Affidavit of Edward Nycholat
Sworn the 26 day of July, 2010

Action No.: 0901-04199

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

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

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 EDWARD NYCHOLAT

I, Edward Nycholat, of the City of Calgary, in the Province of Alberta, Chartered Accountant, MAKE OATH AND SAY AS FOLLOWS:

1. I am a director of Southwynd Resort Corp., the administrator of the applicant, Resorts International Real Estate Investment Trust ("RI REIT"). In addition, I am the sole director of FRPL Management Ltd. ("FRPL Management"), one of the original applicants in these proceedings. As such, I have personal knowledge of the matters and facts hereinafter deposed to, except where stated to be based on information and belief and where so stated, I verily believe the same to be true.

2. LL Developments Ltd. ("LL Developments") is a wholly owned subsidiary of Fairmont Resort Properties Ltd. ("Fairmont"), and along with Fairmont, Lake Okanagan Resort Vacation (2001) Ltd. and Lake Okanagan Resort (2001) Ltd., was granted creditor protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") in these proceedings.

3. The only asset of LL Developments is its interest in a Co-Owners' Agreement (the "Co-Owners' Agreement") made amongst "all of those persons who are or become owners of an undivided interest" in lands legally described as Lot 1, District Lot 4596, Kootenay District Plan 4023, except Part included in Plan NEP 22509 (the "Lands"). Pursuant to the Co-Owners'

Agreement, LL Developments, along with the other co-owners, beneficially own the Lands as tenants in common, each as to an undivided interest as set out in title to the Lands registered at the Nelson Land Title Office of the Province of British Columbia. In total, LL Developments owns a 72.83% undivided interest in the Lands. A copy of the Co-Owners' Agreement is attached hereto and marked as **Exhibit "A"**.

4. Title to the Lands is registered in the name of Lyttle Lake Co-Ownership Holding Corporation (the "Trustee"). The Trustee holds the Lands beneficially for all of the co-owners of the Lands, pursuant to a Trust Declaration dated October 28, 2005 and amendments thereto.

5. RI REIT is the only known creditor of LL Developments, as a result of a number of loan and assignment transactions set out as follows:

(a) On or about February 21, 2008, RI REIT and FRPL Management entered into a Trust Loan Agreement pursuant to which RI REIT agreed to lend to FRPL Management the proceeds of an offering of units of the REIT, ultimately for the purpose of FRPL Management lending such proceeds to Fairmont (the "REIT Loan").

(b) Also on February 21, 2008, FRPL Management entered into the loan agreement with Fairmont, pursuant to which FRPL Management loaned to Fairmont the principal amount of $13,041,600.00, being the amount of the proceeds of the RI REIT offering loaned to FRPL Management (the "FRPL Management Loan").

(c) The FRPL Management Loan was guaranteed by LL Developments pursuant to a continuing and unlimited guarantee (the "LL Developments Guarantee"). As partial security for the FRPL Management Loan, LL Developments provided an Assignment of Co-Ownership Interest Agreement dated February 21, 2008 (the "Co-Ownership Assignment") whereby LL Developments assigned all of its interest in the Co-Owners' Agreement to FRPL Management. The Co-Ownership Assignment is attached hereto and marked as **Exhibit "B"**.

(d) As security for its obligations to RI REIT under the REIT Loan, FRPL Management executed a Security Agreement in favour of the REIT, dated May

18, 2010 pursuant to which FRPL Management granted to RI REIT its security interest in, among other things, the FRPL Management Loan agreement, the LL Developments Guarantee and the Co-Ownership Assignment, being the security pledged by LL Developments to FRPL Management in support of the FRPL Management Loan. The Security Assignment granted by FRPL Management in favour of RI REIT is attached hereto and marked as **Exhibit "C"**.

(e) FRPL Management defaulted on its obligations to RI REIT under the REIT Loan by failing to pay interest and principal due and owing.

(f) On or about June 3, 2010, as a result of FRPL Management's default under the REIT Loan, RI REIT issued a Declaration of Default and a Notice under section 62(1) of the *Personal Property Security Act* (Alberta), R.S.A. 2000, c. P-7 (the "PPSA") declaring the REIT Loan to be immediately due and payable and giving notice of its proposal to take the collateral subject to the REIT Loan, being among other things, the Co-Ownership Assignment, in satisfaction of the REIT Loan. The Declaration of Default and section 62(1) Notice issued by RI REIT to FRPL Management are attached hereto and marked as **Exhibit "D"**.

(g) On or about June 20, 2010, upon the expiry of the 15 day objection period set out in section 62(2) of the PPSA, RI REIT issued a Demand for Possession to FRPL Management outlining RI REIT's intention to take the collateral subject to the REIT Loan and demanding, in order to effect same, that FRPL Management execute and deliver, among other things, an Assignment Agreement (the "Assignment Agreement") assigning the Co-Ownership Assignment to RI REIT. The Assignment Agreement was executed by FRPL Management, RI REIT and LL Developments on or about June 20, 2010. A copy of the Demand for Possession is attached hereto and marked as **Exhibit "E"**. A copy of the Assignment Agreement is attached hereto and marked as **Exhibit "F"**.

6. As a result of the foregoing, RI REIT is now a party to the Co-Ownership Assignment, consented to by FRPL Management and LL Developments, and is entitled to hold and enforce all of the privileges, rights and benefits of FRPL Management under the Co-Ownership Assignment.

7. RI REIT now wishes to enforce its rights under the Co-Ownership Assignment, as a result of defaults committed by LL Developments under both the FRPL Management Loan agreement and the REIT Loan agreement, including but not limited to, failing to pay amounts when due and owing.

8. In order to enforce its rights under the Co-Ownership Assignment and effectively become a legal and beneficial owner of an undivided 72.83% interest in the Lands, RI REIT has, pursuant to the terms of the Trust Declaration and the Co-Ownership Assignment, issued a Notice of Enforcement dated July 21, 2010 (the "Notice of Enforcement") to LL Developments and the Trustee, giving notice of its intention to enforce the Co-Ownership Assignment and to take control over and ownership of the co-ownership interest originally held by LL Developments. Pursuant to section 13 of the Co-Ownership Assignment, upon RI REIT giving notice of its intention to enforce, the Trustee is required to acknowledge RI REIT's ownership of the co-ownership interest without any proof other than the written notice. The Notice of Enforcement is attached hereto and marked as **Exhibit "G"**.

9. I am advised by Phil Matkin of the Trustee, and do verily believe that the Trustee has acknowledged RI REIT's ownership of the co-ownership interest, and will be providing such acknowledgment in writing in due course, upon his return from summer holidays.

10. I make this Affidavit in support of an Order:

(a) lifting the stay of proceedings granted pursuant to the Initial Order to permit RI REIT to enforce the Co-Ownership Assignment;

(b) approving the Notice of Enforcement and declaring RI REIT to be an owner of a 72.83% undivided interest in the Lands;

(c) directing the Trustee to acknowledge RI REIT's ownership of the co-ownership interest and to amend its records to reflect such ownership.

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| SWORN BEFORE ME at the City of Calgary, in the Province of Alberta this 26th day of July, 2010 | |
| Commissioner for Oaths in an for the Province of Alberta | EDWARD NYCHOLAT |

# CO-OWNERS' AGREEMENT

AMONG:

All of those persons who are or become owners of an undivided interest in the Lands as described herein (hereinafter collectively referred to as the "Owners" and singularly as an "Owner")

WITNESSETH:

1. **Definitions**

In this agreement, the following words or expressions shall have the following meanings, namely:

This Is Exhibit "A" referred to in the Affidavit of Edward Mychalat
Sworn before me this 20th day of July A.D. 2010
A Commissioner for Oaths in and for the Province of Alberta
ROBYN GUROFSKY
BARRISTER & SOLICITOR

a) "Business Day" means a day which is not:

   i. a Saturday or Sunday; or

   ii. a statutory holiday in the Province of Alberta;

b) "Interest in the Property" means an undivided interest in the Lands owned by an Owner;

c) "Lands" means those lands legally described as Lot 1, District Lot 4596, Kootenay District Plan 4023, except Part included in Plan NEP 22509;

2. **Binding the Land**

This agreement shall run with the Lands and as long as it is registered against the Lands it shall bind the Owners and all who have any Interest in the Property and any party taking title to an undivided interest in the Lands, shall be entitled to the benefits of and subject to the burdens of this agreement. No sale of an undivided interest in the Lands shall be permitted except that the transferee shall be bound by this agreement.

3. **Term**

This agreement shall continue in full force and effect until it is terminated by agreement of the Majority Owners (as hereinafter defined).

4. **Ownership of the Lands**

The Owners shall beneficially own the Lands as tenants in common, each as to an undivided interest as set forth in title(s) to the Lands on record at the Nelson Land Title Office for the Province of British Columbia from time to time. Nothing in this agreement expressed or implied shall constitute the Owners as partners in either the co-ownership of the Lands or their joint operation, maintenance, management or sale of the Lands. An Owner may not pledge the credit of or incur any liability on behalf of another Owner.

## 5. Decisions of the Majority

Subject to the provisions of Section 13(h), the following matters shall be decided upon at a Meeting of the Owners, by those Owners who own in aggregate at least an undivided 301/600$^{th}$ Interest in the Property (herein referred to as the "Majority Owners") and the decision of such Majority Owners shall be binding on all Owners:

a) the appointment or replacement of the Agent and the direction of the Agent in its duties;

b) the terms of a lease of all or any portion of the Lands to be entered into by or on behalf of the Owners;

c) the timing of a plan of subdivision of the Lands (including, without limiting the foregoing, the appointment of an engineer or other professional consultant for the preparation of plans for the subdivision of the Lands and the construction of services (if any) for the Lands, arranging or all required approvals, permits, fees, licences and other authorizations, preparation of schedules and budgets and cash flow analyses, arranging for the supervision and co-ordination of work, determining the form of contracts to be entered into by or on behalf of the Owners in connection with the subdivision and servicing (if applicable) of the Lands, commencing, defending or maintaining any legal action or other proceeding related to the subdivision or servicing of the Lands);

d) the timing of and the terms of the sale, mortgaging or other disposition of the Lands or any part thereof (including, without limiting the foregoing, the appointment of a real estate company or other consultant to list all or part of the Lands for sale, the taking of such steps and doing such things which are decided to be appropriate to prepare all or part of the Lands for sale, and determining the form of contract for the sale of all or part of the Lands to be entered into by or on behalf of the Owners);

e) the development or re-zoning of the Lands or any part of the Lands;

f) the use, management and operation of the Lands to the extent the same is permitted by law (including, without limiting the foregoing, arranging and maintaining insurance and carrying out any work required by any competent authority or municipality);

and any other matters associated with the above.

For the purpose of carrying out the leasing, subdivision, servicing, sale, development, re-zoning, operation of or other activities associated with the Lands (which may be authorized by the Majority Owners under the provisions of this agreement), each Owner hereby makes, nominates, constitutes and appoints the Agent (in respect to the matter in which the power of attorney is required), true and lawful attorney for the Owner in his name, place and stead and for sole use and benefit to lease, subdivide, service, sell, transfer, develop, re-zone, operate, or otherwise deal with the Owner's Interest in the Property (including signing any lease of the Lands or parts thereof, signing any application for or documents relating to the subdivision, or re-zoning of the Lands, accepting or amending any offer to purchase and waiving any conditions contained therein, obtaining any "Revenue Canada clearance certificates", signing any contracts relating to the servicing, development, use or operation of the Lands) and for such purposes to sign, seal and deliver all documents and instruments which may be required in that regard. And for all and every of the purposes above mentioned, each Owner does grant and give to the Agent full and absolute power and authority to do and execute all acts, deeds, matters and things necessary to be done in the above mentioned, as fully and effectually to all intents and purposes as the Owner could do if personally present and acting therein.

