contractor" means Rock Ridge Contractors Inc., an Affiliate of the Borrower, or other contractor retained by the Borrower and approved by Administrative Agent, acting reasonably.

"Golf Residences" is defined in the recitals.

"Golf Residences Available Deposit Deficit" is defined in item (ii) of clause (b) of Section 5.2.5.

"Golf Residences Commitment" means, as the context may require, a Golf Residences Tranche A Commitment or a Golf Residences Tranche B Commitment.

"Golf Residences Commitment Amount" means, as the context may require, the Golf Residences Tranche A Commitment Amount or the Golf Residences Tranche B Commitment Amount.

"Golf Residences Tranche A Commitment" means, on any date, relative to any Golf Residences Tranche A Lender, the portion of the Golf Residences Tranche A Commitment Amount of such Lender reduced by the principal amount of any Loans made or outstanding Bankers' Acceptances created by such Lender with respect to the Golf Residences Construction Phase as of such date.

"Golf Residences Tranche B Commitment" means, on any date, relative to any Golf Residences Tranche B Lender, the portion of the Golf Residences Tranche B Commitment Amount of such Lender reduced by the principal amount of any Loans made or outstanding Bankers' Acceptances created by such Lender with respect to the Golf Residences Construction Phase as of such date.

"Golf Residences Tranche A Commitment Amount" means an amount equal to the lesser of (i) 53.5482% of the total Project Costs of the Golf Residences Construction Phase, (ii) 53.5482% of the appraised value of the Golf Residences as set forth in the Appraisal received by the Administrative Agent pursuant to Section 6.2.11, and (iii) \$13,952,182 (as same may be increased or decreased in accordance with Section 2.2). The Golf Residences Tranche A Commitment Amount of each Golf Residences Tranche A Lender is set forth below such Lender's signature hereto or in a Lender Assignment.

"Golf Residences Tranche B Commitment Amount" means an amount equal to the lesser of (i) 11.4518% of the total Project Costs of the Golf Residences Construction Phase, (ii) 11.4518% of the appraised value of the Golf Residences as set forth in the Appraisal received by the Administrative Agent pursuant to Section 6.2.11, and (iii) \$2,983,799 (as same may be increased or decreased in accordance with Section 2.2). The Golf Residences Tranche B Commitment Amount of each Golf Residences Tranche B Lender is set forth below such Lender's signature hereto or in a Lender Assignment.

"Golf Residences Tranche A Lender" means a Lender that has a Golf Residences Tranche A Commitment, or has made Loans or created Bankers' Acceptances, in each case, with respect thereto.

"Golf Residences Tranche B Lender" means a Lender that has a Golf Residences Tranche B Commitment, or has made Loans or created Bankers' Acceptances, in each case, with respect thereto.

"Golf Residences Construction Phase" means the construction of the portion of the Improvements designated as the Golf Residences and certain common property together with related facilities and amenities, as more particularly described in the Project Documents.

"Golf Residences Construction Phase GMP Contract" means, on any date, the Agreement between Owner and Contractor (Guaranteed Maximum Cost) covering the Golf Residences Construction Phase, if, as and when such agreement becomes effective in accordance with its terms, between the Borrower and the GMP Contractor, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with this Agreement.

"Golf Residences Equity" means the funds or property to be contributed in an aggregate amount no less than \$10,663,700, which shall be comprised of cash contributions by the Borrower and application of Available Golf Residences Deposits.

"Golf Residences Project Costs" means Project Costs payable with respect to the Golf Residences Construction Phase.

"Governmental Instrumentality" means any national, provincial, state, regional or local government (whether United States, Canadian or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including any zoning authority, the Office of the Superintendent of Financial Institutions (Canada), the Bank of Canada, the Canada Deposit Insurance Corporation, the Comptroller of the Currency or the F.R.S. Board, any central bank or any comparable authority) or any arbitrator with authority to bind a party at law.

"Gross Operating Revenue" is defined in the Hotel Management Agreement.

"Guaranteed Maximum Price" means with respect to any particular GMP Contract, the total costs (including applicable taxes) payable by the Borrower to the GMP Contractor for the portion of the Improvements to be constructed as part of the Construction Phase covered by such GMP Contract.

"Guarantor" means Ken Fowler Enterprises Limited.

"Hazardous Substances" means (statutory acronyms and abbreviations having the meaning given them in the definition of "Environmental Laws") substances defined as "hazardous substances," "pollutants" or "contaminants" or similar or related terms under any Environmental Law.

