

**CLEARWATER BAY LIMITED (GUARANTEE
OF LOAN) ACT, 2011 – 6**

Arrangement of Sections

Section

1. Short title.
2. Interpretation.
3. Guarantee.
4. Loans to be charged on Consolidated Fund.

FIRST SCHEDULE

SECOND SCHEDULE

BARBADOS

I assent
C. STRAUGHN HUSBANDS
Governor-General
10th March, 2011.

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An Act to provide for the Government of Barbados to guarantee, in respect of Clearwater Bay Limited, a company wholly owned and controlled by the Government, the obligations of the company under a deed of guarantee relating to a term loan facility to be made available for the recommencement of the Four Seasons Development project.

(March 10, 2011). Commence-
ment.

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *Clearwater Bay Limited* Short title.
(Guarantee of Loan) Act, 2011.

Interpreta-
tion.**2. In this Act,**

"Agreement" means the Credit Facility Agreement **described in section 3(3)**;

"ANSA" means ANSA Merchant Bank Limited, a financial institution incorporated and licensed under the laws of Trinidad and Tobago;

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"Borrowers" means Paradise Beach LLP, a limited liability partnership established and registered under the laws of England and Paradise Beach Limited, and Paradise 88 Ltd, companies continued and incorporated, respectively, under the *Companies Act*;

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"Clearwater Bay Limited" means the company incorporated under the *Companies Act* under the name "Clearwater Bay Limited", and wholly owned and controlled by the Government for use as a special purpose vehicle to facilitate the recommencement of the Four Seasons Development project;

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"Consolidated Finance" means Consolidated Finance Co. Limited, a company continued under the *Companies Act*;

"Deed of Guarantee" means the Deed of Guarantee described in section 3(2);

"Facility" means the term loan facility that is the subject of the Agreement;

"Four Seasons" means Four Seasons Hotels Ltd. and any affiliate or associate of Four Seasons Hotels Ltd, providing services in relation to the Four Seasons Development;

"Four Seasons Development" or "FSD" means the project for the construction, under the Four Seasons brand name, of a world-class, luxury resort hotel and approximately 35 luxury

residential villas and the development of assorted common areas and common rights, at Black Rock in the parish of St. Michael;

"Lenders" means ANSA and Consolidated Finance and any other lender to whom the whole or any part of the commitments under the Agreement have been transferred or assigned and included, where the context so permits or requires, the holders of note certificates as defined in the Agreement, but does not include a person to whom a lender has transferred any of the advances of the Facility without an assignment and transfer by novation of all or any of its rights, benefits or obligations or both, as lender under clause 19.11 of the Agreement;

"Obligors" means

- (a) Paradise Beach LLP;
- (b) Paradise Beach Limited;
- (c) Paradise 88 Ltd;
- (d) Eastern Resorts Limited, a company incorporated under the laws of England; and
- (e) Paradise 88 L.P, a company registered as an external company under the *Companies Act*,

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in their capacity as Obligors under the Agreement.

3. (1) The Government guarantees the obligations of Clearwater Bay Limited under the Deed of Guarantee referred to in subsection (2). Guarantee.

(2) The Deed of Guarantee referred to in subsection (1) is that executed by Clearwater Bay Limited on 15th September, 2010

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in favour of the Lenders, in relation to the obligations of the Obligors under the Credit Facility Agreement referred to in subsection (3).

(3) The Credit Facility Agreement referred to in subsection (2) is that entered into on 13th September, 2010, by which the Lenders agreed to make available to the Borrowers, a term loan facility in a maximum aggregate amount of US\$60,000,000 to facilitate the recommencement of the Four Seasons Development project, the principal terms and conditions of which are set out in the *First Schedule*.

First
Schedule.

(4) The obligations of Clearwater Bay Limited under the Deed of Guarantee referred to in subsections (1) and (2) are described in the *Second Schedule*.

Second
Schedule.

Loans to be
charged on
Consoli-
dated Fund.

4. All amounts required for the payment of sums guaranteed by the Government under the authority of this Act and for the payment of all interest and other charges on those sums are hereby charged upon and shall be payable out of the Consolidated Fund.

