

If you are in agreement with the foregoing, please acknowledge and confirm your agreement by signing were indicated below.

Dated this \_\_\_\_\_ day of October, 2007.

**WESTLB AG, TORONTO BRANCH** on its  
own behalf and as Administrative Agent for  
the Lenders under the Credit Agreement

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

Name:

Title:

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

Name:

Title:

Acknowledged and Agreed to this \_\_\_\_\_ day of October, 2007.

**THE ROSSEAU RESORT  
DEVELOPMENTS INC.**

Per: 

Name: Greg Tylee

Title: Vice President

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

Name:

Title:

**KEN FOWLER ENTERPRISES LIMITED**

Per: 

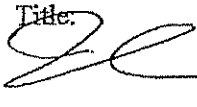
Name:

Title:

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

Name:

Title:



Ken Fowler

  
Witness

## AMENDMENT AGREEMENT

THIS AMENDMENT AGREEMENT is dated as of March 9, 2009 and is entered into among The Rosseau Resort Developments Inc. (the "**Borrower**"), the lenders from time to time parties hereto, as lenders, and WestLB AG, Toronto Branch, as administrative agent (the "**Administrative Agent**").

### RECITALS:

A. Reference is made to the credit agreement dated as of February 1, 2007 by and among the Borrower, various financial institutions as are or may become parties thereto (the "**Lenders**"), and the Administrative Agent (as amended, supplemented or otherwise modified or restated from time to time, the "**Credit Agreement**").

B. The parties hereto wish to amend the Credit Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE ONE INTERPRETATION

**Section 1.01 Incorporation of Credit Agreement:** This Amendment Agreement is supplemental to and shall henceforth be read in conjunction with the Credit Agreement, and the Credit Agreement and this Amendment Agreement shall henceforth be read, interpreted, construed and have effect as, and shall constitute, one agreement with the same effect as if the amendments made by this Amendment Agreement had been contained in the Credit Agreement as of the date of this Amendment Agreement.

**Section 1.02 Defined Terms:** In this Amendment Agreement, unless something in the subject matter or context is inconsistent:

- (a) terms defined in the description of the parties or in the recitals have the respective meanings given to them in the description or recitals, as applicable; and
- (b) all other capitalized terms have the respective meanings given to them in the Credit Agreement as amended by this Amendment Agreement.

**Section 1.03 Headings:** The headings of the Articles and Sections of this Amendment Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of this Amendment Agreement.

**Section 1.04 References to and Effect on the Credit Agreement:** On and after the date hereof, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof",

"herein" or words of like import, shall mean and refer to the Credit Agreement as amended hereby. Except as specifically amended hereby, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed.

## ARTICLE TWO AMENDMENTS

**Section 2.01 Amendments:** The definition of "Permitted Lien" in Section 1.1 of the Credit Agreement is amended by deleting "and" at the end of clause (l), by replacing the period at the end of clause (m) with a semi-colon, and by adding the following clause thereafter:

(n) the following agreements; provided, however, such agreements are being complied with in all material respects:

(i) developer's responsibility agreement (the "Developer's Responsibility Agreement") between the Borrower, as Developer No. 1, Wallace Marine Limited, as Developer No. 2, 2027588 Ontario Inc., Wallace Marine Limited, 2027587 Ontario Inc. and 2162262 Ontario Inc., as Developer No. 3, and The District Municipality of Muskoka, with respect to the operation and maintenance of the private water and sanitary sewage facilities servicing, *inter alia*, the Condominium Regime;

(ii) reciprocal agreement between the resort condominium corporation for the Residential Condominium Units and the Borrower with respect to the allocation of costs and easements for the integrated use, operation, maintenance and repair of the resort condominium lands and the commercial condominium lands (provided, however, that the liens created in section 13.01 thereof are expressly subordinated to the Mortgage in favour of the Administrative Agent);

(iii) resort easement agreement between the Borrower, 1515511 Ontario Inc. (golf course owner) and the resort condominium corporation for the Residential Condominium Units setting out terms and conditions that apply to easements necessary or desirable for the integrated use, operation and maintenance of The Rosseau Resort; and

(iv) shared facilities agreement between the resort condominium corporation for the Residential Condominium Units, the Borrower and 1515511 Ontario Inc. (the golf course owner) governing the integrated use, operation and maintenance of the The Rosseau Resort

including shared facilities and the sharing of costs in respect thereof, as well as the provision of easements necessary or desirable in connection therewith (provided, however, that the liens created in section 13.01 thereof are expressly subordinated to the Mortgage in favour of the Administrative Agent); and

(o) the following agreements; provided, however, such agreements are subject and subordinate to Liens in favor of the Lender and are being complied with in all material respects:

(i) condominium agreement made December 23, 2008 between the Borrower and The Corporation of the Township of Muskoka Lakes relating to the maintenance of the commercial use and components, including access to the facilities by resort guests; and

(ii) hotel management unit lease between the Borrower, as landlord, and Marriott Hotels of Canada, Ltd., as tenant, with respect to the lease of the hotel management unit for the operation of a hotel management office and front desk area and uses incidental thereto in connection with the management of the hotel pursuant to the Hotel Management Agreement.

### ARTICLE THREE CONDITIONS TO EFFECTIVENESS

**Section 3.01 Conditions to Effectiveness:** This Amendment Agreement shall become effective on the date upon which the Administrative Agent shall have received this Amendment Agreement, duly executed by each of the parties hereto (it being acknowledged that the amendments contemplated herein require the consent of the Required Lenders pursuant to Section 11.1 of the Credit Agreement).

### ARTICLE FOUR REPRESENTATIONS AND WARRANTIES

**Section 4.01 Representation re Easements and Agreements:** The Borrower represents, warrants and covenants that each of (i) the agreements that has been included as a "Permitted Lien" pursuant to Section 2.01 hereof, and (ii) the golf course blanket easement being granted by the Borrower in favour of 1515511 Ontario Inc., the Easement Agreement, the rental pool covenants and restrictions and the access easement granted to The District Municipality of Muskoka pursuant to section 57 of the Developer's Responsibility Agreement (collectively, the "**Easements and Restrictions**"), does not interfere in any material respect with the ordinary conduct of business of the Borrower. The Administrative Agent and the Lenders confirm that the Easements and Restrictions are also Permitted Liens.

**Section 4.02 Representations and Warranties:** The Borrower represents and warrants to the Administrative Agent and the Lenders that this Amendment Agreement has been duly authorized, executed and delivered by the Borrower, and that the Credit Agreement, as amended by this Amendment Agreement, constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditor's rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**Section 4.03 Ratification of Credit Agreement.** The Loan Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed and shall remain unamended except as set forth herein. The Loan Agreement, as amended by this Amendment Agreement as of the date of this Amendment Agreement, shall be read, taken and construed as one and the same document. This Amendment Agreement shall not, except as expressly provided above, operate as an amendment of any provision of the Loan Documents nor shall it operate as a waiver of any right or remedy of the Administrative Agent or any of the Lenders against the Borrower, any of the Guarantors or any other Person whatsoever under any of the Loan Documents or any other agreement whatsoever, including (without limitation) as a result of any Default or Event of Default now existing or hereafter arising under or in connection with any of the Loan Documents. Notwithstanding the execution of this Amendment Agreement by the Administrative Agent and the Lenders, the Administrative Agent and each of the Lenders hereby reserve all of their respective rights and remedies, now existing or hereafter arising, against the Borrower, any of the Guarantors or any other Person whatsoever under or in connection with any of the Loan Documents or any other agreement whatsoever, including (without limitation) as a result of any Default or Event of Default now existing or hereafter arising under or in connection with any of the Loan Documents.

**Section 4.04 Confirmation of Security.** The Borrower acknowledges, confirms and agrees that (i) all security granted by the Borrower to and in favor of Administrative Agent on behalf of the Lenders as security for its obligations under the Credit Agreement and the other Loan Documents to which it is a party (collectively, the "**Security**") remains in full force and effect, unamended, and the security interests, mortgages, charges, liens, assignments, transfers and pledges granted by the Borrower in favour of the Administrative Agent on behalf of the Lenders pursuant to the Security continue to secure and extend to all debts, liabilities and obligations of the Borrower to the Administrative Agent and the Lenders whether direct or indirect, absolute or contingent, present or future, pursuant to, arising out of, or in connection with, the Credit Agreement (as amended hereby) and the other Loan Documents to which it is a party; and (ii) the Security is hereby ratified and confirmed.

## **ARTICLE FIVE GENERAL**

**Section 5.01 Binding Nature:** This Amendment Agreement shall enure to the benefit of and be binding upon the Borrower, the Administrative Agent, the Lenders and their respective successors and permitted assigns.

**Section 5.02 Governing Law:** This Amendment Agreement shall be deemed to be a contract made under and governed by the internal laws of the State of New York.

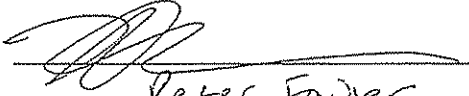
**Section 5.03 Counterpart and Facsimile:** This Amendment Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page to this Amendment Agreement by any party by facsimile transmission, or by electronic transmission in "PDF" or other similar form, shall be as effective as delivery of a manually executed copy of this Amendment Agreement by such party.

**Section 5.04 Expenses:** The Borrower agrees to reimburse the Administrative Agent for its out-of-pocket expenses in connection with this Amendment Agreement, including the legal fees and disbursements of Blake, Cassels & Graydon LLP, counsel for the Administrative Agent.

[Balance of this page left blank; signature pages follow.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

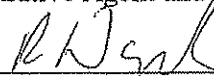
**THE ROSSEAU RESORT DEVELOPMENTS  
INC., as Borrower**

By:   
Name: Peter Fowler  
Title: Secretary Treasurer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**WESTLB AG, TORONTO BRANCH,**  
as Administrative Agent and Lender

By:   
Name: Robert L. Dyck  
Title: Executive Director

By:   
Name: Kenneth Chan  
Title: Director

**CIT FINANCIAL LTD., as Lender**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



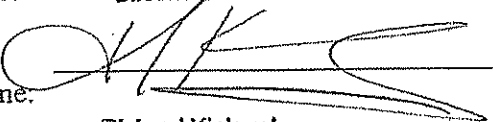
**WESTLB AG, TORONTO BRANCH,**  
as Administrative Agent and Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CIT FINANCIAL LTD., as Lender**

By:  \_\_\_\_\_  
Name: **Evan Bennett**  
Title: **Director**

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: **Richard Kinlough**  
**Managing Director**

## FOURTH AMENDMENT AND FORBEARANCE AGREEMENT

**THIS FOURTH AMENDMENT AND FORBEARANCE AGREEMENT** is dated as of April 9, 2009 and is entered into among The Rosseau Resort Developments Inc. (the "**Borrower**"), the lenders from time to time parties hereto, as lenders, and WestLB AG, Toronto Branch, as administrative agent (the "**Administrative Agent**").

### **RECITALS:**

A. Reference is made to the credit agreement dated as of February 1, 2007 by and among the Borrower, various financial institutions as are or may become parties thereto (the "**Lenders**"), and the Administrative Agent (as amended by amending agreements dated June 6, 2007, October 19, 2007 and March 9, 2009, and as further amended, supplemented or otherwise modified or restated from time to time, the "**Credit Agreement**").

B. The parties hereto wish to amend the Credit Agreement, and the Lenders have agreed to forbear from exercising default-related rights and remedies under the Credit Agreement, all on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE ONE INTERPRETATION**

**Section 1.01 Incorporation of Credit Agreement:** This Agreement is supplemental to and shall henceforth be read in conjunction with the Credit Agreement, and the Credit Agreement and this Agreement shall henceforth be read, interpreted, construed and have effect as, and shall constitute, one agreement with the same effect as if the amendments made by this Agreement had been contained in the Credit Agreement as of the date of this Agreement.

**Section 1.02 Defined Terms:** In this Agreement, unless something in the subject matter or context is inconsistent (a) terms defined in the description of the parties or in the recitals have the respective meanings given to them in the description or recitals, as applicable; and (b) all other capitalized terms have the respective meanings given to them in the Credit Agreement as amended by this Agreement.

**Section 1.03 Headings:** The headings of the Articles and Sections of this Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**Section 1.04 References to and Effect on the Credit Agreement:** On and after the date hereof, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import, shall mean and refer to the Credit Agreement as amended

hereby. Except as specifically amended hereby, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed.

## ARTICLE TWO AMENDMENTS

**Section 2.01 Acknowledgement of Defaults; Forbearance:** Events of Default have occurred and are continuing under the Credit Agreement. The Borrower represents and warrants to the Lenders and the Administrative Agent that all existing Events of Default are described in Schedule F. Notwithstanding the occurrence and continuance of Events of Default under the Credit Agreement, until May 15, 2009, the Lenders are prepared to forbear from exercising their default-related rights and remedies against the Borrower and, subject to the terms and conditions of the Intercreditor Agreement (as hereinafter defined), the Guarantor unless a new Event of Default shall have occurred and is continuing. In addition, at the request of the Borrower and the Guarantor, the Lenders have agreed to advance a further **\$2,500,000.00** under the Credit Agreement to enable the Borrower to make the payments listed in Schedule D of this Agreement (and for no other purpose), subject to the conditions set forth herein and there being no new Liens against any of the collateral for the Loans since the date of the last Advance. Nothing in this Agreement obligates the Lenders to make any further Credit Extension. In addition, nothing in this Agreement obligates the Administrative Agent and/or Lenders to continue to forbear from exercising rights and remedies under the Credit Agreement beyond May 15, 2009 or if, prior to May 15, 2009, a new Event of Default shall have occurred and is continuing.

**Section 2.02 Amendments to Credit Agreement:** Upon the effectiveness of this Agreement, the Credit Agreement is hereby amended as follows:

- (a) Section 8.1.1 of the Credit Agreement is hereby amended by adding the following:
  - (y) on a weekly basis, by 5:00 p.m. on Wednesday of each week, a rolling 13-week cash flow forecast and a list of the specific payables which are to be paid in the next week. Each delivery of the 13-week cash flow forecast will be certified by the Chief Financial Officer of the Borrower as being prepared based upon good faith estimates and assumptions that are reasonable at the time made and that the Chief Financial Officer of the Borrower is not aware of (i) any information contained in such 13-week cash flow forecast which is false or misleading in any material respect, or (ii) any omission of information which causes such 13-week cash flow forecast to be false or misleading in any material respect. The most recent 13-week cash flow made available to the Lenders is attached as Schedule A.
  - (z) on a weekly basis, by 5:00 p.m. on Wednesday of each week, a variance report showing, on a line item basis, the percentage and dollar variance of actual cash disbursements and revenues and cash receipts for the prior week from the amounts set forth for such week in the applicable 13-week cash flow forecast, a

narrative analysis of each such material variance and the daily cash balances for the prior week.

- (aa) on a weekly basis, by 5:00 p.m. on Wednesday of each week, an aged list of accounts payable.

### **ARTICLE THREE**

#### **CONDITIONS TO EFFECTIVENESS**

**Section 3.01 Conditions to Effectiveness:** This Agreement shall be and become effective as of the date (the "**Fourth Amendment Effective Date**") on which each of the following conditions precedent shall have been satisfied or waived in writing by the Administrative Agent after direction from the Lenders.

(a) **Consents:** The Administrative Agent shall have received consents and/or approvals of this Amendment from all Persons from which consent or approvals is required including, without limitation, the unanimous approval of the Lenders and the approvals of Meridian Credit Union Limited ("**Meridian**") and TD Capital Mezzanine Partners Management Ltd. ("**TD**"). The Administrative Agent shall have also received copies of any amendment documentation relating to the Meridian or TD credit facilities entered into in connection with this Amendment.

(b) **No Restrictions:** No order, judgment or decree of any Governmental Instrumentality shall purport to enjoin or restrain the Borrower, the Lenders or the Administrative Agent from entering into this Amendment.

(c) **Execution of this Agreement:** The Administrative Agent shall have received counterparts of this Agreement duly executed by the Borrower, the Guarantor and the Administrative Agent.

(d) **KFEL Security:** The Administrative Agent shall have received, subject to the terms and conditions of the Intercreditor Agreement, (i) from each of Ken Fowler Enterprises Limited ("**KFEL**"), Ken Fowler (N.Y.), Inc., Ken Fowler Columbus, Inc. and Ken Fowler Texas, Inc. (collectively, the "**New Guarantors**" and individually, a "**New Guarantor**") a Limited Guaranty and Postponement of Debts and Claims substantially in the form attached hereto as Schedule A and a General Security Agreement substantially in the form attached hereto as Schedule B; (ii) from KFEL, and a Securities Pledge Agreement substantially in the form attached hereto as Schedule C; (iii) from Peter Fowler Enterprises Limited ("**PFEL**") a negative pledge over all equity interests held by PFEL in SIR Corp; and (iv) a charge over the loan entered into between KFEL and PFEL in the amount of \$6,253,682.79 (as evidenced by those demand grid promissory notes issued by PFEL in favour of the Borrower dated February 9, 2001, March 19, 2003 and June 5, 2006 in the original principal amounts of \$1,060,872.20, \$556,091.00 and \$4,636,719.59, respectively), representing amounts owing from PFEL for an investment in SIR Corp (the "**Peter Fowler Loan**"). The terms of the Peter Fowler Loan are to be amended to include (x) a maturity date no later than February 1, 2012, (y) the requirement to repay the Peter Fowler Loan following the sale by PFEL of its investment in SIR Corp. with net proceeds from such sale to be first applied against the existing TD facility and secondly against

the Peter Fowler Loan, and (z) a pledge by PFEL to KFEL of its equity interests in SIR Corp. to secure the Peter Fowler Loan. The Liens arising under the documentation described in paragraphs (i), (ii), (iii) and (iv) above shall have been perfected in all jurisdictions reasonably required by the Administrative Agent.

(e) **Meridian/TD Subordination Agreement:** The Administrative Agent shall have received an executed copy of a Subordination and Postponement Agreement among Meridian Credit Union Limited, TD Capital Mezzanine Partners Management Ltd., the New Guarantors, the Administrative Agent and PFEL (the "**Intercreditor Agreement**"), substantially in the form attached hereto as Schedule D.

(f) **Fees:** The Borrower shall have paid all fees, expenses and other charges then due and payable by it under the Credit Agreement, this Amendment and each of the other Loan Documents, including all fees, costs and expenses due and payable pursuant to Section 11.3 of the Credit Agreement and all other reasonable expenses of the Administrative Agent in connection with the negotiation, execution and delivery of this Amendment.

#### **ARTICLE FOUR REPRESENTATIONS AND WARRANTIES**

**Section 4.01 Representations and Warranties:** The Borrower represents and warrants to the Administrative Agent and the Lenders that (a) this Agreement has been duly authorized, executed and delivered by the Borrower, and that the Credit Agreement, as amended by this Agreement, constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditor's rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law, and (b) after giving effect to the amendments hereunder, no default shall have occurred and be continuing under the TD Credit Agreement.

**Section 4.02 Ratification of Credit Agreement:** The Loan Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed and shall remain unamended except as set forth herein. The Loan Agreement, as amended by this Agreement as of the date of this Agreement, shall be read, taken and construed as one and the same document. This Agreement shall not, except as expressly provided above, operate as an amendment of any provision of the Loan Documents nor shall it operate as a waiver of any right or remedy of the Administrative Agent or any of the Lenders against the Borrower, or subject to the terms of the Intercreditor Agreement, any of the Guarantors or any other Person whatsoever under any of the Loan Documents or any other agreement whatsoever, including (without limitation) as a result of any Default or Event of Default now existing or hereafter arising under or in connection with any of the Loan Documents. Notwithstanding the execution of this Agreement by the Administrative Agent and the Lenders, the Administrative Agent and each of the Lenders hereby reserve all of their respective rights and remedies, now existing or hereafter arising, against the Borrower, or subject to the terms of the Intercreditor Agreement, any of the Guarantors or any other Person whatsoever under or in connection with any of the Loan

Documents or any other agreement whatsoever, including (without limitation) as a result of any Default or Event of Default now existing or hereafter arising under or in connection with any of the Loan Documents.

**Section 4.03 Confirmation of Security:** The Borrower acknowledges, confirms and agrees that (i) all security granted by the Borrower to and in favor of Administrative Agent on behalf of the Lenders as security for its obligations under the Credit Agreement and the other Loan Documents to which it is a party (collectively, the "**Security**") remains in full force and effect, unamended, and the security interests, mortgages, charges, liens, assignments, transfers and pledges granted by the Borrower in favour of the Administrative Agent on behalf of the Lenders pursuant to the Security continue to secure and extend to all debts, liabilities and obligations of the Borrower to the Administrative Agent and the Lenders whether direct or indirect, absolute or contingent, present or future, pursuant to, arising out of, or in connection with, the Credit Agreement (as amended hereby) and the other Loan Documents to which it is a party; and (ii) the Security is hereby ratified and confirmed.

**Section 4.04 Confirmation of Loan Balances:** The Borrower acknowledges and agrees that, as of the date hereof, the respective aggregate principal balances of the Loans as of such date and aggregate face amount of Letters of Credit are as follows:

<b>Commitment</b>	<b>Balance</b>
Longview/Paignton House Tranche A Commitment	\$69,042,629.00
Longview/Paignton House Tranche B Commitment	\$14,765,379.00
Letter of Credit Commitment	nil

## **ARTICLE FIVE GENERAL**

**Section 5.01 Binding Nature:** This Agreement shall enure to the benefit of and be binding upon the Borrower, the Administrative Agent, the Lenders and their respective successors and permitted assigns.

**Section 5.02 Governing Law:** This Agreement shall be deemed to be a contract made under and governed by the internal laws of the Province of Ontario.

**Section 5.03 Counterpart and Facsimile:** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one

and the same instrument. Delivery of an executed signature page to this Agreement by any party by facsimile transmission, or by electronic transmission in "PDF" or other similar form, shall be as effective as delivery of a manually executed copy of this Agreement by such party.

**Section 5.04 Expenses:** The Borrower agrees to reimburse the Administrative Agent for its out-of-pocket expenses in connection with this Agreement, including the legal fees and disbursements of Blake, Cassels & Graydon LLP, counsel for the Administrative Agent.

**Section 5.05 Waiver and Release:** Each of the Borrower and the Guarantor hereby expressly forever waives, releases and discharges any and all claims (including, without limitation, cross-claims, counterclaims, third party claims and rights of setoff), causes of action (whether direct or derivative in nature), demands, suits, costs, expenses and damages (collectively, the "Claims") any of them may have or allege to have as of the date of this Agreement (and all defenses that may arise out of any of the foregoing) of any nature, description, or kind whatsoever, based in whole or in part on facts, whether actual, contingent or otherwise, now known, unknown, or subsequently discovered, whether arising in law, at equity or otherwise, against the Administrative Agent or any Lender, their respective Affiliates, agents, principals, managers, shareholders, directors, officers, employees, attorneys, consultants, advisors or agents of each of the foregoing (collectively, the "Released Parties") involving or otherwise relating to this Agreement or any of the other agreements entered into in connection herewith, the Credit Agreement, the Loan Documents or any or all of the actions and transactions contemplated hereby or thereby including, without limitation, any actual or alleged performance or non-performance by any of the Released Parties hereunder or thereunder. Each of the Borrower and the Guarantor hereby acknowledges that these agreements are intended to be in full satisfaction of all or any alleged injuries or damages arising in connection with the Claims. In entering into this Agreement, each of the Borrower and the Guarantor expressly disclaims any reliance on any representations, acts, or omissions by any of the Released Parties and hereby agrees and acknowledges that the validity and effectiveness of the releases set forth above does not depend in any way on any such representation, acts and/or omissions or the accuracy, completeness, or validity thereof. The provisions of this paragraph will survive the termination or expiration of the waiver period contemplated herein, the termination of the Loan Documents and the payment in full of all obligations of the Borrower and the Guarantor under or in respect of the Credit Agreement and other Loan Documents and all other amounts owing thereunder.

