

**TAB P**



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Barristers & Solicitors  
Patent & Trade-mark Agents  
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Toronto ON M5L 1A9 Canada  
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**Pamela L. J. Huff**  
Dir: 416-863-2958  
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May 19, 2009

Reference: 71416/2

**VIA COURIER AND FACSIMILE**

The Rosseau Resort Developments Inc.  
110 Hannover Drive, Suite 203B  
P.O. Box 24091  
St. Catharines, Ontario  
L2W 1A4

Attention: President  
Facsimile No.: (905) 688-3060

**Re: Indebtedness of The Rosseau Resort Developments Inc. (the "Borrower") to WestLB AG,  
Toronto Branch (the "Administrative Agent")**

Dear Sirs:

We are the solicitors for the Administrative Agent.

We refer you to the Credit Agreement dated as of February 1, 2007 among the Borrower, various financial institutions, as Lenders, the Administrative Agent, as the Arranger and Administrative Agent for the Lenders, CIT Financial Ltd., as Syndication Agent for the Lenders, and Raiffeisen Zentralbank Osterreich AG, as Documentation Agent (as amended by the amending agreements dated June 6, 2007, October 19, 2007, March 9, 2009 and April 9, 2009, the "Credit Agreement"). All capitalized terms and phrases used herein and not otherwise defined have the meanings given to them in the Credit Agreement.

We also refer to the Fourth Amendment and Forbearance Agreement dated as of April 9, 2009 (the "Forbearance Agreement") among the Loan Parties, the Lenders and the Administrative Agent, whereby the Lenders agreed to forbear from exercising their default-related rights and remedies arising from the Events of Default set out in Schedule F therein (the "Prior Events of Default") until May 15, 2009 (the "Expiry Date").

The obligations of the Borrower under the Credit Agreement are secured by, among other things (collectively, the "Security"):

- a Security Agreement dated as of April 20, 2007 in favour of the Administrative Agent, over all of the present and future undertaking, personal property and real property of the Borrower and all proceeds thereof;

- a Charge/Mortgage registered on March 6, 2007 against the lands and premises denoted by 48143-0120 (LT), 48143-0242 (LT), 48143-0244 (LT), 48143-0246 (LT) and 48143-0261 (LT);
- a Project Account Agreement dated as of April 20, 2007 in favour of the Administrative Agent, with respect to the Project Account (as defined therein); and
- an Assignment of Contracts dated as of April 20, 2007 in favour of the Administrative Agent, with respect to the Assigned Contracts (as defined therein).

As of May 18, 2009, the Borrower is indebted to the Lenders in the amount of \$68,965,845.63, being comprised of principal owing in the amount of \$67,260,149.79, accrued but unpaid interest owing in the amount of \$778,515.03, and costs, expenses and other fees in the amount of \$927,180.81.

The Expiry Date has now passed and, accordingly, the Administrative Agent is entitled to enforce its rights and remedies arising from the Prior Events of Default upon direction by the Required Lenders in accordance with Section 9.3 of the Credit Agreement. As well, additional Events of Default have occurred and are continuing as a result of, among other things, the failure of the Borrower to make the interest payment due May 1, 2009, as more particularly set out in the notice of default dated May 5, 2009, and the failure to pay fees, costs and expenses incurred by the Administrative Agent in accordance with Section 11.3 of the Credit Agreement (collectively, the "Additional Events of Default"). By letter dated May 12, 2009, the Borrower and the Guarantor acknowledged the Additional Events of Default (together with the Prior Events of Default, the "Defaults").

As a result of the Defaults, in accordance with Section 9.3 of the Credit Agreement, the Required Lenders have directed the Administrative Agent to declare all Obligations to be immediately due and payable, terminate the remaining Commitments, and exercise any and all rights and remedies available to it under applicable law or any of the Loan Documents.

On behalf of the Administrative Agent, we hereby notify you that the remaining Commitments are terminated. In addition, on behalf of the Administrative Agent, we hereby declare that all Obligations are immediately due and payable and demand immediate payment of the Obligations in full. Interest continues to accrue on the Obligations at the rates set forth in the Credit Agreement.

We enclose a Notice of intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada).

Yours very truly,



Pamela L. J. Huff

PLJH/FLY  
Enclosure

c: Stikeman Elliot LLP (Via Facsimile)  
199 Bay Street



Commerce Court West  
Suite 5300  
Toronto, Ontario  
M5L 1B9  
Attention: John R. Dow and Sean F. Dunphy

Ken Fowler Enterprises Limited (Via Facsimile)  
P.O. Box 24091  
110 Hannover Drive, Suite 203B  
St. Catharines, Ontario  
L2R 7P7  
Attention: Ken Fowler  
Red Leaves Resort  
P.O. Box 24091  
110 Hannover Drive, Suite 203B  
St. Catharines, Ontario  
L2R 7P7  
Attention: Ken Fowler

CIT Financial Ltd. (Via Facsimile)  
207 Queens Quay West  
Suite 700  
Toronto, Ontario  
M5J 1A7  
Attention: Mr. Daryl MacLellan and Mr. John Robson

CIT Group Inc. (Via Facsimile)  
Commercial Real Estate  
505 Fifth Avenue, 14<sup>th</sup> Floor  
New York, New York 10002  
Attention: Mr. George Raddatz

Aird & Berlis LLP  
Brookfield Place, 181 Bay Street  
Suite 1800, Box 754  
Toronto, Ontario M5J 2T9  
Attention: Edmund Smith and Harry Fogul

**FORM 86**  
**Notice of Intention to Enforce Security**  
**(Subsection 244(1))**

To: The Rosseau Resort Developments Inc. (the "Debtor"), an insolvent person  
110 Hannover Drive, Suite 203B  
P.O. Box 24091  
St. Catharines, Ontario  
L2W 1A4

Attention: President

Take notice that:

1. WestLB AG, Toronto Branch, a secured creditor (the "Secured Creditor"), intends to enforce the security granted by the Debtor over all of its present and future undertaking, personal property and real property of the Debtor (as more particularly set out in the Security Agreement dated April 20, 2007), the lands and premises denoted by 48143-0120 (LT), 48143-0242 (LT), 48143-0244 (LT), 48143-0246 (LT) and 48143-0261 (LT) (as more particularly set out in the Charge/Mortgage registered on March 6, 2007), the Project Account (as defined and more particularly described in the Project Account Agreement dated April 20, 2007), and the Assigned Contracts (as defined and more particularly described in the Assignment of Contracts dated as of April 20, 2007 (collectively, the "Security").

2. The total amount of indebtedness secured by the Security as at May 18, 2009 is \$68,965,845.63, comprised of principal owing under the Credit Agreement dated as of February 1, 2007 (the "Credit Agreement") in the amount of \$67,260,149.79, accrued but unpaid interest owing under the Credit Agreement in the amount of \$778,515.03, and costs, expenses and other fees owing under the Credit Agreement in the amount of \$927,180.81, together with any other amounts and costs recoverable by the Secured Creditor under the terms of the aforesaid Credit Agreement and the Security, plus all interest accrued on all of the foregoing to the date of payment in full calculated at the applicable rates.

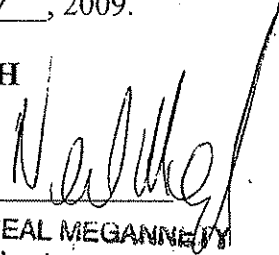
3. The Secured Creditor will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

Dated at Toronto this 19<sup>th</sup> day of May, 2009.

**WESTLB AG, TORONTO BRANCH**

By: 

Name: Robert L. Dyck  
Title: Executive Director

  
NEAL MEGANNERY  
Director

ACKNOWLEDGED and AGREED to this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**THE ROSSEAU RESORT DEVELOPMENTS INC.**

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

Name:

Title:

I have authority to bind the corporation.

