Action No.: 0901-04199
Sworn March 15, 2010

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

**AND IN THE MATTER OF
FAIRMONT RESORT PROPERTIES LTD.,
LAKE OKANAGAN RESORT VACATION (2001) LTD.,
LAKE OKANAGAN RESORT (2001) LTD.,
AND LL DEVELOPMENTS LTD.**

AFFIDAVIT OF MURRAY MOORE

**(Lake Okanagan Resort Vacation (2001) Ltd. and
Lake Okanagan Resort (2001) Ltd. Claims Procedure)**

I, Murray Moore, of the City of Calgary, in the Province of Alberta, Businessman, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Restructuring Officer of the Fairmont Group of Companies and, as such, have personal knowledge of the facts and matters deposed to herein except where otherwise stated to be based on information and belief and where so stated, I verily believe the same to be true.

2. Lake Okanagan Resort Vacation (2001) Ltd. ("Lake Okanagan Resort Vacation") has sold numerous timeshare entitlements in three buildings that it owns in which units were transferred to a Trustee for the benefit of the timeshare holders at a resort located on Lake Okanagan in British Columbia.

3. Lake Okanagan Resort (2001) Ltd. ("LOR") owns adjacent lands and two newer constructed buildings at the Lake Okanagan Resort (the two newer buildings are often referenced as the 1000 and 1100 Buildings or the "Pointe Beach Villas").

4. LOR has not transferred the units in the Pointe Beach Villas to a Trustee to be included in the timeshare pool and has not marketed or transferred timeshare rights with respect to the Pointe Beach Villas to any purchaser.

5. Attached hereto and marked as **Exhibit "A"** is an example form of the Vacation Experience Lease agreement executed between Lake Okanagan Resort Vacation and its timeshare purchasers. LOR has not entered into any such agreements.

6. In addition to the Vacation Experience Lease agreement, all purchasers at Lake Okanagan Resort Vacation executed a Buyers Certification form in the form as attached as **Exhibit "B"** hereto ("Buyer's Certification"). Paragraph 11 of the Buyer's Certification provides as follows:

> "11. I understand that the salesperson is not authorized to make written or verbal offers which represent modifications, alterations or additions to the Vacation Interval Agreement, and that the Vacation Interval Agreement includes all agreements and considerations on which I based my purchase decisions."

7. Lake Okanagan Resort Vacation has sold approximately 4,000 timeshare week agreements at the Lake Okanagan property. To evidence the usage right of the timeshare week for the leasehold period, each timeshare owner is issued a "Certificate of Leasehold Interest" in the form as attached as **Exhibit "C"**. These certificates are forwarded to the timeshare owner upon full payment of the purchase price under the Vacation Experience Lease agreement. The Certificate of Leasehold Interest indicates the unit and week number in one of the older buildings that have been registered in the trustee system to be held for the term of the lease in the name of the owner.

8. Lake Okanagan Resort Vacation had been contacted by numerous timeshare owners who advised that promises, representations or inducements had been made by the Lake Okanagan Resort Vacation sales personnel that such timeshare purchasers could have an option, entitlement or ability to upgrade from their units in the Lake Okanagan Resort Vacation properties to a unit in the Pointe Beach Villas.

9. Such upgrade or option rights are contrary to the provisions of the Vacation Experience Lease and Buyer's Certification. However, confirmation that the Lake Okanagan Resort Vacation sales personnel made such inducements have been located on numerous timeshare holders' files, including on forms of Purchase Worksheets maintained by the Lake Okanagan Resort Vacation sales personnel. An example of confirmation of an Offer of a free upgrade is attached in the form of Purchase Work Sheet attached as **Exhibit "D"** hereto.

10. Lake Okanagan Resort Vacation has identified that as many as 800 timeshare owners believed they had some right, option or entitlement to stay in the Pointe Beach Villas rather than the three Lake Okanagan Resort Vacation buildings that are the subject of the timeshare program. As the affected timeshare owners cannot be fully identified from Lake Okanagan Resort Vacation's records, and as determination of potential claimants could not easily be confirmed, Lake Okanagan Resort Vacations forwarded correspondence to all of its timeshare owners dated March 10, 2010, a copy of which form is attached as **Exhibit "E"** hereto.

11. In this correspondence, Lake Okanagan Resort Vacation expressly repudiates any claims to right, entitlement or option to transfer a timeshare owner's interest from the Lake Okanagan Resort Vacation properties to the Pointe Beach Villas.

12. This repudiation is necessary:

    (a) to allow Lake Okanagan Resort Vacation to identify all of the potential claims arising from the repudiation of any such representation or commitment; and

    (b) these repudiations are necessary to allow Lake Okanagan Resort Vacation and LOR to be able to proceed with an orderly restructuring of their businesses and contemplate drafting a Plan of Arrangement to their affected stakeholders and creditors.

13. To further allow the possible development, drafting and consideration by creditors of a CCAA Plan of Arrangement, I do verily believe that it is necessary and appropriate for

this Honourable Court to order a Claims Process with respect to Lake Okanagan Resort Vacation and LOR.

14. At this time, and after discussions with the Monitor, I have concluded that it is premature to initiate a Claims Process with respect to the remaining Fairmont Group of Companies that are subject to the within CCAA proceedings.

15. I make this Affidavit in support of an application for an Order directing a Claims Process with respect to Lake Okanagan Resort Vacation and LOR.

SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 15th day of March, 2010.	)))))))	
A Commissioner for Oaths in and for the Province of Alberta		Murray Moore

HOWARD A. GORMAN
BARRISTER & SOLICITOR

VACATION EXPERIENCE LEASE

Lake Okanagan Resort

Lake Okanagan Vacation Resort
Kelowna, B.C., Canada, V1Z 3T1

Lease made this 07 day of July, 20 ____.

BETWEEN:

LAKE OKANAGAN RESORT VACATION (2001) LTD., a body corporate, with offices at Kelowna, British Columbia

(the "Lessor")

OF THE FIRST PART

AND:

[redacted]

(the "Lessee")

OF THE SECOND PART

____ the Lessees hold their interests as Tenants in Common each as to an undivided ____ % interest. or

✓ the Lessees shall be joint tenants (with a right of survivorship).

Where there is no indication and there is more than one Lessee, the Lessees shall be deemed to be joint tenants (with a right of survivorship) unless otherwise indicated.