**Section 5.06 Acknowledgement:** Each of the Borrower and the Guarantor hereby acknowledges that:

- (a) it has carefully read and fully understood all of the terms and conditions of this Agreement, and considers the terms hereof to be fair and reasonable;
- (b) it has consulted with, or had a full and fair opportunity to consult with, and has been advised by, fully competent counsel in the negotiation, execution and delivery of this Agreement;
- (c) it has had a full and fair opportunity to participate in the drafting of this Agreement and that no provision of this Agreement will be construed against or interpreted to the disadvantage

of any party hereto by any court or other governmental or judicial authority by reason of any party hereto having or being deemed to have structured, dictated or drafted such provision;


- (d) it is freely, voluntarily, knowingly and intelligently entering into this Agreement;
- (e) none of the Lenders or the Agent has a fiduciary relationship to any Credit Party, and the relationship between Agent and the Lenders, on the one hand, and the Credit Parties, on the other, is solely that of creditor and debtor, and that the Administrative Agent and the Lenders have not acted in a managerial capacity with respect to the Borrower or the Guarantor; and
- (f) no joint venture exists among the Credit Parties, the Agent and the Lenders.

[Balance of this page left blank; signature pages follow.]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**THE ROSSEAU RESORT DEVELOPMENTS  
INC., as Borrower**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

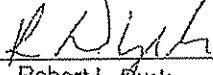
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


**KEN FOWLER ENTERPRISES LIMITED, as  
Guarantor**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WESTLB AG, TORONTO BRANCH,**  
as Administrative Agent and Lender

By:   
Name: Robert L. Dyck  
Title: Executive Director

By:   
Name: Kenneth Chan  
Title: Director, Credits America

**CIT FINANCIAL LTD., as Lender**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WESTLB AG, TORONTO BRANCH,**  
as Administrative Agent and Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CIT FINANCIAL LTD., as Lender**

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: **Richard Klnlough**  
**Managing Director**

By:  \_\_\_\_\_  
Name: **Evan Bennett**  
Title: **Director**

**SCHEDULE A**  
**LIMITED GUARANTY AND POSTPONEMENT OF DEBTS AND CLAIMS**

## LIMITED GUARANTY AND POSTPONEMENT OF DEBTS AND CLAIMS

In consideration of any party that is a Lender, as such term is defined in a Credit Agreement, dated as of February 1, 2007, among The Rosseau Resort Developments Inc., a corporation organized under the law of the Province of Ontario, Canada, (the "Borrower"), the parties identified on such signature pages as lenders and WestLB AG, Toronto Branch in its capacity as agent for and on behalf of itself and such parties so identified as lenders, (in such capacity, the "Agent") (as has been or may be amended, supplemented or otherwise modified or restated or replaced from time to time, the "Credit Agreement"), extending or agreeing to extend any credit or other financial accommodation to the Borrower on or after January 26, 2009 pursuant to the Credit Agreement, and for other valuable consideration, the receipt of which is acknowledged, each of the undersigned, (each, a "Guarantor and collectively, the "Guarantors") agrees with all parties that are or become Lenders, as such term is defined in the Credit Agreement, and the Agent (such parties and the Agent being collectively the "Lender Parties" and individually a "Lender Party") as follows:

### 1. DEFINITIONS. In this Agreement:

a. **Claim.** "Claim" means any claim, however asserted and whether now existing or hereafter arising or accruing, for (i) the recovery of any money or Collateral heretofore or hereafter received, applied or retained by any Lender Party in payment or satisfaction of any of the Obligations (including, but not limited to, any such claim involving any allegation that any money constituted trust funds or that the receipt, application or retention of any money or Collateral or the grant, perfection or other creation or protection of any security interest in or other lien on any Collateral constituted a preference or fraudulent conveyance or transfer) or (ii) whether or not correctly or legally imposed, any tax, assessment, fee, charge, interest, fine or penalty imposed by any government, political subdivision or other taxing authority, or any deduction or withholding for any such tax, assessment, fee, charge, interest, fine or penalty required, as a result of the execution, delivery to the Agent or performance by the Guarantor of, any filing or registration of or with respect to, or any payment made pursuant to, this Agreement or otherwise in connection with this Agreement other than any income or franchise tax imposed on any Lender Party by any government, political subdivision or other taxing authority in the jurisdiction in which such Lender Party is organized or has its chief executive office or any interest, fine or penalty relating to any such income or franchise tax.

b. **Collateral.** "Collateral" means, other than any guaranty pursuant to Section 2 of this Agreement, (i) any collateral, subordination, guaranty, endorsement or other security or assurance of payment, whether now existing or hereafter arising or accruing, that now or hereafter secures the payment or other performance of or is otherwise applicable to any of the Obligations or any obligation of the Guarantor pursuant to this Agreement or (ii) any obligation of any Lender Party, whether pursuant to any deposit account or certificate of deposit or otherwise, that is now or hereafter available for setoff against any of the Obligations or any obligation of the Guarantor pursuant to this Agreement.

c. **Intercreditor Agreement.** "Intercreditor Agreement" means the subordination and postponement agreement dated as of the date hereof among Meridian Credit Union Limited, Ken Fowler Enterprises Limited, as borrower, TD Capital Mezzanine Partners Management Ltd., as

agent, WestLB AG, Toronto Branch, as administrative agent and Ken Fowler, Columbus, Inc., Ken Fowler (N.Y.), Inc., Ken Fowler Texas, Inc. and Peter Fowler Enterprises Ltd., collectively, as guarantors, as amended, supplemented or otherwise modified or restated or replaced from time to time.

d. **Obligations.** The "Obligations" means collectively all obligations to any or all of the Lender Parties in any capacity that have been heretofore or are hereafter incurred by, in any capacity (including, but not limited to, as a debtor-in-possession after the commencement of any case or other proceeding pursuant to any bankruptcy, insolvency or similar statute) and whether alone or otherwise, the Borrower or any direct or indirect successor of the Borrower or direct or indirect assignee or other transferee of all or substantially all of the assets of the Borrower (including, but not limited to, any estate created by the commencement of any case or other proceeding pursuant to any bankruptcy, insolvency or similar statute and any receiver, trustee, custodian or similar Person for the Borrower or any of the assets of the Borrower) for (i) the payment of any money, whether for the payment of any principal, interest, fee, charge, cost or expense or otherwise, now existing or hereafter arising or accruing pursuant to the Credit Agreement or any agreement, instrument or other document at any time entered into in connection with the transactions contemplated by the Credit Agreement, and whether or not arising or accrued subsequent to any commencement of or made, proved, voted or allowed as a claim in any case or other proceeding pursuant to any bankruptcy, insolvency or similar statute, or (ii) the performance of any obligation other than an obligation to pay any money now existing or hereafter arising or accruing pursuant to the Credit Agreement or any agreement, instrument or other document at any time entered into in connection with the transactions contemplated by the Credit Agreement.

e. **Other Obligor.** "Other Obligor" means, other than the Guarantor and the Borrower, any Person who or that is now or hereafter liable, whether pursuant to the Credit Agreement or otherwise, directly or indirectly or absolutely or contingently, for the payment or other performance of any of the Obligations.

f. **Person.** "Person" means (i) any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated association, government, political subdivision or other taxing authority, (ii) any court, agency or other governmental body or (iii) any other entity, body, organization or group.

g. **Subordinated Obligations.** The "Subordinated Obligations" means collectively all obligations of any member or members of the Borrower Group, as such term is defined in the Credit Agreement, to the Guarantor, whether now existing or hereafter arising or accruing.

2. **GUARANTY.** The Guarantor guarantees, without any setoff or other deduction, the payment and other performance when due, whether by acceleration or lapse of time or otherwise, of the Obligations. Any such payment of any portion of the Obligations shall be made in lawful money of the jurisdiction in which such portion is payable and in immediately available funds. Such guaranty is a continuing, absolute and unconditional guaranty and a guaranty of payment rather than collection. Notwithstanding anything to the contrary contained in this Agreement, the recourse of the Lender Parties under this

Guaranty and all security provided by the Guarantors shall be limited to an amount equal to the aggregate of all Loans made under the Credit Agreement on or after January 26, 2009 and any other additional liquidity provided by the Lenders on or after January 26, 2009 as a result of allowing the Borrower to use any purchase deposit, the proceeds from the sale of any Unit or any other form of permission allowing the Borrower to use what would otherwise constitute Lender collateral other than Guarantor property, in each case, where such Loans are made or liquidity is provided other than during the exercise by the Agent and/or the Lender Parties of their rights and remedies under the Loan Documents, at law or in equity.

3. **REINSTATEMENT OF OBLIGATIONS.** Each portion of the Obligations heretofore or hereafter paid or satisfied by any money or Collateral heretofore or hereafter received, applied or retained by any Lender Party and later recovered from any Lender Party as a result of any Claim shall be reinstated as part of the Obligations for purposes of this Agreement as of the date it originally arose or accrued.
4. **INDEMNIFICATION.** The Guarantor shall indemnify each Lender Party on demand, without any limitation as to amount, against each liability, cost and expense (including, but not limited to, if such Lender Party retains counsel for advice, litigation or any other purpose, reasonable attorneys' fees and disbursements) heretofore or hereafter imposed on, incurred by or asserted against such Lender Party as a result of any Claim.
5. **EXPENSES.** The Guarantor shall pay to each Lender Party on demand each cost and expense (including, but not limited to, if such Lender Party retains counsel for advice, litigation or any other purpose, reasonable attorneys' fees and disbursements) hereafter incurred by such Lender Party in endeavoring to enforce any obligation of the Guarantor pursuant to this Agreement or preserve or exercise any right, remedy or power of any Lender Party pursuant to this Agreement or arising or accruing as a result of this Agreement.
6. **POSTPONEMENT.**
  - a. **Postponement of Right of Subrogation.** Until termination of this Agreement in accordance with Section 7, the Guarantor shall not exercise, commence or prosecute any action or other legal proceeding relating to or otherwise enforce, or attempt or agree or otherwise incur any obligation to exercise, commence or prosecute any action or other legal proceeding relating to or otherwise enforce, whether now existing or hereafter arising or accruing, any right of subrogation, indemnification, reimbursement or contribution, or any similar right, against the Borrower or any Other Obligor in connection with this Agreement or any of the Obligations (including, but not limited to, pursuant to any agreement, instrument or other document providing any Collateral).
  - b. **Subordination.** The Guarantor subordinates the payment of the Subordinated Obligations to the final and indefeasible payment or other performance in full of all obligations of the Guarantor pursuant to this Agreement. Subject to the Intercreditor Agreement, until such payment or other performance in full, all amounts received by the Guarantor with respect to any

of the Subordinated Obligations (i) shall be immediately paid over to the Agent for application to the Obligations in the order prescribed by the Credit Agreement or, if no order is so prescribed, in any order determined by the Agent and (ii) prior to such payment shall be held by the Guarantor in trust for the Lender Parties, provided that so long as no Event of Default, as such term is defined in the Credit Agreement, has occurred or existed and is continuing, the Guarantor may retain any such amount received by it as permitted under the Credit Agreement.

7. **TERMINATION.** This Agreement shall remain in full force and effect until and shall terminate only upon the earlier of: (1) the final and indefeasible payment or other performance in full of (i) the Obligations (A) arising or accrued before such receipt of such written notice and the expiration of such period of time, (B) thereafter arising or accruing as a result of any credit or other financial accommodation theretofore committed or otherwise agreed to by any Lender Party or (C) thereafter arising or accruing as a result of any of the Obligations described in clause (i)(A) or (B) of this sentence (including, but not limited to, (I) all interest, fees, charges, costs and expenses thereafter arising or accruing with respect to any of the Obligations described in such clause (i)(A) or (B) and (II) all of the Obligations thereafter arising or accruing as a result of any direct or indirect extension, renewal, refinancing or other modification or replacement of any of the Obligations described in such clause (i)(A) or (B)), (ii) each liability, cost and expense that the Guarantor is obligated to pay pursuant to Section 4 of this Agreement with respect to any Claim theretofore or thereafter arising with respect to any of the Obligations described in clause (i) of this sentence and (iii) each cost and expense that the Guarantor is obligated to pay pursuant to Section 5 of this Agreement, whether theretofore or thereafter arising or accruing; or (2) (a) Final Completion (as defined in the Credit Agreement) has occurred, (b) an amount of additional funds necessary to bring the Budget In Balance (as defined in the Credit Agreement) has been contributed to the Borrower (by way of common equity) by Ken Fowler Enterprises Limited, Mr. Ken Fowler, Mr. Peter Fowler or one or more of their respective Affiliates, and (c) no Default (as defined in the Credit Agreement) or Event of Default (as defined in the Credit Agreement) has occurred and is continuing.
8. **OBLIGATIONS IMMEDIATELY DUE.** Subject to the Intercreditor Agreement, all of the Obligations to any Lender Party remaining unpaid or unperformed shall, in the sole discretion of such Lender Party or the Agent and without any notice, demand, presentment or protest of any kind (each of which is knowingly, voluntarily, intentionally and irrevocably waived by the Guarantor) become immediately due from the Guarantor if there occurs or exists any Event of Default, as such term is defined in the Credit Agreement. All of the Obligations remaining unpaid or unperformed shall automatically, without any notice, demand, presentment or protest of any kind (each of which is knowingly, voluntarily, intentionally and irrevocably waived by the Guarantor), become immediately due from the Guarantor if there occurs or exists with respect to the Guarantor any Event of Default, as such term is defined in the Credit Agreement, under Section 9.1.10 of the Credit Agreement.



9. **REPRESENTATIONS AND WARRANTIES.** The Guarantor represents and warrants to each Lender Party that the execution, delivery to the Agent and performance of this Agreement by the Guarantor are and will be in furtherance of the purposes and within the power and authority of the Guarantor .

10. **CERTAIN CONSENTS AND WAIVERS.**

a. **Consents.** Except to the extent expressly provided in this Agreement, this Agreement shall not be modified or terminated, no obligation of the Guarantor pursuant to this Agreement and no right, remedy or power of any Lender Party pursuant to this Agreement or arising or accruing as a result of this Agreement shall be impaired or otherwise adversely affected, and no such right, remedy or power shall be waived, by any act, omission or other thing, whether heretofore occurred or hereafter occurring. The Guarantor knowingly, voluntarily, intentionally and irrevocably consents, without any notice, to each act, omission and other thing, whether heretofore occurred or hereafter occurring, that would or might, but for such consent, modify or terminate this Agreement, impair or otherwise adversely affect any such obligation, right, remedy or power or operate as a waiver of any such right, remedy or power. Without limiting the generality of the preceding two sentences, except as expressly permitted herein, this Agreement shall not be modified or terminated, no such obligation, right, remedy or power shall be impaired or otherwise adversely affected by, no such right, remedy or power shall be waived by, and such consent shall apply to, whether heretofore occurred or hereafter occurring, (i) any direct or indirect extension, renewal, refinancing or other modification or replacement of, or any assignment or other transfer, compromise, cancellation, release, discharge, invalidity, impairment, unenforceability, repudiation, revocation or change in any term or condition of, defense or effect of any statute of limitations with respect to or grant of any participation in, any of the Obligations or any other obligation of the Guarantor, the Borrower or any Other Obligor or other Person, (ii) any acceptance of any Other Obligor, (iii) any taking, increase or decrease in value, impairment, unenforceability, repudiation, revocation or release of, collection or sale, lease or other disposition of or other realization upon or failure or delaying to call for, take any property as, hold, preserve, protect, insure or collect, sell, lease or otherwise dispose of or otherwise realize upon any Collateral, (iv) any failure or delaying to perfect, keep perfected or maintain the priority of any security interest in or other lien on any Collateral, (v) any exercise or waiver of, failure or delaying to exercise, forbearance from exercising or failure to give any notice prior to exercising any right, remedy or power of any Lender Party or other Person, whether relating to any of the Obligations or any Collateral, against the Guarantor, the Borrower or any Other Obligor or other Person or otherwise, (vi) any incapacity, death or disability of or case or other proceeding pursuant to any bankruptcy, insolvency or similar statute with respect to the Guarantor, the Borrower or any Other Obligor or other Person or any election, loan or other extension of credit or taking of any collateral, subordination, guaranty, endorsement or other security or assurance of payment in any such case or other legal proceeding (including, but not limited to, pursuant to 11 U.S.C. §1111(b) or 364), (vii) any failure of any Lender Party or other Person to make, prove or vote any claim relating to any of the Obligations or any Collateral, or any failure of any such claim to be allowed, in any case or other proceeding pursuant to any bankruptcy, insolvency or similar statute, (viii) the Obligations being at any time or from time to time paid in full or reduced and then increased or exceeding any amount, (ix) any refusal or other

failure of any Lender Party or other Person to grant any or any additional credit or other financial accommodation to the Guarantor, the Borrower or any Other Obligor or other Person or provide to the Guarantor any or complete and accurate information relating to the Borrower or any Other Obligor or other Person or the business, operations, assets, affairs or condition (financial or other) of the Borrower or any Other Obligor or other Person, regardless of whether such information relates to any fact that increases the scope of the risk undertaken by the Guarantor pursuant to this Agreement or is unknown to the Guarantor, (x) any notice to any Lender Party or other Person from the Guarantor, the Borrower or any Other Obligor or other Person not to grant any or any additional credit or other financial accommodation to the Borrower or to take or not to take any other action, (xi) the acceptance by any Lender Party or other Person of any agreement, instrument or other document intended by the Guarantor, the Borrower or any Other Obligor or other Person but not by the Agent to create an accord and satisfaction with respect to any of the Obligations or any other obligation of the Guarantor, the Borrower or any Other Obligor or other Person, (xii) any action taken or not taken by any Lender Party or other Person that increases the scope of the risk undertaken by the Guarantor pursuant to this Agreement (including, but not limited to, any negligent servicing of any credit or other financial accommodation to the Borrower or any Other Obligor), (xiii) the manner or order of any collection or sale, lease or other disposition of or other realization upon any Collateral, (xiv) the manner or order of application of any money applied in payment of any of the Obligations, (xv) any change in the ownership, membership, location, business, name, identity or structure of the Guarantor, the Borrower or any Other Obligor or other Person or (xvi) the execution and delivery to any Lender Party by the Guarantor, the Borrower or any Other Obligor or other Person of any agreement, instrument or other document providing any Collateral.

**b. Waivers.** The Guarantor knowingly, voluntarily, intentionally and irrevocably waives, without any notice, each act and other thing upon which, but for such waiver, any obligation of the Guarantor pursuant to this Agreement or any right, remedy or power of any Lender Party pursuant to this Agreement or arising or accruing as a result of this Agreement would or might be conditioned. Without limiting the generality of the preceding sentence, no such obligation, right, remedy or power shall be conditioned upon, and such waiver shall apply to, (i) the acceptance of this Agreement by the Agent or any lack or other insufficiency of consideration for this Agreement, (ii) any demand upon or presentment or protest to the Guarantor, the Borrower or any Other Obligor or other Person (including, but not limited to, any such demand for the payment or other performance of any of the Obligations), (iii) any exercise of any right, remedy or power of any Lender Party or other Person, whether relating to any of the Obligations or any Collateral, against the Guarantor, the Borrower or any Other Obligor or other Person or otherwise, (iv) any notice to the Guarantor, the Borrower or any Other Obligor or other Person of the acceptance of this Agreement by the Agent, any incurring or nonpayment or other nonperformance of any of the Obligations, any occurrence or existence of any event or condition of default relating to any of the Obligations or any Collateral, any demand for the payment or other performance of or acceleration of the maturity of any of the Obligations, any decrease in the value of any Collateral, any exercise of any right, remedy or power of any Lender Party or other Person, whether relating to any of the Obligations or any Collateral, against the Guarantor, the Borrower or any Other Obligor or other Person or otherwise, any action taken or not taken by any Lender Party or other Person or any other matter, (v) any defense or benefit that would or

might, but for such waiver, be available to the Guarantor as a surety (including, but not limited to, any defense based upon the principle that the obligation of a surety may not exceed or otherwise be more burdensome than that of any Person for whom or which such surety acts as a surety), as a result of any right of setoff, as a result of the application of any anti-deficiency statute, single form of action rule, statute or rule relating to the marshalling of collateral or similar statute or rule or as a result of any election of any right, remedy or power by any Lender Party or other Person that would or might impair or otherwise adversely affect any right of subrogation, reimbursement, indemnification or contribution, or any similar right, against the Borrower or any Other Obligor in connection with this Agreement or any of the Obligations or (vi) any right to terminate this Agreement except as provided in Section 8 of this Agreement.

**11. NOTICES AND OTHER COMMUNICATIONS.** Each notice and other communication by any Lender Party to the Guarantor, or by the Guarantor to any Lender Party, relating to this Agreement shall be given as provided in the Credit Agreement.

**12. MISCELLANEOUS.**

**a. Limitation on Guaranty.** If the guaranty by the Guarantor pursuant to Section 2 of this Agreement is sought to be voided in any case or other proceeding pursuant to any bankruptcy, insolvency or similar statute, the payment and other performance of the Obligations shall not be guaranteed by the Guarantor pursuant to such guaranty to the extent of any amount in excess of the maximum amount that can be so guaranteed without rendering such guaranty unenforceable under applicable law as a fraudulent conveyance or transfer.

**b. Effect on Other Agreements, Instruments and Other Documents.** The execution, delivery to the Agent and performance of this Agreement by the Guarantor shall not modify or terminate any other agreement, instrument or other document (including, but not limited to, any agreement, instrument or other document providing any Collateral) by which the Guarantor, the Borrower or any Other Obligor or other Person is bound or impair or otherwise adversely affect any obligation of the Guarantor, the Borrower or any Other Obligor or other Person pursuant to any such other agreement, instrument or other document.

**c. Right of Setoff.** Subject to the Intercreditor Agreement, upon and at any time and from time to time after the occurrence or existence and during the continuation of any Event of Default, as such term is defined in the Credit Agreement, each Lender Party shall have the right to place an administrative hold on, and set off against each obligation of the Guarantor pursuant to this Agreement, each obligation of such Lender Party in any capacity to, in any capacity and whether alone or otherwise, the Guarantor, whether now existing or hereafter arising or accruing, whether or not then due and whether pursuant to any deposit account or certificate of deposit or otherwise. Such Lender Party shall endeavor to notify the Guarantor promptly after making such setoff. Such setoff shall become effective at the time such Lender Party opts therefor even though evidence thereof is not entered in the records of such Lender Party until later.