We hereby consent to the immediate enforcement of  
the Security. \_\_\_\_\_

(Initials)

**TAB Q**

**NON-RECOURSE CARVE OUT GUARANTEE  
KEN FOWLER ENTERPRISES LIMITED**

**THIS NON-RECOURSE CARVE OUT GUARANTEE** (this "**Guarantee**"), dated as of the 6<sup>th</sup> day of June, 2007, by KEN FOWLER ENTERPRISES LIMITED, a company incorporated under the laws of the Province of Ontario (the "**Guarantor**"), for the benefit of **FORTRESS CREDIT CORP.** ("**Fortress**"), in its capacity as Administrative Agent (together with its successors and assigns, the "**Administrative Agent**") under that certain Mezzanine Loan and Security Agreement dated as of the date hereof, among the Guarantor, The Rosseau Resort Developments Inc., an Ontario corporation (the "**Borrower**"), Fortress, in its capacity as the initial Lender, the various financial institutions which may from time to time become a party thereto (each individually, including Fortress, a "**Lender**" and collectively, the "**Lenders**") and Administrative Agent (as such agreement may be amended, supplemented, amended and restated or otherwise modified from time to time, the "**Mezzanine Loan Agreement**").

**WITNESSETH:**

**WHEREAS**, the Guarantor owns, directly or indirectly, 74.56% of the issued and outstanding shares of the Capital Stock (as defined in the Senior Credit Agreement) of the Borrower; and

**WHEREAS**, the Borrower is the record legal title holder of that certain real property located in Muskoka, Ontario, Canada as more particularly described (i) on Exhibit A-1 to the Senior Credit Agreement including all Appurtenant Rights thereto (the "**Land**") upon which it will develop:

- (a) a main upper hotel/condominium consisting of 178 Residential Condominium Units including an approximately 20,000 square foot conference facility, an approximately 13,500 square foot spa, food and beverage facility that will include a casual dining restaurant with a 60 seat outdoor terrace, a 40 seat lounge adjacent to the upper hotel, a 40 seat fine dining restaurant with a 20 seat outdoor terrace ("**Longview**") and certain common property together with related facilities and amenities;
- (b) a lower hotel/condominium lodge consisting of 43 Residential Condominium Units resulting from the construction of a new building to be named "Paignton House" including a pool/bar restaurant ("**Paignton House**") and certain common property together with related facilities and amenities;
- (c) up to 31 Residential Condominium Units between Longview and Lake Rosseau together with a boathouse (the "**Waterfront Residences**") and certain other common property together with related facilities and amenities;
- (d) up to 6 "Meadow" residences, 21 "Wedge" golf villas, and 24 "Bunker " golf villas built along "The Rock" golf course (the "**Golf Residences**") and certain common property together with related facilities and amenities;



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

WHEREAS, pursuant to the Mezzanine Loan Agreement, the Lenders have agreed to make advances to the Borrower in the aggregate principal amount of up to FORTY MILLION CANADIAN DOLLARS (\$40,000,000) (the "Loan"); and

WHEREAS, the Loan is to be advanced by the Lenders to the Borrower pursuant to the terms of the Mezzanine Loan Agreement; and

WHEREAS, as a condition precedent to the effectiveness of the Mezzanine Loan Agreement, the Guarantor is required to execute and deliver this Guarantee; and

WHEREAS, the Guarantor has duly authorized the execution, delivery and performance of this Guarantee and such other Loan Documents; and

WHEREAS, it is in the best interests of the Guarantor to execute this Guarantee inasmuch as the Guarantor will derive substantial benefits from the Loan to be made to the Borrower pursuant to the Mezzanine Loan Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Lenders to make the Loan to the Borrower in accordance with the Mezzanine Loan Agreement, the Guarantor agrees for the benefit of the Administrative Agent and the Lenders, as follows:

1. **Definitions.**

Capitalized terms used herein, including the preamble and the recitals above, and not separately defined herein shall have the definitions ascribed thereto in the Mezzanine Loan Agreement.

2. **The Guarantee.**

2.1 **Guaranteed Obligations.**

- (a) Subject to clause (b) of this Section 2.1 below, the Guarantor hereby jointly and severally, unconditionally, absolutely and irrevocably, as a primary obligor and not merely as a surety, guarantees to the Administrative Agent, for its benefit and for the benefit of the Lenders, the punctual and complete payment when due in Canadian Dollars, whether at or after maturity, upon acceleration or otherwise, of all present and future Indebtedness and the Obligations of the Borrower to the Lenders under any and all of the Loan Documents, in each case, as such Indebtedness and Obligations may from time to time be supplemented, increased, modified, amended, renewed and extended, whether evidenced by amendments, supplements, amendments and restatements or new or additional documents, including, without limitation, (i) the outstanding principal amount of any Loan, (ii) all interest payable under the Loan Documents, including, without limitation, interest accruing after the Maturity Date or the realization of any Security or

interest that would otherwise have been owed by the Borrower under the Loan Documents but the payment of which is unenforceable or not allowable due to the existence of a bankruptcy, liquidation, reorganization or similar proceeding involving the Borrower, and any late charges, fees or other amounts due by reason of any later payment of interest, and (iii) all other sums, fees, costs, expenses and payments due to the Administrative Agent or the Lenders (including legal fees) pursuant to the Mezzanine Loan Agreement (including Section 15.11(a) thereof) or one or more of the Loan Documents (the obligations set forth in this clause (a) and in clause (c) of this Section 2.1 are hereinafter collectively referred to as the **"Guaranteed Obligations"**); provided that the Guaranteed Obligations shall, except (1) in the case of a Senior Claim (as hereinafter defined), or (2) in the case of the occurrence of a Recourse Event specified in subclause 2.1(b)(ii) or (xx), be limited to Losses (as hereinafter defined) suffered or incurred by the Agent or the Lenders as a result of the occurrence of the applicable Recourse Event. For the purposes of this Guarantee, (x) the term "Losses" includes any and all claims, liabilities, actions, proceedings, obligations, debts, demands, damages, losses, costs, expenses, fines, penalties, charges, fees, expenses, judgements, awards, or amounts paid in settlement (including legal fees and other costs of defence), and (y) the term "Senior Claim" means any demand or claim against the Guarantor by any Senior Creditor pursuant to the non-recourse carve-out guaranty dated as of June \_\_\_, 2007, given by the Guarantor for the benefit of the Senior Creditors (the **"Senior Guaranty"**), for an amount in excess of the Losses actually suffered or incurred as a result of the occurrence of one or more of the "Recourse Obligations" (as defined in the Senior Guaranty as of the date of this Agreement). In addition to the Guaranteed Obligations, the Guarantor shall also be liable to pay all Enforcement Costs as provided for in clause (c) of this Section 2.1.