THIS IS EXHIBIT "A"
referred to in the Affidavit of Murray Moore
Sworn before me this 15
Day of March A.D. 2010

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

HOWARD A. GORMAN
BARRISTER & SOLICITOR

Purchase Price: $ ____ ☒ Canadian Funds ☐ U.S. Funds

Lease # [redacted]

Vacation Property # [redacted]

Week # [redacted] in each annual or biennial year

Vacation Particulars

(i) Type of Vacation Property:
- (____) One bedroom, or
- (____) Two bedroom
  - (____) Lockoff, or
  - (____) Terrace
- (✓) Three bedroom, or
- (____) Other ____

(ii) (____) annual (commencing 20 ____), or

(✓) biennial (____ odd or ✓ even calendar years commencing 20 10)

(iii) Season:

(✓)	Prime	(Weeks 1 to 18 inclusive, excluding Easter Week)
(____)	Golf Prime	(Weeks 19 to 25 inclusive and Weeks 36 to 41 inclusive)
(____)	Golden	(Easter Week, Weeks 26 to 35 inclusive, and Weeks 51 and 52)
(____)	Leisure	(Weeks 42 to 50 inclusive)

WHEREAS:

A. Lake Okanagan Resort Vacation (2001) Ltd. (the "Lessor") has constructed residential dwellings (the "Villas") in a resort development (the "Vacation Resort") located on certain lands and premises (the "Lands") situated in Kelowna, British Columbia, legally described as follows:

Strata Lots 2, 11, 12, 14 to 36, 51, 57 to 86
District Lot 3547
Osoyoos Division Yale District
Strata Plan K520
and
Strata Lots 1, 2, 3, 4, 5, 6, 8, 9, 11, 12, 13, 14, 16, 17 and 18
District Lot 3547
Osoyoos Division Yale District
Strata Plan K287

B. The Lessor has transferred the Lands to Carthew Registry Services Ltd. (the "Nominee") which holds title as nominee, agent and bare trustee for Philip K. Matkin Professional Corporation (the "Trustee") to be held in trust by the Trustee for the benefit of present and future lessees to the extent of their interests and for the benefit of the Lessor to the extent of its residual interest in the Lands;

C. In this Lease, the Villas are referred to as "Vacation Properties", and "Vacation Property" means one of them; and

D. The Lessee is desirous of purchasing a vacation leasehold interest in the Vacation Properties for the term and upon the terms and conditions hereinafter set forth.

NOW THEREFORE in consideration of the premises, covenants and agreements contained herein the parties agree as follows:

1. **DEMISE**

   The Lessor hereby demises and leases to the Lessee and the Lessee leases from the Lessor a specified Vacation Property for a specified week either annually or biennially as described on the first page of this Lease, together with the right of ingress and egress thereto over the Lands, TO HAVE AND TO HOLD during the Term (as defined in paragraph 4 of this Lease) in accordance with the terms and conditions set out in this Lease.

2. **FLOATING OPTION**

Notwithstanding paragraph 1, the Lessee hereby surrenders the right to use and occupy a specified Vacation Property for a specified week as contemplated by that paragraph in consideration for a right to use and occupy for the duration of the Term either an unspecified Villa of the type specified in paragraph 1 or other equivalent Vacation Property for a floating week, *either annually or biennially as designated in paragraph 1, within the Season* designated in paragraph 1. However, for the purposes of recording the Lessee's leasehold interest, the Trustee will record this Lease as a demise to the Lessee of the specific Vacation Property for the specific week designated on page 1. This option, and the agreement created by this exercise of this option by the Lessee, is an exchange right collateral to, but independent from, the Lease.

3. **PRICE**

The consideration (the "Purchase Price") for the granting of this Lease is the sum set out on the first page of this Lease, payable to the Lessor, as follows:

(a) cash; or

(b) a deposit equal to twenty-five percent (25%) of the Purchase Price, by cheque, cash or debit or credit card, and the balance of the Purchase Price to be financed by the Lessee and advanced to the Lessor within seven (7) clear days of the execution of this Lease.

All funds received by the Lessor, whether full payment or deposit, shall be held by the Lessor, until the expiration of the seven (7) day rescission period referred to in paragraph 6 of this Lease, and until issuance of a certificate of leasehold interest (the "Certificate of Leasehold Interest").

The Lessor is not licensed to handle resales of either this Lease or the Lessee's leasehold interest in the Vacation Property unless the Lessor acquires the title to such interest pursuant to paragraph 13 of this Lease.

4. **LEASE TERM**

The term of this Lease is for a period of forty (40) years commencing from the first day of the first week in the Season of the calendar year designated by the Lessee on the first page of this Lease.

For the purposes of this Lease a lease year shall be the period commencing at 4:00 p.m. (Kelowna Time) on the first *Thursday, Friday, Saturday, Sunday* or *Monday* in January which is selected as the check-in day for the respective Vacation Property and ending at 10:00 a.m. (Kelowna Time) on the same week day in the following year and this lease year shall be divided into fifty-two (52) week periods (a "week period") numbered consecutively, the first week period being numbered "1". For each consecutive lease year thereafter, the lease year shall commence at 4:00 p.m. (Kelowna Time) on the week day as above in January and end on the same week day in the following year at 10:00 a.m. (Kelowna Time).

If any portion of the week period is not utilized in any calendar year, there shall be no accrual or carry-over of the unused time to subsequent years unless accrued through an international exchange agency.

5. **RESERVATIONS**

Because the Lessee has exercised the floating option described in paragraph 2, the Lessee must reserve *his week* period each year on the following terms and conditions:

(a) all reservations must be made by telephone or in writing addressed to the following address or as otherwise designated by the Lessor:

2751 Westside Road
Kelowna, British Columbia
V12 3T1
(250) 769-3511 (tel)
(250) 769-6665 (fax)

(b) all reservations must receive a confirmation number before they are valid;

(c) reservations will only be accepted a maximum of one calendar year in advance or a minimum of thirty (30) days in advance of the designated Season, except that reservations for Easter Week and weeks 51 and 52 will be accepted a *minimum of three (3) months in advance*;

(d) all reservations are subject to space availability;

(e) in order to be assured of available weeks in the Lessee's designated Season, the Lessee must reserve his week period a minimum of thirty (30) days prior to the start of the first week of the designated Season;

(f) if *space is not available in the Lessee's first choice of Vacation Property*, the Lessee will be assured an available week in one of the Vacation Properties of equivalent or superior type to the Vacation Property specified on page 1 of this Lease in the Lessee's designated Season provided the Lessee reserves his week a minimum of thirty (30) days prior to the start of the first week of the designated Season;

(g) the Manager (as defined in paragraph 10 herein) or the Lessor will charge a nominal fee to the Lessee to change a reservation;

(h) the Lessee must cancel a confirmed reservation thirty (30) days prior to the confirmed occupancy date in order to change to an alternate week period;

(i) if the Lessee does not wish to reserve a week during the calendar year, the Lessee may deposit the week in his designated Season with RCI Canada inc. If the Lessee is a member of that exchange program provided that the Lessee may only carry forward one week of leasehold interest at any one time; and

(j) the procedures, rules and *requirements* pertaining to reservations shall be more particularly set out in rules and regulations established by the Lessor from time to time in respect thereof and of which the Lessee is *notified from time to time*

6. **RIGHTS OF RESCISSION OF LESSEE**

In the event that a Lessee who has not financed his purchase (or has financed it where there is no requirement to pledge his Certificate of Leasehold Interest to a lender) does not receive a Certificate of Leasehold Interest *from the Lessor evidencing his Lease* within five (5) months from the date of payment of the Purchase Price and such Certificate of Leasehold Interest is not delivered to the Lessee within thirty (30) days of the Lessee providing written notice to the Lessor requesting delivery of the Certificate of Leasehold Interest, then the Lessee shall be entitled to repudiate this Lease by providing written notice to the Lessor and thereupon the Lessor will return to the Lessee all monies paid by the Lessee, together with all accrued interest thereon. Delivery by the Lessor of the Certificate of Leasehold Interest to a lender constitutes delivery to a lessee.

