COST OVERRUN, debt service

and CONSTRUCTION COMPLETION AGREEMENT

**THIS AGREEMENT** dated the **\_\_\_\_** day of **\_\_\_\_\_\_\_\_\_\_\_\_**, 202

**B e t w e e n :**

**[BORROWER]**

- and -

MERIDIAN CREDIT UNION LIMITED

**WITNESSES THAT WHEREAS**:

A. All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Credit Agreement (as defined herein);

B. The Borrower has agreed to borrow the moneys representing the Credit Facilities from the Lender, who has agreed to provide the Credit Facilities to the Borrower, upon and subject to the terms and conditions of the Credit Agreement; and

C. It is a condition of the Credit Agreement that the Borrower and the Obligant execute and deliver this Agreement as additional and collateral security for the due payment, observance and performance of the Indebtedness.

**NOW THEREFORE** in consideration of the premises and of the sum of Ten Dollars ($10.00) and other good and valuable consideration now paid by the Lender to the Borrower and the Obligant (the receipt and sufficiency of which are hereby acknowledged by the Borrower and the Obligant) the Borrower and the Obligant warrant and represent to and covenant and agree with the Lender as set forth below.

1. INTERPRETATION
	1. Definitions

In this Agreement:

* + 1. “**Agreement**” or “**this Agreement**” means this Agreement including all recitals and schedules hereto and includes all amendments thereto and modifications, restatements or replacements thereof, from time to time;
		2. “**Borrower**” means and its successors and permitted assigns, whether immediate or derivative;
		3. “**Credit Agreement**” means a credit agreement dated as of \_\_\_\_\_\_ 202 between the Lender, the Borrower [and the Guarantor(s)], as guarantors, as such agreement may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time;
		4. “**Credit Facilities**” means the construction loan facility and letters of credit facility (if any), provided by the Lender to the Borrower pursuant to the Credit Agreement in the aggregate principal amount of up to $ ;
		5. “**Debt Service Amount**” means each and every payment of interest due by the Borrower to the Lender from time to time pursuant to the terms of the Credit Agreement and the Security Documents executed in favour of the Lender;
		6. “**Force Majeure**” means acts of God, earthquakes, tidal waves, hurricanes, landslides, storms, windstorms, lightning, floods, explosions, fires, vandalism, wars, riots, insurrections, rebellions, civil commotion, sabotage, blockades, embargoes, epidemics, partial or entire failure of utilities owned and operated by governmental bodies, lockouts, strikes, other labour disturbances, any other event or cause, whether similar or dissimilar to the foregoing, beyond the control of the Borrower and which the Borrower could not reasonably have protected itself against, provided however the lack of funds or credit shall not constitute an event of Force Majeure;
		7. “**Guarantors**” means , and their respective heirs, executors, personal representatives, successors and assigns (each a “**Guarantor**”); **[NTD: delete if no guarantors and delete all other references to Guarantors in agreement]**
		8. “**Improvements**” means the improvements to be constructed under, upon or over the Project Lands as contemplated by the Credit Agreement;
		9. “**Lender**” means Meridian Credit Union Limited and its respective successors and assigns;
		10. “**Obligants**” means the Borrower and the Guarantors, and their respective heirs, executors, personal representatives, successors and assigns (each an “**Obligant**”);
		11. “**Indebtedness**” means all indebtedness, liabilities and obligations of the Borrower to the Lender, without limitation, under the Credit Agreement and the Security Documents to which the Borrower is a party and the payment of all reasonable costs and expenses incurred by the Lender in enforcing any rights under this Agreement;
		12. “**Project**” means the construction of located on, within or under the hotel property located at , Ontario;
		13. “**Project** **Lands**” means the lands and premises municipally and legally described in Schedule “A” hereto; and
		14. “**Security Documents**” means all security documents required pursuant to the Credit Agreement to be delivered by the Obligants.
	1. Headings

All headings and titles in this Agreement are for reference only and are not to be used in the interpretation of the terms hereof.

* 1. Hereof Etc.

All references in this Agreement to the words “**hereof**”, “**herein**” or “**hereunder**” will be construed to mean and refer to this Agreement as a whole and will not be construed to refer only to a specific Article, Section, paragraph or clause of this Agreement unless the context clearly requires such construction.