The Majority Owners may by resolution appoint an Agent who shall have authority to act on behalf of all of the Owners in accordance with the authority conferred from time to time by resolution of the Majority Owners. The fees and expenses of the Agent shall be borne by the Owners in proportion to their Interest in the Property.

## 6. Appointment of Agent

Until otherwise determined by the Majority Owners, LL Developments Ltd. shall act as Agent for the Owners in accordance with the provisions of this agreement. Until otherwise directed by a resolution of the Majority Owners the Agent shall proceed to manage the Lands on behalf of all of the Owners as may be reasonably required for the benefit of all Owners.

## 7. Liability of Agent

The Agent, in exercising its powers and discharging its duties hereunder, shall act honestly and in good faith with a view to the best interests of the Owners.

The Agent shall be liable only for its willful default, negligence and bad faith.

## 8. Conditions Precedent to Action by Agent

The obligation of the Agent to commence or continue to act, any action or proceeding for the purpose of enforcing any rights of the Owners shall be conditional upon the Owners furnishing, when required by notice in writing by the Agent, sufficient funds to commence or continue such act, action or proceeding and indemnity reasonably satisfactory to the Agent to protect and hold harmless the Agent against the expenses and liabilities to be incurred thereby and any loss or damage it may suffer by reason thereof, except such as may arise from its willful default, negligence or bad faith. None of the provisions contained in this agreement shall require the Agent to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified as required herein.

## 9. Expert and Advisers

The Agent may appoint such agents and employ or retain such solicitors, accountants, engineers, appraisers or other experts or advisers as it may reasonably require for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them. The Agent may pay reasonable remuneration for all services performed for it in the discharge of its duties herein, without taxation of costs or fees of any solicitor, except as may be required at law and then on a solicitor and his own client basis. The Agent may act and shall be protected in acting in good faith on the opinion or advice of or information obtained from any lawyer, accountant, engineer, appraiser or other expert or adviser, retained by the Agent in relation to any matter arising in the administration of the duties herein.

## 10. Replacement of Agent

The agent may resign its appointment and be discharged from all further duties and liability hereunder by giving to the Owners not less than 90 days' notice in writing. The Owners shall have power at any time to remove the Agent and to appoint a new Agent. In the event of the Agent resigning or being removed by the Owners or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Owners shall appoint a new Agent. Failing such appointment by the Owners, the retiring Agent may apply to a Justice of the Court of Queen's Bench of Alberta (or any successor thereof) on such notice as such Justice may direct, for the appointment of a new Agent. Any new Agent shall be subject to removal by the Owners.

## 11. Revenues and Expenses

Except as otherwise provided for in this agreement, all revenue and other receipts (whether of a capital nature or otherwise) derived from the ownership and operation of the Lands shall be the property of and shall be paid to the Owners in proportion to their Interest in the Property at the time the same is earned (in the case of revenue) or received (in the case of receipts which are not revenue). Except as otherwise provided for in this agreement, all costs, charges, and expenses (including, without limiting the foregoing, property taxes and including costs associated with the subdivision, sale, re-zoning or development of the Lands if authorized pursuant to this agreement) which are incurred or due to be paid in connection with the Lands shall be borne by the Owners in proportion to their Interest in the Property at the time the same are incurred or due to be paid, and shall be paid when the same are incurred or are due to be paid.

## 12. Default by the Owner

In the event that a particular Owner (herein called the "Defaulting Owner") shall fail for any reason to pay for his share of any costs, charges, expenses or liability associated with the Lands when the same is incurred or becomes due to be paid then the amount not paid by the Defaulting Owner shall be a debt owing to all the Owners who have paid their share (the "Non-defaulting Owners"). This debt shall bear interest at the rate of 4% per annum added to the prime lending rate as established from time to time by the Bank of Nova Scotia compounded monthly and calculated from the date the payment was due to be made until full reimbursement is made. The Non-defaulting Owners shall have a lien and charge over the Defaulting Owner's Interest in the Property in the amount of the debt. Each charge shall be subordinate to all mortgages and charges on title approved by the Majority Owners. The debt owing by a Defaulting Owner may be collected by the Agent on behalf of all Owners. A Defaulting Owner shall not be entitled to vote at any Meeting of the Owners and all revenues payable to the Defaulting Owner pursuant to this agreement shall be held by the Agent and shall be applied against the debt owing hereunder. The Agent, on behalf of he Owners, shall be entitled to take such proceedings as it deems desirable to enforce the lien or charge created hereby, including bringing foreclosure proceedings and in such event all costs thereof, including costs on a solicitor and his own client basis, shall be payable by the Defaulting Owner.

13. **Meetings of the Owners**

The Agent may at any time and from time to time and shall, on receipt of a request of not less than five (5) Owners, convene a meeting of the Owners (a "Meeting"). If the Agent fails within 21 days after receipt of such request to give notice convening such Meeting, the Owners may convene such Meeting. Every Meeting shall be held in Calgary, Alberta.

**(a) Notice**

At least 21 days' notice of any Meeting shall be given to the Owners. Such notice shall state the time when and the place where the Meeting is to be held and, in general terms, the nature of the business to be transacted thereat and shall set out the text of any resolution to be proposed at the Meeting.

(b) **Chairman**

Some individual nominated in writing by the Agent shall be chairman of a Meeting and if no individual is so nominated or if the individual so nominated is not present within 15 minutes from the time fixed for the holding of the Meeting, the Owners present in person or by proxy shall choose some individual present to be chairman. The chairman need not be an Owner.

(c) **Quorum**

At any meeting:

(i) a quorum shall consist of Owners present in person or by proxy and representing a majority of the total undivided Interests in the Property;

(ii) if a quorum of the Owners shall not be present within 30 minutes after the time fixed for holding a Meeting, the Meeting shall stand adjourned to the same day in the second week thereafter (or, if such day is not a Business Day in the place where the meeting is to be held, the Business Day in such place next following such day) at the same time and place; notice of the adjournment of the Meeting and of the date, time and place of the adjourned Meeting shall not be required; and

(iii) at the adjourned Meeting, the Owners present in person or by proxy shall form a quorum and may transact the business for which the Meeting was originally convened notwithstanding that they may not represent a majority of the total undivided Interests in the Property.

(d) **Show of Hands**

Every question submitted to a Meeting shall be decided in the first place by a majority of the votes given on a show of hands. In the case of an equality of votes on a show of hands, the chairman shall have a casting vote. At any Meeting, unless a poll is duly demanded as herein provided, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact.

(e) **Poll**

On any question submitted to a Meeting if demanded, after a vote by show of hands, by the chairman or by one or more of the Owners acting in person or by proxy, a poll shall be taken in such manner as the chairman shall direct. Questions shall, if a poll be taken, be decided by the votes of the Owners owning a majority of the undivided Interest in the Property represented at the Meeting and voted on the poll. If, at any Meeting, a poll is so demanded on the election of a chairman or on a question of adjournment, it shall be taken forthwith but, if demanded on any other question the poll shall be taken in such manner and either at once or after an adjournment as the chairman directs. The result of a poll shall be deemed to be the decision of the Meeting at which the poll was taken and shall be binding on all Owners.

(f) **Voting**

On a show of hands at a Meeting, every individual who is present and entitled to vote, whether an Owner or as proxy for one or more absent Owners or both, shall have one vote. On a poll, each Owner present in person or represented by a proxy duly appointed by instrument in writing shall be entitled to one vote in respect of each 1/600$^{th}$ Interest in the Property held by the Owner or represented by proxy. A proxy need not be an Owner. In the case of joint registered Owners, any one of them present in person or by proxy at the Meeting may vote in the absence of the other or others; but in case more than one of them be present in person or by proxy, they shall vote together in respect of their Interest in the Property of which they are joint registered Owners or no vote shall be counted in respect of that Interest in Property,

**(g) Regulations**

The Agent may from time to time make and from time to time vary such regulations as it shall from time to time think appropriate;

(i) for the deposit of instruments appointing proxies at such place as the Agent or the Owners convening the Meeting, as the case may be, may direct in the notice convening the Meeting; and

(ii) for the deposit of instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be mailed, cabled, telexed, telecopies or telegraphed before the meeting to the Agent at the place where the same is to be held and for the voting of instruments of proxy so deposited as though the instruments themselves were produced at the Meeting.

As regulations so made shall be binding and effective and the votes given in accordance therewith shall be valid and shall be counted. Save as such regulations may provide, the only persons who shall be recognized at any Meeting as Owners, or as entitled to vote or be present at the Meeting in respect thereof, shall be Owners and individuals whom Owners have, by instrument in writing, duly appointed as their proxies.

**(h) Instruments in Writing**

All actions that may be taken and all powers that may be exercised as a decision of the Owners or by a resolution at a Meeting of the Owners held in accordance with this Section Thirteen may also be taken and exercised by the Owners without holding a Meeting by an instrument in writing circulated to all Owners and signed in one or more counterparts by the Owners holding 400/600ths Interest in the Property.

**(i) Binding Effects of Resolutions**

Every resolution and every decision of the Majority Owners passed at a Meeting in accordance with the provisions of this Section Thirteen shall be biding upon all the Holders, whether present at or absent from such Meeting, and every instrument in writing signed by Holders in accordance with subsection (h) hereof shall be binding upon all the Owners, whether signatories thereto or not, and each and every Owner shall be bound to give effect accordingly to every such resolution or decision.

## 14. Alberta Law

This agreement shall be construed and enforced in accordance with, and the rights of the Owners shall be governed by, the laws of the Province of Alberta. This agreement has been entered into in the Province of Alberta. Each Owner hereto hereby irrevocably attorns to the jurisdiction of the courts of the Province of Alberta and the Supreme Court of Canada.

15. **No Waiver**

Neither the granting of any time or other indulgence to an Owner nor the failure of an Owner to insist upon the strict performance of any covenant, term, or condition of this agreement or to enforce his rights hereunder shall be construed as a waiver of his rights or remedies hereunder and the same shall continue in full force and effect.

16. **Notice**

Any notice or demand or other document required or permitted to be given under the terms of this agreement shall be sufficiently given to the party to whom it is addressed if delivered or forwarded by registered mail, return receipt requested, to such party at his address appearing on the title to that Owner's Interest in the Property in the Nelson Land Title Office in the Province of British Columbia. Every such notice shall be deemed to have been received and given at the time when it was delivered, if delivered, or on the 3rd business day following the posting of the notice, if mailed.

17. **Counterpart Execution**

This agreement may be executed in counterpart and shall be binding upon all Owners upon them becoming Owners.

18 **Enurement**

This agreement and everything herein contained shall enure to the benefit of and be binding upon the parties together with their personal representatives, and permitted successors and assigns.

IN WITNESS WHEREOF this agreement has been executed in counterpart as of the date set opposite each party's signature.

OWNER:

Date: ____________________ ____________________

____________________
Print Name

OWNER:

Date: ____________________ ____________________

____________________
Print Name

ASSIGNMENT OF CO-OWNERSHIP INTEREST

This Is Exhibit " B " referred to in the Affidavit of Edward Nychelat
Sworn before me this 26th day of July A.D. 2010
A Commissioner for Oaths in and for the Province of Alberta
ROBYN GUROFSKY
BARRISTER & SOLICITOR

THIS INDENTURE made as of the 21st day of February, 2008.