FIRST SCHEDULE

(Section 3(3))

TERMS AND CONDITIONS OF THE FACILITY

1. The Lenders agree to make available to the Borrowers pursuant to the Agreement, a term loan facility in a maximum aggregate amount not exceeding US\$60,000,000, which shall be made available for drawing in the following tranches:

"Tranche A"

Authorised Limit: \$36,000,000

Purpose: To be applied as follows:

- (a) the amount of US\$34,140,000 to be applied in discharge in full of the existing secured indebtedness due and owing by the Parent Company to Bank of Scotland; and
- (b) the amount of US\$1,860,000 to be applied
 - (i) to the payment into the FSD Debt Service Account of US\$100,000; and
 - (ii) toward the general business and operational expenses of the Borrower Group.

Utilization: The Borrowers may utilize Tranche A by way of direct advances evidenced by one or more promissory notes, provided that all terms and conditions are met.

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"Tranche B"

Authorised Limit: \$2,000,000

Purpose: To be applied as follows:

- (a) the amount of US\$1,050,000 to be applied in discharge in full of the existing unsecured indebtedness due and owing by the Parent Company and other members of the Borrower Group to Maybach Corporation *et al*; and
- (b) the amount of US\$950,000 to be applied toward the general business and operational expenses of the Borrower Group.

Utilization: The Borrowers may utilize Tranche B by way of direct advances evidenced by one or more promissory notes, provided that all terms and conditions are met.

"Tranche C"

Authorised Limit: \$7,000,000.

Purpose: To be applied as follows:

- (a) the amount of US\$5,850,000 to be applied in discharge of the purchase price for certain lands situate at **Black Rock** in the parish of **St. Michael**, referred to in the Agreement as the "**ESSO lands**", and the transactional fees and closing costs related thereto; and

FIRST SCHEDULE – *Cont'd*

- (b) the amount of US\$1,150,000 to be applied toward the general business and operational expenses of the Borrower Group.

Utilization: The Borrowers may utilize Tranche C by way of direct advances evidenced by one or more promissory notes, provided that all terms and conditions are met.

"Tranche D"

Authorised Limit: \$10,000,000.

Purpose: To be applied as follows:

- (a) the amount of US\$8,388,593 to be applied in partial discharge of other certain existing unsecured indebtedness due and owing by the Parent Company and other members of the Borrower Group; and
- (b) the amount of US\$1,611,407 to be applied
 - (i) to the payment into the FSD Debt Service Account of US\$912,500; and
 - (ii) toward the general business and operational expenses of the Borrower Group.

Utilization: The Borrowers may utilize Tranche D by way of direct advances evidenced by one or more promissory notes, provided that all terms and conditions are met.

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FIRST SCHEDULE – *Cont'd*

"Tranche E"

Authorised Limit:	\$5,000,000.
Purpose:	To be applied toward certain costs related to the resumption of construction of certain villa units and hotel re-design costs.
Utilization:	The Borrowers may utilize Tranche E by way of direct advances evidenced by one or more promissory notes, provided that all terms and conditions are met.

2. The Administrative Agent is Consolidated Finance Co. Limited.
3. The Security Agent is Consolidated Finance Co. Limited.
4. Interest in respect of the Facility is governed by the following:
 - (a) interest shall be payable on each advance by reference to interest periods;
 - (b) each advance shall have an interest period of one quarter in duration commencing on its drawing date and each successive interest period applicable to an advance shall commence on the expiry of the immediately preceding interest period for that advance;
 - (c) subject to paragraph (f), the rate of interest applicable to an advance for a particular interest period shall be 6.75% per annum;
 - (d) interest shall accrue daily and shall be calculated on the basis of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day);
 - (e) the Administrative Agent shall promptly notify the Parent Company and the Lenders of the interest period applicable to each advance;

FIRST SCHEDULE – *Cont'd*

(f) in the event that the Parent Company gives notice of the intention to exercise the option to extend the repayment date in accordance with paragraph 5(c), the rate of interest due on the advances at the next interest period shall be the greater of

- (i) 6.75%; and
- (ii) the LIBOR Margin Rate,

and the Administrative Agent shall notify the Parent Company and the Lenders of the rate of interest and the interest period applicable after exercise of the option to extend the repayment date in accordance with paragraph 5(c);

(g) except as otherwise provided in the Agreement, an amount of interest accrued pursuant to paragraphs (a) and (b) on an advance for each interest period shall be paid by the relevant Borrower in cash on the last day of each interest period;