* 1. Joint and Several Liability

If any party hereto is comprised of more than one person, the representations, warranties, covenants, agreements, obligations and liabilities made by or imposed upon that party herein or by law will be deemed to have been made or incurred by all those persons jointly and by each of those persons severally.

* 1. Severability

If any of the terms of this Agreement are or are held to be unenforceable or otherwise invalid, such holding will not in any way affect the enforceability or validity of the remaining terms of this Agreement.

* 1. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario, and each party hereby submits to the jurisdiction of the courts of the Province of Ontario and agrees to be bound by any suit, action or proceeding commenced in such courts and by any order or judgment resulting from such suit, action or proceeding, provided that the foregoing will in no way limit the right of the Lender to commence suits, actions or proceedings based on this Agreement in any other jurisdiction.

* 1. Interpretation

Wherever the singular or masculine gender is used throughout this Agreement, the same will be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties hereto so require.

* 1. Binding Effect

This Agreement will be binding on the Obligants and their respective heirs, executors, personal representatives, successors and assigns, on a joint and several basis, and will enure to the benefit of the Lender and its successors and assigns.

1. COMPLETION OF IMPROVEMENTS
	1. Completion of Improvements

The Borrower shall pursue the construction of the Project in a diligent and continuous manner. If the construction of the Project is not pursued in a diligent and continuous manner by the Borrower (or any Person(s) engaged by the Borrower for that purpose) for any reason whatsoever except Force Majeure, then, the Lender may, at its sole discretion, make demand on the Obligants to complete the construction of the Project in the manner contemplated by the Credit Agreement.

In the event the Lender makes a demand pursuant to this Section 2.1, the Obligants will be obligated to, and will, at its own cost and expense, immediately proceed with the completion of the construction of the Project, in accordance with the provisions of the Credit Agreement.

In the event of Force Majeure, the Obligants shall complete the Project in accordance with the above, after the expiration of the delay caused by the event of Force Majeure.

1. PAYMENT OF DEBT SERVICE AMOUNT
	1. Payment of Debt Service Amount

The Borrower agrees that it shall pay all Debt Service Amounts under the Credit Agreement. If the Borrower at any time defaults in the payment of any Debt Service Amount when due, the Lender may make demand on the Obligants to:

* + 1. pay to the Lender the Debt Service Amount then outstanding; and
		2. pay, when due, any Debt Service Amount accruing due thereafter, unless the Borrower pays the same.

In the event the Lender makes a demand pursuant to this Section 3.1, the Obligants will be obligated to, and will, at their cost and expense, immediately pay any Debt Service Amount then outstanding and any Debt Service Amount accruing due thereafter, when due under the Credit Agreement unless the Borrower pays the same.

1. PAYMENT OF COST OVERRUN
	1. Payment of Cost Overrun

The Borrower shall pay promptly for all Cost Overruns for the Project, respectively, from its own resources.

If:

* + 1. in the opinion of the Lender there is a Cost Overrun; and
		2. the Borrower defaults in the payment of that Cost Overrun when required to do so by the Lender,

the Lender may:

* + 1. at their option, refuse to make any further advances under the Credit Facilities until such time as satisfactory arrangements to cover the Cost Overrun have been made; and/or
		2. make demand upon the Obligants to pay the Cost Overrun.

In the event the Lender makes a demand pursuant to this Section 4.1, the Obligants will be obligated to, and will, immediately pay any Cost Overrun then outstanding and will on demand immediately pay any Cost Overrun which may, from time to time, arise thereafter.

1. GENERAL
	1. Continuing Obligations

The obligations of the Obligants under Sections 2.1, 3.1 and 4.1 hereof will be continuing obligations, on a joint and several basis, in favour of the Lender which will not be terminated by reason of any demand being made by the Lender under this Agreement. The Lender will be entitled to make demands and under Sections 2.1, 3.1 and 4.1, as the case may be, when entitled to do so thereunder.

* 1. Lender’s Records Conclusive

The records of the Lender will, absent manifest error, be conclusive evidence of:

* + 1. the Borrower having ceased to construct the Project;
		2. the failure of the Borrower to pay any Debt Service Amount or Cost Overrun when due;
		3. the amount of any Debt Service Amount or Cost Overrun payable from time to time; and
		4. the making of any demand or re-demand hereunder.
1. MISCELLANEOUS
	1. Additional Rights

The rights and powers conferred by this Agreement are in addition to and without prejudice to any other rights which the Lender may now have or hereafter acquire from the Obligants.