AMONG:

**LL DEVELOPMENTS LTD.**
(hereinafter called the "Guarantor")

AND:

**FRPL MANAGEMENT LTD,**
(hereinafter called the "Lender")

AND:

**LYTTLE LAKE CO-OWNERSHIP HOLDING CORPORATION**
(hereinafter called the "Trustee")

WHEREAS under and by virtue of a Trust Declaration, the Trustee is holding legal title for a parcel of land in the Province of British Columbia legally described as Lot 1, District Block Lot 4596 Kootenay District Plan 4023, except part including in Plan NEP22509 (the "Lands") hereto in trust for the Co-Owners;

AND WHEREAS the Guarantor is the owner of certain undivided co-ownership interests and may become the owner of further and additional co-ownership interests in the Lands (all of these co-ownership interests of the Guarantor whether presently owned or that may be owned in the future are hereinafter called the "Co-Ownership Interest");

AND WHEREAS the rights of the Guarantor to the Co-Ownership Interest are subject to the provisions of the Cc-Owners Agreement which binds all of the Co-owners of the Lands (the "Co-Ownership Agreement");

AND WHEREAS under and by virtue of a Loan Agreement Fairmont Resort Properties Ltd. ("Fairmont"), the parent company of the Guarantor, has entered into a Loan Agreement with the Lender, which under certain circumstances obligates Fairmont to provide certain subsidiaries of Fairmont to grant security and guarantees to the Lender and the Guarantor has provided such a Guarantee dated effective the 21st day of February, 2008;

AND WHEREAS the Guarantor, as the owner of the Co-Ownership Interest has agreed to grant security for its obligations under the Guarantee by way of an Assignment of all of its right title and interest in the Co-Ownership Agreement;

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and of such advances as may from time to time be made by the Lender to Fairmont under said Loan Agreement (which the Guarantor acknowledges is for its benefit) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged THE GUARANTOR DOES HEREBY ASSIGN, TRANSFER AND SET OVER UNTO the Lender the Co-Ownership Interest, all the proceeds payable thereunder and all other benefit and advantage to be derived therefrom; and also the full benefit of all powers and of all covenants and provisos contained for the benefit of the Guarantor in the Co-Ownership Agreement, with full power and authority to use the name of the Guarantor, its successors or assigns for enforcing the performance of said covenants and other matters and things contained in the Co-Ownership Agreement;

PROVIDED HOWEVER that the Lender shall be liable to account for only such moneys as are actually received by it by virtue of these presents less all proper costs of collection and the net amount of such moneys as are actually received by the Lender may in the sole discretion of the Lender be applied on account of the moneys due under said Loan Agreement or may be paid to the Guarantor;

AND PROVIDED FURTHER that nothing contained herein shall be deemed to have the effect of making the Lender responsible for any of the obligations of the Guarantor under the Co-Owners Agreement, the collection of proceeds or any part thereof, and nothing herein contained shall obligate the Lender to assume or perform any obligation of the Guarantor under the Co-Owners Agreement (for which obligations the Guarantor shall remain liable) or any other third party in respect or arising out of the Co-Owners Agreement and the Guarantor shall indemnify and save harmless the Lender from any and all claims of such third parties. The Lender may, however, at its option, assume or perform any such obligation as the Lender considers necessary or desirable to obtain the benefit of the assignment herein contained free of any set-off, deduction or abatement and any money expended by the Lender in this regard shall form part of the indebtedness secured hereby and by the Loan Agreement;

AND PROVIDED FURTHER that this present assignment, although absolute and intended to be so, shall be held by the Lender as continuing collateral security to the Lender for the payment of the all indebtedness secured by the Loan Agreement and performance by the Guarantor of all of its obligations under the Loan Agreement and other security collateral thereto, and upon payment of the indebtedness secured thereby and performance of such obligations this Assignment shall be released or reassigned to the Guarantor at the Guarantor's expense;

AND PROVIDED FURTHER that the Lender shall not be by reason of these presents or by reason of any steps, actions, distress or other proceedings taken to enforce any of its rights hereunder be deemed to be a mortgagee in possession of said lands or any part thereof;

AND PROVIDED FURTHER that neither this assignment nor anything herein contained shall bind the Lender to recognize the Co-Owners Agreement or any part thereof nor in any way render the interest of the Lender under Guarantee subject to the Co-Owners Agreement and all remedies now available to the Lender under Guarantee are hereby reserved to the Lender and may be exercised notwithstanding the Co-Owners Agreement.

THE GUARANTOR FURTHER COVENANTS AND AGREES WITH THE LENDER;

1. The Trustee covenants and agrees with the Lender that it will not terminate, amend or otherwise deal with the Co-Ownership Interest of the Guarantor except subject to this Assignment and the Trustee acknowledges and agrees to observe the assignments and agreements herein set forth.

2. That the Co-Owners Agreement is valid and subsisting and there is no default thereunder.

3. That it will not alter or modify the terms of the Co-Owners Agreement, waive any defaults by the Lessee or discharge or surrender the Co-Owners Agreement without the consent in writing of the Lender first had and obtained.

4. That it will not vote for any action which might result in there being a charge against the Co-Ownership Interest without the express written consent of the Lender first had and obtained.

5. That no waiver by the Lender of any breach of any of the covenants and conditions in Guarantee or these presents whether negative or positive in form shall take effect or be binding upon the Lender unless the same be expressed in writing under the authority of the Lender and any waiver so expressed shall extend only to the particular breach so waived and shall not limit or affect the Lender's right with respect to any other or future breach.

6. That it has not entered into and will not enter into any agreement with the Trustee under the Co-Owners Agreement whereby any right of set-off shall or may arise between the Guarantor and the Lessee and the Guarantor has not and will not enter into any agreement with the Lessee whereby the Co-Owners Agreement shall or may be surrendered or terminated by way of merger.

7. That it will well and truly keep, observe and perform all obligations on its part contained in the Co-Owners Agreement and that there are at the date hereof no existing defaults by the Guarantor or any of the other Co-Owners under the Co-Owners Agreement.

8. That any direction or request by the Lender to pay proceeds to the Lender shall be sufficient warrant and authority to the Trustee to make such payment and the payment of such amount to the Lender shall be and operate as a discharge to the Trustee in respect of the amount so paid.

9. Notwithstanding that this Assignment is given as security for indebtedness by the Guarantor to the Lender, this Assignment shall be absolute as and from the date that the Trustee receives notice of same but nothing herein shall be read or construed to constitute the Lender as a mortgagee in possession or to make the Lender liable for any of the Guarantor's obligations, covenants or provisos contained in the Co-Owners Agreement but the Lender may, at its option, allow the Guarantor, until further notice, to continue to receive payments under the Co-Owners Agreement and to enjoy all of the rights, duties and obligations of a Co-Owner under the Co-Owners Agreement until the Lender gives notice of default to the Trustee.

10. This assignment of the Co-Owners Agreement shall not in any way relieve the Guarantor of its obligations for the performance of each and every covenant of the Guarantor as set forth in the Co-Owners Agreement.

11. If the Guarantor shall be in default in the observance or performance of any of the terms and conditions of this agreement then at the option of the Lender all moneys payable under the Guarantee shall forthwith become due and payable and in default of payment the Lender shall be entitled to exercise such remedies to realize any other security under the Guarantee as it may by law be entitled to do.

12. That the Guarantor will not dispose of any interest in the Lands or any part thereof or any interest therein to any person, firm or corporation unless and until such person, firm or corporation has expressly covenanted and agreed with the Lender to be bound by this assignment.

13. The Lender and the Trustee covenant and agree with each other that if the Lender or any person, firm or corporation lawfully claiming by, through or under the Lender by enforcing the Assignment takes control over the Co-Ownership Interest then, the Lender shall, as and from such date, assume the obligations of the Guarantor under the Co-Owners Agreement as if such Mortgagee or successor were the holder of the Co-Ownership Interest and the Trustee shall acknowledge the ownership of the Co-Ownership Interest of the Lender without any proof other than the written notice of the Lender of its rights to the said Co-Ownership Interest. The Lessee acknowledges that the Lender has no liability for the obligations of the Guarantor under the Co-Owners Agreement until such time as the Lender acknowledges to the Trustee its intention to assume such obligations or otherwise takes steps to assume control of the Lands or the Co-Ownership Interest.

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

**LL DEVELOPMENTS LTD.**

PER: ______________________

**FRPL MANAGEMENT LTD.**

PER: ______________________

**LYTTLE LAKE CO-OWNERSHIP HOLDING CORPORATION**

PER: ______________________

This is Exhibit "C"
referred to in the Affidavit of
Edward Nykolat
Sworn before me this 26th
day of July A.D. 2010

A Commissioner for
Oaths in and for the
Province of Alberta

ROBYN GUROFSKY
BARRISTER & SOLICITOR

# SECURITY AGREEMENT

(FRPL Management Ltd.)

TO: Resorts International Real Estate Investment Trust (the "**Lender**")

DATE: May 18, 2010

RECITALS:

A. FRPL Management Ltd. (the "**Obligor**") and the Lender entered into the Loan Agreement dated February 21, 2008 (the "**Trust Loan Agreement**") pursuant to which the RI REIT agreed to lend to the Obligor proceeds of the offering of Series C Units of the Lender (the "**Offering**") for the purpose of the Obligor lending such proceeds to Fairmont Resort Properties Ltd. ("**Fairmont**") pursuant to the Fairmont Loan Agreement (as defined below).

B. Fairmont and the Obligor entered into the Loan Agreement dated February 21, 2008 (the "**Fairmont Loan Agreement**") contemplated by the Trust Loan Agreement, pursuant to which the Obligor loaned to Fairmont proceeds of the Offering that were loaned to the Obligor by the Lender pursuant to the Trust Loan Agreement;

C. LL Developments Ltd. ("**LL Developments**") guaranteed Fairmont's obligations under the Fairmont Loan Agreement pursuant to the Subsidiary Guarantee dated February 21, 2008 (the "**Fairmont Guarantee**") between LL Developments and the Obligor. Makaha Hotel and Resort, Inc. ("**Makaha**") and the Obligor entered into the Addition Agreement dated July 15, 2008 pursuant to which Makaha became a party to the Fairmont Guarantee and a guarantor of the Fairmont obligations under the Fairmont Loan Agreement;

D. As security of the Fairmont Loan Agreement and the Fairmont Guarantee (i) LL Developments provided an Assignment of Co-Ownership Interest Indenture dated February 21, 2008 (the "**Assignment Indenture**") among LL Developments, the Obligor and Lyttle Lake Co-Ownership Holding Corporation (the "**Trustee**") whereby LL Developments assigned to the Obligor all of its interest in the Co-Ownership Agreement registered in the name of LL Developments in the register kept by the Trustee pursuant to the Trust Declaration dated February 15, 1995 made between Lake Windermere Properties Inc. (predecessor in interest to LL Developments) and Montreal Trust Company of Canada (predecessor to the Trustee), as supplemented by the First Amendment to Declaration of Trust dated October 1, 2005, (ii) Makaha provided a Mortgage, Security Agreement and Financing Statement dated July 15, 2008 (the "**Mortgage and Security Agreement**") made by Fairways Cottages at Makaha Owners Association and Makaha in favour of the Obligor charging certain fractional ownership interests in Makaha's resort property in favour of the Obligor, and (iii) Fairmont provided a General Security Agreement dated February 18, 2009 (the "**GSA**") and a Hypothecation of Shares dated February 18, 2009 ("**Share Hypothecation**") in favour of the Obligor and FRPL Finance Ltd.

E. The Assignment Indenture, Mortgage and Security Agreement, GSA and Share Hypothecation are referred to collectively as the "**Fairmont Security**" and, together with the Fairmont Guarantees and the Fairmont Loan Agreement are referred to, collectively, as the "**Fairmont Loan Documents**".

F. Under Section 4.2 of the Trust Loan Agreement, the Obligor is obligated to execute and deliver to the Lender this security agreement to evidence its security interest in all rights and interest of the Obligor pursuant to the Fairmont Loan Documents.

FOR VALUE RECEIVED and intending to be legally bound by this security agreement (the "**Agreement**"), the Obligor agrees as follows:

1. INTERPRETATION

1.1 Capitalized Terms In this Agreement, except where the context otherwise requires:

(a) "**Collateral**" means all of the rights and interest of the Obligor in the Fairmont Loan Documents including all amendments thereto and supplements thereof.