"Hedging Liability" means, relative to any Person, any liability of such Person under any currency exchange agreement, interest rate swap agreement, interest rate cap agreement or interest rate collar agreement, or any other agreement designed to protect such Person against fluctuations in interest rates or currency exchange rates including the Rate Protection Agreement.

"herein", "hereof", "hereto", "hereunder" and similar terms contained in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular Section, paragraph or provision of this Agreement or such other Loan Document.

"HOA Reserve" means, a reserve covering monthly maintenance charges, real estate taxes and insurance (to the extent not included in the monthly maintenance charges or reserve funds required of Unit Owners in respect of the Condominium Regime under the *Condominium Act* (Ontario)) of all unsold Units to be funded by the Borrower in accordance with Section 8.1.18.

"HOA Reserve Account Agreement" means that certain cash collateral account agreement, as originally in effect on the Initial Credit Extension Date, between the Borrower and the Administrative Agent for the benefit of the Lenders, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Holdback Amount" means, at any given time, amounts which have accrued and are owing under the terms of a GMP Contract, a Contract or other agreement, as the case may be, for work or services already provided but which at such time (and in accordance with the terms of such GMP Contract or Contract or other agreement) are being withheld from payment to the GMP Contractor or a Contractor or other Person thereunder in accordance with the *Construction Lien Act* (Ontario).

"Hotel Management Agreement" means, on any date, the Management Agreement as in effect on the Effective Date, between the Borrower and the Hotel Manager, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified.

"Hotel Management Condominium Unit" means a separate Unit constituting a portion of the Condominium Regime and comprised of the Land and the Improvements, other than the Residential Condominium Units, the Commercial Condominium Unit, the Detached Units and the Townhouse Units of which the Borrower will retain ownership and which the Hotel Manager will have the right, power, authority, responsibility and obligation to manage and operate in accordance with the Condominium Documents and the Hotel Management Agreement.

"Hotel Management Condominium Unit Owner" means the Borrower, in its capacity as the owner of the Hotel Management Condominium Unit.

"Hotel Manager" means Marriott International and its successors and assigns permitted under the Loan Documents under its "JW Marriott" brand name.

"Hotel Manager Consent and Acknowledgment" means the Consent and Acknowledgment by the Hotel Manager in favor of the Administrative Agent for the benefit of the Lenders, to be delivered on or before the Initial Credit Extension Date.

"Impermissible Qualification" means, relative to the opinion or certification of any independent public accountant as to any financial statement of the Borrower or the Guarantor, any qualification or exception to such opinion or certification

- (a) which is of a "going concern" or similar nature;
- (b) which relates to the limited scope of examination of matters relevant to such financial statement; or
- (c) which relates to the treatment or classification of any item in such financial statement and which, as a condition to its removal, would require an adjustment to such item the effect of which would be to cause the Borrower to be in default of any of its obligations under Section 8.2.19 or by the Guarantor of any of its obligations under the Completion Guaranty or the Payment Guaranty.

"Imposition" means any real estate tax, payment in lieu of taxes or other assessment levied, assessed or imposed against all or a portion of the Premises owned by the Borrower or for which the Borrower has an obligation to pay, and any water rates, sewer rentals or other governmental, municipal or public dues, charges or impositions, of every nature and to whomever assessed, that may now or hereafter be levied or assessed upon all or a portion of the Premises owned by the Borrower or for which the Borrower has an obligation to pay or upon the rents, issues, income, proceeds or profits thereof, whether the Imposition is levied directly or indirectly against the Premises or such portion thereof or as excise taxes or income taxes.

"Impositions and Insurance Reserve" means the cash collateral account established pursuant to the Impositions and Insurance Reserve Account Agreement and funded in accordance therewith.

"Impositions and Insurance Reserve Account Agreement" means that certain cash collateral account agreement, as originally in effect on the Initial Credit Extension Date, between the Borrower, the Administrative Agent for the benefit of the Lenders, and the Depository, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with terms hereof.

"Improvements" means Longview, Paignton House, the Waterfront Residences and the Golf Residences, in each case, together with common property, related facilities and amenities, Appurtenant Rights, and the benefits and burdens under the Easement Agreement.