- (b) The Guarantor shall be liable, as aforesaid, for all of the Guaranteed Obligations upon the occurrence of one or more of the following (individually, a **"Recourse Event"** and collectively, the **"Recourse Events"**):
  - (i) the Borrower shall become insolvent or generally fail to pay, or admit in writing its inability or unwillingness generally to pay, debts as they become due;
  - (ii) an event of default occurs under Section 13.1(a)(vii) or 13.1(a)(viii) of the Mezzanine Loan Agreement as to the Borrower or the Guarantor which is voluntary, or the Borrower, the Guarantor or any of their Affiliates solicits or aids the solicitation of or consents or acquiesces to the filing of any petition, application or other proceeding under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation against the Borrower or the Guarantor including, without limitation: (A) providing information regarding the identity of creditors or the nature of creditors' claims to any third party unless compelled to do so by order of a court of competent jurisdiction or by regulation promulgated by a Governmental Authority, or (B) paying the legal fees or expenses of any creditor of or interest holder in the

Borrower or the Guarantor with respect to any bankruptcy, insolvency or restructuring filing by or against any of them;

- (iii) fraud, tortious conduct or material misrepresentation by the Borrower, the Guarantor or any of their Affiliates in connection with the Security, the Loan, the Mezzanine Loan Agreement, the Note or any of the other Loan Documents;
- (iv) the Borrower shall misappropriate or fail to deliver to the Senior Credit Administrative Agent any Minimum Release Price, Rent Proceeds, Expropriation Proceeds, Insurance Proceeds, Net Disposition Proceeds or Proceeds from Equity Issuance (in each case as such terms are defined in the Senior Credit Agreement) in each case as required pursuant to the terms of the Senior Credit Agreement or otherwise fail to apply any such proceeds in accordance with the Senior Loan Documents, or fail to deliver to the Administrative Agent any Net Cash Flow or Proceeds in each case as required pursuant to the Mezzanine Loan Agreement or otherwise fail to apply any such Net Cash Flow or Proceeds in accordance with the Loan Documents;
- (v) the Borrower shall fail to maintain the insurance required by Section 5.1.9 of the Mezzanine Loan Agreement;
- (vi) the Borrower shall be liable for the payment to the Administrative Agent or any Lender of any amount pursuant to Section 17.3 of the Mezzanine Loan Agreement;
- (vii) the Borrower shall be liable for the payment of any amounts required by the *Ontarians with Disabilities Act, 2001*, S.O. 2001, Chapter 32 (or its equivalent) and other similar Legal Requirements;
- (viii) a Change in Control (as defined in the Senior Credit Agreement);
- (ix) the Borrower shall fail to fund and maintain the Impositions and Insurance Reserve pursuant to the Senior Credit Agreement and the Insurance Reserve Account Agreement;
- (x) the Borrower, or anyone claiming through or under the Borrower, shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of the Mortgage by the Administrative Agent or the absolute sale of the Security or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof;
- (xi) the occurrence of a default by the Borrower of the covenants set forth in Sections 5.1.14 and 5.1.16 of the Mezzanine Loan Agreement and Section 8.1.4 and 8.1.15 of the Senior Credit Agreement (as required and

interpreted in accordance with Section 5.3 of the Mezzanine Loan Agreement);

- (xii) any misappropriation of funds by the Borrower, the Guarantor or any of their Affiliates;
- (xiii) all or any part of the Premises, the Lock-Box Account, the Rate Cap Collateral or the other Collateral being encumbered by a voluntary Lien (other than by virtue of the Mezzanine Loan Agreement, the Security or the Priority Liens) in violation of the Loan Documents;
- (xiv) an Event of Default by the Borrower, the Guarantor or any of their Affiliates under the Mezzanine Loan Agreement or under any other Loan Document pursuant to which any profits and/or income collected by the Borrower or the Guarantor or any of their Affiliates (other than as required to be paid to the ECD Insurance Escrow Agent, or paid directly to the Senior Administrative Agent pursuant to the Senior Loan Documents) is not applied to payment of the Obligations or used to pay Operating Expenses of the Premises permitted pursuant to the Senior Loan Documents, or otherwise consented to by Administrative Agent or otherwise applied in a manner permitted under the Loan Documents;
- (xv) physical damage to the Premises from intentional waste committed by the Borrower, the Guarantor or any of their Affiliates;
- (xvi) the failure of the Borrower to comply with any of the provisions of Section 5.1.22 of the Mezzanine Loan Agreement or Section 8.1.16 of the Senior Credit Agreement;
- (xvii) the failure of the Borrower to comply with any of the provisions of Article 9 of the Mezzanine Loan Agreement;
- (xviii) the fraudulent acts of Borrower or the Guarantor, or the wilful breach of the Mezzanine Loan Agreement or any of the other Loan Documents by the Borrower, the Guarantor or any of their Affiliates;
- (xix) the Borrower, the Guarantor or any of their Affiliates asserting, claiming or alleging any defence to the enforceability of the Note, the Mezzanine Loan Agreement, the Security, the Environmental Indemnity, any of the Guarantees or any other Loan Document, or to the priority of the lien of the Security or the Mezzanine Loan Agreement (other than a good faith defence to a claimed Event of Default that no such Event of Default exists); or
- (xx) the Borrower or the Guarantor agreeing to any amendment or modification to the Senior Credit Agreement or any other Senior Loan Document that has the effect of increasing the interest rates payable under the Senior Credit Agreement as at the date of this Guarantee; or

- (xxi) the Borrower shall fail to comply with its obligations contained in Section 5.1.4 of the Mezzanine Loan Agreement to remain a Single Purpose Entity.
- (c) In the event the Administrative Agent retains counsel (i) to enforce any of the Administrative Agent's rights and remedies hereunder, to prosecute or defend any action or proceeding or other litigation affecting or relating to the Guaranteed Obligations or this Guarantee, or to collect amounts due from the Guarantor hereunder or (ii) to represent the Administrative Agent in any other proceeding whatsoever arising out of, from, or in connection with the Guaranteed Obligations or this Guarantee including, without limitation, in any bankruptcy, reorganization, restructuring, receivership or other proceedings affecting creditors' rights related to a filing by or against the Guarantor, the Guarantor covenants and agrees to pay all reasonable fees and reasonable out-of-pocket costs and expenses of such counsel, court costs and filing fees (all of which costs, expenses and fees are referred to as "**Enforcement Costs**") in addition to all other amounts due hereunder whether or not such Enforcement Costs are incurred in one or more proceedings involving the Administrative Agent. All such Enforcement Costs shall be paid on demand after delivery of an invoice therefor after which time interest shall accrue on the amount thereof at the Interest Rate set forth in the Mezzanine Loan Agreement until all such Enforcement Costs have been indefeasibly paid in full.

If the Borrower shall fail to pay or perform in full when due (whether at the Maturity Date, by acceleration or otherwise) any Obligation under the Loan Documents which constitutes a Guaranteed Obligation or if the Guarantor otherwise becomes obligated to pay or perform any Guaranteed Obligation in accordance with the terms of this Guarantee, the Guarantor will promptly pay same on demand therefor by the Administrative Agent.

- 2.2 **Guarantee Absolute.** The obligation of the Guarantor hereunder is a present and continuing obligation and is primary and independent of any obligation of the Borrower to perform the Obligations under the Loan Documents. The Guarantor shall be obligated jointly and severally to pay and perform the Guaranteed Obligations whether or not the Loan Documents are in effect, whether or not the Borrower has been relieved, released or discharged thereunder and whether or not the Administrative Agent is prohibited from enforcing some or all of the Borrower's obligations thereunder until the Guaranteed Obligations have been indefeasibly paid and performed. At the option of the Administrative Agent, all amounts advanced by the Administrative Agent under the Mezzanine Loan Agreement may be treated as a protective advance made to or on behalf of the Borrower under the Loan Documents and, in such event, the Guarantor shall be obligated to reimburse the Administrative Agent for such advance in accordance with this Guarantee together with interest thereon from the date of any such advance at the Interest Rate set forth in the Mezzanine Loan Agreement. This Guarantee shall be reinstated if at any time after the payment and performance of the Guaranteed Obligations a court of competent jurisdiction requires the Administrative Agent to return or refund to any Person for any reason whatsoever all or any portion of any payment made by the Borrower to the Administrative Agent.