(b) "**Event of Default**" means the occurrence of an Event of Default under the Trust Loan Agreement.

(c) "**Obligations**" means all debts, liabilities and obligations of the Obligor to the Lender, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing or remaining unpaid by the Obligor to the Lender and all interest, fees, commissions and legal and other costs, charges and expenses owing or remaining unpaid by the Obligor to the Lender.

(d) "**PPSA**" means the *Personal Property Security Act* (Alberta).

1.2 PPSA Definitions In this Agreement, the words "proceeds," "receiver," and "security" shall have the same meanings as their defined meanings where they are defined in the PPSA.

1.3 No *Contra Proferentum* This Agreement has been negotiated by the Obligor and the Lender with the benefit of legal representation, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Agreement.

1.4 Other Interpretation Rules In this Agreement:

(e) The division into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

(f) Unless otherwise specified or the context otherwise requires, (i) "including" or "includes" means "including (or includes) but is not limited to" and shall not be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it, (ii) a reference to any legislation, statutory instrument or regulation or a section of it is a reference to the legislation, statutory instrument, regulation or section as amended, restated and re-enacted from time to time, and (iii) words in the singular include the plural and vice-versa and words in one gender include all genders.

(g) Unless otherwise specified or the context otherwise requires, any reference in this Agreement to payment of the Obligations includes performance of the Obligations.

2. GRANT OF SECURITY, ETC.

2.1 Grant of Security As security for payment and performance of the Obligations, the Obligor mortgages, charges, assigns, transfers and pledges the Collateral to the Lender as a fixed and specific mortgage and charge, and grants the Lender a security interest in the Collateral.

2.2 Attachment The Obligor agrees that the Lender has given value and that the liens created by this Agreement are intended to attach (a) with respect to Collateral that is now in existence, upon execution of this Agreement, and (b) with respect to Collateral that comes into existence in the future, upon the Obligor acquiring rights in the Collateral or the power to transfer rights in the Collateral to the Lender. In each case, the parties do not intend to postpone the attachment of any lien created by this Agreement.

2.3 Continuing Agreement The liens created by this Agreement are continuing, to secure a current or running account, and will extend to the ultimate balance of the Obligations, regardless of any intermediate payment or discharge of the Obligations in whole or in part. Without limiting the foregoing, the Obligations may include advances and re-advances under revolving credit facilities, which permit borrowing, repayment of all or part of the amount borrowed and re-borrowing of amounts previously paid.

2.4 In Addition to Other Rights; No Marshalling This Agreement is in addition to and is not in any way prejudiced by or merged with any other lien now or subsequently held by the Lender in respect of any Obligations. The Lender shall be under no obligation to marshal in favour of the Obligor any other lien or any money or other property that the Lender may be entitled to receive or may have a claim upon.

2.5 Liabilities Unconditional The liabilities of the Obligor under this Agreement are absolute and unconditional, and will not be affected by any act, omission, matter or thing that, but for this Section, would reduce, release or prejudice any of its liabilities under this Agreement, whether or not known to it or the Lender or consented to by it or the Lender.

2.6 Merger of Obligor If the Obligor amalgamates or merges with one or more other entities, the Obligations and the liens created by this Agreement shall continue as to the Obligations and the undertaking, property and assets of the Obligor at the time of amalgamation or merger, and shall extend to the Obligations and the present and future undertaking, property and assets of the amalgamated or merged entity, and the term

Obligor shall extend to the amalgamated or merged entity, all as if the amalgamated or merged entity had executed this Agreement as the Obligor.

2.7 Limitation Periods To the extent that any limitation period applies to any claim for payment of the Obligations or remedy for enforcement of the Obligations, the Obligor agrees that:

(a) any limitation period is expressly excluded and waived entirely if permitted by applicable law;

(b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law; and

(c) any applicable limitation period shall begin afresh upon any payment or other acknowledgment of the Obligations by the Obligor.

3. RIGHTS AND OBLIGATIONS OF THE OBLIGOR

3.1 Restrictions on Liens and Dispositions The Obligor shall not create, assume, incur or permit the existence of any lien on the Collateral, nor shall the Obligor sell, lease or otherwise dispose of the Collateral, or permit such a disposition to occur.

3.2 Possession and Control of Collateral The Lender, in its sole discretion, shall be entitled to take possession and exercise control of the Collateral, whether before or after the occurrence of an Event of Default. The Obligor shall take whatever steps, and execute and deliver whatever documents, the Lender requires to enable the Lender to take possession and exercise control of the Collateral. The Lender is not obligated to take steps to preserve rights relating to Collateral against prior parties or other persons. The Lender shall have no duty with respect to any Collateral in its possession or control. The Obligor shall reimburse the Lender on demand for all expenses incurred by the Lender in connection with its possession or control of the Collateral from the date the expenses are incurred until paid at the highest rate of interest applicable to the Obligations. The expenses and interest shall form part of the Obligations.

3.3 Other Assurances; Power of Attorney On request by the Lender, the Obligor shall (a) execute, acknowledge and deliver all financing statements, certificates, further assignments, documents, transfers, instruments, security documents, acknowledgments and assurances and do all further acts and things as the Lender may consider necessary or desirable to give effect to the intent of this Agreement, or for the collection, disposition, realization or enforcement of the Collateral or the liens created by this Agreement. The Obligor constitutes and appoints the Lender its true and lawful attorney, with full power of substitution, to do any of the foregoing or any other things that the Obligor has agreed to do in this Agreement, whenever and wherever the Lender may consider it to be necessary or desirable, and to use the Obligor's name in the exercise of the Lender's rights under this Agreement. This power of attorney is coupled with an interest and is irrevocable by the Obligor.

3.4 Restriction on Change of Office Location The Obligor shall not permit its chief executive office to be located out of the province of Alberta (the "**Specified Location**").

3.5 Lender May Perform Obligor's Duties If the Obligor fails to perform any of its duties under this Agreement, the Lender may, but shall not be obligated to, perform any or all of those duties, without waiving any rights to enforce this Agreement. The Obligor shall pay the Lender, immediately on written demand, an amount equal to the costs, fees and expenses incurred by the Lender in doing so plus interest from the date the costs, fees and expenses are incurred until paid at the highest rate of interest applicable to the Obligations. The costs, fees, expenses and interest shall be included in the Obligations under this Agreement.

3.6 Lender Not Liable for Obligor's Agreements Nothing in this Agreement shall make the Lender liable to observe or perform any term of any agreement to which the Obligor is a party or by which it or the Collateral is bound, or make the Lender a mortgagee in possession. The Obligor shall indemnify the Lender and save it harmless from any claim arising from any such agreement.

3.7 Release of Liens If the Obligor has indefeasibly paid the Obligations in full in cash and otherwise performed all of the terms of the Trust Loan Agreement, then the Lender shall, at the request and expense of the Obligor, release the liens created by this Agreement and execute and deliver whatever documents are reasonably required to do so.

4. RIGHTS AND OBLIGATIONS ON DEFAULT

4.1 Application of Article The provisions of this article 4 apply on the occurrence of an Event of Default.

4.2 Rights and Remedies Upon the Obligations becoming due and payable, the Lender may enforce payment of the Obligations and the Lender shall have the rights and remedies of a secured party under the PPSA and other applicable law together with those rights and remedies provided by this Agreement or otherwise provided by applicable law.

4.3 Proceeds The Lender may take charge of all proceeds of the Collateral and may hold them as additional security for the Obligations. The Lender may give notice to any or all account debtors of the Obligor and to any or all persons liable to the Obligor under an instrument to direct all payments or other proceeds relating to the Collateral to the Lender and any payments or other proceeds of the Collateral received by the Obligor from account debtors or from any persons liable to the Obligor under an instrument, after notice is given by the Lender, shall be held by the Obligor in trust for the Lender and immediately paid over to the Lender. The Lender shall not, however, be required to collect any proceeds of the Collateral. The Lender may also enforce any rights of the Obligor in respect of the Collateral by any manner permitted by law.

4.4 Notice of Disposition If required to do so by applicable law, the Lender shall give the Obligor written notice of any intended disposition of the Collateral in accordance with the Trust Loan Agreement or by any other method required or permitted by applicable law. The Obligor waives giving of notice by the Lender to the maximum extent permitted by applicable law.

4.5 <u>Statutory Waivers</u> To the maximum extent permitted by law, the Obligor waives all of the rights, benefits and protections given by any present or future statute that imposes limits on the rights, remedies or powers of the Lender or on the methods of realization of security, including any seize or sue or anti-deficiency statute or any similar provisions of any other statute.

4.6 <u>Disposition and Other Rights of Lender</u> The Lender may (a) make payments on account of, to discharge, or to obtain an assignment of any lien on the Collateral, whether or not ranking in priority to the liens created by this Agreement, (b) file proofs of claim and other documents to establish the claims of the Lender in any proceeding relating to the Obligor, and (c) sell or otherwise dispose of all or any part of the Collateral at public auction, by public tender or by private sale, lease or other disposition, either for cash or on credit, at such time and on such terms and conditions as the Lender may determine. On any disposition, the Lender shall have the right to acquire all or any part of the Collateral that is offered for disposition and the rights of the Obligor in that Collateral shall be extinguished. The Lender may also accept the Collateral in satisfaction of the Obligations or may from time to time designate any part of the Obligations to be satisfied by the acceptance of particular Collateral that the Lender reasonably determines to have a net realizable value equal to the amount of the designated part of the Obligations, in which case only the designated part of the Obligations shall be satisfied by the acceptance of the particular Collateral.

4.7 <u>Commercially Reasonable Actions and Omissions</u> The Obligor agrees that it is commercially reasonable for the Lender (a) not to exercise collection remedies against account debtors or other persons obligated on Collateral or to remove liens on or adverse claims against Collateral, (b) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (c) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (d) to contact other persons, whether or not in the same business as the Obligor, for expressions of interest in acquiring all or any portion of the Collateral. The Obligor acknowledges that the purpose of this Section is to provide selected examples of actions and omissions that would be commercially reasonable in the Lender's exercise of remedies against the Collateral and that other actions and omissions shall not be considered commercially unreasonable solely on account of not being mentioned in this Section, nor shall the Lender be liable or accountable for any discount attributable to the specified actions and omissions. Nothing in this Section shall be construed to grant any rights to the Obligor or to impose any duties on the Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section. In exercising its rights and obligations under this Agreement, the Lender shall not be responsible or liable to the Obligor or any other person for any loss or damage from the realization or disposal of any Collateral or the enforcement of this Agreement, or any failure to do so, or for any act or omission on their respective parts or on the part of any of their directors, officers, employees, agents or advisors in that connection, except that the Lender may be responsible or liable for loss or damage arising from its wilful misconduct or gross negligence.

4.8 Costs of Realization All costs incurred in connection with realizing the security constituted by this Agreement or exercising any of the Lender's rights under this Agreement, including costs incurred in connection with repossessing, holding, preparing for disposition, and disposing of any Collateral and legal fees on a full indemnity (sometimes called solicitor and own client) basis (in this Section, "**realization costs**") shall be payable by the Obligor to the Lender immediately on demand. Realization costs shall bear interest from the date they are incurred until paid at the highest rate of interest applicable to the Obligations. Realization costs and interest shall be included in the Obligations under this Agreement.

4.9 Other Security; Application of Money The Lender may apply any money received from or in respect of the Collateral in any manner and order as it sees fit and change any application of money received in whole or in part from time to time, or refrain from applying any money and hold it in a suspense account.

4.10 Third Parties No person dealing with the Lender is required to determine (a) whether the liens created by this Agreement or the powers purporting to be exercised have become enforceable, (b) whether any Obligations remain owing, (c) the propriety of any aspect of the disposition of Collateral or (d) how any payment to the Lender has been or will be applied. Any person who acquires Collateral from the Lender in good faith shall acquire it free from any interest of the Obligor.