**d. Assignment or Grant of Participation.** In conjunction with any assignment or other transfer of or grant of any participation in any of the Obligations by any Lender Party, such Lender Party shall have the right to assign or otherwise transfer or grant any participation in this

Agreement, any obligation of the Guarantor to such Lender Party pursuant to this Agreement or any right, remedy or power of such Lender Party pursuant to this Agreement or arising or accruing as a result of this Agreement.

e. **Foreign Currency.** Any obligation of the Guarantor to make any payment pursuant to this Agreement in lawful currency of any jurisdiction shall, notwithstanding any judgment therefor in lawful currency of any other jurisdiction, be discharged by a payment to the Agent on account of such judgment in lawful currency of such other jurisdiction only to the extent that on the first business day of the Agent following the date of receipt by the Agent of such payment the Agent is able, in accordance with normal banking procedures, to purchase lawful currency of such jurisdiction with the amount of lawful currency of such other jurisdiction so paid. If the amount of lawful currency of such jurisdiction that may be so purchased is less than the amount due in such currency, the Guarantor shall, as an obligation separate from and independent of any other obligation of the Guarantor pursuant to this Agreement, indemnify each Lender Party on demand against such deficiency and remit to the Agent on demand the amount of such currency equal to the amount of such deficiency.

f. **Deduction or Withholding.** Any payment pursuant to this Agreement made by the Guarantor shall be made without any setoff or counterclaim and free and clear of and without any deduction or withholding for any tax, assessment, fee, charge, fine or penalty imposed by any government, political subdivision or other taxing authority; provided, however, that, if such deduction or withholding is required by applicable law, (i) such payment shall include such additional amount as is necessary to result in the net amount of such payment after such deduction or withholding not being less than the amount of such payment without such deduction or withholding, (ii) the Guarantor shall make such deduction or withholding and (iii) the Guarantor shall pay the amount of such deduction or withholding as required by applicable law.

g. **Binding Effect.** This Agreement shall be binding upon the Guarantor and each direct or indirect legal representative, successor and assignee of the Guarantor and shall inure to the benefit of and be enforceable by each Lender Party and each direct or indirect successor and assignee of such Lender Party.

h. **Entire Agreement, Modifications and Waivers.** This Agreement contains the entire agreement between any Lender Party and the Guarantor with respect to the subject matter of this Agreement and supersedes each action heretofore taken or not taken, each course of conduct heretofore pursued, accepted or acquiesced in, and each oral, written or other agreement and representation heretofore made, by or on behalf of any Lender Party with respect thereto. No action heretofore or hereafter taken or not taken, no course of conduct heretofore or hereafter pursued, accepted or acquiesced in, no oral, written or other agreement or representation heretofore made, and no agreement or representation hereafter made other than in writing, by or on behalf of any Lender Party shall modify or terminate this Agreement, impair or otherwise adversely affect any obligation of the Guarantor pursuant to this Agreement or any right, remedy or power of any Lender Party pursuant to this Agreement or arising or accruing as a result of this Agreement or operate as a waiver of any such right, remedy or power. No modification of this Agreement or waiver of any such right, remedy or power shall be effective as to any Lender

Party unless made in a writing duly executed by such Lender Party and specifically referring to such modification or waiver.

i. **Rights, Remedies and Powers Cumulative.** All rights, remedies and powers of any Lender Party pursuant to this Agreement or arising or accruing as a result of this Agreement shall be cumulative, and no such right, remedy or power shall be exclusive of any other such right, remedy or power.

j. **Extent of Consents and Waivers.** Each consent and waiver of the Guarantor contained in this Agreement shall be deemed to have been given to the extent permitted by applicable law.

k. **Exercise of Rights, Remedies and Powers; Requests.** Except as expressly provided in this Agreement, and subject to the Intercreditor Agreement, each right, remedy and power of any Lender Party pursuant to this Agreement or arising or accruing as a result of this Agreement may be exercised (i) at any time and from time to time, (ii) in the sole discretion of such Lender Party, (iii) without any notice or demand of any kind and (iv) whether or not any event or condition of default relating to any of the Obligations or any Collateral has occurred or existed, but such Lender Party shall not be obligated to exercise any such right, remedy or power. Each such right, remedy or power may be exercised only to the extent that the exercise thereof does not violate applicable law. Each request by any Lender Party pursuant to this Agreement may be made (i) at any time and from time to time, (ii) in the sole discretion of such Lender Party and (iii) whether or not any event or condition of default relating to any of the Obligations or any Collateral has occurred or existed.

l. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If, however, any such provision shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law, or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

m. **Governing Law.** This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the Province of Ontario and, to the extent applicable, the federal laws of Canada without regard to the laws of any other jurisdiction.

n. **Headings.** In this Agreement, headings of sections are for convenience of reference only and have no substantive effect.

o. **Obligations of Guarantors.** Subject to the last sentence in Section 2, the obligations of each Guarantor hereunder are joint and several with the obligations of each other Guarantor hereunder.

### 13. **CONSENTS AND WAIVERS RELATING TO LEGAL PROCEEDINGS.**

a. **JURISDICTIONAL CONSENTS AND WAIVERS. THE GUARANTOR KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY**

(i) CONSENTS IN EACH ACTION AND OTHER LEGAL PROCEEDING COMMENCED BY ANY LENDER PARTY AND ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT, ANY OF THE OBLIGATIONS OR ANY COLLATERAL TO THE NONEXCLUSIVE PERSONAL JURISDICTION OF THE COURTS OF THE PROVINCE OF ONTARIO, (ii) WAIVES EACH OBJECTION TO THE LAYING OF VENUE OF ANY SUCH ACTION OR OTHER LEGAL PROCEEDING, (iii) WAIVES PERSONAL SERVICE OF PROCESS IN EACH SUCH ACTION AND OTHER LEGAL PROCEEDING, (iv) CONSENTS TO THE MAKING OF SERVICE OF PROCESS IN EACH SUCH ACTION AND OTHER LEGAL PROCEEDING BY REGISTERED MAIL DIRECTED TO THE GUARANTOR AT THE LAST ADDRESS OF THE GUARANTOR SHOWN IN THE RECORDS RELATING TO THIS AGREEMENT MAINTAINED BY SUCH LENDER PARTY, WITH SUCH SERVICE OF PROCESS TO BE DEEMED COMPLETED FIVE DAYS AFTER THE MAILING THEREOF, (v) WAIVES IN EACH SUCH ACTION AND OTHER LEGAL PROCEEDING EACH RIGHT TO ASSERT ANY NONMANDATORY COUNTERCLAIM OR ANY SETOFF, (vi) WAIVES EACH RIGHT TO ATTACK ANY FINAL JUDGMENT THAT IS OBTAINED AS A RESULT OF ANY SUCH ACTION OR OTHER LEGAL PROCEEDING AND (vii) CONSENTS TO EACH SUCH FINAL JUDGMENT BEING SUED UPON IN ANY COURT HAVING JURISDICTION WITH RESPECT THERETO AND ENFORCED IN THE JURISDICTION IN WHICH SUCH COURT IS LOCATED AS IF ISSUED BY SUCH COURT.

b. WAIVER OF TRIAL BY JURY. THE GUARANTOR (i) KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES EACH RIGHT THE GUARANTOR MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO, ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER BASED ON ANY CONTRACT OR NEGLIGENCE, INTENTIONAL OR OTHER TORT OR OTHERWISE, ARISING OUT OF OR OTHERWISE RELATING TO (A) THIS AGREEMENT, ANY OF THE OBLIGATIONS OR ANY COLLATERAL, (B) ANY TRANSACTION ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT, ANY OF THE OBLIGATIONS OR ANY COLLATERAL OR (C) ANY NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT OF THIS AGREEMENT, ANY OF THE OBLIGATIONS OR ANY COLLATERAL AND (ii) CERTIFIES THAT NEITHER ANY LENDER PARTY NOR ANY REPRESENTATIVE OF ANY LENDER PARTY HAS REPRESENTED TO THE GUARANTOR THAT NO LENDER PARTY WILL SEEK TO ENFORCE THE WAIVER MADE BY THE GUARANTOR IN THIS SECTION 13b.

14. INTERCREDITOR AGREEMENT. For greater certainty, if the Intercreditor Agreement is no longer in effect, this Agreement will be interpreted without reference to the Intercreditor Agreement.

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Dated April 9, 2009

**KEN FOWLER ENTERPRISES LIMITED**

By:   
Title: \_\_\_\_\_

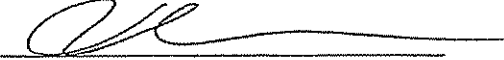
**KEN FOWLER (N.Y.), INC.**

By:   
Title: \_\_\_\_\_

**KEN FOWLER, COLUMBUS, INC.**

By:   
Title: \_\_\_\_\_

**KEN FOWLER TEXAS, INC.**

By:   
Name: \_\_\_\_\_

**SCHEDULE B**  
**GENERAL SECURITY AGREEMENT**



## GENERAL SECURITY AGREEMENT

**THIS AGREEMENT** effective as of April 9, 2009 made by **KEN FOWLER TEXAS, INC.**, a corporation existing under the law of Texas (together with its successors and assigns, the "**Grantor**") in favour of **WESTLB AG, TORONTO BRANCH**, in its capacity as agent acting for and on behalf of itself and the Lenders (as defined below) (the "**Agent**").

**WHEREAS** as general and continuing collateral security for the payment and fulfillment of the Secured Obligations, the Grantor has agreed, *inter alia*, to grant, charge, pledge and assign to the Agent, for and on behalf of and for the benefit of itself and the Lenders, a security interest in the Collateral.

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Grantor, the Grantor agrees and covenants with the Agent and the Lenders as follows:

1. **Definitions.** All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Credit Agreement. In addition, in this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings set forth below:
  - (a) "Accessions", "Accounts", "Chattel Paper", "Consumer Goods", "Document of Title", "Equipment", "Goods", "Instrument", "Intangible", "Inventory", "Investment Property" and "Proceeds" have the meanings given to them in the PPSA;
  - (b) "**Agreement**" means this agreement as the same may hereafter be amended, restated, modified, replaced or supplemented from time to time;
  - (c) "**Books and Records**" means all books, records, files, papers, disks, documents, computer programs, tapes, disks and related processing software and other repositories of data recording in any form or medium, evidencing or relating to the Collateral which are at any time owned by the Grantor or to which the Grantor (or any Person on the Grantor's behalf) has access;
  - (d) "**Collateral**" means all of the present and future undertaking, Personal Property (including, without limitation, any Personal Property that may be described in any Schedule to this Agreement or any schedules, documents or listings that the Grantor may from time to time sign and provide to the Agent in connection with this Agreement) and real property (including, without limitation, any real property that may be described in any Schedule to this Agreement or any schedules, documents, or listings that the Grantor may from time to time provide to the Agent in connection with this Agreement and including all fixtures and all buildings placed, installed or erected from time to time on any such real property) of the Grantor (including, without limitation, all such Personal Property or real property at any time owned, leased, licensed, possessed or acquired by the Grantor, or in which the Grantor at any time has any interest or to which the

Grantor is or may at any time become entitled) and all Accessions thereto, and all Proceeds thereof, in any such case wherever located;

- (e) **"Contracts"** means all contracts, licenses and agreements to which the Grantor is at any time a party or pursuant to which the Grantor has at any time acquired rights, as such contracts, licenses and agreements may from time to time be amended or restated and includes (i) all rights of the Grantor to receive money due and to become due to it in connection with a contract, licence or agreement, (ii) all rights of the Grantor to damages arising out of, or for breach or default in respect of, a contract, licence or agreement and (iii) all rights of the Grantor to perform and exercise all remedies in connection with a contract, licence or agreement;
- (f) **"Credit Agreement"** means the credit agreement dated as of February 1, 2007 by and among The Rosseau Resort Developments Inc., an Ontario corporation (the **"Borrower"**), as borrower, the Agent, as issuer of the Letters of Credit and as administrative agent for the Lenders, CIT Financial Ltd. (as syndication agent for the Lenders), and Raiffeisen Zentralbank Osterreich AG (as documentation agent for the Lenders), and various financial institutions as are or may become parties thereunder from time to time, as lenders, as such agreement has been or may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time;
- (g) **"Event of Default"** means the occurrence of an Event of Default under the Credit Agreement;
- (h) **"Guarantee"** means the guarantee dated as of the date hereof, by the Grantor in favour of the Agent, for and on behalf of itself and the Lenders (as amended, supplemented, restated or replaced from time to time with the prior written consent of the Senior Lenders), and those guarantees entered into in the future by the Grantor (which have been consented to in writing by the Senior Lenders) in favour of the Agent, the Lenders or any of the Secured Parties under, in connection with or with respect to the Credit Agreement but for greater certainty, excluding any guarantees (each of which may be amended, supplemented or replaced from time to time) provided to the Agent, for and on behalf of the Lenders from time to time, prior to the date hereof.
- (i) **"Intellectual Property"** means all industrial and intellectual property rights including, without limitation, all copyrights, patents, trade-marks, industrial designs, know how and trade secrets and all Contracts related to any such industrial and intellectual property rights;
- (j) **"Intercreditor Agreement"** means the subordination and postponement agreement dated as of the date hereof among Meridian Credit Union Limited, Ken Fowler Enterprises Limited, an Ontario Corporation (together with its successors and assigns, **"KFE"**), as borrower, TD Capital Mezzanine Partners Management

Ltd., as agent, WestLB AG, Toronto Branch, as administrative agent and Ken Fowler, Columbus, Inc., Ken Fowler (N.Y.), Inc., Ken Fowler Texas, Inc. and Peter Fowler Enterprises Ltd., collectively, as guarantors, as amended, supplemented or otherwise modified or restated or replaced from time to time;

- (k) **"Lenders"** means, collectively, all lender signatories to the Credit Agreement, together with any other lender who may become a party to the Credit Agreement from time to time, and their respective successors and assigns;
- (l) **"Money"** means a medium of exchange authorized or adopted by the government referred to in the "Governing Law" section of this agreement as part of its currency;
- (m) **"Permits"** means all permits, licenses, authorizations, approvals, franchises, rights-of-way, easements and entitlements that the Grantor has, requires or is required to have, to own, possess or operate any of its property or to operate and carry on any part of its business;
- (n) **"Permitted Liens"** means the Liens created by the Security Documents and, with respect to the Grantor:
  - (i) Permitted Charges (as defined in the TD Credit Agreement) in effect on the date hereof; and
  - (ii) Liens granted in favour of Fortress Credit Corp. prior to the date hereof.
- (o) **"Personal Property"** means personal property of every nature and kind and includes Accounts (including all present and future tax credits, tax refunds and other sums of a similar nature due to the Grantor by any fiscal authority), Inventory, Equipment, Books and Records, Chattel Paper, Goods, Documents of Title, Instruments, general intangibles (including Intellectual Property and Permits), Money, Securities and other Investment Property and includes all present and future Accessions to any of the foregoing, but expressly excludes Consumer Goods;
- (p) **"PPSA"** means the *Personal Property Security Act* (Ontario), as such legislation may be amended, renamed or replaced from time to time (and includes all regulations from time to time made under such legislation);
- (q) **"RDI"** means Retail Dimensions Incorporated, a company organized under the laws of Ontario and its successors and assigns;
- (r) **"Receiver"** means a receiver, a manager or a receiver and manager;
- (s) **"Secured Obligations"** means all present and future indebtedness, liabilities and obligations of any and every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of the

Grantor to the Secured Parties or any of them arising under the Guarantee (and not under any other document), and all fees, including Receiver's fees and expenses, legal costs (on a solicitor and his own client basis) and other costs, charges and expenses, and the payment of all costs and expenses incurred by the Secured Parties or any of them, in enforcing any rights under this Agreement;

- (t) "**Secured Parties**" means the Lenders, the Issuer, the Agent, each counterparty to a Rate Protection Agreement that is (or at the time such Rate Protection Agreement was entered into, was) a Lender or an Affiliate thereof reasonably acceptable to the Agent and, in each case, each of their respective successors and permitted transferees and assigns; and "**Secured Party**" means each of them;
- (u) "**Securities**", has the meaning given to it in the PPSA, or if there is no such meaning given in the PPSA, but the PPSA defines "security" instead, it means the plural of that term;
- (v) "**Security Documents**" means all of the security documents delivered to the Agent from time to time after the date hereof in connection with this Agreement;
- (w) "**Security Interest**" means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), assignment, finance lease, title retention agreement or arrangement, security interest or other encumbrance or adverse claim of any nature, or any other security agreement or arrangement creating in favour of any creditor a right in respect of a particular property;
- (x) "**Senior Lenders**" has the meaning given to such term in the Intercreditor Agreement; and
- (y) "**TD Credit Agreement**" means the credit agreement dated as of October 22, 2007 among, *inter alia*, KFE as borrower, TD Capital Mezzanine Partners Management Ltd., as Agent, the guarantors party thereto and the lenders party thereto, as amended, supplemented, restated or modified from time to time.

2. **Grant of Security.** As general and continuing collateral security for the due payment and performance of the Secured Obligations, the Grantor mortgages, charges, pledges and assigns (by way of security) the Collateral to the Agent, for and on behalf and for the benefit of itself and the Lenders, and grants to the Agent, for and on behalf and for the benefit of itself and the Lenders, a security interest in the Collateral.
3. **Limitations on Grant of Security.** If the grant of any Security Interest in any Contract, Intellectual Property, Permit or any other item of Collateral under Section 2 would result in the termination or breach of such Contract, Intellectual Property, Permit, or item of Collateral, then the applicable Contract, Intellectual Property, Permit or item of Collateral will not be subject to any Security Interest under Section 2 but will be held in trust by the Grantor for the benefit of the Secured Parties. In addition, the Security Interests created by this Agreement do not extend to the last day of the term of any lease or agreement

therefore now held or hereafter acquired by the Grantor. Such last day will be held by the Grantor in trust for the Secured Parties and, on the exercise by the Agent of any of its rights under this Agreement following an Event of Default, will be assigned by the Grantor as directed by the Agent.

4. **Attachment.** The Grantor confirms that value has been given by the Secured Parties to the Grantor, that the Grantor has rights in the Collateral and that the Grantor and the Agent have not agreed to postpone the time for attachment of the Security Interests created by this Agreement to any of the Collateral. The Security Interests created by this Agreement will have effect and be deemed to be effective whether or not the Secured Obligations or any part thereof are owing or in existence before or after or upon the date of this Agreement, and the execution of this Agreement shall not oblige any of the Secured Parties to advance any funds or any additional funds.

5. **Representations and Warranties.** The Grantor represents and warrants to the Secured Parties that:

- (a) **Places of Business, Name, Location of Collateral.** As of the date hereof, the Grantor's principal place of business and chief executive office, and the place where it keeps its Books and Records, is at the address specified on the signature page of this Agreement, and its full legal name, and any other name under which it conducts its business, is specified on the signature page of this Agreement.
- (b) **Title; No Other Security Interests.** Except for (i) the Security Interests created by this Agreement; (ii) any Permitted Liens; and (iii) any other Security Interests expressly permitted in writing by the Agent, the Grantor owns (or, with respect to any leased or licensed property forming part of the Collateral, holds a valid leasehold or licensed interest in) the Collateral free and clear of any Security Interests. No security agreement, financing statement or other notice with respect to any or all of the Collateral other than in respect of the Permitted Liens, is on file or on record in any public office, except for filings in favour of, or permitted in writing by, the Agent;
- (c) **Amount of Accounts.** The amount represented by the Grantor to the Agent from time to time as owing by each account debtor or by all account debtors in respect of the Accounts will at such time be the correct amount so owing by such account debtor or debtors;
- (d) **Defaults under Accounts and Contracts.** Except as disclosed in writing by the Grantor to the Agent, neither the Grantor nor (to the best of the Grantor's knowledge) any other party to any Account or Contract is in default or is likely to become in default in the performance or observance of any of the terms of such Account or Contract that would have a Material Adverse Effect;

- (e) No Consumer Goods. The Grantor does not own any Consumer Goods which are material in value or which are material to the business, operations, property, condition or prospects (financial or otherwise) of the Grantor; and
- (f) Intellectual Property. With respect to any Intellectual Property the loss, impairment or infringement of which would have a Material Adverse Effect in the financial condition, operation, assets, business, properties or prospects of the Grantor:
  - (i) such Intellectual Property is subsisting and has not been adjudged invalid or unenforceable, in whole or in part;
  - (ii) except as disclosed in writing to the Secured Parties, the Grantor has made all necessary and material filings and recordings in Canada or the United States of America, as applicable, to protect its interest in such Intellectual Property;
  - (iii) except as disclosed in writing to the Secured Parties, the Grantor is the exclusive owner of the entire right, title and interest in and to the Intellectual Property used by it and is entitled to use the Intellectual Property leased or licensed to the Grantor and, to its knowledge, no claim has been made that the use of such Intellectual Property does or may violate the asserted rights of any third party.

The Grantor owns directly or is entitled to use by license or otherwise all Intellectual Property that is material to the conduct of the Grantor's business.

6. Survival of Representations and Warranties. All agreements, representations, warranties and covenants made by the Grantor in this Agreement are material, will be considered to have been relied on by the Secured Parties and will survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Agent and any disposition or payment of the Secured Obligations until repayment and performance in full of the Secured Obligations and termination of all rights of the Grantor that, if exercised, would result in the existence of Secured Obligations. Except for representations and warranties expressed herein to be made as of a specific date, the representations and warranties contained herein will be repeated and deemed to be repeated by the Grantor as being true and correct in every material respect upon each increase in the principal amount of the "Obligations" (as defined in the Guarantee).

7. Covenants. The Grantor covenants and agrees with the Secured Parties that:

- (a) Further Documentation. The Grantor will from time to time at its expense promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Agent may reasonably request, subject to the Intercreditor Agreement, for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Agreement

(including the filing of any financing statements or financing change statements under any applicable legislation with respect to the Security Interests created by this Agreement). The Grantor acknowledges that this Agreement has been prepared based on the existing laws in the jurisdiction referred to in the "Governing Law" section of this Agreement and that a change in such laws, or the laws of other jurisdictions, may require the execution and delivery of different forms of security documentation. Accordingly, the Grantor agrees that the Agent will have the right to require that this Agreement be amended, supplemented or replaced, and that the Grantor will immediately on request by the Agent authorize, execute and deliver any such amendment, supplement or replacement (i) to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions, or (iii) if the Grantor merges or amalgamates with any other Person or enters into any corporate reorganization, in each case in order to confer on the Agent and the Lenders Security Interests similar to, and having the same effect as, the Security Interests created by this Agreement;

- (b) Delivery and Pledge of Certain Collateral. Subject to the Intercreditor Agreement, if applicable, the Grantor shall, promptly upon request from time to time by the Agent, deliver (or cause to be delivered) to the Agent, endorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Agent may reasonably request, any and all Instruments, Securities, Documents of Title and Chattel Paper included in or relating to the Collateral as the Agent may specify in its request;
- (c) Payment of Expenses; Indemnification. The Grantor will pay upon demand therefor by the Agent, and will indemnify and save the Secured Parties harmless from, any and all liabilities, reasonable costs and expenses (including reasonable legal fees and expenses and any sales, goods and services or other similar taxes payable to any governmental authority with respect to any such liabilities, costs and expenses) (i) incurred by the Agent in the preparation, registration, administration or enforcement of this Agreement, (ii) with respect to, or resulting from, any failure or delay by the Grantor in performing or observing any of its obligations under this Agreement, or (iii) incurred by the Agent in performing or observing any of the other covenants of the Grantor under this Agreement;
- (d) Maintenance of Records. The Grantor will keep and maintain accurate and complete records of the Accounts, including a record of all payments received and all credits granted with respect to the Accounts;
- (e) Limitations on Modifications, Waivers, Extensions. The Grantor will not (i) amend, modify, terminate or waive any provision of any agreement giving rise to an Account in any manner which is or could reasonably be expected to have a Material Adverse Effect, or (ii) fail to exercise promptly and diligently its rights

under each agreement giving rise to an Account if such failure is or could reasonably be expected to have a Material Adverse Effect;

- (f) Further Identification of Collateral. The Grantor will promptly furnish to the Agent such statements and schedules further identifying and describing the Collateral, and such other reports in connection with the Collateral, as the Agent may from time to time reasonably request;
  - (g) Notices. The Grantor will advise the Agent promptly, in reasonable detail, of (i) any Security Interest (other than the Security Interests created by this Agreement and any Security Interest permitted in writing by the Agent) on, or claim asserted against, any of the Collateral other than by TD Capital Mezzanine Partners Management Ltd. or Meridian Credit Union Limited (collectively, the "Senior Lenders"), or (ii) any change in the name of the Grantor. The Grantor agrees not to effect or permit any change referred to in clauses (ii) above unless all filings have been made and all other actions taken that are required in order for the Secured Parties to continue at all times following such change to have a valid and perfected Security Interest in all of the Collateral; and
  - (h) Delivery of Agreements re Intellectual Property. The Grantor will promptly, following demand from time to time by the Agent, authorize, execute and deliver any and all agreements, instruments, documents and papers that the Agent may reasonably request to evidence the Agent's and the Lenders' Security Interests in any Intellectual Property and, where applicable, the goodwill of the business of the Grantor connected with the use of, and symbolized by, any such Intellectual Property.
8. Rights Upon an Event of Default. If an Event of Default has occurred and is continuing, the security constituted by this Agreement will become enforceable, and subject to the Intercreditor Agreement, the Agent for the rateable benefit of the Lenders may, personally or by agent at such time or times as the Agent, in its discretion may determine, do any one or more of the following:
- (a) Rights under PPSA, etc. Exercise all of the rights and remedies granted to secured parties under the PPSA and any other applicable statute, or otherwise available to the Agent at law or in equity;
  - (b) Demand Possession. Demand possession of any or all of the Collateral in which event the Grantor will, at its own expense, promptly cause the Collateral designated by the Agent to be made available and/or delivered to the Agent at any reasonable place designated by the Agent;
  - (c) Take Possession. Enter on any premises where any Collateral is located and take possession of, disable or remove such Collateral;