(h) an amount of interest accrued pursuant to paragraphs (a) and (b) on an advance for each interest period relating thereto which is equal to the aggregate amount of interest accrued during such interest period less the amount of such interest which is paid in cash in accordance with paragraph (g) in respect of such interest period shall, at the end of such interest period, be capitalised with, added to, and shall be deemed to be part of the relevant advance and the principal amount of such advance shall thereafter be treated as having been increased by the amounts of interest so capitalised in accordance with this paragraph;

(i) where the end date of an interest period for an advance ends on the same date as the end date of the interest period for another advance, those advances shall be consolidated and treated as one advance;

(j) the Administrative Agent and the Borrowers may enter into such other arrangements as they may agree for the determination and adjustment of interest periods and the consolidation or splitting of advances;

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- (k) if any Obligor fails to pay any sum (including, without limitation, any sum payable pursuant to this paragraph) under any Finance Document referred to in the Agreement, on its due date (an “unpaid sum”), such Obligor shall pay default interest on such unpaid sum from its due date to the date of actual payment (as well after as before judgment) at a rate determined by the Administrative Agent to be 2% per annum above
 - (i) where the unpaid sum is principal which has fallen due prior to the expiry of the relevant interest period, the rate applicable to such principal immediately prior to the date it so fell due (but only for the period from such due date to the end of the relevant interest period); or
 - (ii) in any other case (including principal falling within subparagraph (i) above, once the relevant interest period has expired), the rate which would be payable if the unpaid sum were an advance made for a period equal to the period of non-payment divided into successive interest periods of such duration as shall be selected by the Administrative Agent (each a “default interest period”); and
 - (l) default interest shall be payable on demand by the Administrative Agent and shall be compounded at the end of each default interest period.
5. Repayment of the Facility is governed by the following:
- (a) the Borrowers shall repay the advances in full on the repayment date;
 - (b) no amount of any advance repaid under the Agreement may be re-borrowed; and
 - (c) in the event that on or before September 12, 2011, the Borrowers are unable to secure long-term financing for the Four Seasons Development, then the Parent Company may, on giving not less than 60 days' notice in writing to the Administrative Agent, exercise the option for a further period ending on March 12, 2012.

FIRST SCHEDULE – *Cont'd*

6. (1) Prepayment and cancellation of the Facility are governed by paragraphs (2) to (5).
- (2) The voluntary prepayment of the Facility is governed by the following:
- (a) subject to paragraphs (3) and (4), the Borrowers may, upon giving not less than 30 days' prior notice in writing to the Administrative Agent, prepay any part of the advances on the last day of the interest period relative thereto which ends after the end of the availability period in part or in whole, but if in part, being the minimum amount of US\$1,000,000 and an integral multiple of US\$1,000,000;
 - (b) all prepayments shall be made with applicable accrued interest and such other obligations which are then due and payable; and
 - (c) in addition to any other amounts payable in respect of a prepayment of any advance, each Borrower voluntarily prepaying any advance or any part thereof on or before the first anniversary of the date of the Agreement shall pay to the Administrative Agent a prepayment fee equal to 1.5% of the principal amount of the advance so prepaid; provided that no prepayment fee shall be due or paid in the event of a prepayment made on a date occurring after 8 months of the date of the Agreement in the circumstances described in paragraph (4).
- (3) The following restrictions apply in respect of voluntary prepayments:
- (a) the Borrowers may not prepay the advances except in accordance with the Agreement;
 - (b) any notice of prepayment or cancellation is irrevocable;
 - (c) upon receipt of a notice of prepayment, the Administrative Agent shall promptly notify the Lenders concerned of the terms of such notice;
 - (d) no amount of any advance prepaid under the Agreement may be re-borrowed; and