* 1. Additional Security

This Agreement is in addition to and not in substitution for any of the security documents referred to in the Credit Agreement or any other security now held or hereafter acquired by the Lender in connection with the Credit Facilities and in particular any guarantee given by the Guarantors in connection with the whole or any portion of the Indebtedness.

The Lender may do all or any of the following:

* + 1. grant time, renewals, extensions, indulgences, releases and discharges to;
		2. take securities from;
		3. abstain from taking additional security from;
		4. abstain from perfecting securities of;
		5. accept compositions from; and
		6. otherwise deal with;

any one or more of the Borrower, the Guarantors and all other Persons and securities as the Lender may see fit without prejudice to the rights of the Lender under this Agreement or any other securities, including any other security now held or hereafter acquired by the Lender in connection with the Credit Facilities.

* 1. No Prejudice

Nothing contained in this Agreement will prejudice or limit the right of the Lender to make demand upon the Borrower or the Guarantors, or upon any other Person(s), for payment or performance of the Indebtedness, in whole or in part, under the Credit Agreement and/or under any other security now or hereafter granted to the Lender by the Borrower or the Guarantors, or any other Person(s), to secure the payment or performance of the same, either in whole or in part.

* 1. Notice

Any notice, demand or other document to be given, or any delivery to be made hereunder shall be effective if in writing and delivered in person and left with, or if faxed and confirmed by prepaid registered letter addressed to the attention of:

* + 1. in the case of the Lender, addressed as follows:

Meridian Credit Union Limited
75 Corporate Park Drive,

St. Catharines, Ontario L2S 3W3
Attention: CBC Security Support

*with a copy to*:

**[insert Lender’s solicitor’s contact information]**

Attention:

(b) in the case of the Borrower and the Guarantor, addressed as follows:

Attention:

*with a copy to:*

**[insert Borrower’s solicitor’s information]**

Attention:

Any notice, demand or other document or delivery so given or made shall be deemed to have been given or made and received at the time of delivery in person or on the business day next following the date of faxing of the same. Any party hereto may from time to time by notice in writing change his or its address (or in the case of a corporate party, the designated recipient) for the purposes of this section.

* 1. No Merger

The taking of judgment on any covenant contained herein will not operate to create any merger or discharge of any liability or obligation of the Obligants hereunder or under any securities of any form now held or which may be held hereafter by the Lender from the Obligants or from any other Person or Persons whomsoever.

* 1. Time of the Essence

Time is of the essence of this Agreement.

* 1. Obligants Bound

Each Person who executes this Agreement as an Obligant agrees and consents to be bound by this Agreement notwithstanding that all of the other Persons who are intended to sign or be bound by this Agreement may not do so or may not be effectually bound hereby, and notwithstanding that this Agreement may be invalid or unenforceable against any one or more of those Persons, and whether or not the deficiency is known to the Lender.

* 1. Execution in Counterparts and by Electronic Transmission

This Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement. A facsimile, PDF or similar electronic form of any party’s signature hereto will be effective as an original form of such signature.

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

***{signature page follows}***

**IN WITNESS WHEREOF** the Borrower, the Obligant and the Lender have duly executed this Agreement as of the date first above written.

|  |  |
| --- | --- |
|  | **[BORROWER]**Per: Name: Click or tap here to enter text.Title: Click or tap here to enter text. I have authority to bind the corporation. |
|  |  |

|  |  |
| --- | --- |
|  | **[GUARANTOR]**Per: Name: Click or tap here to enter text.Title: Click or tap here to enter text. I have authority to bind the corporation. |
|  |  |

|  |  |
| --- | --- |
| [OR] |  |
| Witness  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[INDIVIDUAL BORROWER** |

***[signatures follow on the next page]***

|  |  |
| --- | --- |
|  | **MERIDIAN CREDIT UNION LIMITED**Per: Name: Click or tap here to enter text.Title: Click or tap here to enter text.Per: Name: Click or tap here to enter text.Title: Click or tap here to enter text. I/We have authority to bind the corporation |
|  |  |

SCHEDULE “A”
legal description