- (d) Use of Collateral. Hold, store and keep idle, or operate, lease or otherwise use or permit the use of any or all of the Collateral for such time and on such terms as the Agent may determine, and demand, collect and retain all earnings and other sums due or to become due from any Person in respect of any of the Collateral;
- (e) Carry on Business. Carry on, or concur in the carrying on of, any or all of the business or undertaking of the Grantor and enter on, occupy and use (without charge by the Grantor) any of the premises, buildings, plant and undertaking of, or occupied or used by, the Grantor;
- (f) Deal with Collateral. Seize, collect, receive, enforce or otherwise deal with any Collateral in such manner, on such terms and conditions and at such times as the Agent deems advisable;
- (g) Dispose of Collateral. Realize on any or all of the Collateral and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral (or contract to do any of the above), in one or more parcels at any public or private sale, at any exchange, broker's board or office of the Agent or elsewhere, on such terms and conditions as the Agent for the rateable benefit of the Lenders may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery;
- (h) Court-Approved Disposition of Collateral. Apply to a court of competent jurisdiction for the sale or foreclosure of any or all of the Collateral;
- (i) Purchase by Agent. At any public sale, and to the extent permitted by law on any private sale, bid for and purchase any or all of the Collateral offered for sale and, upon compliance with the terms of such sale, hold, retain and dispose of such Collateral without any further accountability to the Grantor or any other Person with respect to such holding, retention or disposition, except as required by law. In any such sale to the Agent, the Agent may, for the purpose of making payment for all or any part of the Collateral so purchased, use any claim for Secured Obligations then due and payable to it as a credit against the purchase price;
- (j) Collect Accounts. Notify the account debtors or obligors under any Accounts of the assignment of such Accounts to the Agent and direct such account debtors or obligors to make payment of all amounts due or to become due to the Grantor in respect of such Accounts directly to the Agent and, upon such notification and at the expense of the Grantor, enforce collection of any such Accounts, and adjust, settle or compromise the amount or payment of such Accounts, in such manner and to such extent as the Agent deems appropriate in the circumstances;
- (k) Transfer of Securities. Transfer any Securities forming part of the Collateral into the name of the Agent or its nominee, with or without disclosing that the Securities are subject to the Security Interests;

- (l) Exercise of Rights. Exercise any and all rights, privileges, entitlements and options pertaining to any Securities forming part of the Collateral as if the Agent were the absolute owner of such Securities;
- (m) Payment of Secured Obligations. Pay any liability secured by any Security Interest against any Collateral. The Grantor will immediately on demand reimburse the Agent for all such payments;
- (n) Appoint Receiver. Appoint by instrument in writing one or more Receivers over property, assets and undertaking of the Grantor or any or all of the Collateral with such rights, powers and authority (including any or all of the rights, powers and authority of the Agent under this Agreement and the Credit Agreement) as may be provided for in the instrument of appointment or any supplemental instrument, and remove and replace any such Receiver from time to time. To the extent permitted by applicable law, any Receiver appointed by the Agent will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the agent of the Grantor and not of the Agent or the Lenders; and
- (o) Court-Appointed Receiver. Apply to a court of competent jurisdiction for the appointment of a Receiver of the property, assets and undertaking of the Grantor or of any or all of the Collateral;

The Agent may exercise any or all of the foregoing rights and remedies without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except as required by applicable law) to or on the Grantor or any other Person, and the Grantor by this Agreement waives each such demand, presentment, protest, advertisement and notice to the extent permitted by applicable law. None of the above rights or remedies will be exclusive of or dependent on or merge in any other right or remedy, and one or more of such rights and remedies may be exercised independently or in combination from time to time. Without prejudice to the ability of the Agent to dispose of the Collateral in any manner which is commercially reasonable, the Grantor acknowledges that a disposition of Collateral by the Agent for the rateable benefit of the Lenders which takes place substantially in accordance with the following provisions will be deemed to be commercially reasonable:

- (i) Collateral may be disposed of in whole or in part;
- (ii) Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;
- (iii) any purchaser or lessee of Collateral may be a customer of the Agent or the Lenders;
- (iv) a disposition of Collateral may be on such terms and conditions as to credit or otherwise as the Agent may determine to be commercially reasonable; and

- (v) the Agent may establish an upset or reserve bid or price in respect of Collateral.

9. **Grant of Licence.** For the purpose of enabling the Agent to exercise its rights and remedies under Section 8 when the Agent is entitled to exercise such rights and remedies, and for no other purpose, and in consideration of the Agent entering into a waiver and amendment letter dated January 26, 2009 between the Agent and the Borrower, the Grantor by this Agreement grants to the Agent an irrevocable, non-exclusive licence (exercisable without payment of royalty or other compensation to the Grantor) to use, assign or sublicense any or all of the Intellectual Property, including in such licence reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout of the same.
10. **Sale of Securities.** The Agent is authorized, in connection with any offer or sale of any Securities forming part of the Collateral, in accordance with the Intercreditor Agreement, to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with applicable securities laws, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Securities. The Grantor further agrees that compliance with any such limitation or restriction will not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and the Agent will not be liable or accountable to the Grantor for any discount allowed by reason of the fact that such Securities are sold in compliance with any such limitation or restriction.
11. **Application of Proceeds.** Subject to the Intercreditor Agreement, all Proceeds of Collateral received by the Agent for the rateable benefit of the Lenders or by a Receiver may be applied to discharge or satisfy any expenses (including the Receiver's remuneration and other expenses of enforcing the Agent's rights under this Agreement), Security Interests in favour of Persons other than the Agent, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by the Agent or the Receiver to protect, preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Security Interests, if any, on the Collateral ranking in priority to any of the Security Interests created by this Agreement, or to sell, lease or otherwise dispose of the Collateral. The balance of such proceeds may, at the sole discretion of the Agent, subject to the Intercreditor Agreement, be held as collateral security for the Secured Obligations or be applied to such of the Secured Obligations (whether or not the same are due and payable) in such manner and at such times as the Agent considers appropriate and thereafter will be accounted for as required by law.
12. **Continuing Liability of Grantor.** The Grantor will remain liable for any Secured Obligations that are outstanding following realization of all or any part of the Collateral and the application of the Proceeds thereof.

13. **Agent's Appointment as Attorney-in-Fact.** The Grantor constitutes and appoints the Agent, for the rateable benefit of the Lenders, and any officer or agent of the Agent, or any receiver appointed by the Agent, with full power of substitution, as the Grantor's true and lawful attorney-in-fact with full power and authority in the place of the Grantor and in the name of the Grantor or in its own name upon the occurrence and during the continuance of an Event of Default, subject to the Intercreditor Agreement, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney acting reasonably, may be necessary or desirable to accomplish the purposes of this Agreement. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the Security Interests created by this Agreement are released. Nothing in this Section affects the right of the Agent, the Lenders or any one of them or any other Person, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification agreements and other documents relating to the Collateral and this Agreement as the Agent, the Lenders or any one of them or such other Person considers appropriate, subject to the Intercreditor Agreement.
14. **Performance by Agent of Grantor's Obligations.** If the Grantor fails to perform or comply with any of its obligations under this Agreement, the Agent may, but need not, perform or otherwise cause the performance or compliance of such obligation, provided that such performance or compliance will not constitute a waiver, remedy or satisfaction of such failure. The expenses of the Agent incurred in connection with any such performance or compliance will be payable by the Grantor to the Agent on demand, and until paid, any such expenses will form part of the Secured Obligations and will be secured by the Security Interests created by this Agreement.
15. **Right of Set-Off.** Subject to the Intercreditor Agreement, the Agent may at any time from time to time after the occurrence of and during the continuance of an Event of Default, without notice to the Grantor or any other Person, set-off, appropriate and apply any and all indebtedness and liabilities of the Agent and the Lenders to the Grantor, liquidated, unliquidated, contingent, matured or unmatured, against and on account of any Secured Obligations of any kind whatsoever, including for greater certainty liquidated, unliquidated, contingent, matured or unmatured, in such order of application as the Agent or the relevant Lender may from time to time determine.
16. **Rights of Agent and Limitations on Agent's Obligations.**
  - (a) **Limitations on Agent's Liability.** The Agent or any of the Lenders will not be liable to the Grantor or any other Person for any failure or delay in exercising any of its rights under this Agreement (including any failure to take possession of, collect, sell, lease or otherwise dispose of any Collateral, or to preserve rights against prior parties). Neither the Agent nor any of the Lenders nor a Receiver nor any agent of the foregoing is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Collateral in its possession. Neither the Agent nor any of the Lenders nor any Receiver will be liable for any, and the

Grantor will bear the full risk of all, loss or damage to any and all of the Collateral (including any Collateral in the possession of the Agent, any Lender or any Receiver) caused for any reason other than the gross negligence or wilful misconduct of the Agent, any Lender or such Receiver;

- (b) Grantor Remains Liable under Accounts and Contracts. Notwithstanding any provision of this Agreement, the Grantor will remain liable under each of the Accounts and Contracts to observe and perform all the conditions and obligations to be observed and performed by the Grantor thereunder, all in accordance with the terms of any agreement giving rise to each such Account or in accordance with and pursuant to the terms and provisions of each such Contract. Neither the Agent nor any Lender nor any Receiver will have any obligation or liability under any Account (or any agreement giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by the Agent of any payment relating to such Account or Contract pursuant hereto, and in particular (but without limitation), the Agent will not be obligated in any manner to perform any of the obligations of the Grantor under or pursuant to any Account (or any agreement giving rise thereto) or under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any account (or any agreement giving rise thereto) or under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time;
- (c) Notice to Account Debtors. Subject to the Intercreditor Agreement, at any time following the occurrence and during the continuance of an Event of Default, the Agent for the rateable benefit of the Lenders may (i) notify account debtors on the Accounts that the Accounts have been assigned to the Agent and that payments in respect thereof will be made directly to the Agent and (ii) in its own name or in the name of others (including the Grantor) communicate with account debtors on the Accounts and parties to the Contracts to verify with them to its satisfaction the existence, status, amount and terms of any Account;
- (d) Collection on Accounts and Contracts. Subject to the Intercreditor Agreement, the Agent hereby authorizes the Grantor to collect the Accounts and payments under the Contracts in the normal course of its business and for the purpose of carrying on the same. Subject to the Intercreditor Agreement, at any time following the occurrence and during the continuance of an Event of Default, the Agent may curtail or terminate such authority and, if required by the Agent any payments of Accounts or under Contracts, when collected by the Grantor will be forthwith (and, in any event, within two Business Days) deposited by the Grantor in the exact form received, duly endorsed by the Grantor to the Agent if required, in a special collateral account maintained by the Agent, subject to withdrawal by the Agent, as hereinafter provided, and, until so deposited, will be held by the

Grantor in trust for the Agent, segregated from other funds of the Grantor. All such amounts while held by the Agent (or the Grantor in trust for the Agent) and all income in respect thereof will continue to be collateral security for the Secured Obligations and will constitute payment thereof until applied as hereinafter provided. Subject to the Intercreditor Agreement, at such intervals as may be agreed upon by the Grantor and the Agent, or, if an Event of Default will have occurred and be continuing at any time or from time to time, at the Agent's election, the Agent will apply all or any part of the amounts on deposit in said special collateral account on account of the Secured Obligations in such order as the Agent may elect. Subject to the Intercreditor Agreement, at the Agent's request, the Grantor will deliver to the Agent any documents evidencing and relating to the agreements and transactions which gave rise to the Accounts and Contracts, including all original orders, invoices and shipping receipts; and

- (e) Analysis of Accounts. The Agent will have the right to analyse and verify the Accounts in any manner and through any medium that it reasonably considers advisable, and the Grantor will furnish all such assistance and information as the Agent may require in connection therewith. Subject to the Intercreditor Agreement, at any time after an Event of Default has occurred, the Agent may in its own name or in the name of others (including the Grantor) communicate with account debtors on the Accounts to verify with them to its satisfaction the existence, status, amount and terms of any Account. At any time from time to time, upon the Agent's reasonable request and at the expense of the Grantor, the Grantor will cause independent accountants or others satisfactory to the Agent to furnish to the Agent reports showing reconciliations, aging and test verifications of, and trial balances for, the Accounts.

- 17. Dealings by Agent. The Agent will not be obliged to exhaust its recourse against the Grantor or any other Person or against any other security it may hold in respect of the Secured Obligations before realizing upon or otherwise dealing with the Collateral in such manner as the Agent may consider desirable, subject to the Intercreditor Agreement. The Agent may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Grantor and any other Person, and with any or all of the Collateral, and with other security and sureties, as the Agent may see fit, subject to the Intercreditor Agreement, all without prejudice to the Secured Obligations or to the rights and remedies of the Agent under this Agreement. The powers conferred on the Agent under this Agreement are solely to protect the respective interests of the Agent in the Collateral and will not impose any duty upon the Agent to exercise any such powers.
- 18. Additional Security. The Security Interests created by this Agreement are in addition and without prejudice to any other Security Interests now or later held by the Agent. No Security Interests held by the Agent will be exclusive of or dependent upon or merge in any other Security Interests, and the Agent may exercise its rights under such Security Interests or in combination.

19. **Communication.** Any notice or communication required or permitted to be given under this Agreement will be in writing and will be effectively made and given if given in accordance with the notice and communication provisions of the Credit Agreement.
20. **Release of Information.** The Grantor authorizes the Agent to provide a copy of this Agreement and such other information as may be requested of the Agent by Persons entitled thereto pursuant to any applicable legislation, and otherwise with the consent of the Grantor.
21. **Waivers and Indemnity.** Except as prohibited by applicable law, the Grantor unconditionally and irrevocably waives (i) all claims, damages and demands it may acquire against the Agent and the Lenders arising out of the exercise by the Agent, the Lenders or any Receiver of any rights or remedies under this Agreement or at law except as a result of, and to the extent that such claims, damages or demands are caused by the gross negligence or wilful misconduct of the Agent or a Lender, (ii) all of the rights, benefits and protections given by any present or future statute that imposes limitations on the rights, powers or remedies of a secured party or on the methods of, or procedures for, realization of security, including any "seize or sue" or "anti-deficiency" statute or any similar provision of any other statute. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Agent. The Agent will not, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Event of Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Agent, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Agent of any right or remedy hereunder on any one occasion will not be construed as a bar to any right or remedy which the Agent or any Lenders would otherwise have on any future occasion. Neither the taking of any judgment nor the exercise of any power of seizure or sale will extinguish the liability of the Grantor to pay the Secured Obligations, nor will the same operate as a merger of any covenant contained in this Agreement or of any other liability, nor will the acceptance of any payment or other security constitute or create any novation. The Grantor agrees to indemnify the Agent or any Lenders from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (except by reason of the gross negligence or wilful misconduct of the Agent or any Lenders) which may be imposed on, incurred by, or asserted against the Agent or and Lenders and arising by reason of any action (including any action referred to in this Agreement) or inaction or omission to do any act legally required by the Grantor. This indemnification will survive the satisfaction, release or extinguishment of the Secured Obligations and the Security Interests created by this Agreement.
22. **Amalgamation.** The Grantor acknowledges that if it amalgamates, merges or consolidates with any other corporation or corporations, then (i) the Collateral and the

Security Interests created by this Agreement will extend to and include all of the property and assets of each of the amalgamating, merging or consolidating corporations and the amalgamated, merged or consolidated corporation and any property or assets of the amalgamated, merged or consolidated corporation thereafter owned or acquired, (ii) the term "Grantor", where used in this Agreement, will extend to and include the amalgamated, merged or consolidated corporation; and (iii) the term "Secured Obligations", where used in this Agreement, will extend to and include the Secured Obligations of each of the amalgamating, merging or consolidating corporations and the amalgamated, merged or consolidated corporation.

23. **Governing Law; Attornment.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and will be treated, in all respects, as a Ontario contract. The Grantor submits and attorns to the non-exclusive jurisdiction of the courts of Ontario. To the extent permitted by applicable law, the Grantor irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in courts of such Province.
24. **Conflict.** In the event that there is any conflict or inconsistency between the provisions contained in this Agreement and the provisions contained in the Credit Agreement, then the provisions of the Credit Agreement shall have priority over and shall govern to the extent of such conflict or inconsistency. Provided, however, that the existence of a particular representation, warranty, covenant or other provision in this Agreement which is not contained in the Credit Agreement shall not be deemed to be a conflict or inconsistency, and that particular representation, warranty, covenant or other provision shall continue to apply.
25. **Interpretation.** The division of this Agreement into sections and paragraphs, and the insertion of headings, is for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. When used in this Agreement, the word "including" (or includes) means "including (or includes) without limitation". Any reference in this Agreement to a "Section" means the relevant Section of this Agreement.
26. **Agent and Lenders.** The Grantor hereby acknowledges that the Agent acts for itself and on behalf of each of the Lenders as agent in connection with the Credit Agreement and the assignments, transfers, pledges, hypothecations and other security interests granted in favour of the Agent and the Lenders hereunder are and shall be held by the Agent for the benefit of itself and the Lenders.
27. **Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.



28. **Successors and Assigns.** This Agreement will enure to the benefit of, and be binding on, the Grantor and its successors and permitted assigns, and will enure to the benefit of, and be binding on, the Agent and the Lenders and their respective successors and assigns. The Grantor may not assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the Agent. The Agent may assign this Agreement and any and all benefits hereunder in accordance with the assignment provisions applicable to the Credit Agreement.
29. **Acknowledgement of Receipt/Waiver.** The Grantor acknowledges receipt of an executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement, financing change statement or verification statement in respect of any registered financing statement or financing change statement prepared, registered or issued in connection with this Agreement.
30. **Permitted Dispositions.** The Agent hereby agrees, and the Lenders hereby authorize and direct the Agent, in each case by their acceptance of the benefits of this Agreement, to discharge and release any Security Interests in any part of the Collateral, to re-deliver any such Collateral in its possession and execute and deliver, at the expense of the Grantor, all such documents and instruments as may be reasonably required by the Grantor to permit a sale, transfer, disposition or other transaction permitted under and completed in full compliance with the terms and conditions of the Credit Agreement.
31. **Discharge.** Subject to the next sentence, the Security Interest in the Collateral shall remain in effect until all obligations of the Grantor under the Guarantee have been repaid in full or such Guarantee has been terminated in accordance with its terms, and shall not be diminished by any repayment received by, or other recovery made by, the Agent or the Lenders after January 26, 2009. The Security Interest in the Collateral will terminate if, and will be discharged if, (i) Final Completion has occurred, (ii) an amount of additional funds necessary to bring the Budget In Balance has been contributed to the Borrower (by way of additional common equity) by Ken Fowler Enterprises Limited, Mr. Ken Fowler, Mr. Peter Fowler or one or more of their respective Affiliates, and (iii) no Default or Event of Default has occurred and is continuing. If the foregoing conditions have been met, and at the request and expense of the Grantor, the Agent will promptly execute and deliver to the Grantor such releases, discharges, financing statements and other documents or instruments as the Grantor may reasonably require and the Agent will redeliver to the Grantor, or as the Grantor may otherwise direct the Agent, any Collateral in its possession.
32. **Default.** This Agreement is a Loan Document under the Credit Agreement and any failure by the Grantor to perform its obligations under this Agreement constitutes an Event of Default under the Credit Agreement.
33. **Intercreditor Agreement.** For greater certainty, if the Intercreditor Agreement is no longer in effect, this Agreement will be interpreted without reference to the Intercreditor Agreement.

**[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF the Grantor has executed this Agreement effective as of the date first above written.

**KEN FOWLER TEXAS, INC.**  
110 Hannover Drive, Suite 203B  
St. Catharines, Ontario L2W 1A4

Per: 

Name:

Title:

I have the authority to bind the Corporation

**SCHEDULE "A"**

**LOCATION OF COLLATERAL**

1. **110 Hannover Drive, St. Catharines, ON L2W 1A4**

**SCHEDULE C**  
**SECURITIES PLEDGE AGREEMENT**

## SECURITIES PLEDGE AGREEMENT

**TO:** WestLB AG, Toronto Branch  
Royal Bank Plaza, North Tower  
200 Bay Street, Suite 2301  
Toronto, ON M5J 2J1

**THIS AGREEMENT** effective as of April 9, 2009 is made by and between **WESTLB AG, TORONTO BRANCH**, in its capacity as agent acting for and on behalf of itself and the Lenders (as defined below) (together with its successors and assigns, the "**Agent**"), and **KEN FOWLER ENTERPRISES LIMITED** (the "**Grantor**").

**WHEREAS** as general and continuing collateral security for the payment and fulfillment of the Secured Obligations, the Grantor has agreed, *inter alia*, to pledge to the Agent, acting on behalf of and for the benefit of itself and the Lenders, a security interest in the Collateral.

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Grantor, the Grantor agrees and covenants with the Agent and the Lenders as follows:

1. **Defined Terms.** All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Credit Agreement. In addition, in this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings set forth below:
  - (a) "**Certificated Security**", "**Investment Property**", "**Proceeds**", "**Securities Account**", "**Securities Intermediary**", "**Security**", "**Security Certificate**", "**Security Entitlement**", and "**Uncertificated Security**", have the meanings given to them in the PPSA;
  - (b) "**1122015**" means 1122015 Ontario Inc., an Ontario corporation, and its successors and assigns;
  - (c) "**1122015 Consent**" means a consent and waiver executed by all shareholders to the 1122015 Shareholders' Agreement whereby each of the shareholders consents to the pledge by the Grantor of the shares owned in the capital stock of 1122015 and to the subsequent transfer by the Grantor to the Agent (or any receiver appointed by it) upon realization under the terms of this Agreement;
  - (d) "**1122015 Shareholders' Agreement**" means the shareholders' agreement made as of October, 2002 among 1122015, Grey Sisson Enterprises Inc., the Grantor and Montgomery Hospitality Inc. in respect of the shareholdings of 1122015;

- (e) **"Agreement"** means this agreement and the schedules hereto and any amendments, supplements, restatements, modifications or replacements of this agreement or the schedules at any time and from time to time;
- (f) **"Collateral"** means all property, undertaking and assets subject to the Security Interest constituted by Section 2 hereof including, without limitation, the Pledged Property;
- (g) **"Companies"** means all members of the Borrower Group and all Core Holdings including, without limitation, SIR, 1122015, KF Columbus, KF NY, KF Texas, Fairmont, Roadware and Prudhommes and **"Company"** means any one of them;
- (h) **"Company's Jurisdiction"** means, with respect to any Company, its jurisdiction as determined under section 44 of the STA;
- (i) **"Credit Agreement"** means the credit agreement dated as of February 1, 2007 by and among The Rosseau Resort Developments Inc., an Ontario corporation (the **"Borrower"**), as borrower, the Agent, as issuer of the Letters of Credit and as administrative agent for the Lenders, CIT Financial Ltd. (as syndication agent for the Lenders), and Raiffeisen Zentralbank Osterreich AG (as documentation agent for the Lenders), and various financial institutions as are or may become parties thereunder from time to time, as lenders, as such agreement has been or may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time;
- (j) **"Event of Default"** means the occurrence of an Event of Default under the Credit Agreement;
- (k) **"Fairmont"** means Fairmont Hot Springs Resort Ltd., a British Columbia corporation, and its successors and assigns;
- (l) **"Guarantee"** means the guarantee dated as of the date hereof by the Grantor in favour of the Agent, for and on behalf of itself and the Lenders (as amended, supplemented, restated or replaced from time to time with the prior written consent of the Senior Lenders), and those guarantees entered into in the future by the Grantor (which have been consented to in writing by the Senior Lenders) in favour of the Agent, the Lenders or any of the Secured Parties under, in connection with or with respect to the Credit Agreement but for greater certainty, excluding any guarantees (each of which may be amended, supplemented or replaced from time to time) provided to the Agent, for and on behalf of the Lenders from time to time, prior to the date hereof;
- (m) **"Intercreditor Agreement"** means the subordination and postponement agreement dated as of the date hereof among Meridian Credit Union Limited, Ken Fowler Enterprises Limited, as borrower, TD Capital Mezzanine Partners Management Ltd., as agent, WestLB AG, Toronto Branch, as administrative agent

and Ken Fowler, Columbus, Inc., Ken Fowler (N.Y.), Inc., Ken Fowler Texas, Inc., and Peter Fowler Enterprises Ltd., collectively, as guarantors, as amended, supplemented or otherwise modified or restated or replaced from time to time.