"In Balance" will be deemed to exist when (w) the Line Item Category entitled **"Project Contingency"** equals or exceeds for each Construction Phase the Required Minimum Contingency therefor, (x) after giving effect to the requested Credit Extension, the Available Funds allocated to each Line Item in the Budget equals or exceeds for such Line Item the aggregate of (1) the costs required to complete such Line Item and (2) the Holdback Amount to be paid to Persons who have supplied labor or materials in connection with such Line Item, (y) the Available Funds allocated to the interest Line Item equals or exceeds for such Line Item the amount required to pay interest and all other amounts due under the Loan Documents at the maximum rate of interest set forth in the Loan Documents through the Substantial Completion Date and (z) the Guaranteed Maximum Price for each Construction Phase remains in effect.

"including" and **"include"** means including, without limiting the generality of any description preceding such term, and, for purposes of this Agreement and each other Loan Document, the parties hereto agree that the rule of ejusdem generis shall not be applicable to limit a general statement, which is followed by or referable to an enumeration of specific matters, to matters similar to the matters specifically mentioned.

"Indebtedness" means, relative to any Person, without duplication:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, bankers' acceptances or other similar instruments;

(b) all obligations, contingent or otherwise, relative to the face amount of all letters of credit (or reimbursement agreements in respect thereof), whether or not drawn, and Banker's Acceptances issued for the account of such Person;

(c) all obligations of such Person as lessee under leases which have been or should be, in accordance with Canadian GAAP, recorded as Capitalized Lease Liabilities;

(d) all other items which, in accordance with Canadian GAAP, would be included as liabilities on the liability side of the balance sheet of such Person as of the date at which Indebtedness is to be determined;

(e) net liabilities of such Person under all Hedging Liabilities; and

(f) whether or not so included as liabilities in accordance with Canadian GAAP, all obligations of such Person to pay the deferred purchase price of property or services, and indebtedness (excluding, however, prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse.

For all purposes of this Agreement, (x) the Indebtedness of any Person shall include the proportion of Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer with liability for all or a portion of such indebtedness, and (y) the amount of any Indebtedness outstanding as of any date shall be (1) the accredited value thereof, in the case of Indebtedness issued with original issue discount and (2) the principal amount

thereof, together with any interest thereon that is more than 30 days past due, in the case of any other Indebtedness.

"Indebtedness to be Paid" means the Indebtedness identified in Item 6.2.18 on the Disclosure Schedule.

"Indemnified Liability" is defined in Section 11.4.

"Indemnified Party" is defined in Section 11.4.

"Independent Consultant" means the Consulting Engineer, the Insurance Consultant, the Environmental Consultant, the Appraiser or their successors engaged pursuant to this Agreement.

"Indirect Cost" means any Project Cost which is not a Direct Cost, including Appraisal fees, the Commitment Fee, interest on the Loans, amounts payable under clause (c) of Section 2.3.3 prior to the Substantial Completion Date, brokers' commissions, fees of the Independent Consultants, insurance prior to the Substantial Completion Date, cost of surveys, Impositions prior to the Substantial Completion Date, title examination and title insurance premiums, expenses in connection with the registration of the applicable Loan Documents, the Project Documents and the Condominium Documents, royalties paid to the Hotel Manager, sales commissions, marketing costs, pre-opening costs, development charges, overhead, and fees and disbursements of the attorneys for the Administrative Agent.

"Initial Construction Phase Credit Extension" is defined in Section 6.3.

"Initial Construction Phase Credit Extension Date" means the date on which the applicable Initial Construction Phase Credit Extension is made.

"Initial Credit Extension" is defined in Section 6.2.

"Initial Credit Extension Date" is the date on which the Initial Credit Extension is made.

"Instrument" means any contract, agreement, indenture, mortgage, deed of trust, document or writing (whether by formal agreement, letter or otherwise) under which any obligation is evidenced, assumed or undertaken, or any Lien (or right or interest therein) is granted or perfected.

"Insurance Broker's Certificate" means a certificate, reasonably satisfactory to the Administrative Agent, from the Borrower's insurance broker(s), dated as of (or a date reasonably near) the Effective Date or the Initial Construction Phase Credit Extension Date, as applicable, relating to each insurance policy required to be maintained pursuant to Section 8.1.22, identifying underwriters, types of insurance and insurance limits of each such insurance policy, and stating that such insurance policy is in full force and effect and that all premiums then due thereon have been paid.

"Insurance Consultant" means the Person designated from time to time by the Administrative Agent to serve as the Insurance Consultant under this Agreement.