2.3 **Obligations Unconditional.** The obligations of the Guarantor under this Guarantee hereof are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Mezzanine Loan Agreement or any other agreement or instrument referred to herein or therein, including, without limitation, the Environmental Indemnity, the Completion Guarantee, the Payment Guarantee, the First Cleveland House Guarantee, the Second Cleveland House Guarantee, the Future Lands Guarantee, the Golf Course Lands Guarantee, the Lakeside Lodge Lands Guarantee, the Sponsor Non-Recourse Carve-Out Guarantee and this Guarantee (collectively, the "Guarantees"), or any substitution, release, settlement or exchange of any of the other Guarantees or any other guarantee of or security for the Loan or the Borrower's obligations under the Loan Documents, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantor hereunder, which shall remain absolute and unconditional as described above:

- (i) at any time or from time to time, without notice to the Guarantor, the time for any performance of or compliance with any obligations of the Borrower or the Guarantor to the Administrative Agent shall be extended, or such performance or compliance shall be waived or any consent or indulgence shall be granted or withheld in connection therewith;
- (ii) any of the acts mentioned in any of the provisions of the Mezzanine Loan Agreement or any other agreement or instrument referred to herein or therein, including, without limitation, any of the Guarantees, shall be performed, in whole or in part;
- (iii) the maturity of any Obligations shall be accelerated, or any such Obligation shall be modified, supplemented or amended in any respect, or any right under the Mezzanine Loan Agreement, the Guarantees, or any other agreement or instrument referred to herein or therein, shall be waived or any of the other Guarantees or any other guarantee of any obligation of the Borrower to the Administrative Agent or any security therefor shall be modified, released or exchanged in whole or in part or otherwise dealt with;
- (iv) any lien or security interest granted to, or in favor of, the Administrative Agent as security for any obligation of the Borrower to the Administrative Agent shall be released or shall fail to be perfected or shall fail to have priority over any other lien or security interest; or
- (v) all or any part of the Land or any other Security for any obligation of the Borrower to the Administrative Agent shall be sold, released, assigned or otherwise transferred, whether in connection with a foreclosure, deed in lieu of foreclosure, settlement, restructuring or otherwise.

The Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices (other than notices that are expressly required by this Guarantee) whatsoever, and any requirement that the Administrative Agent exhaust any right, power or remedy or proceed against the Borrower under the Mezzanine Loan Agreement or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any obligation of the Borrower to the Administrative Agent.

- 2.4 **Reinstatement.** The obligations of the Guarantor under this Guarantee shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of any Guaranteed Obligation is rescinded or must be otherwise restored by the Administrative Agent, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Guarantor agrees that it will indemnify the Administrative Agent on demand for all reasonable costs and expenses (including, without limitation, reasonable fees and costs and expenses of counsel) incurred by the Administrative Agent in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.
- 2.5 **Subrogation.** The Guarantor hereby agrees that it shall not be subrogated to any of the rights of the Administrative Agent until indefeasible payment of the Obligations has been made by or on behalf of the Borrower.
- 2.6 **Remedies.** The Guarantor agrees that, as between the Guarantor and the Administrative Agent, the Obligations of the Borrower under the Mezzanine Loan Agreement may be declared to be forthwith due and payable pursuant to the terms thereof (and shall be deemed to have become automatically due and payable in the circumstances provided therein) for purposes of Section 2.1 hereof notwithstanding any stay, injunction or other prohibition preventing such declaration (or such Obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such Obligations being deemed to have become automatically due and payable), such Obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantor for purposes of said Section 2.1.
- 2.7 **Continuing Guarantee.** The guarantee in this Section 2 is a continuing guarantee, and shall apply to all Guaranteed Obligations hereof whenever arising.
- 2.8 **Payments.** All payments under this Guarantee shall be made in Canadian Dollars without set-off or counterclaim at the place and in the manner specified for payments under the Mezzanine Loan Agreement.
3. **Representations and Warranties; Covenants.**

The Guarantor represents and warrants to the Administrative Agent, for its benefit and the benefit of the Lenders, that:

- 3.1 **Corporate Existence.** The Guarantor is duly organized and validly existing and in good standing under the laws of the province or jurisdiction of its organization, is duly qualified to do business and is in good standing in each jurisdiction where the nature of its business requires such qualification and has full power and authority and holds all requisite governmental licenses, Permits and other approvals to enter into and perform its obligations under this Guarantee and the other Loan Documents to which it is a party and to own, hold and, if applicable, lease its property and to conduct its business substantially as currently conducted by it.
- 3.2 **No Breach.** None of the execution and delivery of this Guarantee, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the articles or by-laws of the Guarantor, any Legal Requirement binding on or affecting the Guarantor, or any agreement or instrument to which the Guarantor is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any Lien upon any of the revenues or assets of the Guarantor pursuant to the terms of any such agreement or instrument.
- 3.3 **Corporate Action.** The Guarantor has all necessary corporate power and authority to execute, deliver and perform its obligations under this Guarantee; the execution, delivery and performance by the Guarantor of this Guarantee has been duly authorized by all necessary corporate action on its part; and this Guarantee has been duly and validly executed and delivered by the Guarantor and constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.
- 3.4 **Approvals.** No authorizations, approvals or consents of, and no filings or registrations with, any Governmental Authority are necessary for the execution, delivery or performance by the Guarantor of this Guarantee or for the validity or enforceability hereof.
- 3.5 **Solvency.** After giving effect to the Transaction (as defined in the Senior Credit Agreement), as of the date of this Guarantee:
- (i) The Guarantor will not for any reason be unable to meet its obligations as they generally become due;
  - (ii) The Guarantor will not have ceased paying its current obligations in the ordinary course of business as they generally become due; and
  - (iii) the aggregate of the Guarantor's property is not, at a fair valuation, insufficient, or, if disposed of at a fairly conducted sale under legal process would not be insufficient to enable payment of all its obligations, due and accruing date.
- 3.6 **Ownership of Interests – Borrower.** As of the date hereof the Guarantor is the owner of 74.56% of the issued and outstanding shares of the Capital Stock (as defined in the Senior Credit Agreement) of the Borrower.



3.7 **Financial Information.** The Guarantor shall furnish, or cause to be furnished, to the Administrative Agent copies of the following financial statements, reports, notices and information:

- (i) as soon as available and in any event within forty-five (45) days after the end of each fiscal quarter, a balance sheet of the Guarantor, and a statement of earnings and cash flow of the Guarantor, in each case, as of the end of such fiscal quarter as well as for the period commencing at the end of the previous Fiscal Year and ending with the end of such fiscal quarter, certified as complete and correct by the chief financial or accounting Authorized Representative (as defined in the Senior Credit Agreement);
- (ii) as soon as available and in any event within forty-five (45) days after the end of each fiscal quarter, a quarterly operating statement of the Guarantor, certified as complete and correct by the chief financial or accounting Authorized Representative (as defined in the Senior Credit Agreement);
- (iii) as soon as available and in any event within one hundred twenty (120) days after the end of each Fiscal Year, a copy of the annual audited financial statements for such Fiscal Year of the Guarantor and a statement of earnings and cash flow of the Guarantor for such Fiscal Year, in each case as audited (without any Impermissible Qualification (as defined in the Senior Credit Agreement)) by nationally recognized independent public accountants reasonably acceptable to the Administrative Agent;
- (iv) as soon as available and in any event within five (5) Business Days after any change in the Authorized Representative (as defined in the Senior Credit Agreement) of the Guarantor, a certified specimen signature of such new Authorized Representative (as defined in the Senior Credit Agreement) so appointed together with evidence of the authority of such new Authorized Representative (as defined in the Senior Credit Agreement);
- (v) as soon as possible and in any event within five (5) Business Days after obtaining knowledge of the occurrence of a Default, any Event of Loss or any act, event or condition which could reasonably be expected to have a Material Adverse Effect, a statement of the chief executive, financial or accounting Authorized Representative (as defined in the Senior Credit Agreement) of the Guarantor setting forth details thereof and the action which the Guarantor has taken and proposes to take with respect thereto;
- (vi) as soon as possible and in any event within five (5) Business Days after the Guarantor obtains knowledge of (x) the occurrence of any material adverse development with respect to any litigation, action, proceeding or labor controversy of the type and materiality described in Exhibit J to the Mezzanine Loan Agreement or (y) the commencement of any litigation,

action, proceeding or labor controversy of the type and materiality described in Exhibit J to the Mezzanine Loan Agreement, a copy of all relevant documentation relating thereto;