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- (e) any repayment or prepayment of an advance (or part thereof) shall be made in the currency of that advance.
- (4) The following applies in respect of mandatory prepayments:
 - (a) unless such mandatory prepayment is waived in writing by all of the Lenders, at any time after the availability period, in the event of a change of control in the Parent Company or other member of the Borrower Group, the Borrowers shall immediately prepay all advances in full;
 - (b) unless such mandatory prepayment is waived in writing by all of the Lenders, at any time after the availability period, in the event of a sale or disposal (whether in a single transaction or a series of related transactions) of all or substantially all of the shares and/or assets acquired in the Parent Company or other member of the Borrower Group, the Borrowers shall immediately prepay all advances in full; and
 - (c) at any time after the availability period, in the event that the Parent company secures long-term financing for the Four Seasons Development, the Borrowers shall immediately prepay all advances in full from the proceeds of money borrowed from the bank or other financial institution which extends such financing.
- (5) The following applies in respect of cancellation of the Facility:
 - (a) in the event that the first advance shall not have been made under the Agreement on or prior to the last business day of the availability period for the Facility, the Facility shall be cancelled and the Finance Parties under the Agreement shall be under no further obligation to permit drawings under the Agreement;
 - (b) on the last business day of the availability period for the Facility any portion of the commitments remaining undrawn in respect of any Tranche shall be cancelled;
 - (c) no Borrower may cancel all or any part of the Facility except as expressly provided in the Agreement; and

FIRST SCHEDULE – *Cont'd*

- (d) any notice of cancellation shall be irrevocable and no part of the Facility which has been cancelled shall be capable of being drawn.

7. The following fees apply in respect of the Agreement:

- (a) the Parent Company shall pay to the Administrative Agent for the account of ANSA in its capacity as the Arranger, a structuring fee in the amount equal to 0.60% of the Facility;
- (b) the Parent Company shall pay to the Administrative Agent out of the proceeds of each advance, a commitment fee equal to 0.30% on the undrawn balance of the relevant Tranche of the Facility;
- (c) the Parent Company shall pay to the Administrative Agent on the date of the first advance, an Administrative Agent fee in the amount equal to 0.075% of the Facility and, in the event that the Facility is extended, the Parent Company shall pay to the Administrative Agent on each anniversary of the date of the Agreement, an Administrative Agent fee in the amount equal to 0.075% of the Facility; and
- (d) the Parent Company shall pay to the Administrative Agent for the account of the Security Agent, on the date of the first advance, a Security Agent fee in the amount equal to 0.075% of the Facility and, in the event that the Facility is extended, the Parent Company shall pay to the Administrative Agent on the account of the Security Agent, on each anniversary of the date of the Agreement, a Security Agent fee in the amount equal to 0.075% of the Facility.

8. (1) The conditions precedent in respect of the Agreement are described in paragraphs (2) to (4):

(2) The Lenders shall not be under any obligation to make any drawing available to the Borrowers under the Agreement unless, and until each of the following conditions is satisfied:

- (a) the Administrative Agent is satisfied that all of the issued and outstanding shares or other equity, membership or participation interest of each member of the Borrower Group are fully paid and registered in the names of the respective owners of such;

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- (b) the Administrative Agent is satisfied that the value of the completed Four Seasons Development is at least US\$350,000,000;
- (c) the Administrative Agent is satisfied that subject to the terms of a Non-Disturbance Agreement between the Lenders, the Security Agent and Four Seasons, Four Seasons shall
 - (i) perform its obligations under the Four Seasons Hotel Management Agreements; and
 - (ii) permit the use of all trademarks and other intellectual property in connection with the Four Seasons Development;
- (d) the Parent Company shall have commenced and taken such action as required by the Administrative Agent to effect either
 - (i) the completion of the sale and transfer by the Borrower Group of any and all shares, securities and any other participation or ownership rights or interest in Cinammon 88 to the Founding Principals (or their nominees); or
 - (ii) the wind-up, liquidation and dissolution of Cinammon 88; with the effect that the Administrative Agent is satisfied that none of the Borrower Group owes any liability to Cinammon 88, and otherwise retains or is responsible (or will retain and be responsible), for any obligation, debt or liability of Cinammon 88;
- (e) the Administrative Agent has received documents confirming
 - (i) the renunciation, release and discharge of any security interest held by the Founding Principals in any part of the property or assets of any member of the Borrower Group; and
 - (ii) the agreement of the Founding Principals and each of the other general creditors of the Borrower Group that they shall accept the payments received as of the date notified therein, and shall during the relevant period, forbear from making any demand or instituting any action or claim against any member of the Borrower Group for payment of any amounts that may be due and outstanding; and

FIRST SCHEDULE – *Cont'd*

- (f) the Administrative Agent is satisfied that no event or circumstance has occurred since November 15, 2009 which has had a material adverse effect, or which otherwise
- (i). materially and adversely affects the rights of the Lenders under any applicable law;
 - (ii) materially and adversely affects the business of the Borrower Group;
 - (iii) might adversely affect the ability of ANSA and Consolidated Finance to syndicate the Facility; or
 - (iv) materially adversely affects a designated securities market or capital markets generally.

