This is the 1st Affidavit of Daniel Matthews in this case and was made on June 13, 2024

NO. S-243389
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF ECOASIS DEVLOPMENTS LLP AND OTHERS

BETWEEN:

SANOVEST HOLDINGS LTD.

PETITIONER

AND:

ECOASIS DEVELOPMENTS LLP, ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD., ECOASIS RESORT AND GOLF LLP, 0884185 B.C. LTD., 0884188 B.C. LTD., 0884190 B.C. LTD., 0884194 B.C. LTD., BM 81/82 LANDS LTD., BM 83 LANDS LTD., BM 84 LANDS LTD., BM CAPELLA LANDS LTD., BM HIGHLANDS GOLF COURSE LTD., BM HIGHLANDS LANDS LTD., BM MOUNTAIN GOLF COURSE LTD. and BEAR MOUNTAIN ADVENTURES LTD.

RESPONDENTS

AFFIDAVIT #1 of DANIEL MATTHEWS

I, **Daniel Matthews**, businessman, c/o 1600 – 925 West Georgia Street, in the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am the president and a director of 599315 B.C. Ltd. ("**599**"), which is the equal partner to the petitioner Sanovest Holdings Ltd. ("**Sanovest**") in the respondent Ecoasis Developments LLP (the "**Partnership**"). I am also a director and the President and CEO of the respondent Ecoasis Bear Mountain Developments Ltd. ("**EBMD**"), which is the managing partner of the Partnership and of Ecoasis Resort and Golf LLP (the "**Resort Partnership**"), and I am a director

of the other respondent companies. In these capacities, I have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be made upon information and belief, and, as to such facts, I verily believe the same to be true.

2. I make this affidavit in response to the receivership petition brought by Sanovest. In making this affidavit, I adopt and rely on the following evidence given in a related proceeding, *599315 B.C. Ltd. and Daniel Matthews v. Ecoasis Bear Mountain Developments Ltd., Ecoasis Developments LLP, Ecoasis Resort and Golf LLP, Tian Kusumoto and Sanovest Holdings Ltd.*, S.C.B.C. No. S-234048, Vancouver Registry (the "**Oppression Action**"):

(a) my Affidavit #1 made on June 1, 2023 (my "**First Affidavit**"); and

(b) my Affidavit #2, made on May 10, 2024 (my "**Second Affidavit**").

3. Unless otherwise stated in this affidavit, I adopt the defined terms from my First Affidavit and Second Affidavit.

A. Assets and Operations of the Partnership and Resort Partnership

4. As described at paragraphs 9 through 11 of my Second Affidavit, the Partnership and Resort Partnership's assets consist of approximately 775 acres of land, including two golf courses, a tennis facility, and at least nine distinct development sites: (i) Village Core; (ii) Fairways Site; (iii) Hedgestone Site; (iv) Augusta Site; (v) Victoria Peak; (vi) Highlands Site; (vii) Players Drive; (viii) Shadow Creek; and (ix) Hole 5 Site. The estimated value of the development sites alone exceeds $210 million, which excludes the value of Bear Mountain's golf courses and tennis facility assets and operations. In addition to the development sites, some 540 acres are currently zoned for golf course and open space, including significant tracts of currently unused land that may be rezoned in future. A true copy of Bear Mountain's homepage (https://bearmountain.ca/) is attached hereto and marked as **Exhibit "A"**.

5. Because the Partnership holds all units in the Resort Partnership (apart from one unit held by EBMD), Bear Mountain's golf courses and tennis facilities come under the general umbrella of assets belonging to the Partnership; however, since their inception in 2013, the Resort

Partnership and the Partnership have always operated in distinct spheres, with the Resort Partnership carrying on the golf, tennis and recreation business, and the Partnership carrying on the real estate holding and development business.