- (vii) promptly after the sending or filing thereof, copies of all reports required to be filed by the Guarantor with any Governmental Authority, including any reports with respect to an Environmental Event and the Permits;
- (viii) as soon as possible and in any event within five (5) Business Days after the Guarantor receives notice or obtains knowledge of the occurrence or existence of any Environmental Event requiring notice to a Governmental Authority or with respect to which notice is received from a Governmental Authority, a copy of all relevant documentation relating thereto; and
- (ix) such other information and reports respecting the condition or operations, financial or otherwise, of the Borrower, the Guarantor or the other guarantors under the Mezzanine Loan Agreement and the Premises as required under the Loan Documents, the Senior Loan Documents, the Project Documents and the Condominium Documents, and such other information and reports respecting the construction of the Improvements as the Administrative Agent or Consulting Engineer may reasonably request from time to time.

By accepting delivery of any of the aforementioned items, the Administrative Agent shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any consent or affirmation with respect thereto or estoppel by the Administrative Agent.

- 3.8 **Recognition of Substantial Benefit.** The Guarantor recognizes that it shall derive substantial benefits from the Loan to be made to the Borrower by reason of its ownership of the Capital Stock (as defined in the Senior Credit Agreement) of the Borrower.

4. **Events of Default.**

Each of the following events or occurrences described in this Section 4 shall constitute an "Event of Default" under this Guarantee:

- (a) The Guarantor shall default in the due performance and observance of its obligations under this Guarantee and such default shall continue unremedied for a period of five (5) Business Days (or such other period of time during which performance of the applicable obligations is required under this Guarantee) after written notice shall have been given to the Guarantor by the Administrative Agent;
- (b) Any representation or warranty of the Guarantor made or deemed to be made under any Loan Document, Senior Loan Document, Project Document or Condominium Document executed by it or any other writing or certificate

furnished by or on behalf of the Guarantor to the Administrative Agent or any Lender for the purposes of or in connection with any Loan Document is or shall be incorrect when made or deemed to have been made in any material respect;

- (c) The Guarantor shall
  - (i) become insolvent or generally fail to pay, or admit in writing its inability or unwillingness generally to pay, debts as they become due;
  - (ii) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, interim receiver, receiver and manager, liquidator, sequestrator or other custodian for a substantial part of its property, or make a general assignment for the benefit of creditors;
  - (iii) in the absence of such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, interim receiver, receiver and manager, liquidator, sequestrator or other custodian for a substantial part of its property, and such trustee, receiver, interim receiver, receiver and manager, liquidator, sequestrator or other custodian shall not be discharged within forty-five (45) days; provided, however, that the Guarantor hereby expressly authorizes the Administrative Agent and each Lender to appear in any court conducting any relevant proceeding during such forty-five (45) day period to preserve, protect and defend their rights under this Guarantee and the other Loan Documents;
  - (iv) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement, readjustment composition, or similar relief or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect thereof, and, if any such case or proceeding is not commenced by the Guarantor, such case or proceeding shall be consented to or acquiesced in by the Guarantor or shall result in the entry of an order for relief or shall remain for forty-five (45) days undismissed; provided, however, that the Guarantor hereby expressly authorizes the Administrative Agent and each Lender to appear in any court conducting any such case or proceeding during such forty-five day period to preserve, protect and defend their rights under this Guarantee and the other Loan Documents; or
  - (v) take any action authorizing, or in furtherance of, any of the foregoing; and
- (d) The existence of an "Event of Default" as such term is defined in the Mezzanine Loan Agreement and the other Guarantees.

Upon the occurrence of an Event of Default hereunder, the Administrative Agent, without any notice to the Guarantor, shall be entitled to exercise all rights and remedies available hereunder and at law and equity and, at the option of the Administrative Agent, an "Event of Default" (as defined in the Mezzanine Loan Agreement) shall exist under the Mezzanine Loan Agreement and the other Loan Documents in which case the

Administrative Agent, without any further notice to the Guarantor or any other Person, shall be entitled to exercise all rights and remedies available thereunder and under the other Loan Documents; provided, however, the Administrative Agent may, at its option, commence enforcement proceedings against the Guarantor without declaring an "Event of Default" (as defined in the Mezzanine Loan Agreement) under the Mezzanine Loan Agreement.

**5. Payments Free and Clear of Taxes, etc.**

The Guarantor agrees that:

- (a) All payments by the Guarantor to the Administrative Agent or any Lender shall be made free and clear of and without withholding or deduction for any present or future taxes, levies, imposts, deductions, charges or withholdings, or any liabilities with respect thereto imposed, levied, collected, withheld, or assessed by any Governmental Authority, whether in force as of the date of this Indemnity or coming into force in the future, and whether such Governmental Authority is within or outside of Canada, but excluding franchise taxes and taxes imposed on or measured by the Administrative Agent's or any Lender's net income or receipts (each such non-excluded item being called "Taxes"). In the event that any withholding or deduction from any payment to be made by the Guarantor hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then the Guarantor will:
  - (i) pay directly to the relevant taxing authority the full amount required to be so withheld or deducted;
  - (ii) promptly forward to the Administrative Agent an official receipt or other documentation satisfactory to the Administrative Agent evidencing such payment to such authority; and
  - (iii) pay to the Administrative Agent for its benefit or for the benefit of the applicable Lender, such additional amount or amounts as are necessary to ensure that the net amount actually received by the Administrative Agent or the applicable Lender after giving effect to such withholding or deduction will equal the full amount the Administrative Agent or such Lender would have received had no such withholding or deduction been required.

Moreover, if any Taxes are directly asserted against the Administrative Agent or any Lender with respect to any payment received by the Administrative Agent or a Lender hereunder, the Administrative Agent may pay such Taxes and the Guarantor will promptly pay such additional amounts (including any penalties, interest or expenses) as are necessary in order that the net amount received by such Person after the payment of such Taxes (including any Taxes on such additional amounts) shall equal the amount the Administrative Agent or such Lender or such Person would have received had not such Taxes been asserted.

- (b) If the Guarantor fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Guarantor shall indemnify the Administrative Agent and the Lender for any incremental Taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure whether or not such Taxes were correctly or legally asserted. The Guarantor shall pay all such amounts within thirty (30) days after the date the Administrative Agent or Lender makes written demand therefor.
- (c) If any Lender or the Administrative Agent, as applicable, receives a refund of a tax for which a payment has been made by the Guarantor pursuant to this Guarantee, which refund in the good faith judgment of such Lender or Administrative Agent, as the case may be, is attributable to such payment made by the Guarantor, then the Lender or the Administrative Agent, as the case may be, shall reimburse the Guarantor for such amount as the Lender or Administrative Agent, as the case may be, determines in its absolute discretion to be the proportion of the refund as will leave the Lender or Administrative Agent, as the case may be, after such reimbursement, in no better or worse position than it would have been in if the payment had not been required. If the Guarantor receives a reimbursement under this paragraph (c) it agrees that, upon request, it will repay the amount of such reimbursement, together with penalties, interest and any other charges due, to the relevant Governmental Authority in connection with the refund, in the event a Lender or the Administrative Agent is required to repay such refund to the relevant Governmental Authority. A Lender or the Administrative Agent shall claim any refund that it determines in its absolute discretion is available to it, unless it concludes in its reasonable discretion that it would be adversely affected by making such a claim, and shall make the sole determination of the date on which such refund is received. Neither any Lender nor the Administrative Agent shall be obliged to disclose any information regarding its tax affairs or computations to the Guarantor in connection with this paragraph (c) or any other provision of this Section 5.