"Insurance Proceeds" means all awards, amounts, damages, compensation, payments, settlements and proceeds (including Instruments) received by any Person in respect of any damage or destruction to the Premises, or any portion thereof, including the proceeds of any insurance policy required to be maintained by the Borrower pursuant to Section 8.1.22.

"Insurance Requirement" means any provisions of any insurance policy covering or applicable to the Borrower, the Premises, or any portion thereof, all requirements of the issuer of any such policy and all orders, rules, regulations and other requirements of any body of underwriters applicable to or affecting the Premises, any portion thereof or any use or condition thereof, or the Borrower.

"Intercompany Indebtedness" means intercompany Indebtedness by the Borrower and the owners of its Capital Stock or Affiliates thereof.

"Interest Expense" means, for any period, the aggregate interest expense (net of accrued interest income) of the Borrower (including, to the extent the Borrower has any Contingent Liability in respect of such interest expense, the interest expense of other Persons) for such period, as determined in accordance with Canadian GAAP, including the portion of any payments made in respect of Capitalized Lease Liabilities or installment sales contracts allocable to interest expense and after giving effect to amounts paid or received by the Borrower under the Rate Protection Agreement.

"Interstate Land Sales Act" means the Interstate Land Sales Full Disclosure Act.

"Inventory" means all of the Borrower's now owned or hereafter acquired right, title and interest with respect to inventory, including goods held for sale or lease or to be furnished under a contract of service, goods that are leased by the Borrower as lessor, goods that are furnished by the Borrower under a contract of service and raw materials, work in progress or materials used or consumed in the Borrower's business.

"Investment" means, relative to any Person,

(a) any loan or advance made by such Person to any other Person (including Affiliates) (excluding, however, commission, travel, petty cash and similar advances to officers and employees made in the ordinary course of business);

(b) any Contingent Liability of such Person incurred in connection with loans or advances described in clause (a);

(c) any ownership or similar interest held by such Person in any other Person (including any obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value (other than for other Equity Interests) any Equity Interests of such Person); and

(d) any other item that is or would be classified as an investment on a balance sheet of such Person prepared in accordance with Canadian GAAP.

The amount of any Investment shall be the original principal or capital amount thereof less all returns of principal or equity thereon and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair market value of such property at the time of such Investment.

"Issuer" is defined in the preamble and shall include the Person that is the successor to WestLB in its capacity as the Issuer in connection with the assignment of the Loans, the Letter of Credit Outstandings and the Commitments. At the request of WestLB (or such successor to WestLB), another Lender or an Affiliate of WestLB (or such successor to WestLB) may issue one or more Letters of Credit hereunder.

"Judgment Currency" is defined in Section 11.10.

"Land" means, (x) as of the Effective Date, the real property in Muskoka, Ontario, Canada described on Exhibit A-1 and (y) on and after the date on which the Wedge Parcel is acquired by the Borrower in accordance with Section 6.4.1, the Wedge Parcel which, when acquired, shall then be described on Exhibit A-2 to be annexed to an amendment to this Agreement, and in each case, includes all Appurtenant Rights thereto.

"Land Registrar" means the Land Registrar of the Land Titles Division of Muskoka (No. 35).

"Legal Requirement" means, relative to any Person or property, all laws, statutes, codes, regulations, rules, acts, ordinances, permits, licenses, authorizations, directions and requirements of all Governmental Instrumentalities, departments, commissions, boards, courts, authorities, agencies, officials and officers, including the Condominium Act, the OSC Ruling and the Interstate Land Sales Act, and any deed restrictions or other requirements of record, applicable to such Person or such property, or any portion thereof or interest therein or any use or condition of such property or any portion thereof or interest therein (including the Easement Agreement, other Easements, the applicable Condominium Documents and those relating to zoning, planning, subdivision, building, safety, health, use, environmental quality and other similar matters).

"Lender" is defined in the preamble and, in addition, shall include any Eligible Assignee that becomes a Lender pursuant to Section 11.12.1.

"Lender Assignment Agreement" means a lender assignment agreement substantially in the form of Exhibit F hereto (or such other form which has been reasonably approved by the Borrower and the Administrative Agent).

"Lender Default" means (x) the refusal (which has not been retracted) of a Lender to make available its portion of any Credit Extension or to fund its portion of any unreimbursed payment under Section 2.6.1 and such refusal has not been retracted and required amounts have not been remitted to the Administrative Agent in accordance with Section 10.2 within two (2) Business Days thereafter or (y) a Lender having notified the Administrative Agent or the

Borrower that it does not intend to perform its obligations under Section 2.3 or under Section 2.6.1.