(3) The Lenders shall be under no obligation to make any drawing available to the Borrowers unless, on both the date of the relevant notice of drawdown and the relevant drawing date:

- (a) no event of default or potential event of default has occurred and is continuing and no event of default or potential event of default shall occur as a result of making such drawing;
- (b) the representations and warranties set out in clause 13 of the Agreement stipulated as being repeated on those dates are true and accurate in each case by reference to the facts and circumstances then subsisting and shall remain true and accurate immediately after the drawing is made;
- (c) any monies standing to the credit of the Four Seasons Development Disbursement Account have been applied towards the intended purpose;
- (d) the Administrative Agent is of the opinion that the amount standing to the credit of the Four Seasons Development Debt Service Account is at least equivalent to the Four Seasons Development Debt Service Reserve Threshold as set out in clause 15.6 of the Agreement; and
- (e) subject to Four Seasons Development Revenue Shortfalls, the proceeds of that advance when aggregated with all previous advances applied in financing or refinancing the cost and expense intended to

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FIRST SCHEDULE – *Cont'd*

be funded by that advance, do not exceed the amount provided for that cost or expense in the FS Reports referred to in the Agreement.

(4) The additional conditions precedent specified in the Agreement in respect of

- (a) documentation, including a guarantee by the Government in respect of the obligations of Clearwater Bay Limited under the Deed of Guarantee;
- (b) all government, regulatory and administrative consents; and
- (c) syndication, participation and distribution,

must also be satisfied.

(5) In this paragraph

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"Cinammon 88" means Cinammon 88 Ltd, a company formerly incorporated under the laws of the British Virgin Islands and formerly registered as an external company under the *Companies Act*, but now dissolved;

"Founding Principals" means the persons identified in the Agreement as the original founding principals and sponsors of the Four Seasons Development.

9. In this Schedule,

"Borrower Group" means a person who is an affiliate or associate of the Parent Company, or of any Obligor under the Agreement;

"LIBOR" means the arithmetical mean of the highest and lowest British Bankers Association Interest Settlement Rate for United States Dollars and a 360 day interest period, displayed on the appropriate page of the Reuters screen, provided that if the agreed page is replaced or service ceases to be available, the Administrative Agent (after consultation with the Parent Company), may specify another page or service displaying the appropriate rate;

FIRST SCHEDULE – *Concl'd*

"LIBOR Margin Rate" means the rate of interest calculated as follows:

- (a) 6.75%, *plus*;
- (b) LIBOR, determined as of the last business day of the immediately preceding interest period, *minus*;
- (c) LIBOR, determined as at the date of the first advance;

"Parent Company" means Paradise Beach LLP.

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SECOND SCHEDULE

(Section 3(4))

OBLIGATIONS OF CLEARWATER BAY LIMITED UNDER
THE DEED OF GUARANTEE.

1. Clearwater Bay Limited, by the Deed of Guarantee
 - (a) guaranteed
 - (i) the due and punctual performance and discharge by each Obligor of all its obligations; and
 - (ii) the payment when due by each Obligor, of all its obligations, under the Agreement; and
 - (b) undertook that if any Obligor fails to pay any of its obligations on the applicable due date, to pay that sum on demand to the relevant party, in the currency in which the same falls due.

2. In paragraph 1, "obligations" means all indebtedness and other liabilities of any nature of any Obligor due, owing or incurred to any of the Finance Parties and/or any receiver under or in connection with the Finance Documents or any of them, (including, without limitation, under any amendments, supplements or restatements of any of the Finance Documents including any relating to the provision of new or further advances or an extension of credit), whether now existing or arising hereafter and whether originally indebtedness or liabilities to all or any of the Finance Parties and/or any receiver or any other person or persons, including joint and several indebtedness and liabilities of the Obligor and any other person, indebtedness and liabilities as guarantor, indemnifier or surety (whether before or after default by the primary guarantor) and contingent indebtedness and liabilities in any currency or currencies, whether present or future, together with all interest accruing thereon (at the rate applicable under the Credit Facility Agreement), after as well as before judgment, and all cost, charges and expenses incurred in connection therewith.

3. The terms "Finance Parties" and "Finance Documents" have the meanings assigned to them in the Agreement.