- (n) **"KF Columbus"** means Ken Fowler, Columbus, Inc., an Ohio corporation, and its successors and assigns;
- (o) **"KF NY"** means Ken Fowler (N.Y.), Inc., a New York corporation, and its successors and assigns;
- (p) **"KF Texas"** means Ken Fowler Texas, Inc., a Texas corporation, and its successors and assigns;
- (q) **"Lenders"** means, collectively, all lender signatories to the Credit Agreement, together with any other lender who may become a party to the Credit Agreement from time to time, and their respective successors and assigns;
- (r) **"Pledged Certificated Securities"** means any and all Collateral that is a Certificated Security;
- (s) **"Pledged Property"** means all assets, property and undertaking described in **Schedule "A"** attached hereto and all other Investment Property, and options and rights in respect thereof, of the Companies now owned or hereafter owned and acquired by the Grantor (or issued to the Agent or its nominee in compliance with this Agreement);
- (t) **"Pledged Securities"** means any and all Collateral that is a Security;
- (u) **"Pledged Securities Accounts"** means any and all Collateral that is a Securities Account;
- (v) **"Pledged Securities Intermediary"** means, at any time, any Person that is at such time a Securities Intermediary with which a Pledged Securities Account is maintained;
- (w) **"Pledged Security Certificates"** means any and all Security Certificates representing the Pledged Certificated Securities;
- (x) **"Pledged Security Entitlements"** means any and all Collateral that is a Security Entitlement;
- (y) **"Pledged Uncertificated Securities"** means any and all Collateral that is an Uncertificated Security;
- (z) **"PPSA"** means the *Personal Property Security Act* (Ontario), as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time prescribed under such legislation;



- (aa) **"Prudhommes"** means Prudhommes Holding Company Ltd., an Ontario corporation, and its successors and assigns;
- (bb) **"Prudhommes Consent"** means a consent and waiver executed by all shareholders to the Prudhommes Shareholders' Agreement whereby each of the shareholders consents to the pledge by the Grantor of the shares owned in the capital stock of Prudhommes and to the subsequent transfer by the Grantor to the Agent (or any receiver appointed by it) upon realization under the terms of this Agreement;
- (cc) **"Prudhommes Shareholders' Agreement"** means the shareholders' agreement made as of September 28, 2007 among Prudhommes, the Grantor and Peter Fowler Enterprises Ltd. in respect of the shareholdings of Prudhommes;
- (dd) **"Roadware"** means Roadware Group Inc., an Ontario corporation, and its successors and assigns;
- (ee) **"Secured Obligations"** means all present and future indebtedness, liabilities and obligations of any and every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of the Grantor to the Secured Parties or any of them arising under the Guarantee (and not under any other document), and all fees, including Receiver's fees and expenses, legal costs (on a solicitor and his own client basis) and other costs, charges and expenses, and the payment of all costs and expenses incurred by the Secured Parties or any of them, in enforcing any rights under this Agreement;
- (ff) **"Secured Parties"** means the Lenders, the Issuer, the Agent, each counterparty to a Rate Protection Agreement that is (or at the time such Rate Protection Agreement was entered into, was) a Lender or an Affiliate thereof reasonably acceptable to the Agent and, in each case, each of their respective successors and permitted transferees and assigns; and **"Secured Party"** means each of them;
- (gg) **"Security Interest"** means a mortgage, hypothec, title retention, pledge, lien, charge, security interest or other encumbrance whatsoever, whether fixed or floating and howsoever created or arising;
- (hh) **"Securities Intermediary's Jurisdiction"** means, with respect to any Securities Intermediary, its jurisdiction as determined under section 45(2) of the STA;
- (ii) **"Senior Lenders"** has the meaning given to such term in the Intercreditor Agreement.
- (jj) **"Shareholder Agreements"** means the SIR Shareholders' Agreement, the 1122015 Shareholders' Agreement and the Prudhommes Shareholders' Agreement;

- (kk) “**Shareholder Consents**” means the 1122015 Consent, the SIR Consent and the Prudhommes Consent;
  - (ll) “**SIR**” means SIR Corp., an Ontario corporation, and its successors and assigns;
  - (mm) “**SIR Consent**” means a consent and waiver executed by all shareholders to the SIR Shareholders’ Agreement whereby each of the shareholders consents to the pledge by the Grantor of the shares owned in the capital stock of SIR and to the subsequent transfer by the Grantor to the Agent (or any receiver appointed by it) upon realization under the terms of this Agreement;
  - (nn) “**SIR Shareholders’ Agreement**” means the shareholders’ agreement made as of September 1, 1995 among SIR, the Grantor, Charlesway Corporation Limited, Peter Fowler Enterprises Ltd., Grey Sisson Enterprises Inc., Mark Bibby, John Harper, 1122015, Barbara Fowler, Bruce Dimytosh and Del McMillan in respect of the shareholdings of SIR;
  - (oo) “**STA**” means the *Securities Transfer Act, 2006* (Ontario), as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time prescribed under such legislation;
  - (pp) “**TD Credit Agreement**” means the credit agreement dated as of October 22, 2007 among, *inter alia*, the Grantor as borrower, TD Capital Mezzanine Partners Management Ltd., as agent, the guarantors party thereto and the lenders party thereto, as amended, supplemented, restated or modified from time to time; and
  - (qq) “**TD Security**” has the meaning given in Section 4(e)(ii).
2. **Pledge.** As general and continuing collateral security for the payment and performance of all Secured Obligations, the Grantor hereby assigns and pledges to and in favour of the Agent, for and on behalf of and for the benefit of itself and the Lenders, and the Grantor hereby grants to the Agent, for the benefit of and on behalf of itself and the Lenders, a continuing security interest in the following (collectively, the “**Collateral**”):
- (a) the Pledged Property, together with any replacements thereof and substitutions therefor, and all Pledged Certificated Securities and all other certificates and instruments evidencing or representing such Pledged Property;
  - (b) all interest, dividends and distributions, whether in cash, kind or stock, received or receivable upon or in respect of any of the Pledged Property and all moneys or other property payable or paid on account of any return or repayment of capital in respect of any of the Pledged Property or otherwise distributed in respect thereof or which will in any way be charged to, or payable or paid out of, the capital of any Company on account of the Pledged Property;

- (c) all other property that may at any time be received or receivable by or otherwise distributed to the Grantor in respect of, or in substitution for, or in exchange for, any of the foregoing; and
- (d) all cash, securities and other proceeds of the foregoing and all rights and interests of the Grantor in respect thereof or evidenced thereby, including all moneys received from time to time by the Grantor in connection with the sale or other disposition of any of the Pledged Property; provided, however, that the Grantor will not sell or otherwise dispose of any of the Pledged Property or purport to do any of the foregoing, except in accordance with the provisions of the Credit Agreement.

3. **Delivery of Pledged Certificated Securities.** Subject to the Intercreditor Agreement, the Grantor shall deliver to the Agent, contemporaneously with the execution of this Agreement, all Pledged Certificated Securities, such duly executed stock powers of attorney to transfer the Pledged Certificated Securities currently held by the Grantor from the Grantor to the Agent or the Agent's nominee and all other materials as may be reasonably required from time to time to provide the Agent with control over all Pledged Certificated Securities in the manner provided under section 23 of the STA. If the constating documents of any Company restrict the transfer of the securities of said Company, then the Grantor will also deliver to the Agent a certified copy of a resolution of the directors or shareholders of each Company consenting to the transfer(s) contemplated by this Agreement. Upon the occurrence and during the continuance of an Event of Default, subject to the Intercreditor Agreement, the Agent shall have the right, at its option, to have any or all of the Pledged Certificated Securities registered in the name of the Agent or its nominee.

4. **Representations and Warranties.** The Grantor hereby represents and warrants to the Secured Parties and acknowledges that the Secured Parties are relying thereon, notwithstanding any investigation by any Secured Party otherwise, that:

- (a) **Grantor Information.** As of the date hereof, all of the information set out in **Schedule "A"** is accurate and complete and all other Pledged Property (including, without limitation, SIR Royalty Income Trust units) is described therein;
- (b) **Issued and Outstanding Capital.** As of the date hereof, the authorized capital of:
  - (i) 1122015 consists of an unlimited number of common shares of which 200 common shares are issued and are outstanding, all as fully paid and non-assessable shares in the capital of 1122015,
  - (ii) SIR consists of an unlimited number of common shares and an unlimited number of Class A shares of which 15,774,795.26 common shares and no Class A shares have been issued and are outstanding, all as fully paid and non-assessable shares in the capital of SIR,

- (iii) KF Columbus consists of a maximum of 750 common shares of which 750 common shares are issued and are outstanding, all as fully paid and non-assessable shares in the capital of KF Columbus,
  - (iv) KF NY consists of a maximum of 200 common shares of which 200 commons shares are issued and are outstanding, all as fully paid and non-assessable shares in the capital of KF NY,
  - (v) KF Texas consists of a maximum of 1,000,000 common shares of which 3,664 common shares are issued and are outstanding, all as fully paid and non-assessable shares in the capital of KF Texas,
  - (vi) Fairmont consists of an unlimited number of common shares and an unlimited number of Series A preferred shares of which 100 common shares and 80 Series A preferred shares are issued and are outstanding, all as fully paid and non-assessable shares in the capital of Fairmont,
  - (vii) Roadware consists of an unlimited number of common shares of which 1,595,533 common shares are issued and are outstanding, all as fully paid and non-assessable shares in the capital of Roadware; and
  - (viii) Prudhommes consists of an unlimited number of common shares, an unlimited number of Class A shares and an unlimited number of Class B shares of which 232,222 common shares are issued and are outstanding, all as fully paid and non-assessable shares in the capital of Prudhommes;
- (c) **SIR Options.** The options listed in **Schedule "B"** attached hereto are the only options existing and issued in favour of third parties by the Grantor as of the date hereof;
- (d) **Valid Issue.** The Pledged Securities referred to in **Schedule "A"** attached hereto have been duly issued and are outstanding as fully paid and non-assessable shares in the capital of each of the Companies, respectively, and were issued in compliance with all applicable laws;
- (e) **Title, No Other Security Interests.** The Grantor is the legal, registered and beneficial owner of the Pledged Property, including but not limited to the Pledged Certificated Securities referred to in **Schedule "A"** attached hereto, free and clear of all Security Interests except for: (i) the Security Interests created by this Agreement; (ii) the Security Interests in favour of TD Capital Mezzanine Partners Management Ltd. which are contemplated by the Intercreditor Agreement (the **"TD Security"**); and (iii) any other Security Interests expressly permitted in writing by the Agent. No security agreement, financing statement or other notice with respect to any or all of the Collateral other than in respect of the Permitted Liens, is on file or on record in any public office, except for filings in favour of, or permitted in writing by, the Agent;

- (f) **No Required Disposition.** Save and except as permitted by the Credit Agreement and save and except for the Shareholder Agreements and the option agreements listed in **Schedule "B"** attached hereto, there is no existing agreement, option, right or privilege (i) capable of becoming an agreement or option pursuant to which the Grantor would be required to sell or otherwise dispose of any of the Pledged Property, or (ii) made or granted by the Grantor for the subscription and issuance of any unissued shares in the capital of any Company;
- (g) **Consents.** Save and except for the TD Security and the Shareholders Agreements, as qualified by the Shareholder Consents, and save and except for the TD Credit Agreement, and save and except for the Mezzanine Loan Agreement, the Grantor is not a party to any agreement which requires the consent of any Person nor is the consent of any other Person required in connection with the execution, delivery, performance, validity or enforceability of this Agreement;
- (h) **No Conflict.** Save and except for the Shareholders Agreements, as qualified by the Shareholder Consents, the execution, delivery and performance of this Agreement will not violate any provision or requirement of any law, agreement or contractual obligation of the Grantor; and
- (i) **Survival of Representations and Warranties.** All agreements, representations, warranties and covenants made by the Grantor in this Agreement are material, will be considered to have been relied on by the Secured Parties and will survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Agent and any disposition or payment of the Secured Obligations until repayment and performance in full of the Secured Obligations and termination of all rights of the Grantor that, if exercised, would result in the existence of Secured Obligations. Except for representations and warranties expressed herein to be made as of a specific date, the representations and warranties contained herein will be repeated and deemed to be repeated by the Grantor as being true and correct in every material respect upon each increase in the principal amount of the "**Obligations**" (as defined in the Guarantee).

5. **Covenants.** The Grantor covenants and agrees with the Secured Parties that:

- (a) **Limitations on Security Interests on Collateral.** The Grantor shall have no right to sell, assign, transfer or otherwise convey, or to mortgage, charge, grant a security interest in or otherwise encumber all or any part of the Pledged Property or its interest therein except in accordance with the provisions of the TD Credit Agreement in effect on the date hereof or with the prior written consent of the Agent. Upon the occurrence and during the continuation of an Event of Default, subject to the Intercreditor Agreement, all Proceeds of the Collateral received by or on behalf of the Grantor, whether or not arising in the ordinary course of the

Grantor's business, will be received by the Grantor as trustee for the Secured Parties and will be immediately paid to the Agent;

- (b) **Pledged Certificated Securities.** The Grantor will ensure that, upon the occurrence and during the continuance of an Event of Default, at the request of the Agent, subject to the Intercreditor Agreement, all Pledged Certificated Securities will be registered in the name of the Agent or its nominee. The Grantor will ensure that all Pledged Certificated Securities will be forthwith delivered to and remain in the custody of the Agent or its nominee, subject to the Intercreditor Agreement, and that all certificates, instruments or other documents representing or evidencing any Pledged Property acquired or issued subsequent to the date hereof will be, upon the occurrence and during the continuance of an Event of Default and at the request of the Agent, subject to the Intercreditor Agreement, registered in the name of the Agent or its nominee and will forthwith after issuance be delivered to, and remain in the custody of, the Agent or its nominee;
- (c) **Shareholder Materials.** Upon the written request of the Agent, the Grantor shall deliver to the Agent copies of all reasonably requested materials received by the Grantor from any of the Companies listed on **Schedule "A"** attached hereto including, without limitation, copies of all notices of meetings of the shareholders, forthwith following receipt of same;
- (d) **Pledged Uncertificated Securities.** Subject to the Intercreditor Agreement, the Grantor shall deliver to the Agent or its nominee such documents, agreements and other materials as may be reasonably required from time to time to provide the Agent or its nominee with control over all Pledged Uncertificated Securities in the manner provided under Section 24 of the STA;
- (e) **Pledged Security Entitlements.** Subject to the Intercreditor Agreement, the Grantor shall deliver to the Agent or its nominee such documents, agreements and other materials as may be reasonably required from time to time to provide the Agent or its nominee with control over all Pledged Security Entitlements in the manner provided under Section 25 or 26 of the STA; and
- (f) **Notices.** The Grantor will advise the Agent promptly, in reasonable detail, of:
  - (i) any Security Interest (other than the Security Interests created by this Agreement and any Security Interest permitted in writing by the Agent) on, or claim asserted against, any of the Collateral other than by the TD Security;
  - (ii) the acquisition after the date of this Agreement of any right, title or interest in any Pledged Property (including, without limitation, additional Securities in Roadware issued to the Grantor in lieu of interest on certain promissory notes issued by Roadware to the Grantor), together with all applicable, information set out in **Schedule "A"** with respect thereto;

- (iii) any change to a Company's Jurisdiction set out in **Schedule "A"**; and
- (iv) any change in the location of the jurisdiction of incorporation or amalgamation, chief executive office, or domicile of the Grantor.

6. **Rights and Duties of Agent.** Subject to the Intercreditor Agreement, the Agent will have and be entitled to exercise all such powers hereunder as are specifically delegated to the Agent by the terms hereof, together with such powers as are incidental thereto. Subject to the Intercreditor Agreement, the Agent may execute any of its duties hereunder by or through agents or employees and will be entitled to retain counsel and to act in reliance upon the advice of such counsel concerning all matters pertaining to its duties hereunder. The Agent and any nominee on its behalf will be bound to exercise in the holding of the Pledged Property and other Collateral only the same degree of care as it would exercise with respect to similar property of its own held in the same place. The Agent and any nominee on its behalf will be deemed to have exercised reasonable care with respect to the custody and preservation of the Collateral if it takes such action for that purpose as the Grantor will reasonably request in writing, but failure of the Agent or its nominee to comply with any such request will not of itself be deemed a failure to exercise reasonable care, and no failure of the Agent or its nominee to preserve or protect any rights with respect to the Collateral against prior parties, or to do any act with respect to preservation of the Collateral not so requested by the Grantor, will be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral other than by the gross negligence or wilful misconduct of the Agent or any Lender. Neither the Agent, the Lenders nor any nominee acting on behalf of the Agent or the Lenders, nor any director, officer or employee of the Agent or the Lenders or any such nominee will be liable for any action taken or admitted to be taken hereunder or in connection herewith except for its own gross negligence or wilful misconduct.

7. **Voting Right.** Unless an Event of Default has occurred and is continuing, the Grantor will be entitled to exercise all voting power from time to time exercisable in respect of the Pledged Property and give consents, waivers and ratifications in respect thereof.

Immediately upon and during the continuance of an Event of Default, all such rights of the Grantor to vote and give consents, waivers and ratifications will cease and, subject to the Intercreditor Agreement, the Agent will be entitled to exercise all such voting rights and to give all consents, waivers and ratifications. Until such notice is given, subject to the Intercreditor Agreement, the Agent shall, from time to time, as requested by the Grantor, execute such power of attorney and proxies as the Grantor reasonably requires to exercise voting rights in respect of all Pledged Securities.

8. **Dividends.**

- (a) Unless an Event of Default has occurred and is continuing:
  - (i) the Grantor will be entitled to receive any and all cash dividends and distributions on the Pledged Securities or Pledged Security Entitlements

which it is otherwise entitled to receive, but any and all stock and/or liquidating dividends, distributions of property, returns of capital or other distributions made in property other than cash on or in respect of the Pledged Securities or Pledged Security Entitlements, whether resulting from a subdivision, combination or reclassification of the outstanding capital stock of any Company or received in exchange for the Pledged Securities or Pledged Security Entitlements or any part thereof or as a result of any merger, consolidation, acquisition or other exchange of assets to which any issuer may be a party or otherwise, or as a result of any issuance of Securities in Roadware to the Grantor in lieu of interest on certain promissory notes issued by Roadware to the Grantor, and any and all cash and other property received in exchange for any Collateral, will be and become part of the Collateral assigned and pledged hereunder except, in each case, any such distributions, cash or other property is received as a result of a transaction permitted by and completed in full compliance with the terms and conditions of the Credit Agreement and, if received by the Grantor, subject to the Intercreditor Agreement, will forthwith be delivered to the Agent or its nominee (accompanied, if appropriate by proper instruments of assignment and/or powers of attorney executed by the Grantor in accordance with the Agent's instructions) to be held subject to the terms of this Agreement except, in each case, any such distributions, cash or other property as is received as a result of a transaction permitted by and completed in full compliance with the terms and conditions of the Credit Agreement; and

- (ii) if the Pledged Security Certificates have been registered in the name of the Agent or its nominee, the Agent will execute and deliver (or cause to be executed and delivered) to the Grantor all such dividend orders and other instruments as the Grantor may request for the purpose of enabling the Grantor to receive the dividends or other payments which the Grantor is authorized to receive and retain pursuant to Section 8(a)(i) above.
  - (b) If an Event of Default has occurred and is continuing, all rights of the Grantor pursuant to this Section will cease and, subject to the Intercreditor Agreement, the Agent will have the sole and exclusive right and authority to receive and retain the dividends which the Grantor would otherwise be authorized to retain pursuant to this Section. Any money and other property paid over to or received by the Agent pursuant to the provisions of this Section will be retained by the Agent, for the rateable benefit of the Lenders, as additional Collateral hereunder and be applied in accordance with the provisions hereof.
9. **Remedies.** If an Event of Default has occurred and is continuing, subject to the Intercreditor Agreement, the Agent may, without notice to or the consent of the Grantor or any other person (other than as required by applicable law), take all or any of the following actions:



- (a) transfer all or any part of the Collateral into the name of the Agent or its nominee, with or without disclosing that such Collateral is subject to the Security Interests hereunder;
- (b) notify any parties obligated on any of the Collateral to make payment to the Agent, for the rateable benefit of the Lenders, of any amounts due or to become due thereunder;
- (c) vote any or all of the Pledged Securities or Pledged Security Entitlements (whether or not transferred to the Agent or its nominee) and give or withhold all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof;
- (d) exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any of the Pledged Property as if it were the absolute owner thereof, including the right to exchange at its discretion any and all of the Pledged Property upon the merger, consolidation, reorganization, recapitalization or other readjustment of any Company or upon the exercise by any Company or the Agent of any right, privilege or option pertaining to any of the Pledged Property, and in connection therewith, to deposit and deliver any and all of the Pledged Property with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine, all without liability except to account for property actually received by the Agent;
- (e) from time to time realize upon, collect, sell, transfer, assign, give options to purchase, or otherwise dispose of and deliver the Pledged Property and other Collateral, or any part thereof, in such a manner as may seem to it advisable, and for the purposes thereof each and every requirement relating thereto and prescribed by law or otherwise is hereby waived to the extent permitted by law and the Grantor agrees that in any offer or sale of any of the Pledged Property, the Agent is hereby authorized to comply with any limitation or restriction in connection with such offer or sale as it may be advised by counsel is necessary in order to avoid any violation of applicable law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, requiring that such prospective bidders and purchasers have certain qualifications, and restricting such prospective bidders and purchasers to persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Pledged Property), or in order to obtain any required approval of the sale or of the purchase by any governmental or regulatory authority or official, and the Grantor further agrees that such compliance will not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor will the Agent or the Lenders be liable or accountable to the Grantor for any discount allowed by reason of the fact that such Pledged Property is sold in compliance with any such limitation or restriction;

- (f) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part of the Collateral, or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect to any Collateral;
- (g) to the extent permitted by applicable law, purchase any or all of the Pledged Property and other Collateral, whether in connection with a sale made under the power of sale herein contained or pursuant to judicial proceedings or otherwise; and
- (h) issue a notice of exclusive control to a Securities Intermediary under any control agreement among the Grantor, the Agent and a Securities Intermediary,

provided, however, that the Agent and the Lenders will not be bound to deal with the Pledged Property and other Collateral as aforesaid, and will not be liable for any loss which may be occasioned by any failure to do so and no action of the Agent or the Lenders permitted hereunder will impair or affect any rights of the Secured Parties in and to the Collateral.

10. **Application of Proceeds.** Subject to the Intercreditor Agreement, all Proceeds of Collateral received by the Agent for the rateable benefit of the Lenders, may be applied to discharge or satisfy any expenses (including expenses of enforcing the Agent's rights under this Agreement), Security Interests charging the Collateral, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by the Agent to protect the Collateral or to keep in good standing any Security Interests on the Collateral ranking in priority to any of the Security Interests created by this Agreement or to sell or otherwise dispose of the Collateral. The balance of such Proceeds may, at the sole discretion of the Agent, subject to the Intercreditor Agreement, be held as collateral security for the Secured Obligations or be applied to such of the Secured Obligations (as are due and payable) in such manner and at such times as the Agent considers appropriate and thereafter will be accounted for as required by law.
11. **Agent's Appointment as Attorney-in-Fact.** The Grantor constitutes and appoints the Agent, for the rateable benefit of the Lenders, and any officer or agent of the Agent, or a receiver appointed by the Agent, with full power of substitution, as the Grantor's true and lawful attorney-in-fact with full power and authority in the place of the Grantor and in the name of the Grantor or in its own name, from time to time in the Agent's discretion upon the occurrence and during the continuance of an Event of Default has occurred and so long as it is continuing, subject to the Intercreditor Agreement, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney acting reasonably, may be necessary or desirable to accomplish the purposes of this Agreement. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the Security Interests created by this Agreement are realized. Nothing in this Section affects the right of the Agent, the Lenders or any one or more of them or any other Person, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices,

verification agreements and other documents relating to the Collateral and this Agreement as the Agent or such other Person considers appropriate, subject to the Intercreditor Agreement.