4.11 Appointment of Receiver The Lender may take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term includes a receiver and manager) of the Collateral or may by appointment in writing appoint any person to be a receiver of the Collateral. The Lender may remove any receiver appointed by the Lender and appoint another in its place, and may determine the remuneration of any receiver, which may be paid from the proceeds of the Collateral in priority to other Obligations. Any receiver appointed by the Lender shall, to the extent permitted by applicable law, have all of the rights, benefits and powers of the Lender under this Agreement, the PPSA or otherwise. Any receiver shall be deemed the Lender of the Obligor and the Lender shall not be in any way responsible for any misconduct or negligence of any receiver.

4.12 Rights Cumulative No failure on the part of the Lender to exercise, nor any delay in exercising, any right or remedy under the Trust Loan Agreement or this Agreement shall operate as a waiver or impose any liability on the Lender, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and do not exclude any rights and remedies provided by applicable law. If the Lender has enforced any right or remedy under this Agreement and the enforcement proceeding has been discontinued, abandoned or determined adversely to the Lender for any reason, then the Obligor and the Lender shall, without any further action, be restored to their previous positions to the maximum extent permitted by law and subject to any determination in the enforcement proceeding or express agreement between the Obligor and the Lender, and thereafter all rights and remedies of the Lender shall continue as if no enforcement proceeding had been taken.

4.13 Release by Obligor The Obligor hereby releases and discharges the Lender and any receiver and their agents, advisors and counsel, and each of them, from all claims of any kind, whether sounding in damages or not, that may arise or be caused to the Obligor or any person claiming through or under the Obligor as a result of any act or omission of the Lender or any receiver except that the Lender or receiver may be responsible or liable for loss or damage arising from its wilful misconduct or gross negligence.

5. NOTICES

5.1 Notices in Writing Any communication to be made under this Agreement shall be made in writing and, except as required or permitted by applicable law, shall be made by fax or letter. Except as specified by applicable law, any communication shall be effective when received if during business hours or on the next business day if received outside of business hours.

5.2 Addresses for Notice The Obligor's address for notice is 5799 – 3rd Street S.E., Calgary, Alberta T2H 1K1, fax: 403-450-0493. The Lender's address for notice is 5799 – 3rd Street S.E., Calgary, Alberta T2H 1K1, fax: 403-450-0493.

6. ENTIRE AGREEMENT; SEVERABILITY

6.1 Entire Agreement This Agreement embodies all the agreements between the Obligor and the Lender relating to the liens created in this Agreement and the related rights and remedies. No party shall be bound by any representation or promise made by any person relating to this Agreement that is not embodied in it. Any waiver of, or consent to departure from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Lender, and only in the specific instance and for the specific purpose for which it has been given.

6.2 Severability If, in any jurisdiction, any provision of this Agreement or its application to any circumstance is restricted, prohibited or unenforceable, that provision shall, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to other circumstances.

7. DELIVERY OF AGREEMENT

7.1 Counterparts This Agreement may be executed in any number of counterparts and all counterparts taken together shall be deemed to constitute one agreement.

7.2 Delivery To evidence the fact that it has executed this Agreement, the Obligor may send a signed copy of this Agreement or its signature to this Agreement by facsimile transmission or e-mail and the signature sent in that way shall be deemed to be its original signature for all purposes.

7.3 No Conditions Possession of this Agreement by the Lender shall be conclusive evidence against the Obligor that the Agreement was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with. This Agreement shall be operative and binding notwithstanding that it is not executed by any proposed signatory.

7.4 Receipt and Waiver The Obligor acknowledges receipt of a copy of this Agreement. The Obligor waives any notice of acceptance of this Agreement by the Lender. The Obligor also waives the right to receive a copy of any financing statement or financing change statement that may be registered in connection with this Agreement or any verification statement issued with respect to a registration, if waiver is not otherwise prohibited by law. The Obligor agrees that the Lender may from time to time provide information regarding this Agreement, the Collateral and the Obligations to persons that the Lender believes in good faith are entitled to the information under applicable law.

8. GOVERNING LAW

8.1 Governing Law This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the law of the province of Alberta and the laws of Canada applicable in that province, excluding the conflict of law rules of that province.

8.2 Obligor's Exclusive Dispute Resolution Jurisdiction The Obligor agrees that the courts of the province of Alberta have exclusive jurisdiction over any dispute arising from or in relation to this Agreement and the Obligor irrevocably and unconditionally attorns to the exclusive jurisdiction of that province. The Obligor agrees that the courts of that province are the most appropriate and convenient forum to settle disputes and agrees not to argue to the contrary.

9. SUCCESSORS AND ASSIGNS

9.1 Successors and Assigns The Obligor may not assign or transfer all or any part of its liabilities under this Agreement. All rights of the Lender under this Agreement shall be assignable and the Obligor shall not assert against any assignee any claim or defence that the Obligor now has or may in the future have against the Lender. This Agreement shall enure to the benefit of the Lender and its successors and assigns and be binding on the Obligor and its successors and any permitted assigns.

**IN WITNESS OF WHICH,** the Obligor has duly executed this Agreement.

FRPL MANAGEMENT LTD.

By: 

Name: EDWARD NYCHOLAT
Title: PRESIDENT / DIRECTOR

This Is Exhibit " D "
referred to in the Affidavit of
Edward Nycholat
Sworn before me this 26th
day of July A.D. 2010

A Commissioner for Oaths in and for the Province of Alberta
ROBYN GUROFSKY
BARRISTER & SOLICITOR

# DECLARATION

**TO:** FRPL Management Ltd. ("**FRPL**")

**FROM:** Resorts International Real Estate Investment Trust (the "**REIT**")

---

**WHEREAS**:

A. The REIT and FRPL entered into the Trust Loan Agreement dated February 21, 2008 (the "**Trust Loan Agreement**") pursuant to which the REIT agreed to lend to FRPL proceeds of the offering of Series C Units of the REIT for the purpose of FRPL lending such proceeds to Fairmont Resort Properties Ltd. ("**Fairmont**") pursuant to the Loan Agreement dated February 21, 2008 between Fairmont and FRPL (the "**Fairmont Loan Agreement**").

B. The REIT advanced loans to FRPL under the Trust Loan Agreement and there is outstanding a principal amount of $11,786,794.59 (the "**Principal Amount**").

C. FRPL has failed to pay interest due and owing under the Trust Loan Agreement and there is outstanding accrued and unpaid interest in the amount of $1,044,342.41 to, and including, June 3, 2010 (the "**Unpaid Interest**" and together with the Principal Amount, the "**Obligations Secured**").

D. Under Section 5.1 of the Trust Loan Agreement, the occurrence of an "Event of Default" by Fairmont under the Fairmont Loan Agreement constitutes an Event of Default under the Trust Loan Agreement.

E. "Events of Default" have occurred under the Fairmont Loan Agreement that remain outstanding, including the failure by Fairmont since August 14, 2009 to pay principal and interest due and owing under the Fairmont Loan Agreement and the commencement of the *Companies' Creditors Arrangement Act* proceeding in March, 2009.

F. Under Section 5.2 of the Trust Loan Agreement, on the occurrence of an Event of Default the REIT is entitled to declare the Obligations Secured immediately due and payable.

**NOW THEREFORE,** pursuant to Section 5.2 of the Trust Loan Agreement, the REIT hereby declares the Obligations Secured to be immediately due and payable.

**DATED** this 3rd day of June, 2010.

**RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST**
**by its Administrator**
**FRPL MANAGEMENT LTD.**

Per: ______________________

*Pursuant to section 62(1) of the Personal Property Security Act (Alberta)*

# NOTICE

**TO:** FRPL Management Ltd. ("**FRPL**")

**FROM:** Resorts International Real Estate Investment Trust (the "**REIT**")

---

WHEREAS:

A. The REIT and FRPL entered into the Trust Loan Agreement dated February 21, 2008 (the "**Trust Loan Agreement**") pursuant to which the REIT agreed to lend to FRPL proceeds of the offering of Series C Units of the REIT for the purpose of FRPL lending such proceeds to Fairmont Resort Properties Ltd. ("**Fairmont**") pursuant to the Loan Agreement dated February 21, 2008 between Fairmont and FRPL (the "**Fairmont Loan Agreement**").

B. As security for its obligations to the REIT under to the Trust Loan Agreement, FRPL executed in favour of the REIT the Security Agreement dated May 18, 2010 (the "**FRPL Security Agreement**") under which FRPL granted to the REIT a security interest in FRPL's interest in the following documents (the "**Fairmont Loan Documents**"):

(a) the Fairmont Loan Agreement;

(b) the Guarantee executed by LL Developments Ltd. ("**LL Developments**") and FRPL, dated February 21, 2009 guaranteeing Fairmont's obligations to FRPL under the Fairmont Loan Agreement (the "**Fairmont Guarantee**");

(c) the Addition Agreement entered into by Makaha Hotel and Resort, Inc. ("**Makaha**") and FRPL, dated July 15, 2008 by which Makaha became a party to the Fairmont Guarantee and a guarantor of Fairmont's obligations to FRPL under the Fairmont Loan Agreement;

(d) the Assignment of Co-Ownership Interest Indenture among LL Developments, FRPL and Lyttle Lake Co-Ownership Holding Corporation, dated February 21, 2008 securing LL Developments' obligations to FRPL under the Fairmont Guarantee;

(e) a Mortgage, Security Agreement and Financing Statement, dated July 15, 2008 made by Fairways Cottages at Makaha Owners Association and Makaha in favour of FRPL securing Makaha's obligations to FRPL under the Fairmont Guarantee;

(f) a General Security Agreement executed by Fairmont in favour of FRPL and FRPL Finance Ltd., dated February 18, 2009 securing Fairmont's obligations to FRPL under the Fairmont Loan Agreement and certain obligations to FRPL Finance Ltd.; and

(g) a Hypothecation of Shares executed by Fairmont in favour of FRPL and FRPL Finance Ltd., dated February 18, 2009.

(FRPL's interest in the Fairmont Loan Documents is referred to as the "**Collateral**".)

C. The REIT advanced loans to FRPL under the Trust Loan Agreement and there is outstanding a principal amount of $11,786,794.59 (the "**Principal Amount**").

D. FRPL has failed to pay interest due and owing under the Trust Loan Agreement and there is outstanding accrued and unpaid interest in the amount of $1,044,342.41 to, and including, June 3, 2010 (the "**Unpaid Interest**" and together with the Principal Amount, the "**Obligations Secured**").

E. Under Section 5.1 of the Trust Loan Agreement, the occurrence of an "Event of Default" by Fairmont under any of the Fairmont Loan Documents constitutes an Event of Default under the Trust Loan Agreement.

F. "Events of Default" have occurred under the Fairmont Loan Agreement that remain outstanding, including the failure by Fairmont since August 14, 2009 to pay principal and interest due and owing under the Fairmont Loan Agreement and the commencement of the *Companies' Creditors Arrangement Act* proceeding in March, 2009.

G. The REIT has declared the Obligations Secured to be immediately due and payable.

H. Pursuant to section 62(1) of the *Personal Property Security Act* (Alberta), R.S.A. 2000, c. P-7, as amended, (the "**PPSA**"), the REIT may propose to take the Collateral in satisfaction of the Obligations Secured.

I. The REIT proposes to take the Collateral in satisfaction of the Obligations Secured (the "**Proposal**") and by this Notice is giving notice pursuant to section 62(1) of the PPSA of its Proposal.

**NOW THEREFORE:**

1. The REIT hereby gives notice of its Proposal to take the Collateral in satisfaction of the Obligations Secured by the FRPL Security Agreement.