If the Guarantor determines in good faith that a reasonable basis exists for contesting any taxes for which indemnification has been demanded hereunder, the relevant Lender or the Administrative Agent, as applicable, shall reasonably cooperate with the Guarantor in challenging such taxes at the Guarantor's expense if so requested in writing by the Guarantor so long as doing so would not be disadvantageous to such Lender, as determined in such Lender's sole discretion.

- (d) Without prejudice to the survival of any other agreement of the Guarantor hereunder, the agreements and obligations of the Guarantor contained in this Section 5 shall survive expiration or earlier termination of this Guarantee.

**6. Subordination of Debt.**

If, for any reason whatsoever and whether or not permitted under the Loan Documents, the Borrower is or becomes indebted to the Guarantor:

- (a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect of property of the Borrower securing same shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;
- (b) the Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of the Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed;
- (c) the Guarantor hereby collaterally assigns and grants to the Administrative Agent, for its benefit and the benefit of the Lenders, a security interest in all such indebtedness and security therefor, if any, of the Borrower to the Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency or liquidation proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceeding involving the Borrower, as debtor, the Administrative Agent shall have the right to provide its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian, dividends and payments that are payable upon any obligation of the Borrower to the Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been indefeasibly repaid and performed. If, notwithstanding the foregoing provisions, the Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 6, the Guarantor shall pay the same to the Administrative Agent immediately, the Guarantor hereby agreeing that it shall receive any such payment, claim or distribution in trust for the Lenders and shall have absolutely no dominion over the same except to pay it immediately to the Administrative Agent; and
- (d) the Guarantor shall promptly upon request of the Administrative Agent from time to time execute such documents and perform such acts as the Administrative Agent may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 6, including, but not limited to, execution and delivery of financing statements, PPSA financing statements or similar Instruments, proofs of claim, further assignments and security agreements, and delivery to the Administrative Agent of any promissory notes or other instruments evidencing indebtedness of the Borrower to the Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by the Guarantor, of obligations of the Borrower to the Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guarantee and the other Guarantees.

7. **Miscellaneous.**

- 7.1 **No Waiver.** No failure on the part of the Administrative Agent or any of its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or

partial exercise by the Administrative Agent or any of its agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

- 7.2 **Cumulative Remedies.** No right or remedy conferred upon the Administrative Agent or the Lenders in this Guarantee is intended to be exclusive of any other right or remedy contained in the other Loan Documents or at law and equity and every such right and remedy shall be cumulative and shall be in addition to every other right or remedy contained in the other Loan Documents and as now or hereafter available to the Administrative Agent or the Lenders at law or in equity, by statute or otherwise.
- 7.3 **Governing Law; Entire Agreement.** THIS GUARANTEE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN. This Guarantee and the other Loan Documents constitute the entire understanding among the parties hereto with respect to the subject matter hereof and thereof and supersede any and all prior agreements, written or oral, with respect thereto.
- 7.4 **Waiver of Jury Trial.** THE ADMINISTRATIVE AGENT AND THE GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTEE OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT OR THE GUARANTOR IN CONNECTION HERewith OR THEREWITH. THE GUARANTOR ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT ACCEPTING THIS GUARANTEE AND THE ADMINISTRATIVE AGENT AND THE LENDERS ENTERING INTO THE MEZZANINE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS.
- 7.5 **Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if sent by (a) hand delivery against receipt, or (b) certified or registered mail, postage prepaid, return receipt requested or (c) expedited prepaid delivery service, either commercial or Canada Post, with proof of attempted delivery, or (d) by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

**To the Guarantor:**

Ken Fowler Enterprises Limited  
P.O. Box 24091  
110 Hanover Drive, Suite 203B  
St. Catharines, Ontario, Canada  
L2R 7P7  
Attention: Ken Fowler  
Facsimile: (905) 688-3060

**With a copy to:**

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario, Canada  
M5L 1B9  
Attention: John R. Dow, Esq.  
Facsimile: (416) 947-0866

**To the Administrative Agent:**

Fortress Credit Corp.  
1345 Avenue of the Americas, 46th Floor  
New York, New York 10105  
Attention: Constantine Dakolias  
Telephone: 212-798-6050  
Telefax: 212-798-6099

- and -

Attention: Glenn Cummings  
Telephone: 212-798-6052  
Telefax: 212-798-6099

**With a copy to:**

Fortress Investment Group LLC  
BCE Place, Bay Wellington Tower  
181 Bay Street, Suite 3210  
Toronto, ON M5J 2T3  
Canada  
Attention: Michael J.R. Nisker  
Telephone: 416-862-8770  
Telefax: 416-361-9501



With a copy to:

Goodmans LLP  
250 Yonge Street, Suite 2400  
Toronto, Ontario M5B 2M6  
Attention: Juli Morrow  
Telephone: (416) 979-2211  
Facsimile: (416) 979-1234

- 7.6 **Modification; Waiver.** No modification, waiver, amendment, discharge or change of this Guarantee shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.
- 7.7 **Successors and Assigns.** This Guarantee shall be binding upon and inure to the benefit of the parties and their respective successors and assigns (provided, however, that the Guarantor shall not assign or transfer any rights it has hereunder).
- 7.8 **Partial Invalidity.** If any of the provisions of this Guarantee, or the application thereof to any Person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Guarantee, or the application of such provision or provisions to Persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Guarantee shall be valid and enforceable to the fullest extent permitted by law.
- 7.9 **Forum Selection and Consent to Jurisdiction.** ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTEE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT THE LENDERS OR THE GUARANTOR IN CONNECTION HEREWITH SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE PROVINCE OF ONTARIO. THE GUARANTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE PERSONAL JURISDICTION OF THE COURTS OF THE PROVINCE OF ONTARIO FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION, SUBJECT TO THE GUARANTOR'S RIGHT TO CONTEST SUCH JUDGMENT BY MOTION OR APPEAL ON ANY GROUNDS NOT EXPRESSLY WAIVED IN THIS SECTION 7.09. THE GUARANTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT THE GUARANTOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF

EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE GUARANTOR HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS GUARANTEE AND THE OTHER LOAN DOCUMENTS.

- 7.10 **Judgment Currency.** The Guaranteed Obligations of the Guarantor in respect of any sum due to the Administrative Agent or the Lender hereunder shall, notwithstanding any judgment in a currency (the "**Judgment Currency**") other than Canadian Dollars, be discharged only to the extent that on the Business Day following receipt by such Person of any sum adjudged to be so due in the Judgment Currency, such Person, in accordance with normal banking procedures, purchases Canadian Dollars with the Judgment Currency. If the amount of Canadian Dollars so purchased is less than the sum originally due to such Person, the Guarantor agrees as a separate obligation and notwithstanding any such judgment, to indemnify each Person, as the case may be, against such loss, and if the amount of Canadian Dollars so purchased exceeds the sum originally due to such Person, as the case may be, each agreeing to remit any excess to the Guarantor.
- 7.11 **Headings.** The various headings of this Guarantee are inserted for convenience only and shall not affect the meaning or interpretation of this Guarantee or any provisions hereof or thereof.
- 7.12 **Acknowledgment of the Administrative Agent.** The Guarantor hereby acknowledges that the Administrative Agent is the duly appointed agent of the Lenders in accordance with the terms and conditions of the Mezzanine Loan Agreement and the other Loan Documents.
- 7.13 **Transfers of Interests in Loan.** The Guarantor recognizes that the Administrative Agent and the Lenders may, subject to the Loan Documents, sell and transfer interests in the Loan to one or more participants and/or assignees and that all documentation, financial statements, appraisals and other data, or copies thereof, relevant to the Borrower, the Guarantor or the Loan, may be exhibited to and retained by any such participant or assignee or prospective participant or assignee.
- 7.14 **Additional Documents; Estoppel Certificates.** The Guarantor shall execute and deliver to the Administrative Agent all instruments and certificates as the Administrative Agent may reasonably request (including, but not limited to, estoppel certificates certifying that this Guarantee is in full force and effect after the occurrence of an Event of Default, a statement stating the nature of any defenses, offsets, claims or counterclaims provided that such statement shall be limited to the actual knowledge of the Guarantor at the time of such certification and will not preclude the Guarantor from raising defenses, claims, offsets or counterclaims of which the Guarantor had no actual knowledge at the time of such certification) to effect, confirm or assure the rights and remedies intended to be granted to the Administrative Agent under this Guarantee but without creating any additional liability which does not exist under the Guarantee or expanding any liability which exists hereunder.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned Guarantor has executed and delivered this Guarantee as of the date first above written.

