

FIDELITY NATIONAL TITLE COMPANY

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**ALAN SPRIGGS, SUMMIT CO RECORDER
2004 DEC 02 11:35 AM FEE \$30.00 BY GGB
REQUEST: GUARDIAN TITLE**

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MEMORANDUM OF RIGHT OF FIRST REFUSAL

COURTESY RECORDING

This document is being recorded solely as a courtesy and as an accommodation only to the parties named therein. Guardian Title Co. of Utah hereby expressly disclaims any responsibility or liability for the accuracy thereof.

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MEMORANDUM OF RIGHT OF FIRST REFUSAL

THIS MEMORANDUM OF RIGHT OF FIRST REFUSAL ("MEMORANDUM"), dated as of October 24, 2004 between Marriott International, Inc., a Delaware corporation ("Franchisor"), and Kahler E&P Partners Lessee, Inc., a Delaware corporation ("Franchisee"), and Kahler E&P Partners, LLC, a Delaware limited liability company ("Owner").

RECITALS

A. Franchisor and Franchisee have entered into a Franchise Agreement dated October 26, 2004 (the "Franchise Agreement"), relating to that certain real property located at 1895 Sidewinder Drive, City of Park City, County of Summit, State of Utah, more fully described on Exhibit 1 attached hereto (the "Real Property").

B. In connection with and in furtherance of the Franchise Agreement, Franchisor, Franchisee and Owner have entered into an Owner Agreement dated October 26, 2004 (the "Owner Agreement") with respect to the Real Property.

C. Owner is the fee owner of the Real Property.

D. Franchisor, Franchisee and Owner are executing and delivering this Memorandum in accordance with Section 17.5 of the Franchise Agreement for the purpose of submitting it to be recorded among the Land Records of Summit County, Park City, Utah (the "Local Jurisdiction").

AGREEMENT

NOW THEREFORE, for the good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state as follows with respect to the Agreement:

1. **Grant of Right of First Refusal.** Pursuant to Article 17 of the Franchise Agreement and Section 5 of the Owner Agreement, Franchisee has granted Franchisor the right of first refusal (the "Right of First Refusal") to purchase the real estate located in the Local Jurisdiction, and more particularly described on Exhibit 1, attached hereto and made a part hereof, together with the improvements thereto (the "Premises"), upon the terms and conditions contained in Section 17.4, Section 17.5 and Section 17.6 of the Franchise Agreement and Section 5 of the Owner Agreement.

2. **Interest in Real Estate and Injunctive Relief.** Franchisee acknowledges that Franchisor's rights under Section 17.4 of the Franchise Agreement and Section 5 of the Owner Agreement are real estate rights in the Premises. Franchisee acknowledges and agrees that damages are not an adequate remedy in the event that Franchisee breaches its obligations under Section 17.4 of the Franchise Agreement or in the event that Owner breaches its obligations under Section 5 of the Owner Agreement, and that Franchisor shall be entitled to injunctive relief to prevent or remedy such breach without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting a bond.

3. **Term.** The Right of First Refusal shall terminate upon the later to occur of the termination of the Franchise Agreement or the termination of the Owner Agreement; provided that in the event of an early termination of either the Franchise Agreement or the Owner Agreement, the Right of First Refusal shall survive such early termination in accordance with the provisions of Section 17.6 of the Franchise Agreement and Section 5 of the Owner Agreement.



4. **Subordination.** Franchisor's rights in real estate under Section 17.4 of the Agreement shall only be subordinate to the interests of bona fide lenders who are not Competitors or Affiliates of Competitors (as those terms are defined in the Franchise Agreement) and who duly record a security interest in the Premises, provided that any such financing and security interests comply with the requirements of Section 5.2 of the Franchise Agreement.

5. **Addresses.** Franchisor's address, as set forth in the Franchise Agreement, is 10400 Fernwood Road, Bethesda, MD 20817, Attn: Law Department. Franchisee's and Owner's address, as set forth in the Franchise Agreement, is 903 Calle Amanecer, Suite 100, San Clemente, California 92673.

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IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be executed, under seal, by their duly authorized representatives, as of the date first above written.