12. **Performance by Agent of Grantor's Secured Obligations.** If the Grantor fails to perform or comply with any of the obligations of the Grantor under this Agreement, subject to the Intercreditor Agreement, the Agent may, but need not, perform or otherwise cause the performance or compliance of such obligation, provided that such performance or compliance will not constitute a waiver, remedy or satisfaction of such failure. The reasonable expenses of the Agent incurred in connection with any such performance or compliance will be payable by the Grantor to the Agent immediately on demand, and until paid, any such expenses will form part of the Secured Obligations and will be secured by the Security Interests created by this Agreement.
13. **Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
14. **Limitations on Agent's Liability.** Neither the Agent nor any of the Lenders will be liable to the Grantor or any other Person for any failure or delay in exercising any of the rights of the Grantor under this Agreement (including any failure to take possession of, collect, sell or otherwise dispose of any collateral, or to preserve rights against prior parties). Neither the Agent nor any of the Lenders is required to take, or will have any liability other than by the gross negligence or wilful misconduct of the Agent or any Lender, for any failure to take or deal in taking, any steps necessary or advisable to preserve rights against other Persons under any Collateral in its possession. Neither the Agent nor any of the Lenders will be liable for any, and the Grantor will bear the full risk of all, loss or damage to any and all of the Collateral (including any Collateral in the possession of the Agent) caused for any reason other than the gross negligence or wilful misconduct of the Agent or any Lender.
15. **Attachment.** The Grantor and the Secured Parties acknowledge that value has been given by the Secured Parties for the granting of the Security Interest, that the Grantor has rights in the Pledged Property (other than future and hereafter acquired Pledged Property) and that the Grantor and the Secured Parties have agreed not to postpone the time for attachment of the Security Interest.
16. **Dealings by Agent.** The Agent will not be obliged to exhaust its recourse against the Grantor or any other Person or against any other security before realizing upon or otherwise dealing with the Collateral in such manner as the Agent may consider desirable, subject to the Intercreditor Agreement. The Agent may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Grantor and any other Person and with any or all of the Collateral, and with other security and sureties, as the Agent may see fit, subject

to the Intercreditor Agreement, all without prejudice to the Secured Obligations or to the rights and remedies of the Secured Parties under this Agreement. The powers conferred on the Agent under this Agreement are solely to protect the interests of the Secured Parties in the Collateral and will not impose any duty upon the Agent or any of the Lenders to exercise any such powers.

17. **Non-Exclusivity of Remedies.** This Agreement and the Security Interests arising hereunder are in addition to and not in substitution for any other security now or hereafter held by the Agent in respect of the Grantor, the Secured Obligations or the Collateral. No remedy for the enforcement of the rights of the Agent hereunder will be exclusive of or dependent on any other such remedy but any one or more of such remedies may from time to time be exercised independently or in combination.
18. **Communication.** Any notice or communication required or permitted to be given under this Agreement will be in writing and will be effectively made and given if given in accordance with the notice and communication provisions of the Credit Agreement.
19. **Release of Information.** The Grantor authorizes the Agent to provide a copy of this Agreement and such other information as may be requested of the Agent by Persons entitled thereto pursuant to any applicable legislation, and otherwise with the consent of the Grantor.
20. **Waivers and Indemnity.** Except as prohibited by applicable law, the Grantor unconditionally and irrevocably waives: (i) all claims, damages and demands it may acquire against the Secured Parties arising out of the exercise by the Secured Parties or any receiver of any rights or remedies under this Agreement or at law, except as a result of, and to the extent that such claims, damages and demands are caused by the gross negligence or wilful misconduct of any of the Secured Parties, and (ii) all of the rights, benefits and protections given by any present or future statute that imposes limitations on the rights, powers or remedies of a secured party or on the methods of, or procedures for, realization of security, including any to "seize or sue" or "anti-deficiency" statute or any similar provision of any other statute. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Agent. The Agent will not, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Event of Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Agent, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Agent of any right or remedy hereunder on any one occasion will not be construed as a bar to any right or remedy which the Agent or any Lender would otherwise have on any future occasion. Neither the taking of any judgment nor the exercise of any power of seizure or sale will extinguish the liability of the Grantor to pay the Secured Obligations, nor will the same operate as a merger of any covenant contained in this Agreement or of any other liability, nor will the acceptance of any payment or other security constitute or create any

novation. The Grantor agrees to indemnify the Secured Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (except by reason of the gross negligence or wilful misconduct of any of the Secured Parties) which may be imposed on, incurred by, or asserted against the Agent or any Lender and arising by reason of any action (including any action referred to in this Agreement) or inaction or omission to do any act legally required by the Grantor. This indemnification will survive the satisfaction, release or extinguishment of the Secured Obligations and the Security Interests created by this Agreement.

21. **Amalgamation.** The Grantor acknowledges that if it amalgamates, merges or consolidates with any other corporation or corporations, then (i) the Collateral and the Security Interests created by this Agreement will extend to and include all of the property and assets of each of the amalgamating, merging or consolidating corporations and the merged or consolidated corporation and any property or assets of the amalgamated, merged or consolidated corporation thereafter owned or acquired that, in each case are of the same type or kind as the property and assets that form the Collateral, (ii) the term "Grantor", where used in this Agreement, will extend to and include the amalgamated, merged or consolidated corporation; and (iii) the term "Secured Obligations", where used in this Agreement, will extend to and include the Secured Obligations of each of the amalgamating, merging or consolidating corporations and the amalgamated, merged or consolidated corporation.
22. **Governing Law; Attornment.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Without prejudice to the ability of the Agent to enforce this Agreement in any other proper jurisdiction, the Grantor irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario. To the extent permitted by applicable law, the Grantor irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of such jurisdiction.
23. **Conflict.** In the event that there is any conflict or inconsistency between the provisions contained in this Agreement and the provisions contained in the Credit Agreement, then the provisions of the Credit Agreement shall have priority over and shall govern to the extent of such conflict or inconsistency. Provided, however, that the existence of a particular representation, warranty, covenant or other provision in this Agreement which is not contained in the Credit Agreement shall not be deemed to be a conflict or inconsistency, and that particular representation, warranty, covenant or other provision shall continue to apply.
24. **Interpretation.** The division of this Agreement into sections and paragraphs, and the insertion of headings, is for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. When used in this Agreement, the word "including" (or

includes) means "including (or includes) without limitation". Any reference in this Agreement to a "Section" means the relevant Section of this Agreement.

25. **Agent and Lenders.** The Grantor hereby acknowledges that the Agent acts for and on behalf of itself and each of the Lenders as agent in connection with the Credit Agreement and the pledges and other security interests granted in favour of the Agent and the Lenders hereunder are and shall be held by the Agent for the benefit of itself and the Lenders.
26. **Successors and Assigns.** This Agreement will enure to the benefit of, and be binding on, the Grantor and its successors and permitted assigns, and will enure to the benefit of, and be binding on, the Agent and the Lenders and their respective successors and assigns. The Grantor may not assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the Agent. The Agent may assign this Agreement and any and all benefits hereunder in accordance with the assignment provisions applicable to the Credit Agreement.
27. **Acknowledgement of Receipt/Waiver.** The Grantor acknowledges receipt of an executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement, financing change statement or verification statement in respect of any registered financing statement or financing change statement, if any, prepared, registered or issued in connection with this Agreement.
28. **Further Assurances.** Subject to the Intercreditor Agreement, the Grantor shall from time to time upon every reasonable request of the Agent, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds and assurances and things as may be necessary in the opinion of the Agent acting reasonably for more effectively, implementing and carrying out the true intent and meaning of this Agreement.
29. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement and all of which shall constitute one agreement. All counterparts shall be construed together and shall constitute one and the same agreement. This Agreement, to the extent signed and delivered by means of electronic transmission (including, without limitation, facsimile and Internet transmissions), shall be treated in all manner and respects as an original agreement and should be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.
30. **Permitted Dispositions.** The Agent hereby agrees, and the Lenders hereby authorize and direct the Agent, in each case by their acceptance of the benefits of this Agreement, to discharge and release any Security Interests in any part of the Collateral, to re-deliver any such Collateral in its possession and execute and deliver, at the expense of the Grantor, all such documents and instruments as may be reasonably required by the Grantor to

permit a sale, transfer, disposition or other transaction permitted by and completed in full compliance with the terms and conditions of the Credit Agreement.

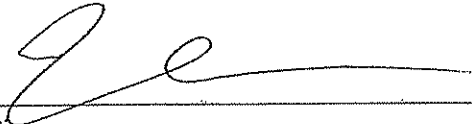
31. **Discharge.** Subject to the next sentence, the Security Interest in the Collateral shall remain in effect until all obligations of the Grantor under the Guarantee have been repaid in full or such Guarantee has been terminated in accordance with its terms, and shall not be diminished by any repayment received by, or other recovery made by, the Agent or the Lenders. The Security Interest in the Collateral will terminate if, and will be discharged if, (i) Final Completion has occurred, (ii) an amount of additional funds necessary to bring the Budget In Balance has been contributed to the Borrower (by way of additional common equity) by Ken Fowler Enterprises Limited, Mr. Ken Fowler, Mr. Peter Fowler or one or more of their respective Affiliates, and (iii) no Default or Event of Default has occurred and is continuing. If the foregoing conditions have been met, and at the request and expense of the Grantor, the Agent will promptly execute and deliver to the Grantor such releases, discharges, financing statements and other documents or instruments as the Grantor may reasonably require and the Agent will redeliver to the Grantor, or as the Grantor may otherwise direct the Agent, any Collateral in its possession.
32. **Default.** This Agreement is a Loan Document under the Credit Agreement and any failure by the Grantor to perform its obligations under this Agreement constitutes an Event of Default under the Credit Agreement.
33. **Intercreditor Agreement.** For greater certainty, if the Intercreditor Agreement is no longer in effect, this Agreement will be interpreted without reference to the Intercreditor Agreement.

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IN WITNESS WHEREOF the Grantor has executed this Agreement effective as of the date first written above.

**KEN FOWLER ENTERPRISES LIMITED**

Per:



Name:

Title:

I have authority to bind the Corporation.

Each of the undersigned hereby acknowledges and consents to the execution and performance of this Agreement by the Grantor, to the transfer of the Pledged Property as contemplated by this Agreement and to any prospective transfer of the Collateral by the Agent upon a realization on the security constituted hereby in accordance with this Agreement.

**SIR CORP.**

Per:



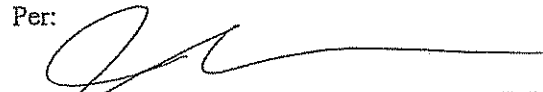
Name:

Title:

I have authority to bind the Corporation.

**1122015 ONTARIO INC.**

Per:



Name:

Title:

I have authority to bind the Corporation.



**KEN FOWLER, COLUMBUS, INC.**

Per: 

Name:

Title:

I have authority to bind the Corporation.

**KEN FOWLER (N.Y.), INC.**

Per: 

Name:

Title:

I have authority to bind the Corporation.

**KEN FOWLER TEXAS, INC.**

Per: 

Name:

Title:

I have authority to bind the Corporation.

**FAIRMONT HOT SPRINGS RESORT  
LTD.**

Per: 

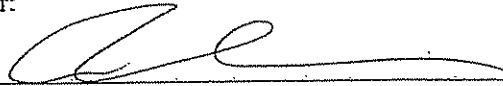
Name:

Title:

I have authority to bind the Corporation.

**PRUDHOMMES HOLDING COMPANY  
LTD.**

Per:



Name:

Title:

I have authority to bind the Corporation.

**ROADWARE GROUP INC.**

Per:



Name:

Title:

I have authority to bind the Corporation.

**Schedule "A"**  
**GRANTOR AND PLEDGED PROPERTY INFORMATION**

**Full legal name:** Ken Fowler Enterprises Limited

**Jurisdiction of incorporation or organization:** Ontario

**Chief executive office:** 110 Hannover Drive, Suite 203B, St. Catharines, Ontario, L2W 1A4

**Pledged Certificated Securities:**

<u>Name of Company</u>	<u>Company's Jurisdiction</u>	<u>Number and Class of Pledged Securities</u>	<u>Certificate No.</u>
1122015 Ontario Inc.	Ontario	100 Common	3
SIR Corp.	Ontario	1,639,300 Common	13
		497,536 Common	22
		180,509 Common	36
		60,963 Common	37
		223,769 Common	38
		1,230,986 Common	43
		712,047.38 Common	47
Ken Fowler, Columbus, Inc.	Ohio	750 Common	3
Ken Fowler (N.Y.), Inc.	New York	200 Common	4
Ken Fowler Texas, Inc.	Texas	3664 Common	2
Fairmont Hot Springs Resort Ltd.	British Columbia	10 Common	C7
		40 Common	C3
		33.3333 Preferred, Series A	AP5
Prudhommes Holding Company Ltd.	Ontario	100 Common	1
		178,529 Common	2

**Pledged Securities Accounts:**

1. Canaccord Capital Corporation Account No. 40B-657A-0 (the "Canaccord Account")
2. BMO Nesbitt Burns Inc. Account No. 401-35960-12 (the "BMO Account")

**Securities Intermediary's Jurisdictions:**

1. Ontario
2. Ontario

**Pledged Uncertificated Securities:** Nil

**Pledged Securities Entitlements:**

1. 378,400 Units of SIR Royalty Income Fund  
in the Canaccord Account.
2. 875,800 Units of SIR Royalty Income Fund  
in the BMO Account.

**Schedule "B"**  
**SIR OPTION AGREEMENT(S)**

Option Grantor	Option Holder	Entitlement to shares under option	Date of Grant and Expiry Date	Documentation
Ken Fowler Enterprises Limited	John Harper	60,963 Common Shares at exercise price of \$1.00 per share plus interest thereon at the rate per annum of the prime rate of the RBC and calculated from the 1 <sup>st</sup> day of Sept. 1993 and payable in full at the time of the exercise of the option.	Granted: Oct. 1, 1993  Expires: Sept. 30, 2005 (extended to December 31, 2008)	Stock Option Agreement dated Oct. 1, 1993 among Charlesway Corporation Limited, KFE and John Harper as extended Oct. 1, 2003, January 1, 2006 and July 1, 2006 (extension agreements not provided). As further extended by agreement dated as of January 1, 2007.

**SCHEDULE D**

**PAYMENTS**

See attached Loan Advance Request

EXHIBIT B-1

LOAN ADVANCE REQUEST

WESTLB AG, TORONTO BRANCH,  
as Administrative Agent  
Suite 2301, Box 41  
Royal Bank Plaza, North Tower  
200 Bay Street  
Toronto, Ontario  
M5J 2J1  
Attention: Robert Dyck  
Facsimile: 416.216.5020

RE: The Rosseau Resort Developments Inc.

Ladies and Gentlemen:

This Loan Advance Request is delivered to you pursuant to Section 6.5.2 of the Credit Agreement, dated as of February 1, 2007 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Credit Agreement"), among The Rosseau Resort Developments Inc., an Ontario corporation (the "Borrower"), the various financial institutions as are or may become parties thereto (collectively, the "Lenders"), WestLB AG, Toronto Branch, ("WestLB") as the Administrative Agent for the Lenders (in such capacity, the "Administrative Agent") and Arranger, CIT Financial Ltd., as the Syndication Agent for the Lenders (the "Syndication Agent") and Raiffeisen Zentralbank Österreich AG, as the Documentation Agent for the Lenders (the "Documentation Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein shall have the meanings provided in the Credit Agreement.

The Borrower hereby requests that an Advance in the principal amount of \$ 2,493,634.00 be made on April 10th, 2009, as a Loan which will accrue interest at a rate per annum equal to the sum of the Prime Rate from time to time in effect plus the Applicable Prime Rate Margin and otherwise in accordance with the Credit Agreement. The proceeds of the Advance will be used (i) to pay interest on, and other amounts due with respect to, the Loans which will become due and payable on or after the date of the requested Advance and prior to the date of the next succeeding Advance and (ii)<sup>1</sup> to pay [other] Project Costs which become due and payable and to reimburse the Borrower for other Project Costs paid on or prior to the date of the Advance. With respect to Project Costs being funded from the Advance (i) the Work completed during the period subsequent to the last Advance is described on the attachment to this Loan Request and (ii) the total amount required to satisfy current Project Costs is set forth below. (The term "Work," as used herein, shall refer to

<sup>1</sup> Item (i) to be deleted for all Loan Requests after the Substantial Completion Date.  
17422586.3

any construction and services required to be performed by the General Contractor or any other Contractor, whether completed or partially completed, and includes all labor, materials, equipment and services provided by the General Contractor or any other Contractor, under a GMP Contract or other Contract.)

As an Inducement to the Lenders to make such Advance, the Borrower warrants and represents as follows:

1. all Permits required to have been obtained by the date of the Advance hereby requested have been issued and are in full force and effect and are not subject to current legal proceedings or to any conditions that are required to be satisfied by the date of the Advance hereby requested that have not been satisfied in all material respects or could reasonably be expected to result in a material modification or revocation of such Permits, and all applicable appeal periods with respect thereto shall have expired;

2. with respect to any of the Permits as not yet required to be obtained as of the date of the Advance requested hereby, (i) each such Permit is of a type that is routinely granted on application and (ii) no facts or circumstances exist which indicate that any such Permit will not be timely obtainable without material difficulty, expense or delay prior to the time that it becomes required;

3. the Borrower has provided to the Administrative Agent and the Consulting Engineer copies of all amendments or modifications to the Plans and Specifications for the Construction Phase in respect of which the Advance has been requested and all such amendments and modifications conform to the requirements of Section 8.2.17 of the Credit Agreement;

4. insurance complying in all material respects with the requirements of Section 6.5.10 of the Credit Agreement for the Construction Phase in respect of which the Advance has been requested is in full force and effect;

5. all actions necessary (including all filings) to perfect or continue the perfection of the Liens in the Project Security having the exclusive first priority (subject only to the Permitted Liens) contemplated therefor by the Credit Agreement and the other Loan Documents have been taken or made;

6. all property, rights and assets required for the Land are free and clear of all Liens and encumbrances other than the Permitted Liens;

7. the Budget is In Balance;



8. no order, judgment or decree of any Governmental Instrumentality purports to enjoin or restrain the Lenders, the Administrative Agent or any Loan Party from entering into any Loan Document or any of the Project Documents to which they are a party;

9. the Borrower has not received any notice of any proposed or threatened Expropriation of any portion of the Premises, and has no knowledge of any proposed or threatened action which will or could result in a relocation of any roadways abutting the Premises or the denial of access which could reasonably be expected to have a Material Adverse Effect;

10. all fixtures, attachments and equipment necessary for the operation of the Improvements which have been installed or incorporated into the Premises are, to the Borrower's knowledge, in good working order and free from material defects; and

11. each of the delivery of this Advance Request and the acceptance by the Borrower of the proceeds of the Loan requested hereby constitutes a representation and warranty by the Borrower that, on the date of such Loan, and before and after giving effect thereto and to the application of the proceeds therefrom, all statements set forth in Section 6.5.1 and Article VII of the Credit Agreement and this Advance Request are true and correct in all material respects.

The Borrower agrees that if prior to the time of the Advance requested hereby any matter certified to herein by it will not be true and correct in all material respects at such time as if then made, it will immediately so notify the Administrative Agent. Except to the extent, if any, that prior to the time of the Advance requested hereby the Administrative Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed once again to be certified as true and correct at the date of such Advance as if then made.

The Advance will be used to make the payments set forth on Schedule I annexed hereto.

[No further text]

Enclosed are invoices for the Work the cost of which is to be paid out of the Advance.

Please wire transfer the proceeds of the Advance to the accounts as set forth below:

Amount to be Transferred: \$ 4

Transferee: Recrean Resort Developments Inc.

Account: Account No.: 10892-01242-14

ABA No.: 026002532

Reference: \_\_\_\_\_

\_\_\_\_\_ Account

Attn: Sandy Thar

Transit: 07876

[Signature page follows]

SWIFT: NOSCCATT

The Borrower has caused this Loan Request to be executed and delivered, and the certification and warranties contained herein to be made, by its duly Authorized Representative this 24 day of April, 2021.

**BORROWER:**

**THE ROSSEAU RESORT DEVELOPMENTS  
INC., an Ontario corporation**

By: 

Name:  
Title:

*Ken Fowler*

SCHEDULE I

<u>Payee</u>	<u>Amount</u>	<u>Line Item</u>	<u>Line Item Category</u>
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17422586,3

Account	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021	12/31/2022	12/31/2023	12/31/2024	12/31/2025	12/31/2026	12/31/2027	12/31/2028	12/31/2029	12/31/2030	12/31/2031	12/31/2032	12/31/2033	12/31/2034	12/31/2035	12/31/2036	12/31/2037	12/31/2038	12/31/2039	12/31/2040	12/31/2041	12/31/2042	12/31/2043	12/31/2044	12/31/2045	12/31/2046	12/31/2047	12/31/2048	12/31/2049	12/31/2050	12/31/2051	12/31/2052	12/31/2053	12/31/2054	12/31/2055	12/31/2056	12/31/2057	12/31/2058	12/31/2059	12/31/2060	12/31/2061	12/31/2062	12/31/2063	12/31/2064	12/31/2065	12/31/2066	12/31/2067	12/31/2068	12/31/2069	12/31/2070	12/31/2071	12/31/2072	12/31/2073	12/31/2074	12/31/2075	12/31/2076	12/31/2077	12/31/2078	12/31/2079	12/31/2080	12/31/2081	12/31/2082	12/31/2083	12/31/2084	12/31/2085	12/31/2086	12/31/2087	12/31/2088	12/31/2089	12/31/2090	12/31/2091	12/31/2092	12/31/2093	12/31/2094	12/31/2095	12/31/2096	12/31/2097	12/31/2098	12/31/2099	12/31/2100	12/31/2101	12/31/2102	12/31/2103	12/31/2104	12/31/2105	12/31/2106	12/31/2107	12/31/2108	12/31/2109	12/31/2110	12/31/2111	12/31/2112	12/31/2113	12/31/2114	12/31/2115	12/31/2116	12/31/2117	12/31/2118	12/31/2119	12/31/2120	12/31/2121	12/31/2122	12/31/2123	12/31/2124	12/31/2125	12/31/2126	12/31/2127	12/31/2128	12/31/2129	12/31/2130	12/31/2131	12/31/2132	12/31/2133	12/31/2134	12/31/2135	12/31/2136	12/31/2137	12/31/2138	12/31/2139	12/31/2140	12/31/2141	12/31/2142	12/31/2143	12/31/2144	12/31/2145	12/31/2146	12/31/2147	12/31/2148	12/31/2149	12/31/2150	12/31/2151	12/31/2152	12/31/2153	12/31/2154	12/31/2155	12/31/2156	12/31/2157	12/31/2158	12/31/2159	12/31/2160	12/31/2161	12/31/2162	12/31/2163	12/31/2164	12/31/2165	12/31/2166	12/31/2167	12/31/2168	12/31/2169	12/31/2170	12/31/2171	12/31/2172	12/31/2173	12/31/2174	12/31/2175	12/31/2176	12/31/2177	12/31/2178	12/31/2179	12/31/2180	12/31/2181	12/31/2182	12/31/2183	12/31/2184	12/31/2185	12/31/2186	12/31/2187	12/31/2188	12/31/2189	12/31/2190	12/31/2191	12/31/2192	12/31/2193	12/31/2194	12/31/2195	12/31/2196	12/31/2197	12/31/2198	12/31/2199	12/31/2200	12/31/2201	12/31/2202	12/31/2203	12/31/2204	12/31/2205	12/31/2206	12/31/2207	12/31/2208	12/31/2209	12/31/2210	12/31/2211	12/31/2212	12/31/2213	12/31/2214	12/31/2215	12/31/2216	12/31/2217	12/31/2218	12/31/2219	12/31/2220	12/31/2221	12/31/2222	12/31/2223	12/31/2224	12/31/2225	12/31/2226	12/31/2227	12/31/2228	12/31/2229	12/31/2230	12/31/2231	12/31/2232	12/31/2233	12/31/2234	12/31/2235	12/31/2236	12/31/2237	12/31/2238	12/31/2239	12/31/2240	12/31/2241	12/31/2242	12/31/2243	12/31/2244	12/31/2245	12/31/2246	12/31/2247	12/31/2248	12/31/2249	12/31/2250	12/31/2251	12/31/2252	12/31/2253	12/31/2254	12/31/2255	12/31/2256	12/31/2257	12/31/2258	12/31/2259	12/31/2260	12/31/2261	12/31/2262	12/31/2263	12/31/2264	12/31/2265	12/31/2266	12/31/2267	12/31/2268	12/31/2269	12/31/2270	12/31/2271	12/31/2272	12/31/2273	12/31/2274	12/31/2275	12/31/2276	12/31/2277	12/31/2278	12/31/2279	12/31/2280	12/31/2281	12/31/2282	12/31/2283	12/31/2284	12/31/2285	12/31/2286	12/31/2287</
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Web-Doc Taken on Off-Piece (WdDoc) Deducted From on Off Constitution Assembly	1,246.37 180.15 [0.15]
Total Adjustments	1,772.60
Rescinded	[0.00]

**SCHEDULE E**  
**SUBORDINATION AGREEMENT**

**SUBORDINATION AND POSTPONEMENT AGREEMENT**

THIS AGREEMENT made as of the <sup>9th</sup>~~8th~~ day of April, 2009.