"Lender's Environmental Liability" means any and all losses, liabilities, obligations, penalties, Claims, litigations, demands, defenses, costs, judgments, suits, proceedings, damages (including punitive and consequential damages), disbursements or expenses of any kind or nature whatsoever (including reasonable attorneys' fees at trial and appellate levels and consultants' and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, Claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against any Lender or any of such Lender's parent and subsidiary corporations, or their Affiliates, shareholders, directors, officers, employees, and agents in connection with or arising from:

(a) any Hazardous Substances on, in, under or affecting all or any portion of any property of the Borrower or the Guarantor, the groundwater thereunder, or any surrounding areas thereof to the extent caused by Releases from the Borrower, the Guarantor or any of its properties;

(b) any misrepresentation, inaccuracy or breach of any warranty, contained or referred to in Section 7.25;

(c) any violation or claim of violation by the Borrower of any Environmental Laws; or

(d) the imposition of any Lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Substances by the Borrower or the Guarantor or in connection with any property owned or formerly owned by the Borrowers or the Guarantor, as the case may be.

"Lender's Tax" is defined in Section 4.4.

"Letter of Credit" is defined in clause (a) of Section 2.1.3.

"Letter of Credit Commitment" means, (x) relative to an Issuer, such Issuer's obligation to issue Letters of Credit pursuant to Section 2.1.3 and (y) relative to each Longview/Paignton House Lender (other than the Issuer), the obligation of such Lender to participate in Letters of Credit pursuant to Section 2.6.1, in each case, reduced by the Letter of Credit Outstandings on such date.

"Letter of Credit Commitment Amount" means, on any date, a maximum amount of \$10,000,000.

"Letter of Credit Disbursement" is defined in Section 2.6.2.

"Letter of Credit Disbursement Date" is defined in Section 2.6.2.

"Letter of Credit Issuance Request" means a Letter of Credit request and certificate duly executed by an Authorized Representative of the Borrower substantially in the form of

Exhibit B-2 hereto (or such other form which has been reasonably approved by the Borrower and the Administrative Agent).

"Letter of Credit Outstandings" means, on any date, an amount equal to the sum of

(a) the then aggregate amount which is undrawn and available under all issued and outstanding Letters of Credit,

plus

(b) the then aggregate amount of all unpaid and outstanding Letter of Credit Reimbursement Obligations.

"Letter of Credit Reimbursement Obligation" is defined in Section 2.6.3.

"Letter of Credit Stated Expiry Date" is defined in Section 2.6.

"Lien" means, relative to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option, or other agreement to sell or give a security interest therein).

"Line Item" means each of the individual line items set forth in the Budget.

"Line Item Category" means each of the following line item categories of the Budget for each Construction Phase:

- (a) Construction Costs;
- (b) FF&E;
- (c) Project Contingency;
- (d) Capitalized Interest;
- (e) Fees/Other Expenses;
- (f) Pre-Opening Expenses and Working Capital;
- (g) Sales and Marketing Costs;
- (h) Site Servicing Costs;
- (i) Land/Infrastructure Contract;
- (j) Architectural, Engineering and Consultant Expenses; and
- (k) Insurance and Taxes.

"Loan" means, as the context may require, a Tranche A Loan or a Tranche B Loan.

"Loan Documents" means, collectively, this Agreement, the Notes, the Bankers' Acceptances, the Mortgage, the Pledge Agreement, each Rate Protection Agreement, each Loan Request, each Letter of Credit Issuance Request, each Bankers' Acceptance Request, the Security Agreement, the Completion Guaranty, the Payment Guaranty, the Non-Recourse Carve Out Guaranty, the Environmental Indemnity, the Assignment of Architect Agreement, the Assignment of Contracts, the Assignment of GMP Contracts, the Assignment of Hotel Management Agreement, the Assignment of Rate Protection Agreements, the Architect Consent and Acknowledgment, the GMP Contractor Consent and Acknowledgment, the Hotel Manager Consent and Acknowledgment, the Deposit Account Agreement, the FF&E Reserve Account Agreement, the Debt Service Reserve Account Agreement, the HOA Reserve Account Agreement, the Impositions and Insurance Reserve Account Agreement, the Project Account Agreement, the Lock-Box Account Agreement, and the ECD Insurance Priority Agreement.