6. Under the section titled "Background', the Resort Partnership Agreement describes the specific role and purpose of the Resort Partnership as follows:

> **BACKGROUND**
>
> A. Pursuant to the terms of a Purchase and Sale Agreement (the "Purchase Agreement") dated August 29, 2013 between Bear Mountain Land Holdings Ltd, as vendor, and Ecoasis Innovative Communities Ltd. (being an Affiliate of EBMD), as purchaser, Ecoasis Innovative Communities Ltd has contracted to acquire certain assets comprising the Bear Mountain Resort near Victoria, British Columbia including without limitation:
>
> 1. the two golf courses located at Bear Mountain known as the "Mountain Course" and the "Valley Course" together with the driving range and practice facility associated therewith (the "Golf Courses"); and
>
> 2. the 156 room hotel located at Bear Mountain operated under the name "Westin Bear Mountain Golf Resort and Spa" (the "Hotel").
>
> B. ED LLP and EBMD have each agreed to become limited liability partners in a limited liability partnership (hereinafter called the "Partnership" or the "LLP") under the *Partnership Act* (British Columbia) for the purposes of:
>
> 1. acquiring and operating the assets comprising the Golf Courses and the Hotel and carry on the business of the Golf Courses and the Hotel; and
>
> 2. carrying out any other activities or undertakings that are determined to be part of the Business (defined below).

7. As discussed in my earlier affidavits, and further below, the Resort Partnership sold the Hotel in 2019 and no longer operates the Hotel business.

8. On a day-to-day basis, the Resort Partnership owns and operates the sporting and recreational facilities at Bear Mountain. These include the following:

(a) Bear Mountain's two Nicklaus Design golf courses: the "Mountain Course" and the "Valley Course" (together, the "**Golf Courses**"). Attached hereto and marked as **Exhibits "B"** and **"C"** are true copies of printouts from their respective websites: https://bearmountain.ca/recreation/golf/mountain-course/; https://bearmountain.ca/recreation/golf/valley-course/.

(b) The Bear Mountain Tennis Centre, a facility with Canada's largest indoor/outdoor red clay courts, available to paid members, resort guests and the general public. Attached hereto and marked as **Exhibit "D"** is a true copy of a printout from the Tennis Centre's website: https://bearmountain.ca/recreation/tennis/play-the-clay/.

(c) The Bear Mountain Activity Centre ("**BMAC**"), a community and recreation centre including gym facilities, year-round outdoor heated pool and hot tub, available to paid members and the general public. Attached hereto and marked as **Exhibit "E"** is a true copy of a website printout for BMAC (https://bearmountain.ca/activity-centre/).

9. The Bear Mountain Tennis Centre was built by the Partnership in 2018 on lands owned by nominee companies BM Highlands Golf Course Ltd and BM Highlands Lands Ltd.

10. BMAC was acquired from the City of Langford in 2020 by a nominee of Bear Mountain Adventures Ltd. ("**BMA**") with funding for the acquisition from the Resort Partnership. I describe this further at paragraphs 97 through 100 of my First Affidavit, including Tian Kusumoto's refusal to formally transfer BMAC into the Resort Partnership. BMAC is located at 1997 Country Club Way, Langford, B.C. and its property is legally described as PID 025-838-903, Lot 6 Section 82 Highland District Plan VIP76365.

11. Images 1 to 3 below show aerial views of Bear Mountain's recreational core, including the Bear Mountain Tennis Centre (with its red clay tennis courts shown in the top left quadrant in Image 2), BMAC (outlined in red in Images 1 and 2) and portions of Bear Mountain's two golf courses. The images also show the Hotel property (outlined in green in Images 1 and 2) and the Gondola Lands (outlined in blue in Images 1 and 2), both discussed in more detail below. These images (excluding the coloured outlining and text) were retrieved from the publicly accessible CRD Regional Maps tools (https://maps.crd.bc.ca/) and are dated to 2023.

Image 1


HEDGESTONE LANE
HOTEL
BMAC
GONDOLA
COUNTRY CLUB WAY
ACADEMY WAY

Image 2

Image 3

12. Image 4, below, shows a view of BMAC (including BMAC's pool) in the foreground; the first hole of the Mountain Course to the right of BMAC; another hotel to the immediate left of BMAC (the Fairways Hotel on the Mountain, with white siding); and a shaded partial view of the Hotel in the right corner. Image 4 was taken in 2022 by a professional photographer engaged for marketing purposes. The development shown in the image is substantially the same today.