**BETWEEN:**

**MERIDIAN CREDIT UNION LIMITED**  
(together with its successors and assigns, "MCU")

**OF THE FIRST PART**

**TD CAPITAL MEZZANINE PARTNERS MANAGEMENT LTD.**  
(as agent, together with all other agents and lenders under the TD Capital Credit Agreement, and each of its and their successors and assigns, collectively "TD Capital")

**OF THE SECOND PART**

- and -

**KEN FOWLER ENTERPRISES LIMITED**  
(together with its successors and permitted assigns, the "Borrower")

**OF THE THIRD PART**

- and -

**WESTLB AG, TORONTO BRANCH**  
(as administrative agent and as a lender, together with all other agents and lenders under the WestLB Credit Agreement, and each of its and their successors and permitted assigns, collectively the "Subordinated Party")

**OF THE FOURTH PART**

- and -

**KEN FOWLER, COLUMBUS, INC.**  
**KEN FOWLER (N.Y.), INC.,**  
**KEN FOWLER TEXAS, INC. and**  
**PETER FOWLER ENTERPRISES LTD. ("PFEL")**  
(collectively, together with their respective successors  
and permitted assigns, the "Guarantors")

**OF THE FIFTH PART**

**RECITALS:**

- A. The Borrower is indebted to MCU and the Borrower has issued to MCU certain security over all of its existing and future assets, undertaking and property to stand as continuing security for the existing and future indebtedness, liabilities and obligations of the



Borrower to MCU as specified in such security howsoever incurred and whether direct or indirect, contingent or not contingent, and any ultimate unpaid balance thereof together with all professional fees, charges, expenses and protective disbursements payable by the Borrower to MCU (collectively, the "**MCU Obligations**"), which security together with all other security documents, guarantees and postponements of every description presently existing or hereafter issued by the Borrower to MCU are collectively referred to as the "**MCU Security**" in this Agreement;

- B. The Borrower and the Guarantors are indebted to TD Capital and the Borrower and the Guarantors have issued to TD Capital certain security over all of their existing and future assets, undertaking and property to stand as continuing security for the existing and future indebtedness, liabilities and obligations of the Borrower and the Guarantors to TD Capital as specified in such security howsoever incurred and whether direct or indirect, contingent or not contingent, and any ultimate unpaid balance thereof together with all professional fees, charges, expenses and protective disbursements payable by the Borrower or any Guarantor to TD Capital, including, without limitation, all indebtedness, liabilities and obligations arising under a credit agreement dated as of October 22, 2007 between the Borrower, TD Capital Mezzanine Partners Management Ltd., as agent, and others (as such agreement may be amended, modified, supplemented, renewed, restated, replaced or refinanced from time to time, the "**TD Capital Credit Agreement**") (collectively, the "**TD Capital Obligations**"), which security together with all other security documents, guarantees and postponements of every description presently existing or hereafter issued by the Borrower or any Guarantor to TD Capital are collectively referred to as the "**TD Capital Security**" in this Agreement;
- C. For the purposes of this Agreement: (i) the MCU Obligations and the TD Capital Obligations shall be collectively referred to as the "**Senior Obligations**", (ii) the MCU Security and the TD Capital Security shall be collectively referred to as the "**Senior Security**", (iii) MCU and TD Capital shall be collectively referred to as the "**Senior Lenders**", (iv) the credit agreement dated as of February 1, 2007 between The Rosseau Resort Developments Inc. ("**Rosseau Resort**"), as borrower, WestLB AG, Toronto Branch, as administrative agent, and others (as such agreement may be amended, modified, supplemented, renewed, restated, replaced or refinanced from time to time) shall be referred to as the "**WestLB Credit Agreement**", (v) the limited guarantee of certain indebtedness of Rosseau Resort granted by the Borrower and the Guarantors in favour of WestLB, a true and complete copy of which is set out in Schedule 1 hereto, shall be referred to as the "**WestLB New Limited Guarantee**", and (vi) the WestLB New Limited Guarantee, together with all guarantees granted by the Borrower or any Guarantor to the Subordinated Party after the date hereof in respect of Rosseau Resort, shall be collectively referred to as the "**WestLB Guarantees**";
- D. The Borrower and the Guarantors (other than PFEL) have each issued to the Subordinated Party (a) a general security agreement charging all of its existing and future assets, a true and complete copy of each of which is set out in Schedule 2 hereto (collectively, the "**WestLB GSAs**"), (b) in the case of the Borrower only, a securities pledge agreement charging all securities and related assets held by it, a true and complete copy of which is set out in Schedule 2 hereto (the "**WestLB Securities Pledge**"), and (c)

in the case of PFEL, a negative pledge agreement, a true and complete copy of which is set out in Schedule 2 hereto (the "**Negative Pledge**") to stand as continuing security for the existing and future indebtedness, liabilities and obligations of the Borrower and the Guarantors to the Subordinated Party arising under the WestLB New Limited Guarantee, which security together with all WestLB Guarantees and all other security documents, guarantees and postponements of every description dated contemporaneously with the date of this Agreement or hereafter issued by the Borrower and the Guarantors to the Subordinated Party are collectively referred to herein as the "**Subordinated Party Security**" (for greater certainty, the WestLB Guarantees and the Subordinated Party Security does not include (i) any security provided by Rosseau Resort to the Subordinated Party as required by the WestLB Credit Agreement, (ii) the Pledge Agreement or the Non-Recourse Pledge Guarantee, each dated as of April 20, 2007 (as each such term is defined in the WestLB Credit Agreement) made by Red Leaves Resort, an Ontario general partnership ("**Red Leaves Resort**") of which the Borrower is a general partner, and (iii) the Payment Guaranty, the Non-Recourse Carve-Out Guaranty, the Guaranty of Completion and Performance and the Environmental Indemnity Agreement (as each such term is defined in the WestLB Credit Agreement) (all of the documents listed in the foregoing paragraphs (i), (ii) and (iii) being collectively referred to herein as the "**Existing WestLB Credit Support**"));

- E. The existing and future indebtedness, liabilities and obligations of the Borrower and the Guarantors to the Subordinated Party arising under all of the WestLB Guarantees and the Subordinated Party Security are collectively referred to herein as the "**Subordinated Party Obligations**";
- F. The Subordinated Party has agreed to postpone and subordinate payment of the Subordinated Party Obligations and the Subordinated Party Security to the Senior Obligations and the Senior Security in accordance with the terms and conditions of this Agreement; and
- G. The Subordinated Party has previously delivered to TD Capital an acknowledgement dated October 19, 2007 in respect of certain WestLB Guarantees in existence at that time and the registrations made by the Subordinated Party against the Borrower and Red Leaves Resort, under the *Personal Property Security Act* (Ontario) as Reference File Numbers 632492496 and 632492505 (the "**WestLB Existing PPSA Acknowledgment**") confirming that such registrations only perfect (i) a security interest in the present and future inter-corporate indebtedness, liabilities and obligations owed by Rosseau Resort to the Borrower and the proceeds thereof (collectively, the "**Rosseau Resort Inter-Corporate Debt**") and does not extend to any other real or personal property of the Borrower, and (ii) a security interest in all shares and other securities of Rosseau Resort which were then owned or thereafter acquired by Red Leaves Resort and does not extend to any other real or personal property of Red Leaves Resort.
- H. PFEL is indebted to the Borrower in respect of the PFEL Designated Loan (as hereinafter defined) and PFEL has issued to the Borrower certain limited security over PFEL's equity interests in SIR Corp. to stand as continuing security for the existing and future

indebtedness, liabilities and obligations of PFEL to the Borrower under the PFEL Designated Loan.

I. For the purposes of this Agreement, "PFEL/SIR Corp. Loan Asset" means, collectively:

(i) the loan owed by PFEL to the Borrower in the current principal amount of \$6,253,682.79, as evidenced by three amended and restated promissory notes issued by PFEL in favour of the Borrower each dated April 6, 2009 in the original principal amounts of \$1,060,872.20, \$556,091.00 and \$4,636,719.59, respectively (collectively, the "PFEL Designated Loan"), and any and all other loan and credit documents relating thereto, as each such document may be amended, restated, supplemented, renewed and replaced from time to time ; and

(ii) a share pledge agreement dated as of April 6, 2009 between the Borrower and PFEL in respect of all of PFEL's equity interests in SIR Corp. (the "SIR Corp. Shares") and all other security documents, instruments and agreements as may be granted by PFEL or others to the Borrower to secure the payment and performance of the PFEL Designated Loan (all such documents, together with the loan and credit documents referenced in (i) above collectively, the "PFEL Designated Loan Documents").

**FOR VALUABLE CONSIDERATION**, the receipt and sufficiency of which is acknowledged by the parties to this Agreement, MCU, TD Capital, the Subordinated Party, the Borrower and the Guarantors each agree as follows:

1. **Senior Lenders Consent.** The Senior Lenders hereby consent to the existence of the Subordinated Party Obligations and to the creation, execution, delivery and registration, filing and perfection of the Subordinated Party Security. The Subordinated Party confirms that as of the date hereof the WestLB Guarantees and the Subordinated Party Security consist solely of the WestLB New Limited Guarantee, the WestLB GSA and the WestLB Securities Pledge, and that the Subordinated Party shall not acquire, require or obtain the benefit of any further or supplemental documents, instruments or agreements comprising WestLB Guarantees or Subordinated Party Security without the prior written consent of the Senior Lenders.
2. **Subordinated Party Consent.** The Subordinated Party hereby consents to the existence of the Senior Obligations and to the creation, execution, delivery and registration, filing and perfection of the Senior Security.
3. **Postponement and Subordination of the Subordinated Party Obligations and Subordinated Party Security.** The Subordinated Party postpones and subordinates for all purposes payment of the Subordinated Party Obligations to the Senior Obligations so that, unless and until the Senior Obligations have been paid and satisfied in full in cash and the Senior Lenders have discharged and released the Senior Security, the Subordinated Party shall not be entitled to receive payment or satisfaction in whole or in part of any kind in respect of the Subordinated Party Obligations. The Subordinated Party postpones and subordinates for all purposes the Subordinated Party Security to the Senior Security so that the Senior Security shall rank, in all circumstances and for all purposes,

in priority to the Subordinated Party Security against the existing and future undertaking, property and assets of the Borrower and the Guarantors, without limitation whatsoever. For greater certainty, the subordination and postponement and other provisions of this Agreement shall extend to (i) the PFEL/SIR Corp. Loan Asset (including the SIR Corp. Shares) and the proceeds thereof; (ii) any Subordinated Party Security charging or encumbering or creating a security interest in the PFEL/SIR Corp. Loan Asset; and (iii) all rights, remedies and claims, whether direct or indirect, which the Subordinated Party may have against PFEL or the PFEL/SIR Corp. Loan Asset.

4. **No Effect on Priority.** The subordination and postponement provided for in this Agreement and all other rights established in, altered by or specified in this Agreement shall be effective, irrespective of:
- (a) the time or order of creation, execution, delivery, attachment or perfection of the Senior Security or the Subordinated Party Security;
  - (b) the method of perfection of the Senior Security or the Subordinated Party Security;
  - (c) the time or order of registration or filing of financing statements, land registration forms or other recording of the Senior Security or the Subordinated Party Security;
  - (d) the giving of or failure to give notice of the acquisition of any additional Senior Security;
  - (e) the date or dates of any existing or future advance or advances made or other credit accommodation granted by the Senior Lenders to the Borrower or any Guarantor, including the time of any advance made or other credit accommodation given under any line of credit made available to the Borrower or any Guarantor by any Senior Lender;
  - (f) the date or dates of any default by the Borrower or any Guarantor in respect of the Senior Obligations or the Subordinated Party Obligations, or any default under the Senior Security or the Subordinated Party Security or any demand for repayment arising therefrom;
  - (g) the date of crystallization of any floating charge contained in the Senior Security or the Subordinated Party Security;
  - (h) the date of commencement of enforcement proceedings under the Senior Security or the Subordinated Party Security, including the date of any Notice of Intention to Enforce Security given under the *Bankruptcy and Insolvency Act* (Canada);
  - (i) the date or dates of execution, delivery, attachment, registration, perfection or re-perfection of all or any portion of any agreement, document or instrument creating the Senior Security or the Subordinated Party Security;

- (j) the place or jurisdiction of execution, delivery, attachment, registration, perfection or reperfecton of all or any portion of the Subordinated Party Obligations and/or the Subordinated Party Security or the Senior Obligations and/or the Senior Security, or any agreement, document or instrument creating same;
  - (k) any other matter which may affect the relative priorities of the Subordinated Party Obligations and/or the Subordinated Party Security and the Senior Obligations and/or the Senior Security; or
  - (l) the priorities otherwise accorded to the Senior Security and the Subordinated Party Security by any applicable laws.
5. **Borrower Consents.** The Borrower and each Guarantor acknowledges and consents to the provisions of this Agreement and agrees that, during such time as the Senior Obligations remain outstanding or any claim by any Senior Lender against the Borrower or any Guarantor remains unpaid or unsatisfied and until the Senior Lenders have discharged and released the Senior Security, the Borrower and each Guarantor shall stand possessed of its undertakings and assets for the benefit of the Senior Lenders and the Subordinated Party in accordance with the provisions of this Agreement.
6. **Payment of the Subordinated Party's Obligations by the Borrower and the Guarantors.** The Borrower and each Guarantor covenants not to make or suffer payment or satisfaction in whole or in part of any kind on account of the Subordinated Party Obligations during such time as the Senior Obligations remain outstanding and until the Senior Lenders have discharged and released the Senior Security.
7. **Enforcement of Subordinated Party Security and Acceleration of the Subordinated Party Obligations.** During such time as the Senior Obligations remain outstanding and until the Senior Lenders have discharged and released the Senior Security, the Subordinated Party covenants with the Senior Lenders that the Subordinated Party shall not: (a) request or accept payment or satisfaction in whole or in part of any kind on account of the Subordinated Party Obligations; (b) take or obtain possession of, or dispose of, or otherwise realize upon any assets, property or undertaking of the Borrower or any Guarantor pursuant to the Subordinated Party Security; (c) give notice to the Borrower or any Guarantor of its intention to enforce the Subordinated Party Security or issue any statutory notices under the *Bankruptcy and Insolvency Act* (Canada), the *Personal Property Security Act* (Ontario) or otherwise in respect of any enforcement or intention to enforce the Subordinated Party Security; (d) commence proceedings in court or otherwise for the enforcement of the Subordinated Party Security or collection of the Subordinated Party Obligations; (e) declare the Borrower or any Guarantor to be in default or that an event of default has occurred under the Subordinated Party Security or otherwise; (f) set-off or apply any amount that may be owed or become owing by the Subordinated Party to the Borrower or any Guarantor against the Subordinated Party Obligations; or (g) make demand for payment of the Subordinated Party Obligations or make demand under any WestLB Guarantee or any other guarantee issued after the date hereof by the Borrower or any Guarantor to the Subordinated Party.

8. **Assignment by the Subordinated Party.** The Subordinated Party agrees that it shall not assign or transfer all or any part of the Subordinated Party Obligations or the Subordinated Party Security without obtaining the prior written consent of the Senior Lenders and a written agreement in favour of the Senior Lenders from the transferee or assignee, as the case may be, whereby such transferee or assignee agrees to be bound by the provisions hereof. The Subordinated Party, the Borrower and each of the Guarantors further agrees that, notwithstanding Section 11, any Senior Lender may assign or transfer all or any part of its Senior Obligations or its Senior Security or (in the case of TD Capital) the TD Capital Credit Agreement, in each case without obtaining the prior consent of the Subordinated Party, the Borrower or the Guarantors.
9. **Restrictions on Amendments.** The Subordinated Party covenants and agrees with the Senior Lenders that it shall not, without first providing written notice to the Senior Lenders and obtaining the prior written consent of the Senior Lenders, amend, revise, restate, supplement, replace or otherwise modify in any way whatsoever, the Subordinated Party Security or any WestLB Guarantee.
10. **Exchange of Notices.**
  - (a) The Subordinated Party covenants and agrees with the Senior Lenders that it shall provide written notice to the Senior Lenders of any demand made upon, and of any Notice of Intention to Enforce Security issued under the *Bankruptcy and Insolvency Act* (Canada) to, Rosseau Resort by the Subordinated Party promptly following the date made or issued. Any notice to be provided to the Senior Lenders shall contain sufficient detail to the satisfaction of the Senior Lenders, acting reasonably and shall be delivered in accordance with Section 22 hereof.
  - (b) Each of the Senior Lenders covenants and agrees with the Subordinated Party that it shall provide written notice to the Subordinated Party of any demand made upon, and of any Notice of Intention to Enforce Security issued under the *Bankruptcy and Insolvency Act* (Canada) to, the Borrower by such Senior Lender promptly following the date made or issued. Any notice to be provided to the Subordinated Party shall contain sufficient detail to the satisfaction of the Subordinated Party, acting reasonably, and shall be delivered in accordance with Section 22 hereof; provided, however, that any failure on the part of any Senior Lender to provide the notices required hereby shall not affect the subordination and postponement provided for in this Agreement and all other rights established in, altered by or specified in this Agreement.
11. **No Waivers of Subordination.** No right of the Senior Lenders to enforce the subordination and other provisions of this Agreement shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Borrower or any Guarantor, or by any act or failure to act on the part of any Senior Lender or any agent, representative or consultant of, or trustee for, any Senior Lender, or by any non-compliance by the Borrower or any Guarantor with any of the agreements or instruments relating to the Senior Obligations or the Subordinated Party Obligations, regardless of any knowledge thereof which any Senior Lender may have or be otherwise charged with.

Without limiting the generality of the foregoing but in no way relieving the Subordinated Party or the Borrower or any Guarantor of their respective obligations under this Agreement, any Senior Lender, the Borrower and the Guarantors may at any time and from time to time, without the consent of the Subordinated Party (in the case of paragraph (a) below), and any Senior Lender may at any time and from time to time, without the consent of the Subordinated Party, the Borrower or any Guarantor (in the case of all other paragraphs below in this Section 11), and without impairing or releasing the subordination and other benefits provided in this Agreement or the obligations hereunder of the Subordinated Party or the Borrower or any Guarantor to any Senior Lender, do any one or more of the following:

- (a) amend, supplement, modify, renew, restate or replace any document or agreement relating to the Senior Obligations, the Senior Security or the TD Capital Credit Agreement, including, without limitation, entering into any and all documents relating to any new or replacement financing in any amount extended by the existing Senior Lenders or by any new or additional Senior Lenders or by other third parties (collectively, the **"Replacement Financing"** and the **"Replacement Financing Lenders"** respectively), it being understood and agreed that such Replacement Financing, the indebtedness, liabilities and obligations thereunder (the **"Replacement Financing Obligations"**) and any security granted by the Borrowers or the Guarantors or others relating thereto (the **"Replacement Financing Security"**) shall have the same prior ranking security interests vis-à-vis the Subordinated Party Obligations and the Subordinated Party Security and enjoy the same rights, privileges and all other benefits under this Agreement as the Senior Obligations and the Senior Security. The Subordinated Party shall provide the Replacement Financing Lenders with all such documents, instruments and agreements that the Replacement Financing Lenders may request to confirm the subordination and postponement of: (i) the Subordinated Party Obligations to the Replacement Financing Obligations; and (ii) the Subordinated Party Security to the Replacement Financing Security;
- (b) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner any of the existing and future assets, undertaking and property of the Borrower or any Guarantor or any other assets pledged or mortgaged or otherwise securing the Senior Obligations or any liability of the Borrower or any Guarantor or any other guarantor of the Senior Obligations, or any liability incurred directly or indirectly in respect thereof;
- (c) settle or compromise any of the Senior Obligations or any other liability of the Borrower or any Guarantor (other than the Subordinated Party Obligations) or of any other guarantor of the Senior Obligations, or any security therefor or any liability incurred directly or indirectly in respect thereof, and apply any sums by whomsoever paid and however realized to the Senior Obligations in any manner or order;
- (d) exercise or delay in or refrain from exercising any right or remedy against the Borrower or any Guarantor or any other guarantor of the Senior Obligations or

any security therefor or any other Person, and elect any remedy and otherwise deal freely with the Borrower or any Guarantor and any other guarantor of the Senior Obligations and with any such security; and

- (e) grant time or other indulgences to the Borrower or any Guarantor and give up or abstain from taking advantage of the Senior Security in whole or in part and discharge any part or parts of or accept any composition or arrangements or realization on the Senior Security in such manner and when any Senior Lender may deem expedient.

The Subordinated Party acknowledges and agrees that the Borrower and the Guarantors shall be authorized and permitted in connection with any Replacement Financing to enter into all such documents, instruments and agreements with the Senior Lenders and any Replacement Financing Lenders and to take all such other actions, in each case as contemplated above, notwithstanding any term or provision of the WestLB Credit Agreement, the WestLB Guarantees or the Subordinated Party Security to the contrary.

The Senior Lenders acknowledge and agree that: (i) the MCU Obligations shall not exceed the aggregate of the principal amount of \$15,000,000 plus all accruing and unpaid interest thereon and all other fees, costs and expenses which the Borrower or any Guarantor is required to pay to MCU under the Senior Loan Documents, including, without limitation, all costs of enforcement; (ii) the TD Capital Obligations shall not exceed the aggregate of the principal amount of \$40,000,000 (including interest which has been capitalized) plus all accruing and unpaid interest (which has not yet been capitalized) thereon and all other fees, costs and expenses which the Borrower or any Guarantor is required to pay to TD Capital under the TD Capital Credit Agreement and the other Senior Loan Documents, including, without limitation, all costs of enforcement; and (iii) the Replacement Financing Obligations shall not exceed the aggregate of the principal amount of \$55,000,000 plus all accruing and unpaid interest thereon and all other fees, costs and expenses which the Borrower or any Guarantor is required to pay to any Replacement Financing Lender under all documents, instruments and agreements relating to the Replacement Financing Obligations and the Replacement Financing Security, including, without limitation, all costs of enforcement.

12. **Payments Received by the Subordinated Party.** If, prior to the permanent payment in full of the Senior Obligations, the Subordinated Party or any person on its behalf shall receive any payment from the Borrower or any Guarantor (including by way of offset) or receive any distribution of assets of the Borrower or any Guarantor or on account of the Subordinated Party Obligations, then the Subordinated Party shall, and shall cause such other person to, receive and hold such payment or distribution in trust for the benefit of the Senior Lenders and promptly pay the same over or deliver to the Senior Lenders in precisely the form received by the Subordinated Party or such other person on its behalf (except for any necessary endorsement or assignment) and such payment or delivery shall be applied by the Senior Lenders to the repayment of the Senior Obligations.