In addition to the aforesaid contractual right, the Lessee may, in any event, rescind his agreement to purchase a time share interest by serving written notice on the Lessor within seven (7) days after the later of:

(a) the date this Lease was entered into; or

(b) the date the Lessee receives a copy of the disclosure statement (the "Disclosure Statement") representing a consolidation and amendment to a prospectus dated April 23, 2005 as one did from time to time thereafter, for Lake Okanagan Vacation Resort.

7. **USE AND OCCUPANCY**

Vacation Properties are leased to the Lessee for use by *the Lessee* and the Lessee's *immediate family, guests and* tenants as private residential dwellings only, and are not to be used for any other purpose or occupied by any other persons without the Lessee first giving written notice to the Lessor as provided in paragraph 16 of this Lease.

8. **FURNISHINGS**

Each *Villa* is *fully furnished and particulars of the furnishings have* been described in the disclosure statement. The Lessee agrees to leave all such furnishings in good and clean condition at the end of each of his week periods. The Lessee will be responsible for all breakage or other damage to furnishings supplied, reasonable wear and tear excepted.

9. **OPERATING COSTS AND RESERVE FOR REFURBISHING**

In addition to the Management Fee described in paragraph 10 of this Lease, the Lessee shall be responsible for his proportionate share of all administration, maintenance and repair costs (the "Operating Costs") and replacement costs incurred with respect to the Vacation Resort and the Vacation Properties including, without limiting the generality of the foregoing, the following:

(a) property taxes;

(b) water and sewer rates;

(c) lighting, heating, plumbing and air-conditioning;

(d) insurance;

(e) clearance of walks and roadways from snow and debris;

(f) housekeeping services, on a hotel standard basis, including the provision of towels, linens, bathroom soap and paper products (i.e., normal housekeeping encompasses linen changes and general clean up following *the termination of a week period, and any services in addition* are classified as special housekeeping services and are subject to a special charge);

(g) painting, redecorating and refurbishing as required;

(h) garbage disposal;

(i) *repairs to both the exterior and interior* of the Vacation Properties;

(j) service fees and costs of the Trustee;

(k) maintenance staff and equipment;

(l) administrative staff;

(m) *office space and equipment*;

(n) legal and accounting costs;

(o) furniture and equipment replacement costs;

(p) reservation system costs;

(q) *strata corporation fees*; and

(r) all expenses incurred by the Lessor in the management of the Vacation Properties (i.e., see paragraph 10 of this Lease).

All maintenance and repairs to the Vacation Properties will be apportioned equally between the lessees in *accordance* with the number of weeks and the type of Vacation Property specified on page 1 of this Lease.

A yearly assessment shall be made of the furnishings and fixtures to permit replacement as *required*.

10. **MANAGEMENT BY THE LESSOR**

The Lessee hereby appoints the Lessor as the manager (the "Manager") of the Vacation Resort and the Lessor agrees to provide management services subject to the terms and conditions herein set forth. The Lessor shall be entitled to subcontract management services to an independent corporation. The Manager shall manage and maintain the Vacation Resort in a prudent and workmanlike manner. Its duties shall include dealing with the items described in paragraph 9 of this Lease. In addition, the Manager shall:

(a) maintain records of its management showing all receipts and expenditures relating to the Vacation Resort;

(b) in each calendar year (usually by January 15th), prepare a budget of the estimated Operating Costs for the calendar year (the "Estimated Operating Costs") and calculate an amount it deems necessary to enable furnishing and fixture replacements to be made when required (the "Replacement Reserves");

(c) prior to the 31st day of March in each calendar year, send to the Lessee

(i) a notice of assessment (the "Notice of Assessment") setting forth the Lessee's share of the Management Fee, the Estimated Operating Costs and the Replacement Reserves, together with such adjustments and carry forwards and other costs as may be contemplated by this Lease; and

(ii) a statement (prepared in accordance with standard accounting procedures) showing the receipts and *expenditures incurred in the preceding calendar year, including the actual Operating* Costs (the "Actual Operating Costs"), Management Fee and Replacement Reserves, and the Lessee's share of such expenses, together with an accounting of all trust monies, if any, held by the Trustee;

(d) in the event that there is a cumulative operating surplus either:

(i) *credit the Lessee with such excess on subsequent assessments*; or

(ii) maintain any cash surplus in an interest bearing account to be credited toward future assessments, including special assessments;

(e) in the event that there is a cumulative operating deficit, add the amount of such deficiency to subsequent assessments;

(f) hold all monies received by it from a Lessee pursuant to the Notice of Assessment in trust for the payment of the Management Fee, Operating Costs and Replacement Reserves and at all times keep and maintain monies paid by the Lessee separate and apart from the Lessor's own money, and deposited in interest bearing accounts whenever practical;

(g) open two separate bank accounts, one entitled "Operating Trust Account" and the other entitled "Replacement Reserve Trust Account", and all monies received relative to Operating Costs shall be placed in the Operating Trust Account and all monies received in connection with Replacement Reserves shall be placed in the Replacement Reserve Trust Account; and

(h) *be entitled in the event that it uses its own money in the course of carrying out its obligations hereunder to* reimburse itself from monies received from the Lessee provided that the Manager gives the Lessee a full accounting of such reimbursement.

As compensation for its services the Manager shall be entitled to an annual fee (the "Management Fee") equal to fifteen per cent (15%) of the aggregate of the Replacement Reserves and the Operating Costs assessed in each calendar year with respect to the Vacation-Resort. The amount of the Management Fee shall be included as a separate amount in the Notice of Assessment and shall be based upon the Estimated Operating Costs.

11. **LESSEE'S OBLIGATION FOR PAYMENT**

The Lessee covenants and agrees to pay to the Lessor the amount set forth in the Notice of Assessment within thirty (30) days from the date of such notice. For payments received after thirty (30) days a late charge of 10% of the amount past due or two percent (2%) per month (being 26.824% per year) of the amount past due (whichever is greater) will be assessed.

12. **SPECIAL ASSESSMENTS**

In the event that during a week period a Vacation Property is damaged by reason of the negligence or malicious acts of the Lessee or a sublessee, guest or invitee of the Lessee, then the Lessor shall notify the Lessee by way of a notice of special assessment (the "Notice of Special Assessment") of the cost of repairing such damage and the Lessee shall, within thirty (30) days from the date of the Notice of Special Assessment, pay the amount thereof. The Lessee will be responsible for all damage to any Vacation Property and the building in which the Vacation Property is located and for all theft of, or breakage of other damage to, the furnishings which occurs while the Vacation Property is occupied by the Lessee or is caused by the Lessee, his guests or invitees, reasonable wear and tear excepted. Chipped, cracked, burned, torn or otherwise damaged furnishings shall be counted as breakage. For payments received after thirty (30) days a late charge of 10% of the amount past due or two percent (2%) per month (being 26.824% per year) of the amount past due (whichever is greater) will be assessed.