**KEN FOWLER ENTERPRISES LIMITED**

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

Name:

Title:

  
JAMES FARRAR

VP

Non-Recourse Carve-out Guarantee

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**TAB R**

- (b) the right, without restricting any other rights of Administrative Agent under this Agreement (including any similar right), to restrict, during the continuance of an Event of Default, Borrower's payments of management, consulting, director or similar fees to Affiliates of Borrower (or their personnel);
- (c) the right, without restricting any other rights of Administrative Agent under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Premises);
- (d) the right, in accordance with the Security (but subject to the Intercreditor Agreement) during the continuance of an Event of Default, to vote Borrower's interests in any subsidiary of Borrower; and
- (e) the right to receive any and all notices and certificates delivered to the Senior Credit Administrative Agent pursuant to the Senior Credit Agreement.

The rights described above may be exercised by Administrative Agent until all of the Obligations (other than contingent liabilities that survive repayment of the Loan in full) hereunder have been indefeasibly repaid in full.

#### 12.2 Costs.

Administrative Agent shall reimburse Borrower for all out-of-pocket expenses incurred by Borrower in connection with Borrower's compliance with the provisions of Section 12.1 unless Borrower would otherwise have incurred such costs pursuant to any other provision of this Agreement or the other Loan Documents.

### 13. **DEFAULTS**

#### 13.1 Event of Default.

- (a) Each of the following events shall constitute an event of default hereunder (each, an "Event of Default"):
  - (i) if (A) the Indebtedness is not paid in full on the Maturity Date, (B) any regularly scheduled monthly payment of interest due under this Agreement or the Note is not paid in full on the applicable Interest Payment Date (other than by reason of the failure by the Lenders to make a Subsequent Advance when required to do so hereunder following satisfaction by the Borrower of all conditions precedent to the making of such Subsequent Advance), (C) any prepayment of principal due under this Agreement or the Note is not paid when due, (D) the Prepayment Fee is not paid when due, or (E) except as to any amount included in (A), (B), (C), and/or (D) of this clause (i), any other amount payable pursuant to this Agreement, the Note or any other Loan Document is not paid in full when due and payable in accordance with the provisions of the applicable

Loan Document, with such failure continuing for five (5) Business Days after Administrative Agent delivers written notice thereof to Borrower;

- (ii) if any material Impositions or Other Charges which are required to be paid hereunder are not paid within the earlier to occur of (x) ten (10) days after Administrative Agent delivers written notice thereof to Borrower or (y) two (2) Business Days after Borrower has actual knowledge thereof;
- (iii) if the insurance policies required by Section 6.1 are not kept in full force and effect, or if certified copies of any of such insurance policies are not delivered to Administrative Agent within ten (10) days of Administrative Agent's request therefor;
- (iv) if Borrower shall fail to comply with any covenants set forth in Section 5.2;
- (v) except as permitted pursuant to the terms of this Agreement, if (a) any Transfer of any legal, beneficial or equitable interest in all or any portion of the Premises occurs (other than sales of individual Condominium Units in the ordinary course of business), (b) any Lien or encumbrance on all or any portion of the Premises (except for Permitted Encumbrances and except as permitted pursuant to Section 5.1.16) occurs, or (c) any pledge, hypothecation, creation of a security interest in or other encumbrance of any direct or indirect interests in Borrower occurs other than the Security and other than as permitted pursuant to the Senior Loan Documents;
- (vi) if any representation or warranty made or deemed to be made by Borrower herein or by Borrower, any Guarantor, or any of their Affiliates in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Administrative Agent or in any Project Document, Condominium Document, ECD Insurance Document or Senior Loan Document shall have been false or misleading in any material respect as of the date the representation or warranty was made;
- (vii) if Borrower or any Guarantor shall make an assignment for the benefit of creditors or if Borrower shall fail to comply with Section 5.1.4 hereof;
- (viii) if a receiver, custodian, administrator, liquidator, trustee or similar official shall be appointed for Borrower or any Guarantor or if Borrower or any Guarantor shall be adjudicated a bankrupt or insolvent, or if Borrower generally does not pay its debts as such debts become due or admits in writing its inability to pay its debt generally or declares any general moratorium on its indebtedness, or if any petition or application for bankruptcy, insolvency, reorganization or arrangement pursuant to federal bankruptcy and insolvency law, or any similar federal or provincial law, shall be filed by or against, consented to, or acquiesced in by, Borrower or any Guarantor or if any proceeding for the dissolution, liquidation,

winding-up reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any statute, rule or regulation relating to bankruptcy, insolvency, reorganization, relief or protection of debtors in respect of Borrower or any Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition, application or proceeding was involuntary and not consented to by Borrower or such Guarantor, upon the same not being discharged, stayed or dismissed within forty-five (45) days;

- (ix) if Borrower or any Guarantor, as applicable, attempts to assign its rights or obligations under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;
- (x) with respect to any term, covenant or provision set forth herein or in any of the other Loan Document which specifically contains a notice requirement or grace period (other than the other subsections of this Section 13.1), if Borrower, any Guarantor or any of their respective Affiliates shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;
- (xi) the occurrence and continuance of any Senior Credit Event of Default, including any Change in Control (as defined in the Senior Credit Agreement);
- (xii) if Borrower or any Guarantor shall fail to comply with any covenants set forth in this Agreement or any of the other Loan Documents (not otherwise described in this Section 13.1(a)), and such default shall continue for thirty (30) days after Administrative Agent delivers written notice thereof to Borrower or any such Guarantor; provided that, if such default cannot be cured within such thirty (30) day period despite Borrower's or such Guarantor's, as the case may be, good faith and diligent efforts to do so, the cure period shall be extended as is reasonably necessary beyond such thirty (30) day period (but in no event longer than sixty (60) days) if remedial action reasonably likely to result in a cure of such default is promptly instituted within such thirty (30) day period and is thereafter diligently pursued until such default is corrected;
- (xiii) the occurrence of any act, event or condition that, in Administrative Agent's sole discretion, may result in a Material Adverse Effect;
- (xiv) if (a) any material default shall occur beyond the expiration of applicable notice and cure periods under any Material Agreement by Borrower, any Guarantor or any of their Affiliates, or (b) any of the Hotel Agreements is terminated and a substitute Hotel Manager reasonably acceptable to Administrative Agent is not appointed within ninety (90) days after such termination, or (c) after the appointment of an acceptable substitute Hotel Manager, a hotel management agreement reasonably acceptable to