"Loan Party" means the Borrower or the Guarantor, as the context may require. Loan Parties means the Borrower and the Guarantor.

"Loan Request" means a request for a Loan and certificate substantially in the form of Exhibit B-1 (or such other form which has been reasonably approved by the Administrative Agent and the Borrower).

"Loan to Value Ratio" means, on any date, the aggregate amount of the Loans, the Bankers' Acceptance Obligations and the Letter of Credit Outstandings which are outstanding on the date on which the Loan to Value Ratio is being calculated divided by the fair market value of the Premises as set forth in the most recent Appraisal which has been approved by the Administrative Agent in its sole discretion.

"Lock-Box Account Agreement" means that certain cash collateral account agreement, as originally in effect on the Initial Credit Extension Date, between the Borrower and the Administrative Agent for the benefit of the Lenders, and the Depository, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Lock-Box and Cash Management Account" means the account established with the Depository pursuant to the Lock-Box Account Agreement.

"Longview" is defined in the recitals.

"Longview/Paignton House Available Deposit Deficit" is defined in item (iv) of clause (a) of Section 5.2.5.

"Longview/Paignton House Commitment" means, as the context may require, a Longview/Paignton House Tranche A Commitment or a Longview/Paignton House Tranche B Commitment.

"Longview/Paignton House Commitment Amount" means, as the context may require, the Longview/Paignton House Tranche A Commitment Amount or the Longview/Paignton House Tranche B Commitment Amount.

"Longview/Paignton House Construction Phase" means the construction of the portion of the Improvements designated as Longview and Paignton House and certain common property together with related facilities and amenities, as more particularly described in the Project Documents.

"Longview/Paignton House Construction Phase GMP Contract" means, on any date, the Agreement between Owner and Contractor (Guaranteed Maximum Cost) covering the Longview/Paignton House Construction Phase, if, as and when such agreement becomes effective in accordance with its terms, between the Borrower and the GMP Contractor, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with this Agreement.

"Longview/Paignton House Equity" means the funds or property to be contributed in an aggregate amount no less than \$51,375,398, which shall be comprised of cash contributions by the Borrower and application of Available Longview/Paignton House Deposits.

"Longview/Paignton House Lender" means, as the context may require, a Longview/Paignton House Tranche A Lender or a Longview/Paignton House Tranche B Lender.

"Longview/Paignton House Project Costs" means Project Costs payable with respect to the Longview/Paignton House Construction Phase.

"Longview/Paignton House Tranche A Commitment" means, on any date, relative to any Longview/Paignton House Tranche A Lender, the portion of the Longview/Paignton House Tranche A Commitment Amount of such Lender reduced by (x) the principal amount of any Loans made or outstanding Bankers' Acceptances created by such Lender with respect to the Longview/Paignton House Construction Phase as of such date and (y) such Lender's portion of the aggregate amount of all Letter of Credit Outstandings with respect thereto.

"Longview/Paignton House Tranche B Commitment" means, on any date, relative to any Longview/Paignton House Tranche B Lender, the portion of the Longview/Paignton House Tranche B Commitment Amount of such Lender reduced by (x) the principal amount of any Loans made or outstanding Bankers' Acceptances created by such Lender with respect to the Longview/Paignton House Construction Phase as of such date and (y) such Lender's portion of the aggregate amount of all Letter of Credit Outstandings with respect thereto.

"Longview/Paignton House Tranche A Commitment Amount" means an amount equal to the lesser of (i) 53.5482% of the total Project Costs of the Longview/Paignton House Construction Phase, (ii) 53.5482% of the appraised value of Longview and Paignton House as set forth in the Appraisal received by the Administrative Agent pursuant to Section 6.2.11, and (iii) \$69,042,629. The Longview/Paignton House Tranche A Commitment Amount of each Longview/Paignton House Tranche A Lender is set forth below such Lender's signature hereto or in a Lender Assignment.

"Longview/Paignton House Tranche B Commitment Amount" means an amount equal to the lesser of (i) 11.4518% of the total Project Costs of the Longview/Paignton House Construction Phase, (ii) 11.4518% of the appraised value of Longview and Paignton House as set forth in the Appraisal received by the Administrative Agent pursuant to Section 6.2.11, and (iii) \$14,765,379. The Longview/Paignton House Tranche B Commitment Amount of each Longview/Paignton House Tranche B Lender is set forth below such Lender's signature hereto or in a Lender Assignment.