13. **DEFAULT OF THE LESSEE IN ANY PAYMENT REQUIRED UNDER THIS LEASE**

In the event that the Lessee should default in making any payment required to be made by the Lessee hereunder, within the time stipulated for payment, then the Lessee agrees that the Lessee's right to occupy a Vacation Property shall be suspended until such time as all payments due have been duly paid. The Lessee also agrees that the Lessor shall be entitled to charge an administration or collection fee to the Lessee in the event the Lessee is in default in making any payment and the Lessor incurs additional costs as a result thereof.

If a default in any payment required to be paid according to this Lease has not been remedied within 90 days from the date of such default, and the Lessee has been given a minimum of one written notice of such default, the Lessor may terminate this Lease upon written notice to the Lessee, and from the date of such notice all of the Lessee's rights to the Vacation Property pursuant to the provisions of this Lease shall be terminated. Furthermore, from the date of such notice of termination, the Lessor shall be entitled to the full and exclusive right to use and occupy the Vacation Property free and clear of all rights of the Lessee pursuant to this Lease or otherwise and Lessor may grant the right to use the Vacation Property during the week period to which the Lessee is entitled hereunder to another person or may retain it for any other purpose. The monies received by Lessor on account of rights of occupation or otherwise following such default or termination shall be retained by the Lessor as its sole and exclusive property as liquidated damages and not as a penalty. In the event of termination as hereinbefore provided, the Lessee shall, following such termination, be released from all obligations hereunder except for any monies then owing to the Lessor, or any other liabilities then outstanding of the Lessee, under this Lease.

14. **RECREATION FACILITIES**

The Lessor has entered into a management agreement and a recreation facilities license with Lake Okanagan Resort (2001) Ltd. ("Resort Ltd.") to cause the Vacation Resort and the Recreation Facilities to be managed and maintained by Resort Ltd. "Recreation Facilities" means the recreational facilities located on Lot 1, District Lot 3547, Osoyoos Division, Yale District Plan 30301 except Plan 32216 and consisting of a swimming pool, men's and women's saunas, two jacuzzi pools, an adult wading pool and whirlpool, seven tennis courts, a 9-hole par 3 golf course, a sandy beach, a swimming wharf, a 28 slip boat moorage marina and a stable providing horseback riding facilities. The Lessor covenants and agrees to maintain or cause to be maintained the Vacation Resort and the Recreation Facilities during the Term in accordance with reasonable commercial standards consistent with the character, age, size and location of the Vacation Resort.

15. **OVERHOLDING**

In the event that the Lessee fails to vacate the Vacation Property at the expiration of the week period to which he is entitled as herein provided, or otherwise makes unauthorized use or occupancy of the Vacation Property, or prohibits another person who is entitled to use and occupy the Vacation Property from occupying and making use of the Vacation Property during his period of entitlement, the Lessee shall, at the option of the Lessor.

(a) be subject to immediate removal, eviction or ejection from the Vacation Property wrongfully used and occupied;

(b) reimburse the Lessor and any other person entitled to the Vacation Property for all costs and expenses incurred by it or him, as the case may be, as a result of such conduct, including, but not limited to, costs of alternate accommodation, travel costs, court costs and reasonable legal fees incurred in connection with removing or ejecting the Lessee or others using or occupying the Vacation Property and costs (including reasonable legal fees) incurred in collecting such disbursements; and

(c) pay to the Lessor for and on behalf of all others affected by such failure to vacate or unauthorized use or occupancy of the Vacation Property, as liquidated damages (in addition to the costs and expenses referred to above) and not as a penalty, an amount equal to three times the rate established from time to time for such Vacation Property by the Lessor or for similar accommodation at Lake Okanagan Resort by Resort Ltd. for each and every day or fraction thereof that the Lessee occupies the Vacation Property in contravention of this Lease.

Such costs or liquidated damages described herein may be charged to the Lessee by way of a notice of special assessment.

16. **LESSEE'S RIGHT OF ASSIGNMENT AND MORTGAGING**

The Lessee shall not assign this Lease without the consent of the Lessor first had and obtained (which consent will not be unreasonably withheld). Assignments shall be in the form prescribed by the Lessor and shall require the assignee (the "Assignee") named in the assignment to perform all of the covenants of the Lessee as if the Assignee had originally executed the Lease. Upon the filing of the assignment with the Trustee accompanied by the Lessee's copy of the Lease, the Trustee shall record the Assignee as the lessee under the Lease and shall issue and forward to the Assignee a Certificate of Leasehold Interest.

The Lessee may allow its leasehold interest to be used by a third party if, thirty (30) days prior to the first week of the designated Season, the Lessee has notified the Lessor of the names and addresses of such invitees. In the case of such use, the Lessee shall be responsible for all damage occasioned by the invitees

Nothing herein contained shall prohibit the Lessee from permitting a guest to occupy the Vacation Property during the week period, whether or not the Lessee is in residence, provided always that the Lessee shall be responsible for all acts of such guest and all charges incurred by such guest.

The Lessee shall be entitled to mortgage this Lease on a one time basis only to facilitate the purchase of same. A Lessee who has financed his purchase may assign by way of pledge agreement his Certificate of Leasehold Interest to a lender, and the Trustee is authorized and directed to forward the Certificate of Leasehold Interest to the lender. A Lessee who has financed his purchase in this manner will not receive physical possession of the Certificate of Leasehold Interest which will be forwarded by the Trustee to the lender.

17. **DAMAGE TO THE VACATION PROPERTIES**

If during the term of this Lease, a Vacation Property is destroyed or damaged by fire or other hazards for which insurance is carried, then the proceeds of insurance shall be used to rebuild or replace the Vacation Property and, during the period of rebuilding, the Lessee will not be entitled to any claim for loss of occupancy; provided, however, that the Lessor shall use reasonable efforts to provide the Lessee with an alternative Vacation Properties at rates to be negotiated by the Lessor with the Lessee. The Lessor agrees to rebuild, repair or replace the Vacation Property provided insurance proceeds are available for such purpose.

18. **REGISTRATION OF LEASE**

Title to the Lands is held by the Nominee as nominee, agent and bare trustee for the Trustee which holds the Lands in trust for the Lessor and the various lessees to the extent of their respective interests. The Trustee will maintain a register evidencing the leases pertaining to the Vacation Properties. The Lessor will cause a copy of this Lease to be registered and recorded with the Trustee and the Lessor will furnish the Lessee with a Certificate of Leasehold Interest evidencing the registration thereof. The Lessee shall furnish the Trustee with the Lessee's mailing address and shall notify the Trustee of any changes of address. The Lessee agrees that neither the Lessor nor the Trustee shall be obliged to deliver this Lease or any other instrument creating a lease of the Lands in a form registrable under any land registration statute of British Columbia.