Image 4

B. My Role as President and CEO of EBMD

13. I have served as the President and CEO of EBMD at Bear Mountain since 2013. Serving in this role as an owner has helped me develop a deep understanding and appreciation for the Bear Mountain community and its evolution and growth over the past decade.

14. Unlike infill development projects, the development of a master-planned resort community like Bear Mountain involves many stakeholders (residents, members, builders, business owners, guests and visitors), multiple amenities, and multiple real estate opportunities (single family, townhouse, condominium, purpose-built rental, and hotels). Since 2013, my primary mandate on behalf of the Partnership and the Resort Partnership has been to manage the

relationship with the community, enhance and expand our amenities, and create and develop our real estate opportunities. My role has included, among other duties and responsibilities, the following:

(a) overseeing current resort operations, including golf, tennis and retail operations, along with all future resort operating components;

(b) overseeing land development operations, including for single-family communities and bulk land sales, and other related development responsibilities;

(c) leading and working collaboratively with our dedicated group of professionals, including golf and tennis managers, department and development managers, our agronomy team, our horticulture team, our real estate sales team, and our administration team;

(d) overseeing management of the hotel assets until the Hotel sale in 2019;

(e) updating and implementing new building design guidelines;

(f) creating and implementing a "designated builders program", and the Golf Membership Eligible Address ("**GMEA**") program to link properties by address to Bear Mountain amenities;

(g) leading golf and tennis membership engagement to ensure a positive membership experience and program development;

(h) creating and implementing guest and homeowner service programs, including Bear Mountain's Homeowner Program and Nature Trail Program;

(i) engaging and participating with stakeholder groups such as the Bear Mountain Community Association, Economic Development Committee of Langford, Tourism Victoria, Victoria Harbour Authority and Tsartlip First Nation;

(j) overseeing the maintenance and renovation of all Resort Partnership assets; and

(k) representing the Partnership in negotiation, discussion and implementation of infrastructure works, rezoning and other development needs with local and regional governments.

15. While my duties have evolved over the years, my objectives as CEO and President of EBMD have been consistent: to build trust among Bear Mountain's stakeholders; to follow through on the Partnership and Resort Partnership's commitments to those stakeholders; to enhance the integrity of design for neighbourhoods within the Bear Mountain community; to work with experienced builders; and to establish meaningful partnerships for the Bear Mountain community, like those with Golf Canada, Cycling Canada and Tennis Canada. EBMD's mission statement, developed shortly after our acquisition in 2013 and used in internal and external presentations and materials, has guided this work:

> Ecoasis will enhance and deliver superlative amenities and events that will create lifestyle experiences producing fond memories for current and future generations. Through the active management and careful stewardship of the land, Ecoasis will continue to deliver solid value as a long-term investment, benefitting those that choose to work and live in our communities. Decisions will be made that reflect and consider the attitudes and desires of the community while maintaining deliberate and prudent management of the land.

16. Golf is also at the epicentre of the Bear Mountain community. In addition to those residents who are members of the Resort Partnership's golf club, a large segment of owners want to view and be near the serene setting of manicured golf courses. The Resort Partnership's operations are strong and continue to grow stronger: for example, the most recent period January 1 to May 31, 2024 has yielded the highest year-over-year green fee revenues for the Resort Partnership since our purchase.

17. Over the past decade, I have been honored to sit on the board of Golf Canada Foundation (the funding arm for Golf Canada), on the Board of Governors of First Tee (a charitable organization that partners with the PGA, LPGA, PGA of America, the Masters Association to provide youth empowerment programs), as well as on the board of the BC Indigenous Golf Association. Serving on these boards have given me access to and insight into the game's best

practices, core values and industry experts — opportunities and experience that have been, and remain, essential to growing the Bear Mountain community.

18. I am also an advocate of amateur sport and the adoption of programs that reach underserved communities and underrepresented children. Under my leadership, the Resort Partnership has participated in many philanthropic programs, including Help Fill a Dream, Golf for Kids and Wounded Warriors of Canada.