**TAB S**

## Term Sheet

<b>BORROWER:</b>	Alvarez & Marsal Canada ULC, in its capacity as receiver and manager and trustee (in such capacity, the " <u>Receiver</u> ") of all of the assets, properties and undertaking (the " <u>Assets</u> ") of The Rosseau Resort Developments Inc. (" <u>RRDI</u> ") appointed by Order of the Ontario Superior Court of Justice dated May 4, 2009 (the " <u>Appointment Order</u> ").
<b>LENDER:</b>	WestLB AG, Toronto Branch, as Agent for certain lenders from time to time (the " <u>Lender</u> ").
<b>CREDIT FACILITY:</b>	Senior secured loan facility (the " <u>Facility</u> ") in the total principal amount of \$15,000,000 (the " <u>Commitment</u> "), repayable on demand. Amounts repaid by the Receiver following demand by the Lender and applied against the Facility cannot be reborrowed.
<b>DRAWDOWN:</b>	As required by delivery by the Receiver of drawdown notice (" <u>Drawdown Notice</u> ") from time to time in form and substance satisfactory to the Lender.
<b>USE OF FUNDS:</b>	General receivership purposes including but not limited to the funding of (i) future costs for the continued development and construction of The Rosseau Hotel located in Muskoka, Ontario; (ii) obligations of RRDI to Marriott Hotels of Canada Ltd. (" <u>Marriott</u> ") under the Amended and Restated Management Agreement dated October 6, 2006 and related agreements, or on such other terms as may be agreed to by the Receiver and Marriott from and after the date of this Term Sheet; (iii) obligations of RRDI in order to facilitate the closing of agreements of purchase and sale entered into by RRDI and certain purchasers of condominium units; (iv) the sales process to be conducted by the Receiver with respect to the assets and business of RRDI; (v) operational expenses of RRDI; (v) professional costs of the Receiver, its counsel and advisors; and (v) all other activities of the Receiver.
<b>REPAYMENT:</b>	Immediately upon demand, provided that the Facility shall be repayable in full on December 31, 2010, or such later date as the Lender may agree to in writing.
<b>INTEREST RATE:</b>	The Prime rate of interest per annum established and reported by the Lender from time to time as the reference rate of interest it charges to customers for Canadian Dollar denominated commercial loans made by the Lender in Canada, plus 6.5%, such interest to be calculated monthly.
<b>CONDITIONS PRECEDENT TO FUNDING:</b>	The obligation of the Lender to make the Commitment available to the Receiver is subject to the following conditions precedent, which shall be satisfied on or before _____, 2009:
	(a) the Receiver shall have obtained the Appointment Order in form and substance satisfactory to the Lender and its counsel (i) appointing the Receiver as receiver and

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Dr. Hans-Jürgen Niehaus, Werner Taiber

Head of the Supervisory Board:  
Michael Breuer

Reg. Amtsgerichte  
Düsseldorf, HRB 42975  
Münster, HRB 6400  
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	<p>manager and trustee of the Assets; (ii) authorizing the Receiver to execute and deliver this Term Sheet and authorizing the Receiver to borrow funds from the Lender on the terms and conditions hereunder; (iii) authorizing the Receiver to secure its obligations hereunder by the issuance, from time to time, of Receiver's Certificates as defined in the Appointment Order ; (iv) granting a first-priority charge in favour of the Lender, in priority to all other present and future liens, charges, construction liens, security and encumbrances, whether legal or equitable, on the assets, properties and undertaking of RRDl subject only to the Receiver's Charge (as defined by the Appointment Order), to secure all obligations owing by the Receiver to the Lender hereunder (the "<u>Lender's Charge</u>"); (v) authorizing and directing the Receiver to execute and deliver such other documents as may be required by the Lender from time to time and such other security documents as the Lender may require; (vi) authorizing the Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the Lender's Charge; (vii); authorizing the Receiver to receive funds on behalf of RRDl and apply same to satisfy its obligations owing to the Lender hereunder; and (viii) authorizing the Receiver to use the funds borrowed for the purposes set out herein under the heading "Use of Funds";</p>
	<p>(b) the Lender shall be satisfied that (i) there are no mortgages, pledges, charges, security interests or other encumbrances ranking ahead of the Lender's Charge, including any such mortgages, pledges, charges, security interests or other encumbrances as provided for by the Court, except as have been disclosed to and hereafter expressly accepted by the Lender; and</p>
	<p>(c) the Lender shall be satisfied that there have been no material adverse changes, individually or in the aggregate, in the business, activities, financial condition or other condition of RRDl, except for the appointment of the Receiver or as otherwise disclosed to the Lender on or before the date hereof.</p>
COVENANTS:	<p>(a) The Receiver shall not incur financial liabilities on behalf of RRDl other than as set out herein except in accordance with its operation of the business of RRDl in the ordinary course of business and its activities described under "Use of Funds" or in the Appointment Order;</p> <p>(b) The Receiver shall not enter into any arrangements (or amend any existing arrangements) with Marriott or any other material creditor without the written consent of the Lender;</p> <p>(c) The Receiver shall obtain the Lender's prior written consent to any sale, lease or other disposition of assets, properties and undertaking of RRDl (a "<u>Sale</u>");</p> <p>(d) The Receiver shall provide weekly reports on RRDl's cash flow and working capital, and shall promptly notify the</p>

	<p>Lender of any material adverse change in the business, activities, financial condition or other condition of RRD1;</p> <p>(e) All amounts received by the Receiver from the Sale shall, subject to obtaining approval of the Court, be applied to permanently reduce the obligations owing by the Receiver to the Lender hereunder; and</p> <p>(f) There shall be no change or amendment to the form of Appointment Order without the consent of the Lender.</p>
SECURITY:	<p>Security shall include the following, in form and substance satisfactory to the Lender:</p> <p>(a) The Appointment Order containing the Receiver's Charge registered against title to all real property of RRD1; and</p> <p>(b) Receiver's Certificates issued by the Receiver to the Lender to secure each drawdown in the amount set forth in each Drawdown Notice.</p>
EVENTS OF DEFAULT:	<p>Usual events of default to apply and to include:</p> <p>(a) Any order amending, supplementing, staying, vacating or otherwise modifying the Appointment Order or terminating the Receiver's appointment, without the Lender's consent;</p> <p>(b) Failure by the Receiver to pay any principal amount outstanding hereunder when the same shall become due and payable hereunder (including when demanded); and</p> <p>(c) Failure by the Receiver to pay when demanded any interest accrued on the Facility or any expenses, including reasonable fees and disbursements (including legal and other professional fees) incurred by the Lender in the preparation and negotiation of this Term Sheet and any enforcement of the Lender's rights hereunder or pursuant to the Lender's Charge;</p>
NO A&M LIABILITY:	<p>Alvarez &amp; Marsal Canada ULC shall not have any personal liability to repay any principal amount or any interest, fee or other amount owing hereunder and the Lender's recourse with respect thereto shall be limited to the Assets.</p>
FEES:	<p>3% of the Commitment.</p>

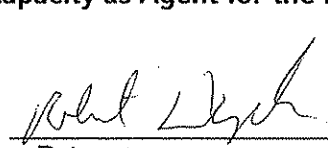
ACCEPTANCE

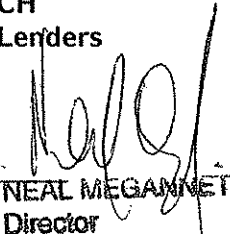
The foregoing term sheet is hereby accepted and agreed to.

**ALVAREZ & MARSAL CANADA**  
**ULC solely in its capacity as receiver and**  
**manager and trustee of the Assets of RRD1**  
**and not in its personal capacity**

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

**WESTLB AG, TORONTO BRANCH**  
**In its capacity as Agent for the Lenders**

By:   
Name: Robert L. Dyck  
Executive Director  
Date: May 19, 2009

  
NEAL MEGAWNEY  
Director