19. **REGISTER OF VACATIONERS**

The Lessor and the Trustee are entitled to maintain a register of all Lessees who from time to time have been granted a lease or license to use a Vacation Property. The Lessee consents to his name being included in the register of Lessees and to:

(a) the Lessor using the register from time to time to contact the Lessee about promotional opportunities that may be of interest to the Lessee; and

(b) Lessees using the register from time to time, upon application by a Lessee to the Trustee, to contact the other Lessees solely for one of the following purposes:

 (i) accessing the security held by the Escrow Holder pursuant to the escrow agreement made as of April 22, 2002 (as may be amended from time to time), a copy of which is attached as Exhibit "8" to the disclosure statement;

 (ii) organizing an association of Lessees to promote a means of resolving problems between the Lessees and the Lessor; or

 (iii) contacting other Lessees to resolve material concerns relating to the Vacation Properties.

20. **LESSOR'S RIGHTS WITH RESPECT TO VACATION PROPERTIES**

The Lessee hereby acknowledges the right of the Lessor to use, occupy and rent any Vacation Property not reserved for a particular week period pursuant to a Vacation Lease, and to retain all monies and other consideration received as a result of the use, occupation and rental of any such Vacation Properties.

21. **APPOINTMENT AND REMOVAL OF TRUSTEE**

The Lessor does hereby represent and warrant to the Lessee that the Trustee was appointed as trustee for the purposes set forth in this Lease.

The Trustee shall remain as trustee until this Lease and all other leases of Vacation Properties recorded by it have expired or until the Trustee has resigned or its services have been terminated as provided for herein.

The Trustee may be removed at the written request of the Lessor or at the written request of fifty-one per cent (51%) of the leaseholders (excluding the Lessor).

In the event of the resignation or termination of the Trustee as provided for herein, the Lessor shall appoint in the stead of the Trustee a trustee acceptable to the Superintendent of Real Estate and shall require the Trustee to transfer all assets and records and accounts to such trust company so as to enable such new trustee to carry on in the place and stead of the Trustee.

22. **LESSOR'S RIGHT TO MORTGAGE**

The Lessor may at any time during the currency of this Lease cause the Trustee to mortgage the Lessor's interest in the Lands, provided that such mortgage shall be subject to this Lease and would have no effect whatsoever on the rights of the Lessee.

23. **POSSESSION OF KEYS**

The Lessee shall not make, nor shall he permit any other person to make, a copy of any key to a Vacation Property and shall, upon the expiration of each of his week periods, surrender all keys to the Lessor. The Lessor shall provide the Lessee with all necessary keys at the commencement of the Lessee's week period.

24. **QUIET ENJOYMENT**

Except as otherwise provided herein, the Lessor hereby covenants with the Lessee, upon the Lessee performing covenants on his part contained herein and the payment of all monies required by the Lessee to be paid hereunder, that the Lessee shall peacefully possess and enjoy the leased premises for the term agreed upon herein without any interruption or disturbance from other lessees or from the Lessor or any other person lawfully claiming under him.

25. **SUPPLY OF WATER AND SEWAGE DISPOSAL**

The Lessor covenants and agrees to supply or cause to be supplied to the Villas potable water and to provide adequate sewage disposal, it being understood that all such services are included in the Notice of Assessment and are payable by the Lessee to the extent of his proportionate share.

26. **TAXES AND RATES**

The Lessor further covenants to pay all taxes and rates assessed against the Lands, including improvements thereon and, subject to the Lessee paying (by way of assessment as herein provided) his proportionate share of such taxes, the Lessor agrees to indemnify and save harmless the Lessee from any loss that the Lessee may suffer from or by reason of the Lessor's default of such payment.

27. **EXPIRATION OF TERM**

Upon the expiration of the term hereby granted, the Lessee shall peaceably surrender the leased premises to the Lessor and shall not remove or carry away from the leased premises any furnishings or fixtures forming part of the leased premises.

28. **ENTRY FOR INSPECTION, REPAIRS AND ALTERATIONS**

The Lessor shall have the right to enter the Vacation Properties for inspection thereof at all reasonable hours, and whenever necessary may make repairs and alterations to the Vacation Properties or clean same.

29. **REDECORATIONS OR ALTERATIONS**

The Lessee shall not make or permit to be made any alterations, improvements or changes in the Vacation Properties without in each case first obtaining the written consent of the Lessor. A consent to a particular alteration, addition, improvement or change shall not be deemed to be a consent to any subsequent alteration, addition, improvement or change

30. **INSURANCE**

The Lessor specifically agrees that it will during the term of this Lease insure and keep insured the Vacation Properties and contents for the full replacement cost thereof against loss or damage from fire, lightning, explosion, windstorm, hail, riot, smoke damage, airplane, hurricane and such other insurable hazards as the Lessor may deem advisable. The insurance policy shall contain replacement cost endorsements providing that, in the event of loss, settlement shall be based on the cost of repairing, replacing or reinstating the property insured without deduction or depreciation. The proceeds payable under such policies shall be payable to the Trustee, as trustee for the Lessor, the Lessee and other lessees of leasehold interests in the Vacation Resort.

In addition to the foregoing insurance, the Lessor shall maintain and keep in force during the term of this Lease, public liability insurance in respect of the Vacation Properties and the common areas of the Vacation Resort in the name of the Trustee as trustee for the Lessor, the Lessee and other lessees of leasehold interests in the Vacation Resort, said insurance to be for coverage and in amounts stipulated by the Lessor.

All insurance premiums are the responsibility of the Lessee (to the extent of his proportionate share) and shall be paid by the Lessee through the Notice of Assessment as provided for in this Lease.

31. **RULES AND REGULATIONS**

The Lessor may from time to time issue rules and regulations governing the use of the Vacation Properties, it being understood that such rules and regulations shall be non-discriminatory and for the general benefit of the Lessee having regard to all of the Vacation Properties. The Lessee agrees to abide by such rules and regulations.

32. **PARKING SPACES**

The Lessee is hereby granted a licence to use one parking space on the Vacation Resort as may be designated from time to time by the Lessor and the Lessor agrees to provide additional parking for at least one additional motor vehicle.

33. **ANIMALS**

No pets are permitted in the Vacation Properties or on the Lands.

34. **WASTE, NUISANCE OR UNLAWFUL USE**

The Lessee agrees that the Lessee will not permit waste on the leased premises, or maintain or permit to be maintained a nuisance thereon, or use or permit the leased premises to be used in an unlawful manner.

35. **DEATH OF THE LESSEE**

On the death of the Lessee, the rights and interests of the Lessee under this Lease may be transferred to the beneficiary of the Lessee for the unexpired Term, provided such beneficiary executes an agreement agreeing to be bound by all the terms of this Lease. In the event of the Lessee's death, appropriate notification shall be given to the Lessor to enable it to make note of such transfer in the register of Lessees maintained by the Lessor.