19. One method of measuring the Partnership and Resort Partnership's success over the past 11 years is to consider the value of single home sales in neighbourhoods developed from lands that the Partnership serviced and sold to developers for vertical construction. The Partnership designed and curated these neighbourhoods by designating developers, setting defined design guidelines, and through the GMEA program. The following chart, prepared by the Partnership's office, illustrates the increase in value to "Ecoasis Neighbourhoods" since 2012, both in absolute terms and in contrast to other neighbourhoods nearby and in Greater Victoria:

Single Family Home Average Sales Price (2012-2023)

Year	Langford	Bear Mountain	Ecoasis Neighbourhoods	Oak Bay	Victoria
2012	$495,692	$732,285	NA	$925,104	$623,775
2015	$508,120	$790,277	$823,000	$1,080,368	$651,810
2017	$676,483	$1,093,191	$1,398,468	$1,455,992	$905,556
2019	$729,358	$1,136,189	$1,649,392	$1,435,923	$939,056
2021	$1,050,258	$1,663,665	$2,155,250	$1,958,963	$1,237,459
2023	$1,130,326	$1,901,513	$2,549,363	$2,175,730	$1,302,190

Source: VREB Historical Stats and Annual Summaries - Average Sales Price for Oak Bay, Victoria and Langford
Source: VREB Matrix (of Bear Mountain Addresses) - Average Sales Price for Bear Mountain and Ecoasis Neighbourhoods

Note: Golf Membership Eligible Address Program (2015), Designated Builders Program (2016), New Building Design Guidelines (2016)

20. The increase sales price of completed units has, in turn, led to substantially increased value for the undeveloped Partnership lands.

C. The Hotel Lease & Transition to New Facilities

21. In making this affidavit, I have reviewed the Affidavit #1 of Tian Kusumoto made on May 22, 2024 (the "**Kusumoto Affidavit #1**") in support of Sanovest's receivership petition.

22. At paragraph 22 of his Affidavit #1, Tian Kusumoto describes the Partnership entering into a lease with the Hotel for use of space in connection with the Golf Courses, with a term expiring on June 30, 2024. Specifically, the lease permits uses for the purpose of "operating a golf course and tennis operation and any other amenities or facilities relating to the Tenant's business plan from time to time including, but not limited to, pro-shop, member's lounge and locker/change room facilities…". Tian Kusumoto goes on to express disagreement over the decision not to renegotiate or renew the existing lease — an assertion that I fundamentally disagree with. The Resort Partnership's decision not to renegotiate or renew the existing Hotel lease is informed by a long history of issues, including ongoing and past deficiencies and serious findings of liability *against* the Hotel in ongoing arbitration proceedings between Hotel entities and the Resort Partnership. This is addressed in more detail below.

23. A true copy of the Resort Partnership's lease with the Hotel is attached hereto and marked as **Exhibit "F"**. A true copy of the Resort Partnership's operations agreement with the Hotel is attached hereto and marked as **Exhibit "G"**. The lease and operations agreement were negotiated together as part of the asset purchase agreement for the sale of the Hotel, so as to form a single "package". Thus, as part of the operations agreement, the Hotel agreed to provide food services to the Resort Partnership, including to the members' lounge located within the Hotel (because the Resort Partnership did not have its own kitchen facilities).

Ongoing and Past Deficiencies

24. Mr. Malak has been involved in the Hotel's management and operations since the transfer of ownership from the Resort Partnership to Hotel entities in 2019. I understand that he was and remains President and CEO of those Hotel entities.

25. Since becoming a tenant of the Hotel, the Resort Partnership has faced a long list of deficiencies in its leased premises, along with a failure by Hotel management to take timely steps (or, in some cases, any steps) to address and resolve those deficiencies. An early example arose in February 2020, when the Hotel ceased providing food services for the Resort Partnership, something it has never resumed doing.