2. FRPL may redeem the Collateral by paying to the REIT the full amount of the Obligations Secured within 15 days from the date of this Notice.

3. If FRPL does not redeem the Collateral in accordance with paragraph 2 above, or give to the REIT a written notice of objection within 15 days from the date of this Notice, at the expiry of the 15-day period, the REIT will be entitled to hold or dispose of the Collateral, free from all rights and interest of FRPL.

**DATED** this 3rd day of June, 2010.

**RESORTS INTERNATIONAL REAL**
**ESTATE INVESTMENT TRUST**
**by its Administrator**
**FRPL MANAGEMENT LTD.**

Per: ____________________

This is Exhibit "E"
referred to in the Affidavit of
Edward Nychelat
Sworn before me this 20th
day of July A.D. 2010

A Commissioner for
Oaths in and for the
Province of Alberta
ROBYN GUROFSKY
BARRISTER & SOLICITOR

# DEMAND FOR POSSESSION

**TO:** FRPL Management Ltd. ("**FRPL**")

**FROM:** Resorts International Real Estate Investment Trust (the "**REIT**")

---

**WHEREAS:**

A. The REIT and FRPL entered into the Trust Loan Agreement dated February 21, 2008 (the "**Trust Loan Agreement**") pursuant to which the REIT agreed to lend to FRPL proceeds of the offering of Series C Units of the REIT for the purpose of FRPL lending such proceeds to Fairmont Resort Properties Ltd. ("**Fairmont**") pursuant to the Loan Agreement dated February 21, 2008 between Fairmont and FRPL (the "**Fairmont Loan Agreement**").

B. The REIT advanced loans to FRPL under the Trust Loan Agreement and there is outstanding a principal amount of $11,786,794.59 (the "**Principal Amount**").

C. FRPL has failed to pay interest due and owing under the Trust Loan Agreement and there is outstanding accrued and unpaid interest in the amount of $1,044,342.41 to, and including, June 3, 2010 (the "**Unpaid Interest**" and together with the Principal Amount, the "**Obligations Secured**").

D. Under Section 5.1 of the Trust Loan Agreement, the occurrence of an "Event of Default" by Fairmont under the Fairmont Loan Agreement constitutes an Event of Default under the Trust Loan Agreement.

E. "Events of Default" have occurred under the Fairmont Loan Agreement that remain outstanding, including the failure by Fairmont since August 14, 2009 to pay principal and interest due and owing under the Fairmont Loan Agreement and the commencement of the *Companies' Creditors Arrangement Act* proceeding in March, 2009.

F. Under Section 5.2 of the Trust Loan Agreement, on the occurrence of an Event of Default the REIT is entitled to declare, and has declared, the Obligations Secured immediately due and payable.

G. FRPL has executed in favour of the REIT the Security Agreement dated May 18, 2010 (the "**Security Agreement**").

H. Under Section 3.2 to the Security Agreement, the REIT is entitled to take possession and exercise control of the Collateral (as defined therein) and FRPL is obligated, inter alis, to execute and deliver whatever documents the REIT requires to enable the REIT to take possession and exercise control of the Collateral.

I. The REIT has determined to take possession and exercise control of the Collateral.

**NOW THEREFORE,** pursuant to Section 3.2 of the Security Agreement, the REIT hereby requires FRPL to execute and deliver the following documents:

(a) the Assignment Agreement (Fairmont Loan Agreement) attached hereto as Schedule A;

(b) the Assignment Agreement (Fairmont Guarantee) attached hereto as Schedule B;

(c) the Assignment Agreement (Assignment Indenture) attached hereto as Schedule C;

(d) the Assignment Agreement (Mortgage and Security Agreement) attached hereto as Schedule D; and

(e) the Assignment Agreement (GSA and Share Hypothecation) attached hereto as Schedule E.

**DATED** this ______ day of June, 2010.

**RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST**
**by its Administrator**
**SOUTHWYND RESORT CORP.**

Per: ______________________

**Schedule A**

**ASSIGNMENT AGREEMENT**
**(Fairmont Loan Agreement)**

THIS AGREEMENT is made the ______ day of June, 2010.

**AMONG**:

> **FRPL MANAGEMENT LTD.**, a body corporate incorporated under the laws of the Province of Alberta (herein called the "**Assignor**")

- and -

> **RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST**, a trust formed under the laws of the Province of Alberta (herein called the "**Assignee**")

- and -

> **FAIRMONT RESORT PROPERTIES LTD.**, a body corporate incorporated under the laws of the Province of Alberta (herein called the "**Fairmont**")

**WHEREAS** the Assignor and Fairmont are parties to the Loan Agreement dated February 21, 2008 (the "**Fairmont Loan Agreement**");

**AND WHEREAS** the Assignor desires to assign, transfer and convey to the Assignee, the interest of the Assignor in the Fairmont Loan Agreement;

**AND WHEREAS** Fairmont is willing, to the extent required pursuant to the Agreement, to consent to such assignment, transfer and conveyance of the Fairmont Loan Agreement to the Assignee.

**NOW THEREFORE** in consideration of the premises hereto and the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

1. The Assignor does hereby assign, set over, transfer and convey unto the Assignee, effective as of the date of this Agreement, all of the Assignor's right and interest in the Fairmont Loan Agreement, to have and hold same unto the Assignee absolutely.

2. The Assignee hereby accepts the assignment of the Assignor's interest in the Fairmont Loan Agreement.

3. Fairmont, effective as of the date of this Agreement and notwithstanding anything to the contrary contained in the Fairmont Loan Agreement, does hereby:

(a) to the extent required by the Fairmont Loan Agreement, consent to the assignment by the Assignor to the Assignee of all of the right and interest of the Assignor in and under the Fairmont Loan Agreement, and accepts the Assignee as a party to the Fairmont Loan Agreement; and

(b) covenants and agrees that the Assignee shall be entitled to hold and enforce all of the privileges, rights and benefits of the Assignor under the Fairmont Loan Agreement, to the same extent as though and to the intent and purpose that the Assignee had been a party thereto in the place and stead of the Assignor.

4. Each of the parties severally covenants and agrees with the Assignee that it will, from time to time, and at all times hereafter, at the request and expense of the requesting party, execute and deliver such further assurances and do and perform all such further acts and things as may be reasonably required for the purpose of giving effect to the terms of this Agreement.

5. This Agreement may be executed in as many counterparts as are necessary and, such counterparts together shall constitute one agreement.

6. Whenever the singular or the masculine or neuter is used in this Agreement, the same shall be construed as meaning plural or feminine or body politic or corporate or vice versa wherever and however the context so requires.

7. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8. Only those persons who have become parties by executing and delivering a copy of this Agreement shall be entitled to the benefits of the provisions hereof.

9. This Agreement shall be construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein and shall be treated, in all respects, as an Alberta contract.

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

**FRPL MANAGEMENT LTD.**

Per: ______________________________

**RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST by its Administrator SOUTHWYND RESORT CORP.**

Per: ______________________________

**FAIRMONT RESORT PROPERTIES LTD.**

Per: ______________________________

**Schedule B**

**ASSIGNMENT AGREEMENT**
**(Fairmont Guarantee)**

THIS AGREEMENT is made the ______ day of June, 2010.

**AMONG:**

**FRPL MANAGEMENT LTD.**, a body corporate incorporated under the laws of the Province of Alberta (herein called the "**Assignor**")

- and -

**RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST,** a trust formed under the laws of the Province of Alberta (herein called the "**Assignee**")

- and -

**LL DEVELOPMENTS LTD.**, a body corporate incorporated under the laws of the Province of Alberta (herein called "**LL Developments**") and **MAKAHA HOTEL AND RESORT, INC.**, a body corporate incorporated under the laws of the State of Hawaii (herein called "**Makaha**" and together with LL Developments, herein called, collectively, the "**Third Parties**" and, individually, a "**Third Party**")

**WHEREAS** the Assignor and Fairmont Resort Properties Ltd. ("**Fairmont**") are parties to the Loan Agreement dated February 21, 2008 (the "**Fairmont Loan Agreement**");

**WHEREAS** LL Developments guaranteed Fairmont's obligations under the Fairmont Loan Agreement pursuant to the Subsidiary Guarantee dated February 21, 2008 (the "**Fairmont Guarantee**") between LL Developments and Makaha and the Assignor entered into the Addition Agreement dated July 15, 2008 (the "**Addition Agreement**") pursuant to which Makaha became a party to the Fairmont Guarantee and a guarantor of the Fairmont obligations under the Fairmont Loan Agreement;

**AND WHEREAS** the Assignor has assigned to the Assignee all of the right and interest of the Assignor in the Fairmont Loan Agreement;

**AND WHEREAS** the Assignor has agreed to assign, transfer and convey unto the Assignee, the interest of the Assignor in the Fairmont Guarantee and the Addition Agreement (collectively, the "**Agreements**");

**AND WHEREAS** the Third Parties are willing, to the extent required pursuant to the Agreement, to consent to such transfer and conveyance of the Agreements to the Assignee.

**NOW THEREFORE** in consideration of the premises hereto and the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

1. The Assignor does hereby assign, set over, transfer and convey unto the Assignee, effective as of the date of this Agreement, all of its right and interest in each of the Agreements, to have and hold same unto the Assignee absolutely.

2. The Assignee hereby accepts the assignment of the Assignor's interest in each of the Agreements.

3. Each Third Party, effective as of the date of this Agreement and notwithstanding anything to the contrary contained in the Agreements, or either of them, does hereby:

   (a) to the extent required by the Agreements, or either of them, consent to the assignment by the Assignor to the Assignee of all of the right and interest of the Assignor in and under the Agreements, and each of them, and accepts the Assignee as a party to the Agreements, and each of them; and

   (b) covenants and agrees that the Assignee shall be entitled to hold and enforce all of the privileges, rights and benefits of the Assignor under the Agreements, and each of them, to the same extent as though and to the intent and purpose that the Assignee had been a party thereto in the place and stead of the Assignor

4. Each of the parties severally covenants and agrees with the Assignee that it will, from time to time, and at all times hereafter, at the request and expense of the requesting party, execute and deliver such further assurances and do and perform all such further acts and things as may be reasonably required for the purpose of giving effect to the terms of this Agreement.

5. This Agreement may be executed in as many counterparts as are necessary and, such counterparts together shall constitute one agreement.

6. Whenever the singular or the masculine or neuter is used in this Agreement, the same shall be construed as meaning plural or feminine or body politic or corporate or vice versa wherever and however the context so requires.

7. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8. Only those persons who have become parties by executing and delivering a copy of this Agreement shall be entitled to the benefits of the provisions hereof.

9. This Agreement shall be construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein and shall be treated, in all respects, as an Alberta contract.

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

| | |
|---|---|
| **FRPL MANAGEMENT LTD.** | **RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST by its Administrator SOUTHWYND RESORT CORP.** |
| Per: ______________________ | Per: ______________________ |
| **MAKAHA HOTEL AND RESORTS, INC.** | **LL DEVELOPMENTS LTD.** |
| Per: ______________________ | Per: ______________________ |

**Schedule C**

**ASSIGNMENT AGREEMENT**
**(Assignment Indenture)**

THIS AGREEMENT is made the ______ day of June, 2010.