36. **INDEMNITY**

The Lessee covenants with the Lessor to indemnify and save harmless the Lessor and Resort Ltd. from any and all actions, suits, claims, liabilities, damages, costs, losses and expenses incurred or sustained by the Lessor and Resort Ltd. arising from or connected with:

(a) any breach, violation or non-performance of any covenant, agreement, condition or proviso in the Lease set out and contained on the part of the Lessee to be fulfilled, kept, observed and performed;

(b) any damage to any Vacation Property or other part of the Vacation Resort, the Recreation Facilities or any part of Lake Okanagan Resort by the Lessee or the Lessee's agents, sublessees, licensees or invitees;

(c) any injury to the Lessee or any agent, sublessee, licensee or invitee of the Lessee, including death resulting at any time therefrom, occurring in or about the Vacation Property, the Vacation Resort, the Recreation Facilities or Lake Okanagan Resort; or

(d) any other act or omission of the Lessee.

37. **STRATA CORPORATION VOTING**

The Lessee covenants and agrees with the Lessee that the Lessee is not entitled to vote, and shall not vote, at any meeting of the relevant Strata Corporation for or in respect of any of the Vacation Properties and agrees that the Lessor shall represent the Vacation Properties and vote for or in respect of the Vacation Properties at all meetings of the relevant Strata Corporation.

38. **PLATINUM EXCHANGE CLUB**

To facilitate the ability of Lessees to exchange their allotted week or weeks with vacation weeks at other resorts or for other vacation experiences, the Lessor has made arrangements with Fairmont Resort Properties Ltd. ("Fairmont"), an affiliate of the Lessor, which manages its own exchange program (the "Platinum Club Benefits Program" or the "Program") which will enable Lessees who participate in the Program to exchange their week or weeks at the Vacation Properties for a week or weeks at other resorts or for other vacation experiences owned or managed by entities affiliated with Fairmont or with whom Fairmont has an exchange arrangement. At present, the properties available for exchange through the Program include the Vacation Properties at the Vacation Resort and vacation villas at Fairmont Vacation Villas in Fairmont Hot Springs, British Columbia. Fairmont reserves the right to make additional properties and vacation experiences available for exchange through the Program. As at the date hereof, the Lessor anticipates that the annual cost of membership in the Program will be $89 (Cdn. funds) per year, but this cost may be subject to change. The Program will offer participating Lessees the ability to exchange their week period on the basis of either one or both of the following reservation systems, as determined by the Program:

(a) the Lessee will register a request for an exchange with the Program and will only deposit his or her week with the Program for exchange upon receiving confirmation from the Program that an exchange is available for the Lessee at the specific resort or vacation experience chosen by the Lessee; and

(b) a Lessee wishing to exchange a week at the Vacation Resort for time at a different resort or an alternate vacation experience will deposit his or her week with the Program within the reservation timelines established by the Program, and will list, in priority of choice, the resorts or vacation experiences with which the Lessee wishes to exchange, and the Program will then confirm to the Lessee which property or vacation experience is available for exchange.

Exchange weeks will be subject to availability. A vacation week will always be available to the Lessee either at the Vacation Properties or at an alternate resort or vacation experience within the Program in which the Lessee has expressed an interest, provided the Lessee complies with the reservation time requirements. The Program may restrict the number of weeks or the frequency in which a Lessee may exchange. Different resorts and vacation experiences will have different exchange values. For example, one week in a three bedroom villa at Lake Okanagan (which accommodates 8 persons) may be equivalent to either more or less than one week in a lock-off at Fairmont Vacation Villas at Riverside and Hillside (which accommodates 8 persons), as determined by the Program. The Program reserves the right from time to time to enhance its features and the benefits and types of vacation experiences available pursuant to the Program.

Membership in the Program is non-transferable by Lessees (other than to family members) and are personal rights which do not attach to the time share interest of a Lessee or to a Vacation Lease.

39. **WAIVERS**

Any waiver by the Lessor of any breach of any covenant or duty of the Lessee under this Lease is not a waiver of a breach of any other covenant or duty of the Lessee or of any subsequent breach of the same covenant or duty.

40. **NOTICES**

Notices under this Lease shall be deemed to be validly given when deposited postage prepaid in a postal box in Canada and addressed to the Lessee at the address set forth in the register maintained by the Trustee as contemplated by paragraph 18 hereof, except during any interruption of postal service when notice shall be given only when delivered by hand or acknowledged as received by the addressee.

41. **MODIFICATIONS TO LEASE**

The Lessor reserves the right to adjust or modify this Lease from time to time for the benefit of existing and future lessees, provided that any such adjustment or modification will not in any way materially prejudice the rights of existing lessees. If any such adjustment or modification is effected, the Lessor will provide notice to each lessee setting out the nature of the adjustment or modification, the reasons giving rise to such adjustment or modification and the effects thereof. In particular, the Lessor reserves the right to add further vacation villas located in the Vacation Resort to the Vacation Properties, the use of which may circulate among the Lessee and other persons who have entered into similar leases with the Lessor.

42. **JOINT AND SEVERAL**

If this Lease is signed by more than one Lessee, each Lessee shall be bound separately and severally as well as jointly with the other or others. If this Lease is entered into with respect to more than one Vacation Property it shall be construed as though a separate Lease was entered into for each week.

43. **ENUREMENT**

This Lease shall enure to the benefit of and be binding upon the Lessor and its successors and assigns and the Lessee and its heirs, executors, successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day, month and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

[redacted]

Witness

[redacted]

Witness

[redacted]

Lessee

[redacted]

Lessee

[redacted]

Street Address

[redacted]

City Province Postal Code

[redacted]

Phone

LAKE OKANAGAN RESORT VACATION (2001) LTD.

Per

Lake Okanagan Resort

LAKE OKANAGAN RESORT VACATION VILLAS BUYER'S CERTIFICATION

Lake Okanagan Resort

Welcome to the Lake Okanagan Resort Vacation Villa Program. To help you enjoy your lifetime of vacations to the fullest, please review and initial each item indicating your understanding of the Vacation Program. We provide this form covering all aspects of the Lake Okanagan Vacation Program to make sure it has been fully explained to you and no misrepresentations or misunderstandings occur.