26. I have written to Mr. Malak on many occasions requesting resolution to the ongoing issues. As a recent example, I wrote to Mr. Malak on December 19, 2023 summarizing outstanding repair and deficiency issues with the Resort Partnership's leased premises — some of which had been outstanding for three years. These issues included, among others:

(a) a dysfunctional heating system in the real estate office, making it impossible to regulate the temperature in that space;

(b) missing and loose door handles on the exterior doors for the pro shop;

(c) dysfunctional door closing apparatus and damage to the exterior door and trim of the members' lounge, which was caused by hotel contractors during renovations more than two years ago;

(d) inoperative light receptacles in the men's locker room;

(e) rusted and stained ceiling tiles, and metal partitions and lights in the men's locker room;

(f) damage to the steam room, caused during the Hotel's 2021 renovations;

(g) a dysfunctional sauna (due to a broken sauna heater element); and

(h) failure to replace the interior staircase access to our leased premises.

27. Since my letter to Mr. Malak in December 2023, none of the outstanding repair and deficiency issues have been addressed by the Hotel. The steam room, which was damaged but still somewhat operational now no longer functions at all. I have not included a copy of my December 19, 2023 letter to Mr. Malak here due to certain commercial details that it contains.

Arbitral Findings, Including "Serious Breach of Trust" by the Hotel's President and CEO

28. Beginning in June 2020, the Resort Partnership and Hotel have been engaged in arbitration proceedings before Murray L. Smith, K.C. to resolve various issues and disputes between the parties to the lease and related agreements.

29. On February 26, 2021, Arbitrator Smith issued a decision on liability as a partial final award (the "**Hotel Liability Decision**"). Following the Hotel Liability Decision, the Hotel entities filed two legal proceedings challenging that decision: (i) on March 30, 2021, an application for leave to appeal in BCCA File No. CA47361, alleging that the Arbitrator had committed various errors of law; and (ii) on March 31, 2021, a petition, seeking an order setting aside the Hotel Liability Decision (the "**Hotel Petition**").

30. The Hotel entities' application for leave to appeal was dismissed by the Court of Appeal (*Ecoasis Resort and Golf LLP v. Bear Mountain Resort & Spa Ltd.*, 2021 BCCA 285). Further, on January 19, 2022, the Hotel entities filed a notice of discontinuance of the Hotel Petition, a true copy of which is attached hereto and marked as **Exhibit "H"**.

31. A copy of the Hotel Liability Decision forms part of the court file in BCCA File No. CA47361. Attached hereto and marked as **Exhibit "I"** is a true copy of the Hotel Liability Decision, as extracted from the Reply Book of the Partnership filed June 14, 2021. (A copy of the Hotel Liability Decision is also included in the Affidavit #1 of Sherri Evans, made March 31, 2021, filed by the Hotel entities in the Hotel Petition on April 1, 2021.)

32. In the Hotel Liability Decision, Arbitrator Smith found that Mr. Malak, on behalf of the Hotel entities, had breached a non-competition and non-solicitation agreement in backdoor negotiations with Mr. Clarke, who was then still serving in the role of CFO for EBMD:

> 28. The CFO for Ecoasis was David Clarke. He was involved in finding a purchaser for the hotel and in negotiating the details of the purchase agreement, operations agreement and lease-back agreement. Mr. Clarke entered into personal negotiations with the principal of the purchaser, Raoul Malak, as early as May of 2019. In those negotiations it was agreed that Mr. Clarke would ultimately be employed by Hotel, potentially as CEO. No disclosure was made to Ecoasis of this arrangement, nor of the fact that after the sale Mr. Malak retained the services of Mr. Clarke's wife in purchasing strata units. Over the next year, Mr. Clarke's wife was paid approximately $27,000.
>
> ...
>
> 308. Hotel breached the Non-Competition and Non-Solicitation Agreement by working with Mr. Clarke behind the back of Ecoasis

> after July 11, 2019 and by entering into a consulting agreement with him in 2020. Mr. Clarke was the key person in the sale of the hotel and in the ongoing operation of the hotel and golf and tennis business. It is impossible to gauge the extent to which this duplicity contributed to the breakdown in relations between the parties.
>
> 309. Both Mr. Malak and Mr. Clarke were sophisticated businessmen who were aware of the serious breach of trust inherent in their business dealings. The duty of loyalty owed to Ecoasis by an employee in the position of Mr. Clarke is one of the most significant obligations recognized in law…