ATTEST:



Assistant Secretary

ATTEST:

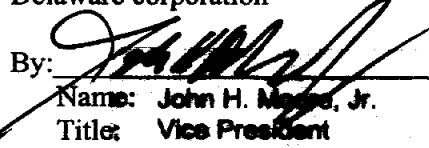
Assistant Secretary

ATTEST:

Assistant Secretary

FRANCHISOR:

MARRIOTT INTERNATIONAL, INC., a
Delaware corporation

By:  (SEAL)
Name: John H. Moore, Jr.
Title: Vice President
Owner & Franchises Services

FRANCHISEE:

KAHLER E&P PARTNERS LESSEE, INC.,
a Delaware corporation

By: _____ (SEAL)
Name:
Title:

OWNER:

KAHLER E&P PARTNERS, LLC

By: _____ (SEAL)
Name:
Title:

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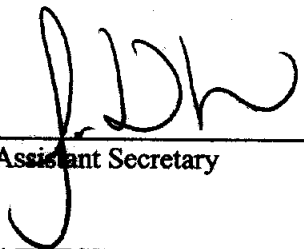


IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be executed, under seal, by their duly authorized representatives, as of the date first above written.

ATTEST:


Assistant Secretary

ATTEST:



Assistant Secretary

ATTEST:



Assistant Secretary

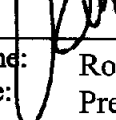
FRANCHISOR:

MARRIOTT INTERNATIONAL, INC., a
Delaware corporation

By: _____ (SEAL)
Name:
Title:

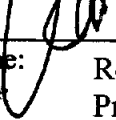
FRANCHISEE:

KAHLER E&P PARTNERS LESSEE, INC.,
a Delaware corporation

By:  _____ (SEAL)
Name: Robert A. Alter
Title: President

OWNER:

KAHLER E&P PARTNERS, LLC

By:  _____ (SEAL)
Name: Robert A. Alter
Title: President

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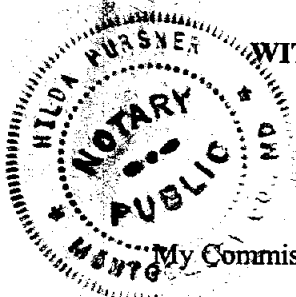


STATE OF Maryland
CITY/COUNTY OF Bethesda/Montgomery

I HEREBY CERTIFY that on October 26, 2004 before me, a Notary Public of the State and City/County aforesaid, personally appeared John H. Moore personally known to me (or proved to me on the basis of satisfactory evidence) who acknowledged himself/herself to be the Sr. Vice Pres. Owner Franchise Service of Marriott International, Inc., a Delaware corporation (the "Corporation"), and that he/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation by himself/herself as such officer.

WITNESS my hand and Notarial Seal.

Hilda Pursner
Notary Public



My Commission Expires:

HILDA PURSNER
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires March 1, 2008

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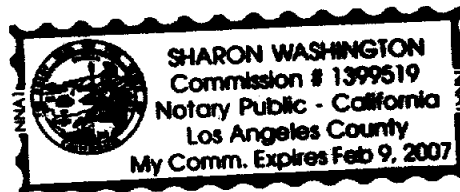
STATE OF California
CITY/COUNTY OF Los Angeles

I HEREBY CERTIFY that on October 25 2004 before me, a Notary Public of the State and City/County aforesaid, personally appeared Robert A. Alter personally known to me (or proved to me on the basis of satisfactory evidence) who acknowledged himself/herself to be the president of Kahler E&P Partners Lessee, Inc., a Delaware corporation (the "Franchisee"), and that he/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Franchisee by himself/herself as such officer.

WITNESS my hand and Notarial Seal.

Sharon Washington
Notary Public

My Commission Expires:



STATE OF California
CITY/COUNTY OF Los Angeles

I HEREBY CERTIFY that on October 25 2004 before me, a Notary Public of the State and City/County aforesaid, personally appeared Robert A. Alter personally known to me (or proved to me on the basis of satisfactory evidence) who acknowledged himself/herself to be the president of Sunstone E&P Corporation 1, the general partner of Kahler E&P Partners, LLC, a Delaware limited liability company (the "Owner"), and that he/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Owner by himself/herself as such officer.

WITNESS my hand and Notarial Seal.

Sharon Washington
Notary Public

My Commission Expires:



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EXHIBIT 1 TO MEMORANDUM OF RIGHT OF FIRST REFUSAL

1895 Sidewinder Drive, Park City, Summit County, Utah

Lots 10-A, 10-B, 10-C, 10-D, 11, 12-B and 12-C, Amended Plat of Prospector Square, according to the official plat thereof recorded December 28, 1974, as Entry No. 1254433, records of Summit County, Utah.

Excepting and reserving all oil, gas, and other mineral of every kind and description underlying the surface of the subject property.

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