______ 1. I understand that I have purchased __________ week(s) per year at Lake Okanagan Resort Vacation Villas at 2751 Westside Road, Kelowna, BC, Canada VIZ 3T1. The lease granted me at said Resort will automatically convert to a fee simple co-ownership interest with no expiry (subject to my option not to convert to a fee simple as set out in the Vacation Interval Agreement). My vacation week(s) ("Use Period") may be used by myself, my family, guests or tenants. Villa type _______1 Bdrm _____3 Bdrm _____Occupancy_____
Time classification: ______________________
Time classification: ______________________

______ 1a. I understand that I have purchased a biennial Vacation Interval. I have purchased _____ week(s) which may be used during _____ odd or _____ even calendar years at Lake Okanagan Resort Vacation Villas at 2751 Westside Road, Kelowna, BC, Canada VIZ 3T1. The lease granted me at said Resort will automatically convert to a fee simple co-ownership interest with no expiry (subject to my option not to convert to a fee simple as set out in the Vacation Interval Agreement). My vacation week(s) ("Use Period") may be used by myself, my family, guests or tenants. Villa type _______1 Bdrm _____3 Bdrm _____Occupancy_____
Time classification: ______________________
Time classification: ______________________

______ 2. Time classifications are as follows:

Golden Floating	• Weeks 26 to 35 inclusive; Easter week; weeks 51 and 52.
Prime Floating	• Weeks 1 to 18 inclusive. (excluding Easter week).
Golf Prime Floating	• Weeks 19 to 25 inclusive; Weeks 36 to 41 inclusive.
Leisure Floating	• Weeks 42 to 50 inclusive.

______ 3. I acknowledge that my Use Periods are made available for exchange through the RCI Points Exchange Program and while I am a member of RCI all reservations are to be made through RCI including a reservation back into the Resort. I have received the RCI Points Disclosure Guide which outlines the procedures for reservations with RCI. I acknowledge that I have been advised that in order to book back into the Resort at my preferred time I should make my reservation 12 months in advance. All reservations must be made through RCI either by telephone at 1-877-968-7476 or on the internet at www.rci.com.

______ 4. I understand that I may allow my Use Period to be used by anyone subject to the payment of guest fees that may be charged by RCI. I must also inform the Management Company as to who will be using my Villa prior to occupancy. I will be responsible for any damages caused by my guests. The Management Company does not provide a rental service for Villa Owners.

______ 5. I understand that my use rights are only for the time allocated as set out above. If I want to trade all or any portion of my Use Periods for other time at the Resort or for any time at any other resort it must be done through RCI. My ability to exchange for other time is subject to availability and subject to the rules of RCI set out in the RCI Disclosure Guide. I have been given no promises or guarantees on which unit will be available to me or the availability of any time other than my Use Period. I acknowledge that I have been advised that my decision to purchase should be made primarily upon the benefits gained from ownership and use of my Use Period at the Resort and not based on the benefits that may be derived from the RCI Points Exchange Program.

______ 6. The annual dues for membership in RCI is currently set at US $124.00 for a one year membership. In addition to the membership fee, RCI Points currently charges a transaction fee for each exchange (as set out in the Disclosure Guide there may be no transaction fee to make a 7 night reservation back in my home resort).

______ 7. I understand that the annual maintenance fee including GST is currently $566.41 per week of ownership in a One Bedroom Villa and $746.13 for a Three Bedroom Villa; said fee shall cover maid service, utilities, insurance, taxes, refurbishing and general maintenance. Fees are subject to increase as costs increase.

______ 8. I understand the company is not licensed to handle resales and cannot resell my Vacation Ownership Interval.

______ 9. I understand that all weeks float within their time classification for the duration of the Vacation Interval Agreement.

______ 10. I understand that management reserves the right to modify these conditions for the benefit of the majority of the Vacation Lease Owners.

______ 11. **I understand that the salesperson is not authorized to make written or verbal offers which represent modifications, alterations or additions to the Vacation Interval Agreement, and that the Vacation Interval Agreement includes all agreements and considerations on which I based my purchase decisions.**

______ 12. I understand that all buildings are designated non-smoking.

______ 13. **I understand that no pets are allowed in the villas or villa area.**

______ 14. My Vacation Interval Agreement rights are freely transferable. It may be sold or bequeathed as part of my estate. A nominal fee is associated with each transfer or change in ownership to cover the issuance of a new Vacation Interval certificate and re-registration fees with the Trustee.

______ 15. I have received and been provided an opportunity to review the Vacation Interval Agreement, the RCI Participation Agreement and the RCI Disclosure Guide.

THIS IS EXHIBIT "B" referred to in the Affidavit of Murray Moore
Sworn before me this 15 Day of March A.D. 2010

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

HOWARD A. GORMAN
BARRISTER & SOLICITOR

______________________ Purchaser ______________ Date

______________________ Purchaser ______________ Date

______________________ Sales Representative

Lake Okanagan Resort

This is Exhibit "..." referred to in the Affidavit of Murray Moore
Sworn before me this 15 Day of March A.D. 2010
A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA
HOWARD A. GORMAN
BARRISTER & SOLICITOR

Certificate No. L530[redacted]

Time Classification **Prime**
Unit Floating **Biennial Odd**

Certificate of Leasehold Interest
Lake Okanagan Vacation Resort

This is to certify that [redacted] ("Holder") is recorded, on the books of Philip K. Matkin Professional Corporation maintained for that purpose, as the holder of record of a Vacation Lease dated the **1st** day of **December, 2007**, granted by Lake Okanagan Resort Vacation Ltd., as Lessor, whereby the Holder is entitled to a leasehold interest in a vacation experience equivalent to a furnished **One** bedroom residential premise located on lands situated in the Province of British Columbia, legally described as Strata Lots 2, 11, 12, 14 to 36, 39, 42, 51, 52, 57 to 86 DL 3547, ODYD Strata Plan K520 and Strata Lots 1 to 6, 8, 9, 11, 13, 14, 16 to 18, DL 3547 ODYD Strata Plan K287, said leasehold interest comprising one week in each "lease year" (as defined in the Vacation Lease) for a period of forty (40) years, the first of such forty (40) week periods commencing in the year of **2009** at 4 P.M. (Lake Okanagan Time) during the **Prime** season.

Dated this **4th** day of **January, 2008.**
Philip K. Matkin Professional Corporation
Per: DPirotte

THIS IS EXHIBIT "D"
referred to in the Affidavit of
Murray Moore
Sworn before me this ... A.D. 2010
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA
HOWARD A. GORMAN
BARRISTER & SOLICITOR

Lake Okanagan Resort — Purchase Work Sheet

№ 2751

Name: [redacted]

Name: [redacted]

Address: [redacted]

City: C[redacted] Prov. [redacted] Postal Code V[redacted]

Tel: Res [redacted] 82[redacted]7

Email: Z[redacted]

Date: Aug 29/03

Resort: L.O.R.

No. of Weeks: 2wks - 3 Bdr.

Time Class: Gold - Annual. Gold - Bienn - OD

Occupancy: 8.

upgrading as per worksheet #3719 (EFFECTIVE JAN. 1, 2004)

(LAKESIDE) To be upgraded to new 3 Bdrm units @ no charge within 1st 6 mths after new units are available.

Price	29,050
Adjustments	19,050
	10,000
G.S.T.	700.
Net Price	10700

Cash Received

Initial Deposit 1700 (IMMEDIATELY PAYABLE)

Cheque

C.C.

Other

Bal. of Deposit

Due

Total Deposit 1700

Amount Financed 9000 4 x 250 / 3 x 1000

Approximate Monthly Investment ~~1500~~

No. of Months 12

Approx. Interest 0 %

1ST YEAR Maintenance Due 2004 - ANN / 2005 Bienn.