"Longview/Paignton House Tranche A Lender" means a Lender that has a Longview/Paignton House Tranche A Commitment, or has made Loans or created Bankers' Acceptances, or holds a portion of the aggregate amount of all Letter of Credit Outstandings, in each case, with respect thereto.

"Longview/Paignton House Tranche B Lender" means a Lender that has a Longview/Paignton House Tranche B Commitment, or has made Loans or created Bankers' Acceptances, or holds a portion of the aggregate amount of all Letter of Credit Outstandings, in each case, with respect thereto.

"Loss Proceeds" means, as the context may require, Insurance Proceeds and Expropriation Proceeds.

"Major Contract" means any Contract having a value in excess of \$2,000,000.

"Major Contractor" means a Contractor which is party to a Major Contract.

"Mandatory Prepayment" is defined in clause (c) of Section 3.1.1.

"Material Adverse Effect" means any fact, event or circumstance which, in the sole determination of the Administrative Agent, made in good faith, materially and adversely affects (i) the financial condition, operations, assets, business, properties or prospects, Debt Service capacity, tax position or environmental liability of the Borrower, the Guarantor or the Premises, (ii) the ability of the Borrower or the Guarantor to perform their obligations under the Loan Documents, the Condominium Documents or the Project Documents to which each is a party, (iii) the material authorizations or approvals applicable to the Borrower, the Guarantor or the Premises or (iv) the validity or enforceability of the Loan Documents or the rights, remedies, options or benefits of the Administrative Agent or the Lenders thereunder.

"Minimum Release Price" relative to any Unit (unless the consideration for the release of such Unit is otherwise designated on Schedule VII), means the greater of (x) the Minimum Sales Price for such Unit and (y) the actual sales price of such Unit (expressed in Dollars), in each case, less Closing Costs (which shall not exceed eight percent (8%) for each individual Unit of the applicable amount in clause (x) or (y) but only so long as the aggregate amount thereof for all Units does not exceed six percent (6%)), expressed in Dollars, and after deducting the portion of the Deposits made by the Qualified Purchaser under the Bona Fide Sales Contract pursuant to which such Unit is being sold that actually funded Project Costs.

"Minimum Sales Price" means (unless otherwise designated on Schedule VII) the minimum sales price (expressed in Dollars) required for the release of each Unit as provided on Schedule VII.

"Minimum Waterfront Improvements" means, in respect of the Waterfront Residences Construction Phase, 29 Residential Condominium Units; provided, however, that the aggregate Minimum Sales Prices for such 29 Residential Condominium Units shall not be materially less than the aggregate Minimum Sales Prices for the 31 Residential Condominium Units contemplated for the Waterfront Residences Construction Phase in the Appraisal delivered by the Borrower pursuant to Section 6.2.11.

"Moody's" means Moody's Investors Service, Inc., a Delaware corporation, or any successor thereto.

"Mortgage" means, on any date, the mortgage and assignment of leases and rents, originally in effect on the date on which it is registered with the Land Registrar, made by the Borrower, as mortgagor, to the Administrative Agent, as the mortgagee, for the benefit of the Lenders, covering the Premises and the other property described therein, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified.

"Net Disposition Proceeds" means with respect to any Disposition that is not a Disposition of a Unit or, after the Opening Date, the Disposition of Inventory by or on behalf of the Borrower in the ordinary course of its business in connection with the operation of the Hotel and other Improvements owned by the Borrower, the excess of:

(a) the gross proceeds received by such Person from such Disposition

over

(b) all broker and customary and reasonable out-of-pocket fees and expenses paid in connection therewith by such Person other than to an Affiliate of such Person or, if such Person is the Borrower, to any Affiliate of the Borrower or the Guarantor.

"Net Operating Income" means for any applicable period, the sum (without duplication) of

(a) Gross Operating Revenues of the Premises for such period,

minus

(b) (i) Operating Expenses of the Premises for such period (including the Base Fee portion of the Operating Fees paid during such Period but excluding any other management fees), and

(ii) the amounts required to be deposited into the Reserve Accounts for such period;

provided, however, that in computing Net Operating Income for any period commencing on the Substantial Completion Date and ending as of the close of any calendar month on or prior to the first anniversary of the Substantial Completion Date, Net Operating Income for such period shall equal the product of (x) the sum of the amounts determined pursuant to clauses (a) and (b) for such period multiplied by (y) a fraction, the numerator of which is equal to 365 or 366, as applicable, and the denominator of which is equal to the number of days that have elapsed in such period.