**AMONG:**

**FRPL MANAGEMENT LTD.**, a body corporate incorporated under the laws of the Province of Alberta (herein called the "**Assignor**")

- and -

**RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST**, a trust formed under the laws of the Province of Alberta (herein called the "**Assignee**")

- and -

**LL DEVELOPMENTS LTD.**, a body corporate incorporated under the laws of the Province of Alberta (herein called "**LL Developments**") and **LYTTLE LAKE CO-OWNERSHIP HOLDING CORPORATION**, a body corporate incorporated under the laws of the Province of Alberta (herein called the "**Trustee**" and together with LL Developments called, collectively, the "**Third Parties**" and, individually, a "**Third Party**")

**WHEREAS** the Assignor and Fairmont Resort Properties Ltd. ("**Fairmont**") are parties to the Loan Agreement dated February 21, 2008 (the "**Fairmont Loan Agreement**");

**WHEREAS** LL Developments guaranteed Fairmont's obligations under the Fairmont Loan Agreement pursuant to the Subsidiary Guarantee dated February 21, 2008 (the "**Fairmont Guarantee**") between LL Developments and the Assignor and Makaha Hotel and Resort, Inc. and ("**Makaha**") and the Assignor entered into the Addition Agreement dated July 15, 2008 (the "**Addition Agreement**") pursuant to which Makaha became a party to the Fairmont Guarantee and a guarantor of the Fairmont obligations under the Fairmont Loan Agreement;

**WHEREAS**, as security of the Fairmont Loan Agreement and the Fairmont Guarantee, LL Developments provided an Assignment of Co-Ownership Interest Indenture dated February 21, 2008 (the "**Assignment Indenture**") among LL Developments, the Assignor and the Trustee whereby LL Developments assigned to the

Obligor all of its interest in the Co-Ownership Agreement registered in the name of LL Developments in the register kept by the Trustee pursuant to the Trust Declaration dated February 15, 1995 made between Lake Windermere Properties Inc. (predecessor in interest to LL Developments) and Montreal Trust Company of Canada (predecessor to the Trustee), as supplemented by the First Amendment to Declaration of Trust dated October 1, 2005;

**AND WHEREAS** the Assignor has assigned to the Assignee all of the right and interest of the Assignor in the Fairmont Loan Agreement, the Fairmont Guarantee and the Addition Agreement;

**AND WHEREAS** the Assignor has agreed to assign, transfer and convey unto the Assignee, the interest of the Assignor in the Assignment Indenture;

**AND WHEREAS** the Third Parties are willing, to the extent required pursuant to the Agreement, to consent to such transfer and conveyance of the Assignment Indenture to the Assignee.

**NOW THEREFORE** in consideration of the premises hereto and the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

1. The Assignor does hereby assign, set over, transfer and convey unto the Assignee, effective as of the date of this Agreement, all of its right and interest in the Assignment Indenture, to have and hold same unto the Assignee absolutely.

2. The Assignee hereby accepts the assignment of the Assignor's interest in the Assignment Indenture.

3. Each Third Party, effective as of the date of this Agreement and notwithstanding anything to the contrary contained in the Assignment Indenture, does hereby:

   (a) to the extent required by the Assignment Indenture, consent to the assignment by the Assignor to the Assignee of all of the right and interest of the Assignor in and under the Assignment Indenture, and accepts the Assignee as a party to the Assignment Indenture;

   (b) covenants and agrees that the Assignee shall be entitled to hold and enforce all of the privileges, rights and benefits of the Assignor under the Assignment Indenture, to the same extent as though and to the intent and purpose that the Assignee had been a party thereto in the place and stead of the Assignor.

4. Each of the parties severally covenants and agrees with the Assignee that it will, from time to time, and at all times hereafter, at the request and expense of the requesting party, execute and deliver such further assurances and do and perform all such further acts and things as may be reasonably required for the purpose of giving effect to the terms of this Agreement.

5. This Agreement may be executed in as many counterparts as are necessary and, such counterparts together shall constitute one agreement.

6. Whenever the singular or the masculine or neuter is used in this Agreement, the same shall be construed as meaning plural or feminine or body politic or corporate or vice versa wherever and however the context so requires.

7. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8. Only those persons who have become parties by executing and delivering a copy of this Agreement shall be entitled to the benefits of the provisions hereof.

9. This Agreement shall be construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein and shall be treated, in all respects, as an Alberta contract.

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

| | |
|---|---|
| **FRPL MANAGEMENT LTD.** | **RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST by its Administrator SOUTHWYND RESORT CORP.** |
| Per: ____________________ | Per: ____________________ |
| **LYTTLE LAKE CO-OWNERSHIP HOLDING CORPORATION** | **LL DEVELOPMENTS LTD.** |
| Per: ____________________ | Per: ____________________ |

**Schedule D**

**ASSIGNMENT AGREEMENT**
**(Mortgage and Security Agreement)**

THIS AGREEMENT is made the ______ day of June, 2010.

**AMONG:**

**FRPL MANAGEMENT LTD.**, a body corporate incorporated under the laws of the Province of Alberta (herein called the "**Assignor**")

- and -

**RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST,** a trust formed under the laws of the Province of Alberta (herein called the "**Assignee**")

- and -

**FAIRWAY COTTAGES AT MAKAHA OWNERS ASSOCIATION**, a non-profit corporation governed by the laws of the State of Hawaii (herein called the "**Association**") and **MAKAHA HOTEL AND RESORT, INC.**, a body corporate incorporated under the laws of the State of Hawaii (herein called "**Makaha**" and together with the Association called, collectively, the "**Third Parties**" and, individually, a "**Third Party**")

**WHEREAS** the Assignor and Fairmont Resort Properties Ltd. ("**Fairmont**") are parties to the Loan Agreement dated February 21, 2008 (the "**Fairmont Loan Agreement**");

**WHEREAS** LL Developments Ltd. ("**LL Developments**") guaranteed Fairmont's obligations under the Fairmont Loan Agreement pursuant to the Subsidiary Guarantee dated February 21, 2008 (the "**Fairmont Guarantee**") between LL Developments and the Assignor and Makaha and the Assignor entered into the Addition Agreement dated July 15, 2008 (the "**Addition Agreement**") pursuant to which Makaha became a party to the Fairmont Guarantee and a guarantor of the Fairmont obligations under the Fairmont Loan Agreement;

**WHEREAS** the Assignor and the Third Parties are parties to a Mortgage, Security Agreement and Financing Statement, dated July 15, 2008 (the "**Mortgage and Security Agreement**") made by the Third Parties in favour of the Assignor securing Makaha's obligations to the Assignor under the Fairmont Guarantee and the Addition Agreement and the Fairmont Loan Agreement;

**AND WHEREAS** the Assignor has assigned to the Assignee all of the right and interest of the Assignor in the Fairmont Loan Agreement, the Fairmont Guarantee and the Addition Agreement;

**AND WHEREAS** the Assignor has agreed to assign, transfer and convey unto the Assignee, the interest of the Assignor in the Mortgage and Security Agreement;

**AND WHEREAS** the Third Parties are willing, to the extent required pursuant to the Agreement, to consent to such transfer and conveyance of the Mortgage and Security Agreement to the Assignee.

**NOW THEREFORE** in consideration of the premises hereto and the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

1. The Assignor does hereby assign, set over, transfer and convey unto the Assignee, effective as of the date of this Agreement, all of its right and interest in the Mortgage and Security Agreement, to have and hold same unto the Assignee absolutely.

2. The Assignee hereby accepts the assignment of the Assignor's interest in the Mortgage and Security Agreement.

3. Each Third Party, effective as of the date of this Agreement and notwithstanding anything to the contrary contained in the Mortgage and Security Agreement, does hereby:

(a) to the extent required by the Mortgage and Assignment Agreement, consent to the assignment by the Assignor to the Assignee of all of the right and interest of the Assignor in and under the Mortgage and Security Agreement, and accepts the Assignee as a party to the Mortgage and Security Agreement;

(b) covenants and agrees that the Assignee shall be entitled to hold and enforce all of the privileges, rights and benefits of the Assignor under the Mortgage and Security Agreement, to the same extent as though and to the intent and purpose that the Assignee had been a party thereto in the place and stead of the Assignor.

4. Each of the parties severally covenants and agrees with the Assignee that it will, from time to time, and at all times hereafter, at the request and expense of the requesting party, execute and deliver such further assurances and do and perform all such further acts and things as may be reasonably required for the purpose of giving effect to the terms of this Agreement.

5. This Agreement may be executed in as many counterparts as are necessary and, such counterparts together shall constitute one agreement.

6. Whenever the singular or the masculine or neuter is used in this Agreement, the same shall be construed as meaning plural or feminine or body politic or corporate or vice versa wherever and however the context so requires.

7. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8. Only those persons who have become parties by executing and delivering a copy of this Agreement shall be entitled to the benefits of the provisions hereof.

9. This Agreement shall be construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein and shall be treated, in all respects, as an Alberta contract.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date and year first above written, but effective from the Effective Time.

**FRPL MANAGEMENT LTD.**

Per: ______________________________

**RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST by its Administrator SOUTHWYND RESORT CORP.**

Per: ______________________________

**MAKAHA HOTEL AND RESORTS, INC.**

Per: ______________________________

**FAIRWAY COTTAGES AT MAKAHA OWNERS ASSOCIATION**

Per: ______________________________

**Schedule E**

**ASSIGNMENT AGREEMENT**
**(GSA and Share Hypothecation)**

THIS AGREEMENT is made the ______ day of June, 2010.

**AMONG**:

**FRPL MANAGEMENT LTD.**, a body corporate incorporated under the laws of the Province of Alberta (herein called the "**Assignor**")

- and -

**RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST**, a trust formed under the laws of the Province of Alberta (herein called the "**Assignee**")

- and -

**FRPL FINANCE LTD.**, a body corporate incorporated under the laws of the Province of Alberta (herein called the "**Third Party**")

**WHEREAS** the Assignor and Fairmont Resort Properties Ltd. ("**Fairmont**") are parties to the Loan Agreement dated February 21, 2008 (the "**Fairmont Loan Agreement**");

**AND WHEREAS**, as security for its obligations to the Assignor under the Fairmont Loan Agreement and for certain obligations of Fairmont to the Third Party, Fairmont provided a General Security Agreement dated February 18, 2009 (the "**GSA**") and a Hypothecation of Shares dated February 18, 2009 ("**Share Hypothecation**") in favour of the Assignor and FRPL Finance Ltd.

**AND WHEREAS** the Assignor has assigned to the Assignee all of the right and interest of the Assignor in the Fairmont Loan Agreement;

**AND WHEREAS** the Assignor has agreed to assign, transfer and convey unto the Assignee, the interest of the Assignor in the GSA and Hypothecation Agreement (collectively, the "**Joint Security**");

**AND WHEREAS** the Third Party is willing, to the extent required pursuant to the Agreement, to consent to such transfer and conveyance of the Joint Security to the Assignee.

**NOW THEREFORE** in consideration of the premises hereto and the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

1. The Assignor does hereby assign, set over, transfer and convey unto the Assignee, effective as of the date of this Agreement, all of its right and interest in each Joint Security, to have and hold same unto the Assignee absolutely.

2. The Assignee hereby accepts the assignment of the Assignor's interest in each Joint Security.

3. The Third Party, effective as of the date of this Agreement and notwithstanding anything to the contrary contained in the Joint Security, does hereby:

   (a) to the extent required by a Joint Security consents to the assignment by the Assignor to the Assignee of all of the right and interest of the Assignor in and under the Joint Security, and accepts the Assignee as a party to the Joint Security;

   (b) covenants and agrees that the Assignee shall be entitled to hold and enforce all of the privileges, rights and benefits of the Assignor under each Joint Security, to the same extent as though and to the intent and purpose that the Assignee had been a party thereto in the place and stead of the Assignor.

4. Each of the parties severally covenants and agrees with the Assignee that it will, from time to time, and at all times hereafter, at the request and expense of the requesting party, execute and deliver such further assurances and do and perform all such further acts and things as may be reasonably required for the purpose of giving effect to the terms of this Agreement.

5. This Agreement may be executed in as many counterparts as are necessary and, such counterparts together shall constitute one agreement.

6. Whenever the singular or the masculine or neuter is used in this Agreement, the same shall be construed as meaning plural or feminine or body politic or corporate or vice versa wherever and however the context so requires.

7. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8. Only those persons who have become parties by executing and delivering a copy of this Agreement shall be entitled to the benefits of the provisions hereof.

9. This Agreement shall be construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein and shall be treated, in all respects, as an Alberta contract.

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

**FRPL MANAGEMENT LTD.**

Per: ____________________________

**RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST**
**by its Administrator**
**SOUTHWYND RESORT CORP.**

Per: ____________________________

**FRPL FINANCE LTD.**

Per: ____________________________

This is Exhibit "F"
referred to in the Affidavit of
Edward Nychelat
Sworn before me this 26th
day of July A.D. 2010
A Commissioner for Oaths in and for the Province of Alberta
ROBYN GUROFSKY
BARRISTER & SOLICITOR

# ASSIGNMENT AGREEMENT
## (Assignment Indenture)

THIS AGREEMENT is made the ______ day of June, 2010.

**AMONG:**

> **FRPL MANAGEMENT LTD.**, a body corporate incorporated under the laws of the Province of Alberta (herein called the "**Assignor**")

- and -

> **RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST**, a trust formed under the laws of the Province of Alberta (herein called the "**Assignee**")

- and -

> **LL DEVELOPMENTS LTD.**, a body corporate incorporated under the laws of the Province of Alberta (herein called "**LL Developments**") and **LYTTLE LAKE CO-OWNERSHIP HOLDING CORPORATION**, a body corporate incorporated under the laws of the Province of Alberta (herein called the "**Trustee**" and together with LL Developments called, collectively, the "**Third Parties**" and, individually, a "**Third Party**")

**WHEREAS** the Assignor and Fairmont Resort Properties Ltd. ("**Fairmont**") are parties to the Loan Agreement dated February 21, 2008 (the "**Fairmont Loan Agreement**");

**WHEREAS** LL Developments guaranteed Fairmont's obligations under the Fairmont Loan Agreement pursuant to the Subsidiary Guarantee dated February 21, 2008 (the "**Fairmont Guarantee**") between LL Developments and the Assignor and Makaha Hotel and Resort, Inc. and ("**Makaha**") and the Assignor entered into the Addition Agreement dated July 15, 2008 (the "**Addition Agreement**") pursuant to which Makaha became a party to the Fairmont Guarantee and a guarantor of the Fairmont obligations under the Fairmont Loan Agreement;

**WHEREAS**, as security of the Fairmont Loan Agreement and the Fairmont Guarantee, LL Developments provided an Assignment of Co-Ownership Interest Indenture dated February 21, 2008 (the "**Assignment Indenture**") among LL Developments, the Assignor and the Trustee whereby LL Developments assigned to the Obligor all of its interest in the Co-Ownership Agreement registered in the name of LL Developments in the register kept by the Trustee pursuant to the Trust Declaration dated

February 15, 1995 made between Lake Windermere Properties Inc. (predecessor in interest to LL Developments) and Montreal Trust Company of Canada (predecessor to the Trustee), as supplemented by the First Amendment to Declaration of Trust dated October 1, 2005;

**AND WHEREAS** the Assignor has assigned to the Assignee all of the right and interest of the Assignor in the Fairmont Loan Agreement, the Fairmont Guarantee and the Addition Agreement;

**AND WHEREAS** the Assignor has agreed to assign, transfer and convey unto the Assignee, the interest of the Assignor in the Assignment Indenture;

**AND WHEREAS** the Third Parties are willing, to the extent required pursuant to the Agreement, to consent to such transfer and conveyance of the Assignment Indenture to the Assignee.

**NOW THEREFORE** in consideration of the premises hereto and the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

1. The Assignor does hereby assign, set over, transfer and convey unto the Assignee, effective as of the date of this Agreement, all of its right and interest in the Assignment Indenture, to have and hold same unto the Assignee absolutely.

2. The Assignee hereby accepts the assignment of the Assignor's interest in the Assignment Indenture.

3. Each Third Party, effective as of the date of this Agreement and notwithstanding anything to the contrary contained in the Assignment Indenture, does hereby:

   (a) to the extent required by the Assignment Indenture, consent to the assignment by the Assignor to the Assignee of all of the right and interest of the Assignor in and under the Assignment Indenture, and accepts the Assignee as a party to the Assignment Indenture;

   (b) covenants and agrees that the Assignee shall be entitled to hold and enforce all of the privileges, rights and benefits of the Assignor under the Assignment Indenture, to the same extent as though and to the intent and purpose that the Assignee had been a party thereto in the place and stead of the Assignor.

4. Each of the parties severally covenants and agrees with the Assignee that it will, from time to time, and at all times hereafter, at the request and expense of the requesting party, execute and deliver such further assurances and do and perform all such further acts and things as may be reasonably required for the purpose of giving effect to the terms of this Agreement.

5. This Agreement may be executed in as many counterparts as are necessary and, such counterparts together shall constitute one agreement.

6. Whenever the singular or the masculine or neuter is used in this Agreement, the same shall be construed as meaning plural or feminine or body politic or corporate or vice versa wherever and however the context so requires.

7. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8. Only those persons who have become parties by executing and delivering a copy of this Agreement shall be entitled to the benefits of the provisions hereof.

9. This Agreement shall be construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein and shall be treated, in all respects, as an Alberta contract.

***The remainder of this page is intentionally left blank.***

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

**FRPL MANAGEMENT LTD.**

Per: ______________________

**RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST**
**by its Administrator**
**SOUTHWYND RESORT CORP.**

Per: ______________________

**LYTTLE LAKE CO-OWNERSHIP HOLDING CORPORATION**

Per: ______________________

**LL DEVELOPMENTS LTD.**

Per: ______________________

This Is Exhibit " G "
referred to in the Affidavit of
Edward Nychelat
Sworn before me this 26th
day of July A.D. 2010

A Commissioner for
Oaths in and for the
Province of Alberta

**NOTICE OF ENFORCEMENT**

**TO:** LL Developments Ltd. ("**LL Developments**")
Lyttle Lake Co-Ownership Holding Corporation (the "**Trustee**")

**FROM:** Resorts International Real Estate Investment Trust (the "**REIT**")

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WHEREAS:

A. FRPL Management Ltd. ("**FRPL**") and Fairmont Resort Properties Ltd. ("**Fairmont**") are parties to a loan agreement dated February 21, 2008 (the "**Fairmont Loan Agreement**") and LL Developments guaranteed Fairmont's obligations under the Fairmont Loan Agreement pursuant to the Subsidiary Guarantee dated February 21, 2008 between LL Developments, FRPL and Makaha Hotel and Resort, Inc. (the "**Fairmont Guarantee**").

B. As security for the Fairmont Loan Agreement and the Fairmont Guarantee, LL Developments provided an Assignment of Co-Ownership Interest Indenture dated February 21, 2008 (the "**Assignment**") among LL Developments, FRPL and the Trustee whereby LL Developments assigned all of its interest in the Co-Ownership Agreement registered in the name of LL Developments (the "**Co-Owners Agreement**") pursuant to the Trust Declaration dated February 15, 1996 made between Lake Windermere Properties Inc. (predecessor in interest to LL Developments) and Montreal Trust Company of Canada (predecessor to the Trustee), as supplemented by the First Amendment to Declaration of Trust dated October 1, 2005 to FRPL.

C. Pursuant to Section 9 of the Assignment, FRPL may, at its option, allow LL Developments to continue to receive payments under the Co-Owners Agreement and to enjoy all of the rights, duties and obligations of a Co-Owner (as defined in the Assignment) under the Co-Owners Agreement until FRPL gives notice of default to the Trustee.

D. The REIT and FRPL entered into the Trust Loan Agreement dated February 21, 2008 pursuant to which the REIT agreed to lend to FRPL proceeds of the offering of Series C Units of the REIT for the purpose of FRPL lending such proceeds to Fairmont pursuant to the Fairmont Loan Agreement.

E. As security for its obligations to the REIT under the Trust Loan Agreement, FRPL executed in favour of the REIT the Security Agreement dated May 18, 2010 (the "**FRPL Security Agreement**") under which FRPL granted to the REIT a security interest in FRPL's interest in the Assignment along with its interest in certain other security documents.

F. The REIT advanced loans to FRPL under the Trust Loan Agreement and there is outstanding a principal amount of $11,786,794.59 (the "**Principal Amount**"). Further FRPL failed to pay interest due and owing under the Trust Loan Agreement and there is outstanding accrued and unpaid interest in the amount of $1,044,342.41 (the "**Unpaid Interest**" together with the Principal Amount, the "**Obligations Secured**").

G. Pursuant to a declaration dated June 3, 2010 issued by the REIT to FRPL the REIT declared the Obligations Secured to be immediately due and payable and pursuant to notice under section 62(1) of the *Personal Property Security Act* (Alberta), R.S.A. 2000, c. P-7, the REIT gave notice of its proposal to take certain collateral, including FRPL's interest in the Assignment, in satisfaction of the Obligations Secured by the FRPL Security Agreement.

H. On or about June 18, 2010 the REIT issued a demand for possession to FRPL in which the REIT outlined its entitlement to take possession and exercise control of certain collateral, including the Assignment, pursuant to the terms of the FRPL Security Agreement and required FRPL to execute certain documents, including an assignment agreement in which LL Developments and the Trustee agreed to the assignment of FRPL's interest in the Assignment to the REIT, so that the REIT may take possession and exercise control of the Assignment.

I. Due to failure of FRPL to satisfy the Obligations Secured within the requisite time period the REIT issued a confirmation of taking to FRPL, dated June 20, 2010 which gave the REIT FRPL's interest in the Assignment free from all rights and interest of FRPL.

J. LL Developments has sought creditor protection pursuant to the Initial Order granted by Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta (the "**Court**") on March 30, 2009 under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36.

K. Events of default under the Fairmont Loan Agreement have occurred and the REIT is entitled to enforce the Assignment and the Fairmont Guarantee.

K. Section 13 of the Assignment provides that if the Lender (as defined in the Assignment) enforces the Assignment, it will take control over the Co-Ownership Interest (as defined in the Assignment) and will assume the obligations of LL Developments as if it were the holder of the Co-Ownership Interest and the Trustee shall acknowledge the ownership of the Co-Ownership Interest of the Lender without any proof other than the written notice of the Lender of its right to the said Co-Ownership Interest.

**NOW THEREFORE:**

1. The REIT hereby gives notice of its intention to enforce the Assignment pursuant to Section 13 thereof and take control and legal and equitable ownership over the Co-Ownership Interest and assume the obligations of LL Developments under the Co-Owners Agreement as if it were the holder of the Co-Ownership Interest as of July ___, 2010 (the "**Effective Date**") and the Trustee shall acknowledge the ownership of the Co-Ownership Interest of the REIT without any proof other than this written notice, subject to approval by the Court of this Notice of Enforcement.

2. The REIT shall, subject to Court approval of this Notice of Enforcement assume control of the Lands (as defined in the Assignment) and the Co-Ownership Interest on the Effective Date.

***The remainder of this page is intentionally left blank.***

3. The REIT shall have not assumed any liability for any obligations of LL Developments under the Co-Owners Agreement or in respect of the Lands that were incurred prior to the Effective Date.

**DATED** this 23 day of July, 2010.

**RESORTS INTERNATIONAL REAL ESTATE INVESTMENT TRUST**
**by its Administrator**
**SOUTHWYND RESORT CORP.**

Action No.: 0901-04199

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

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

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

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**AFFIDAVIT OF EDWARD NYCHOLAT**

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**BORDEN LADNER GERVAIS LLP**
Barristers and Solicitors
1000, 400 – 3rd Avenue S.W.
Calgary, AB T2P 4H2

Attention: Patrick T. McCarthy Q.C./
John L. Ircandia
Telephone: (403) 232-9500
Facsimile: (403) 266-1395


File No. 438819-000001