LOR Financing

Marketing Allowance

Adjustments FC141

R.C.I. Initiation

1st Yr. R.C.I. Dues

Owner's Package

Other (ADDITIONAL) 100 rds FREE Golf @ LOR 1750

half price golf there after

Total 1750

Approved by

Manager Only

I understand that this is a complete summary of our agreement and includes all incentives, discounts and benefits offered for making this purchase on this date.

Purchaser

Purchaser

OFFICE USE ONLY

Financing: LL4252GOBO Cash LOR Term Other

Lease # LL4834GO Lease Date 08/29/03 First Use 2005/2004

Sales Person Bill Jacobs Exchange Yes ☒ No ☐ Generation Code Trade

Referred by Current Owner 1 B. ☐ 2 Br. ☐ Season

WHITE – File YELLOW – Customer Service PINK – Owner GOLDENROD – Vacation Counsellor

THIS IS EXHIBIT "E"
referred to in the Affidavit of
Murray Moore
Sworn before me this 15
Day of March A.D. 2010

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

HOWARD A. GORMAN
BARRISTER & SOLICITOR

Lake Okanagan Resort Vacations

March 10, 2010

[redacted]
P[redacted]
Canada

Dear Sir or Madam:

Re: Lake Okanagan Resort Vacation (2001) Ltd. Timeshare Owners

Lake Okanagan Resort Vacation (2001) Ltd. ("Lake Okanagan Resort Vacation"), Lake Okanagan Resort (2001) Ltd. ("LOR") and various of their affiliates were placed under protection of the *Companies' Creditors Arrangement Act* ("CCAA") pursuant to an Initial Order (the "Initial Order") granted by the Alberta Court of Queen's Bench on March 30, 2009.

Lake Okanagan Resort Vacation had entered into numerous Timeshare Agreements with respect to the Lake Okanagan vacation project. All of these timeshare arrangements are with respect to three specific buildings that had been included in the timeshare pool pursuant to Lake Okanagan Resort Vacation transferring those units to a Trustee in accordance with British Columbia timeshare legislation.

You, like all timeshare purchasers, entered into a Vacation Interval Agreement with Lake Okanagan Resort Vacation (and <u>**not**</u> LOR).

In addition to the Vacation Interval Agreement that identified the buildings that had been transferred by Lake Okanagan Resort Vacation to the Trustee to be included in the timeshare pool, you and all Lake Okanagan timeshare purchasers executed a form of Buyer's Certification that provided:

> "I understand that the salesperson is not authorized to make written or verbal offers which represent modifications, alterations or additions to the Vacation Interval Agreement, and that the Vacation Interval Agreement includes all agreements and considerations on which I based my purchase decision."

Notwithstanding the express provisions of the Vacation Interval Agreement and the Buyer's Certification, various timeshare holders have advised that Lake Okanagan Resort Vacation sales personnel had indicated or represented that the timeshare owner would have a right, entitlement or option to transfer their timeshare interest into the newly constructed or under construction building generally known as the Pointe Beach Villas units or the 1000 or 1100 building units (the "Pointe Beach Villas").

5799 - 3rd Street S.E., Calgary, AB T2H 1K1
Toll Free: 1-866-335-9445
Fax: (403) 450-0495
www.lakeokanagan.com

In addition to various timeshare owners viewing timeshares located in the Pointe Beach Villas or having been "upgraded" to a Pointe Beach Villas on subsequent visits, numerous timeshare owners' option or entitlement have been recorded in the Purchase Worksheet prepared by the Lake Okanagan Resort Vacation sales representative.

Notwithstanding these promises or representations that may have been made or recorded with respect to numerous Lake Okanagan timeshare owners, the Pointe Beach Villas have never been owned by Lake Okanagan Resort Vacation, have never been transferred to a Trustee to be included in the timeshare pool and are not available for transfer, upgrade or exercise of option by any Lake Okanagan timeshare holder notwithstanding what each timeshare owner may have been told by the sales representative and notwithstanding those instances where the Purchase Worksheet includes a reference to such an option inconsistent with the executed Vacation Interval Agreement and Buyer's Certification.

The Pointe Beach Villas are owned by LOR (and not Lake Okanagan Resort Vacation) and are subject to various significant secured mortgages and charges.

Paragraph 10(d) of the Initial Order provides that:

> "The Fairmont Group [that includes Lake Okanagan Resort Vacation and LOR] shall, subject to such covenants as may be contained in the definitive documents, as hereinafter defined, have the right to:
>
> (d) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Fairmont Group deems appropriate on such terms as may be agreed upon between the Fairmont Group and such counterparties or failing such agreement, to deal with the consequences thereof in the Plan: . . . to permit the Fairmont Group to proceed with an orderly restructuring of the business..."

To provide clarification going forward and to assist with a potential orderly restructuring, Lake Okanagan Resort Vacation does hereby repudiate any written or oral agreement, understanding, right, claim or entitlement that you might claim, advance or possess with respect to any options, rights, or entitlement with respect to the Pointe Beach Villas. Any claim or damages that you might have with respect to this repudiation by Lake Okanagan Resort Vacation should be advanced as a claim in the Claims Process to be established in the CCAA proceedings and will be dealt with in any ultimate Lake Okanagan Resort Vacation CCAA creditor Plan.

LOR has no agreement, understanding or obligation with the Lake Okanagan Resort Vacation timeshare owners and its properties, including the Pointe Beach Villas, are not available to the Lake Okanagan Resort Vacation timeshare owners on a go forward basis.

This repudiation does not affect the Lake Okanagan Resort Vacation timeshare owners' rights to utilize the three existing Lake Okanagan Resort Vacation timeshare buildings in accordance with the terms of your Vacation Interval Agreement and only affects any claims or rights with respect to the Pointe Beach Villas or future development projects.

Lake Okanagan Resort Vacation regrets the disappointment that many timeshare owners will experience as a result of this repudiation / clarification of rights.

Lake Okanagan Resort Vacation (2001) Ltd.

Per: Murray Moore
Murray Moore
Chief Restructuring Officer

Lake Okanagan Resort (2001) Ltd.

Per: Murray Moore
Murray Moore
Chief Restructuring Officer

Action Number: 0901-04199
Sworn March 15, 2010

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF FAIRMONT RESORT PROPERTIES LTD., LAKE OKANAGAN RESORT VACATION (2001) LTD., LAKE OKANAGAN RESORT (2001) LTD., AND LL DEVELOPMENTS LTD.

AFFIDAVIT OF MURRAY MOORE

(Lake Okanagan Resort Vacation (2001) Ltd. and Lake Okanagan Resort (2001) Ltd. Claims Procedure)

MACLEOD DIXON LLP
3700, 400 Third Avenue S.W.
Calgary, Alberta T2P 4H2
Telephone: (403) 267-8222
Fax: (403) 264-5973

Howard A. Gorman
howard.gorman@macleoddixon.com

File No: 264244