13. **Liquidation, Dissolution and Bankruptcy.**

- (a) In the event of a distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of the Borrower, or the proceeds of those assets, to creditors in connection with the bankruptcy, insolvency, liquidation or winding up of the Borrower, or in connection with any composition with creditors or scheme of arrangement to which the Borrower is a party, the Senior Lenders will be entitled to:
- (i) receive payment in full (including interest accruing to the date of receipt of such payment at the applicable rate whether or not allowed as a claim in any Proceeding (as defined below)) of the Senior Obligations before the Subordinated Party is entitled to receive any direct or indirect payment or distribution of any cash or other assets of the Borrower or any Guarantor on account of the Subordinated Party Obligations;
  - (ii) demand that any proceeds received by the Subordinated Party in connection with any of the actions described in this Section 13(a) or any Proceeding be applied to the payment of the Senior Obligations (and for certainty, the Subordinated Party agrees that such proceeds will be held in trust for, and paid over to, the Senior Lenders as long as any Senior Obligations remain outstanding); and
  - (iii) if any payment (a "Preferential Payment") of the Senior Obligations is declared to be a fraudulent preference or otherwise preferential, and is set aside or required to be paid to a trustee, receiver, or similar Person under any applicable bankruptcy, insolvency, receivership or similar law, demand that an amount equivalent to that Preferential Payment be held back from any payment or distribution which would otherwise be made with respect to the Subordinated Party Obligations, and paid directly to the Senior Lenders.
- (b) In order to enable each of the Senior Lenders to enforce its rights in any of the actions described in Section 13(a) above or any Proceeding, upon the failure of the Subordinated Party to present on a timely basis a proof of claim or other motion or pleading as may be expedient or proper to establish the Subordinated Party's entitlement to payment of the Subordinated Party Obligations, each Senior Lender is irrevocably authorized, in its discretion and at the sole expense of the Borrower, to present on behalf of the Subordinated Party proofs of claims or other motions or pleadings, and to demand, sue for, receive and collect all payments or disbursements made as a result, and to apply those payments and disbursements on account of the Senior Obligations. The Subordinated Party agrees not to exercise any voting right or other privilege relating to the Subordinated Party Obligations that it may have in any of the actions described in Section 13(a) above or in any Proceeding in favour of any plan, proposal, compromise, arrangement or similar transaction that would defeat:

- (i) the right of any Senior Lender to receive payments and distributions otherwise payable or deliverable with respect to the Senior Obligations, so long as any of the Senior Obligations remain outstanding; or
  - (ii) the obligation of the Subordinated Party to receive, hold in trust, and pay over to the Senior Lenders certain payments and distributions as contemplated by Section 13 (a) above.
- (c) Without limiting the generality of the foregoing, the Subordinated Party further undertakes and agrees that in connection with any Proceeding, and the approval of any plan thereunder, the Subordinated Party will vote its interest relating to the Subordinated Party Obligations in such manner as may be directed by TD Capital or any Replacement Financing Lender in writing, and shall not in any circumstances whatsoever vote its interest relating to the Subordinated Party Obligations against or contrary to the way in which TD Capital or any Replacement Financing Lender may vote its interest. Upon any failure of the Subordinated Party to vote its interest relating to the Subordinated Party Obligations in accordance herewith, TD Capital or any Replacement Financing Lender is irrevocably authorized, in its discretion and at the sole expense of the Borrower, to vote the Subordinated Party's interest on behalf of the Subordinated Party.
- (d) For the purposes of this Agreement, "**Proceeding**" means, with respect to the Borrower or any Guarantor, any voluntary or involuntary insolvency, bankruptcy, receivership, custodianship, liquidation, dissolution, reorganization, assignment for the benefit of creditors, appointment of a custodian, receiver, trustee or other officer with similar powers or any other proceeding for the liquidation, dissolution or other winding up of the Borrower or any Guarantor, whether under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors' Arrangement Act* (Canada) or the *Winding-Up and Restructuring Act* (Canada), or any other bankruptcy or insolvency laws, or any laws relating to relief of debtors, readjustment of indebtedness or reorganization, composition or extension of indebtedness.
14. **Appointment of Receiver.** The Subordinated Party acknowledges that under the terms of the Senior Security, the Senior Lenders, or a receiver, manager or other Person appointed by the Senior Lenders (a "**Senior Lender Receiver**") may become entitled to the exclusive custody and control of the undertaking, property and assets of the Borrower and the Guarantors. The Subordinated Party will not be entitled to appoint a receiver or take steps to have a receiver appointed by court order or otherwise, without the prior written consent of the Senior Lenders. Any receiver appointed by the Subordinated Party, and, to the extent consistent with an order of a court, any court appointed receiver, will surrender custody and control of all undertaking, property and assets of the Borrower and the Guarantors to any Senior Lender Receiver appointed by or on behalf of the Senior Lender with respect to the Borrower's or the Guarantors' undertaking, property and assets. Nothing in this paragraph will be deemed to be an acknowledgment by the Senior

Lenders of any rights the Subordinated Party may have to appoint a receiver or receiver and manager.

15. **Payment of the Senior Obligations.** For the purposes of this Agreement, the Senior Obligations will be considered to be permanently paid in full when the aggregate of the cash payments and the fair market value of non-cash payments received by each Senior Lender, as determined by each Senior Lender in its discretion, is equal to the Senior Obligations owing to each such Senior Lender, without regard to whether an applicable limitation period for a claim for fraudulent preference or a similar claim has not expired; provided that if at the time of proposed payment or distribution to the Subordinated Party, any trustee, receiver or other third party has made or threatened to make a claim of fraudulent preference or any other similar claim, the Senior Lenders may require that an amount equal to that claim, together with the Senior Lenders' anticipated reasonable costs and expenses relating to it, be held back from that distribution or payment to the Subordinated Party.
16. **Prior Intercreditor Agreement between the Senior Lenders.** The Senior Lenders and the Borrower acknowledge that they are parties to an existing intercreditor agreement dated as of October 22, 2007 (as such agreement may be amended, modified, supplemented, renewed, restated or replaced from time to time, the "MCU/TD Existing Intercreditor Agreement"), which governs the priority of the MCU Obligations, the MCU Security, the TD Capital Obligations and the TD Capital Security, and confirm that this Agreement shall not amend or alter in any way the rights, obligations, priorities and remedies established under the MCU/TD Existing Intercreditor Agreement as between the parties thereto. The Senior Lenders and the Borrower further acknowledge that this Agreement only governs the relative rights, obligations, priorities and remedies of the Senior Lenders collectively as against the Subordinated Party.
17. **WestLB Existing PPSA Acknowledgment.** TD Capital and the Subordinated Party acknowledge and confirm that this Agreement shall not amend or alter in any way the rights, obligations, priorities and remedies established by the WestLB Existing PPSA Acknowledgment, as between the parties thereto, insofar as it relates to the Rosseau Resort Inter-Corporate Debt.
18. **Successors and Assigns.** This Agreement is binding upon and enures to the benefit of the Senior Lenders and their respective successors and assigns, and the Subordinated Party and its successors and permitted assigns, and the Borrower and the Guarantors and their respective successors and permitted assigns.
19. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract and the parties hereto hereby submit to the non-exclusive jurisdiction of the courts of the Province of Ontario. Time shall be in all respects of the essence herein.
20. **Counterparts.** This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts and by facsimile signature or

electronic signature (including PDF), and all such counterparts taken together shall be deemed to constitute one and the same instrument. A set of copies of this Agreement signed by all the parties shall be lodged with the Borrower, the Senior Lenders and the Subordinated Party.

21. **Confirmation of Agent's Authority.** TD Capital confirms that it is executing this Agreement on behalf of itself and on behalf of all other agents and lenders under the TD Capital Credit Agreement, and that it has the authority to bind such lenders. WestLB confirms that it is executing this Agreement on behalf of itself and on behalf of all other agents and lenders under the WestLB Credit Agreement, and that it has the authority to bind all such agents and lenders.
22. **WestLB Consent to Asset Disposition.** The Subordinated Party confirms that notwithstanding the terms of the WestLB Guarantees and the Subordinated Party Security and any registered or perfected security interest held by the Subordinated Party in connection with any assets or property of the Borrower or the Guarantors (collectively, the "Secured Assets"), until the Senior Obligations have been paid in full, the Subordinated Party shall have no direct or indirect involvement whatsoever with any sale, transfer, conveyance or other disposition (a "Disposition") of any Secured Asset by the Borrower or any Guarantor, and hereby waives and releases any and all rights of consent or approval in relation to any Disposition of a Secured Asset by virtue of the WestLB Guarantees and the Subordinated Party Security. In addition, the Subordinated Party shall not, by virtue of its rights under the WestLB Guarantees or the Subordinated Party Security, directly or indirectly interfere, obstruct, frustrate, impede, compromise or delay any sale process for the completion of any Disposition, and the Subordinated Party shall be deemed to have consented to any such Disposition which has been approved by the Senior Lenders regardless of the purchase price relating to such Disposition. At the written request of any Senior Lender, the Subordinated Party shall take all such actions and do all such things as may be required to discharge its Subordinated Party Security in respect of any Secured Assets subject to a Disposition, the security interests created thereby and any security registrations made in respect thereof in advance of any Disposition of any Secured Asset being completed, including, without limitation, the delivery of registrable financing change statements discharging the applicable Secured Asset from any security registrations in favour of the Subordinated Party. The Subordinated Party shall from time to time forthwith upon request by any Senior Lender do, make and execute all such documents, acts, matters and things as may be reasonably required by any Senior Lender to give effect to this provision. The Subordinated Party acknowledges that it is acquiring the security interests contained in the Subordinated Party Security by way of an accommodation from the Senior Lenders, and that it is not the intention of the parties that, by virtue of its rights under the WestLB Guarantees or the Subordinated Party Security, the Subordinated Party should be placed in any position where it can prejudicially affect the rights and remedies of the Senior Lenders in existence prior to the date hereof.
23. **Borrower Consent to Asset Disposition.** The Borrower confirms that notwithstanding the terms of the PFEL Designated Loan Documents and any registered or perfected security interest held by the Borrower in connection with any assets or property of PFEL

(collectively, the "PFEL Secured Assets"), until the Senior Obligations have been paid in full, the Borrower shall have no direct or indirect involvement whatsoever with any sale, transfer, conveyance or other disposition (a "PFEL Disposition") of any PFEL Secured Asset by PFEL, and hereby waives and releases any and all rights of consent or approval in relation to any PFEL Disposition of a PFEL Secured Asset by virtue of the PFEL Designated Loan Documents or otherwise. In addition, the Borrower shall not directly or indirectly interfere, obstruct, frustrate, impede, compromise or delay any sale process for the completion of any PFEL Disposition, and the Borrower shall be deemed to have consented to any such PFEL Disposition which has been approved by the Senior Lenders regardless of the purchase price relating to such PFEL Disposition. At the written request of any Senior Lender, the Borrower shall take all such actions and do all such things as may be required to discharge its security, the security interests created thereby and any security registrations made in respect thereof in advance of any PFEL Disposition of any PFEL Secured Asset being completed, including, without limitation, the delivery of registrable financing change statements discharging the applicable PFEL Secured Asset from any security registrations in favour of the Borrower. The Borrower shall from time to time forthwith upon request by any Senior Lender do, make and execute all such documents, acts, matters and things as may be reasonably required by any Senior Lender to give effect to this provision. The Borrower acknowledges that it is acquiring the security interests contained in its security by way of an accommodation from the Senior Lenders, and that it is not the intention of the parties that the Borrower should be placed in any position where it can prejudicially affect the rights and remedies of the Senior Lenders in existence prior to the date hereof.

24. **Notice.** All notices provided for in this Agreement shall be in writing and shall be personally delivered or sent by facsimile to the officer or other responsible employee of the addressee, at or to the applicable addresses or facsimile numbers, as the case may be, set opposite the party's name below, or at or to such other address or addresses or facsimile number of numbers as any party hereto may from time to time designate to the other parties in such manner:

(a) to Meridian:

Meridian Credit Union Limited  
75 Corporate Park Drive  
St. Catharines, Ontario  
L2S 3W3

Attention: Rick Thomas  
Facsimile: 905-937-6129

(b) to TD Capital:

TD Securities Mezzanine Capital  
TD Bank Tower  
66 Wellington Street West  
9th Floor

Toronto, Ontario  
M5K 1A2

Attention: Luis Fonseca  
Facsimile: 416-983-6817

(c) to WestLB:

WestLB AG, Toronto Branch  
Suite 2301, Box 41  
Royal Bank Plaza, North Tower  
200 Bay Street  
Toronto, Ontario  
M5J 2J1  
Attention: Robert Dyck  
Facsimile: 416-216-5020

(d) to the Borrower and the Guarantors, a single notice to:

Ken Fowler Enterprises Limited  
110 Hannover Drive,  
Suite 203B,  
St. Catharines, Ontario  
L2W 1A4

Attention: President  
Facsimile: 905-688-3060

Any communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a business day and such delivery was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the business day next following such date of delivery. Any communication which is transmitted by facsimile as aforesaid shall be deemed to have been validly and effectively given on the date of transmission if such date is a business day and such transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the business day next following such date of transmission.

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IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

**MERIDIAN CREDIT UNION LIMITED,**  
as a Senior Lender

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RICK THOMAS**  
DIRECTOR & DEPUTY MANAGER,  
COMMERCIAL SERVICES, ST CATHARINES

I/We have authority to bind the Corporation.

**TD CAPITAL MEZZANINE PARTNERS  
MANAGEMENT LTD.**

(as agent on behalf of all lenders  
under the TD Capital Credit Agreement),  
as a Senior Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

**KEN FOWLER ENTERPRISES  
LIMITED, as borrower**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

**WESTLB AG, TORONTO BRANCH**  
(as administrative agent on behalf of all  
lenders under the WestLB Credit  
Agreement),  
as Subordinated Party

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

**MERIDIAN CREDIT UNION LIMITED,**  
as a Senior Lender  
Per:

\_\_\_\_\_  
Name:

Title:

I/We have authority to bind the Corporation.

**TD CAPITAL MEZZANINE PARTNERS  
MANAGEMENT LTD.**

(as agent on behalf of all lenders  
under the TD Capital Credit Agreement),  
as a Senior Lender

By: Ian Kidson

Name: **IAN KIDSON**

Title: **MANAGING DIRECTOR**

I/We have authority to bind the Corporation.

**KEN FOWLER ENTERPRISES  
LIMITED, as borrower**

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation.

**WESTLB AG, TORONTO BRANCH**  
(as administrative agent on behalf of all  
lenders under the WestLB Credit  
Agreement),  
as Subordinated Party

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation.



IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

**MERIDIAN CREDIT UNION LIMITED,**  
as a Senior Lender  
Per: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

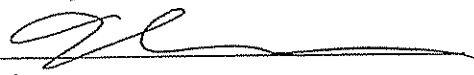
I/We have authority to bind the Corporation.

**TD CAPITAL MEZZANINE PARTNERS  
MANAGEMENT LTD.**  
(as agent on behalf of all lenders  
under the TD Capital Credit Agreement),  
as a Senior Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

**KEN FOWLER ENTERPRISES  
LIMITED, as borrower**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

**WESTLB AG, TORONTO BRANCH**  
(as administrative agent on behalf of all  
lenders under the WestLB Credit  
Agreement),  
as Subordinated Party

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

**MERIDIAN CREDIT UNION LIMITED,**  
as a Senior Lender  
Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

**TD CAPITAL MEZZANINE PARTNERS  
MANAGEMENT LTD.**  
(as agent on behalf of all lenders  
under the TD Capital Credit Agreement),  
as a Senior Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

**KEN FOWLER ENTERPRISES  
LIMITED, as borrower**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

**WESTLB AG, TORONTO BRANCH**  
(as administrative agent on behalf of all  
lenders under the WestLB Credit  
Agreement),  
as Subordinated Party

By: \_\_\_\_\_

Name: Robert L. Dyck  
Title: Executive Director

  
Kenneth Chan  
Director, Credits America

I/We have authority to bind the Corporation.

**KEN FOWLER COLUMBUS, INC.,**  
as a Guarantor  
Per:



Name:  
Title:

I/We have authority to bind the Corporation.

**KEN FOWLER (N.Y.), INC.**  
as a Guarantor  
Per:



Name:  
Title:

I/We have authority to bind the Corporation.

**KEN FOWLER TEXAS, INC.,**  
as a Guarantor  
Per:



Name:  
Title:

I/We have authority to bind the Corporation.

**PETER FOWLER ENTERPRISES LTD.,**  
as a Guarantor  
Per:



Name:  
Title:

I/We have authority to bind the Corporation.

## **SCHEDULE 1**

### **WestLB New Limited Guarantee**

1. A true and complete copy of the executed WestLB New Limited Guarantee is attached hereto.

## SCHEDULE 2

### Subordinated Party Security

1. True and complete copies of all executed WestLB GSAs are attached hereto.
2. A true and complete copy of the executed WestLB Securities Pledge is attached hereto.
3. A true and complete copy of the executed Negative Pledge is attached hereto.

## SCHEDULE F

### **CURRENT OUTSTANDING DEFAULTS OR POTENTIAL DEFAULTS UNDER WESTLB LOAN DOCUMENTS REQUIRING WAIVER**

1. The Borrower and KFE are in default under the Loan Documents in failing to fund overruns of project costs associated with the Longview/Paignton House Construction Phase (the "Project") and, accordingly, the following provisions of the Loan Documents have not been complied with:
  - (a) Loan Agreement:
    - (i) Section 6.5.13 - the Budget for the Project is not In Balance;
    - (ii) Section 7.33 - the Budget is not In Balance;
    - (iii) Section 8.1.8 - the Budget is not In Balance and the Borrower has defaulted in paying the amounts required to bring the Budget In Balance;
    - (iv) Section 9.1.3 - the Borrower has defaulted in the performance of its obligations under Section 8.1.8;
    - (v) Section 9.1.12 - KFE has failed to comply with its obligations under the Budget.
  - (b) Section 9.1.4 of the Loan Agreement and KFE Guaranty of Completion and Performance:
    - (i) KFE has failed to pay the amounts required to ensure completion of construction of the Project or cause the Borrower to pay such costs and put the Budget into Balance. KFE is currently not able to comply with these obligations which must be funded by the Lenders.
2. The following provisions of the Loan Agreement are not complied with or are in default relating to the Budget:
  - (a) Section 7.35 - The current Budget for the Project does not accurately reflect all costs required for completion of the Project.
  - (b) Section 8.1.18 - The Borrower has provided to the Hotel Manager the working capital required by the Pre-Commencement Addendum to the Hotel Management Agreement. The Hotel Manager has advised that the Owner and Manager must agree upon a new amount of working capital.
  - (c) Section 8.2.1(e) - The capital required for the Project, as well as the normal operation of the Rental Pool and the Borrower's obligations under the lease-back transactions, is greater than was projected and has not been funded by the Borrower.

- (d) Section 8.2.18 - During construction of the Hotel, the Borrower has modified the amounts allocated to the Line Items of the Budget, the Construction Schedule and the total cost of the Project. No Guaranteed Maximum Price for the Project has been determined. Accordingly, the procedures outlined in Section 8.2.18 have not, to date, been followed or complied with in constructing the Project.
  - (e) Section 9.1.3 - The Borrower has not complied with the requirements of Section 8.2.18 as noted above.
3. The Borrower has provided to the Lenders the current outstanding unit sales contracts and schedules summarizing the terms and conditions and status of those sales contracts. Such contracts are approved by the Lenders even though such contracts reveal the following non-compliance with the following provisions of the Loan Agreement:
- (a) Sections 3.1.1(c), 8.2.10(c) and 8.2.13(f)(ii) - On closing of the disposition of Units, the closing proceeds to be paid to the Lenders at the time of closing may not be equal to the Minimum Release Price;
  - (b) Sections 8.2.7 and 8.2.13 - In respect of certain of the Units, the Borrower has entered into sale/leaseback transactions, as disclosed to the Lenders, which do not comply with these provisions of the Loan Agreement.
  - (c) The sales contracts do not all comply with the deposit structure required by the definition of Bona Fide Sales Contracts.
4. In entering into construction contracts for the Project, the Borrower has not complied with certain requirements of the Loan Agreement, including the fact that there is no Guaranteed Maximum Price General Contract for the Project. Instead, the Project has been undertaken with a construction management contract entered into between the Borrower and Rock Ridge Contractors Inc. (the "**Construction Manager**") as an agent for and on behalf of the Borrower, which retained the trade contractors performing work on the Project. The following provisions of the Loan Agreement have not been complied with:
- (a) Sections 5.4.1 and 6.6.4 - These provisions are not relevant to the construction contract program actually engaged in by the Borrower. The Borrower has entered into individual construction contracts with each trade contractor. Accordingly, there will be separate substantial completion arrangements for each separate trade contractor. For those trade contractors who have achieved substantial performance (as defined in the *Construction Lien Act* (Ontario), the Construction Manager has certified substantial performance and the trade contractor has published notice of substantial performance in compliance with the *Construction Lien Act* (Ontario). The procedures set forth in Section 5.4.1 have not been followed in this certification process. The Project Architect has been engaged to ensure building code compliance only and has not provided certificates relating to the progress of completion of construction.

- (b) Section 7.26 - This warranty provides that the Administrative Agent has received a true, complete and correct copy of each Project Document. The definition of "Project Document" includes all construction contracts as well as the Budget, the Construction Schedule and any contract with a contract price in excess of \$2,000,000.00. The construction contracts have not been signed by the trade contractors and are being signed.
  - (c) Section 7.36 - The Construction Schedule does not comply with the requirements of this warranty, both with respect to the anticipated date of final completion and the work to be performed in each calendar month of each Construction Phase.
  - (d) Section 8.2.16 - The Borrower has approved many change orders under the trade contracts without complying with the change order procedure set forth in this provision.
  - (e) Section 8.2.17 - The Borrower had made Scope Changes without complying with this procedure. This is, in part, the cause of the Budget not being In Balance.
  - (f) Section 8.2.18 - The Borrower has approved change orders resulting in changes to the Construction Schedule without complying with the requirements of this provision.
- 5. Section 8.2.19 - The net operating income of the hotel is insufficient for the Borrower to comply with the Debt Service Coverage Ratio. The Borrower funded the sum of \$368,000.00 in working capital to the Hotel Operator prior to the Opening Date of the Hotel, but these funds have now been dissipated due to the fact that the Net Operating Income of the Hotel has been insufficient to maintain this level of working capital.
  - 6. Section 4(e) of the Payment Guaranty makes it an Event of Default that the daily average Net Worth of the Guarantor at any time during the term of the Guarantee is less than \$95,000,000.00. It is unclear as to whether or not the net worth requirement of this Guaranty will be sustained.
  - 7. The Borrower has disclosed to the Lenders the details of its outstanding, unsecured trade payables. Many of these unsecured trade payables have been outstanding for longer than 45 days and, accordingly, do not constitute indebtedness permitted pursuant to the provisions of Section 8.2.2(e) and may be a breach of Section 9.1.5.
  - 8. The Borrower failed to pay interest on April 1, 2009 as required under Section 3.2.3.
  - 9. The foregoing matters which have been disclosed to the Lenders have the following consequences:
    - (a) They may constitute a Material Adverse Effect and thereby be a breach of Sections 6.5.1(c), 7.12 and 9.1.16;



- (b) The Borrower's knowledge of the foregoing matters will constitute a breach of the warranty in Section 7.31;
- (c) The provisions of Section 4(b) of the KFE Guaranty of Completion and Performance and Section 4(b) of the Non-Recourse Carve-Out Guaranty of KFE which, in respect of the foregoing matters, make it an Event of Default if any representation or warranty of the Guarantor under any Loan Document is incorrect when made or deemed to have been made in any material respect, may not have been complied with.
- (d) As disclosed to the Lenders, the Borrower has been unable to pay current outstanding project expenses without the advance of additional Credit Extensions. This may result in the Borrower being insolvent and cause a breach of the provisions of Section 2.01(b)(i) of the Non-Recourse Carve-Out Guaranty of KFE. In addition, the Borrower may be in breach of Section 2.01(b)(vii) due to the fact that the closing proceeds to be delivered to the Lenders may not, in all cases, constitute the Minimum Release Price for each Unit sold.
- (e) Section 9.1.12 - In respect of the defaults outlined in this Schedule, the Borrower and KFE have not complied with the provisions of the Loan Agreement or the Guarantees to which such breaches relate.
- (f) They may have constituted a material misrepresentation by the Borrower or KFE pursuant to Section 2.01(b)(vi) of the KFE Non-Recourse Cave-Out Guaranty.

THE ROSSEAU RESORT DEVELOPMENT INC.

V.

WESTLB AG, TORONTO BRANCH

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPLICATION RECORD  
VOLUME I OF II**

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