"Net Proceeds" means: (x) the net amount of all Insurance Proceeds received by the Administrative Agent as a result of any damage or destruction to the Premises or any portion thereof; or (y) the net amount of all Expropriation Proceeds received by the Administrative Agent with respect to any Partial Expropriation or Total Expropriation (as applicable), in each case, after deduction of the Administrative Agent's costs and expenses (including, but not limited to, attorneys' fees and costs and expenses), if any, in collecting same, as applicable.

"Net Proceeds Deficiency" is defined in clause (h) of Section 8.1.24.

"Net Worth" means the net worth of the Borrower determined in accordance with Canadian GAAP.

"Non-Defaulting Lender" means and includes each Lender other than a "Defaulting Lender".

"Non-Recourse Carve Out Guaranty" means, on any date, the Non-Recourse Carve Out Guaranty, as originally in effect on the Initial Credit Extension Date, by the Guarantor in favor of the Administrative Agent for the benefit of the Lenders, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Non-Recourse Pledge Guaranty" means, on any date, the Non-Recourse Pledge Guaranty, as originally in effect on the Initial Credit Extension Date, by Red Leaves Resort Partnership in favor of the Administrative Agent for the benefit of the Lenders, and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified in accordance with the terms hereof.

"Note" means on any date, a promissory note of the Borrower payable (i) to a Tranche A Lender, in the form of Exhibit E-1 hereto and (ii) to a Tranche B Lender, in the form of Exhibit E-2 hereto (as such promissory note may thereafter from time to time be amended, supplemented, amended and restated, endorsed or otherwise modified), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from outstanding Credit Extensions and also means all other promissory notes accepted from time to time in substitution or replacement therefor or renewal thereof.

"Obligations" means (x) all loans, advances, debts, liabilities and obligations, howsoever arising, owed by a Loan Party under the Loan Documents to any Lender of every kind and description (whether or not evidenced by any Note, Bankers' Acceptance or Instrument and whether or not for the payment of money), direct or indirect, due or to become due, now existing or hereafter arising, pursuant to the terms of the Loan Documents, including all Debt Service, all

Bankers' Acceptance Obligations, fees, charges, expenses, attorneys' fees, consultants' fees and accountants' fees chargeable to and payable by the Borrower hereunder or thereunder; (y) any and all sums advanced by the Lenders in order to protect and preserve the security interests created or perfected by the Loan Documents, including all protective advances; and (z) in the event of any proceeding for the collection or enforcement of, or any "working out" of, the Obligations after a Default has occurred and is continuing, the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing or otherwise disposing of or realizing on the Lenders' security interests, or of any exercise by any Secured Party of its rights under the Loan Documents, together with reasonable attorneys' fees and court costs.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Off-Site Improvements" means the utility and other improvements which are required to be completed by or on behalf of the Borrower in order for the Borrower to obtain a permanent Permission to Occupy for the Premises.

"Ongoing Investment" is any Investment listed in Item 8.2.4(a) on the Disclosure Schedule.

"Opening Date" means the date on which the first Unit is conveyed to the purchaser thereof or the Premises or any portion thereof are open for business to the general public.

"Operating Agreement" means the Operating Agreement, the form of which shall be approved by the Administrative Agent, to be entered into between a Unit Owner and The Rosseau Resort Management Services Inc. with respect to the rental of the Unit covered by such Operating Agreement as a hotel room, together with any and all joinders, consents and subordinations executed in connection therewith.

"Operating Expenses" is defined in the Hotel Management Agreement.

"Operating Fees" is defined in the Hotel Management Agreement

"Organizational Document" means, relative to any Person, its certificate or articles of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, articles of organization, operating agreement, limited liability company or operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to any of such Person's partnership interests, limited liability company interests or authorized shares of capital stock.

"OSC Ruling" means the ruling of the Ontario Securities Commission made April 13, 2004 in respect of the sale of the Condominium Units and related property.

"Outside Completion Deadline" means the date that is 36 months from the Effective Date, as such date may be extended by the number of days that a Force Majeure Event exists, subject to the satisfaction by the Borrower of the conditions to such extension and the limitations thereof as set forth in the definition of Force Majeure Event.