33. Further, as found by Arbitrator Smith:

> 312. Within a year of having purchased the hotel, Mr. Malak gave notice of termination of the Operations Agreement and the Commercial Lease and sought to have Ecoasis removed from the premises. The impact of the terminations was devastating on the golf and tennis business. The financial consequences of Hotel's breaches of the Operations Agreement and the Non-Competition and Non-Solicitation Agreement will be assessed on a further hearing for the assessment of damages. …

34. As noted, Mr. Malak, to the best of my knowledge, continues to serve as President and CEO for the Hotel. To the best of my knowledge, Mr. Clarke also continues to work in the Hotel's finance department. Tian Kusumoto states, at paragraph 73 of Kusumoto Affidavit #1, that "[i]n April 2024, I spoke to David Clarke, who works in the finance department of the Hotel, regarding the lease".

Non-Renewal of the Hotel Lease

35. In light of these various factors — including the many ongoing and past deficiencies, the serious breach of trust by Mr. Malak and Mr. Clarke and the ongoing arbitration — I concluded as CEO of EBMD that the Resort Partnership should not renew its lease with the Hotel. I communicated this to Tian Kusumoto by email on January 4, 2024.

36. I made the decision not to renew the Hotel lease in the best interests of the Resort Partnership. I do not agree with Tian Kusumoto's insistence that the Resort Partnership should continue to do business with the Hotel moving forward. In response to paragraph 73 of

Kusumoto Affidavit #1, I can only conclude that Tian Kusumoto has cultivated a separate relationship with the Hotel operators for his own reasons. I am not surprised if the Hotel owners no longer wish to do business with me, given the history of the arbitration described above. For the same reasons, I am surprised that Tian Kusumoto wishes to do Resort Partnership or other business with the Hotel operators.

37. Tian Kusumoto's steps to hamper the Resort Partnership's orderly transition from the Hotel facilities to new facilities are not in the best interests of the Resort Partnership. These steps include his refusal to authorize payment of $34,074 required for a deposit on the Resort Partnership's new facilities, which funds were available from cash on hand when requested. This and other concerns were addressed in a letter from my lawyers to Tian Kusumoto's and Sanovest's lawyers, dated April 16, 2024, a true copy of which is attached hereto and marked as **Exhibit "J"** with the dropbox link redacted.

Transition to New Facilities as of June 30, 2024

38. Despite Tian Kusumoto's refusal to authorize the release of deposit funds, we now have an effective plan in place to transition our existing pro shop, golf cart staging and storage, lockers/change rooms and charging space to new facilities. This transition is well underway and is being carried out in two phases. Given Sanovest's refusal to advance any funding to effect this important transition, I am advancing personal funds, through 599, as a loan to the Resort Partnership for costs associated with Phase 1.

39. The details of the Phase 1 and Phase 2 transition are as follows:

(a) **Phase 1 of Facilities Transition.** Phase 1 is underway and I expect it will be fully completed by June 30, 2024.

(i) Our golf cart storage/staging area, including all electrical work for our golf cart fleet, is underway and will be finalized within the next two weeks allowing for full relocation before expiration of the existing lease term. The golf cart storage area is a newly excavated site located below the

tennis courts adjacent to the event lawn. The staging area is an existing paved area immediately adjacent to the golf practice facilities.

(ii) All golf bags will be moved into the temperature controlled bag storage area at BMAC in the final week of June 2024.

(iii) BMAC's day lockers, showers and change room facilities will be immediately available to our golf and tennis members and their guests. All members will be notified of this transition this week, allowing time for removal of personal items from existing lockers (and retrieval and storage of any unclaimed items prior to the end of June 2024). I note that our women golf and tennis members have already been using BMAC's change room and shower facilities since August 2023 (after the Hotel closed off the shower facilities for women).

(iv) Golf and tennis pro shop services will be transitioned to the existing reception and entry of BMAC. Space will be dedicated for the display of select clothing, clubs and racquets and retail accessories. Images 5 and 6 below show BMAC's member/guest check-in, seating and reception area. Image 5 was taken recently by staff; Image 6 was taken in 2022 by a professional photographer for marketing purposes.

Image 5

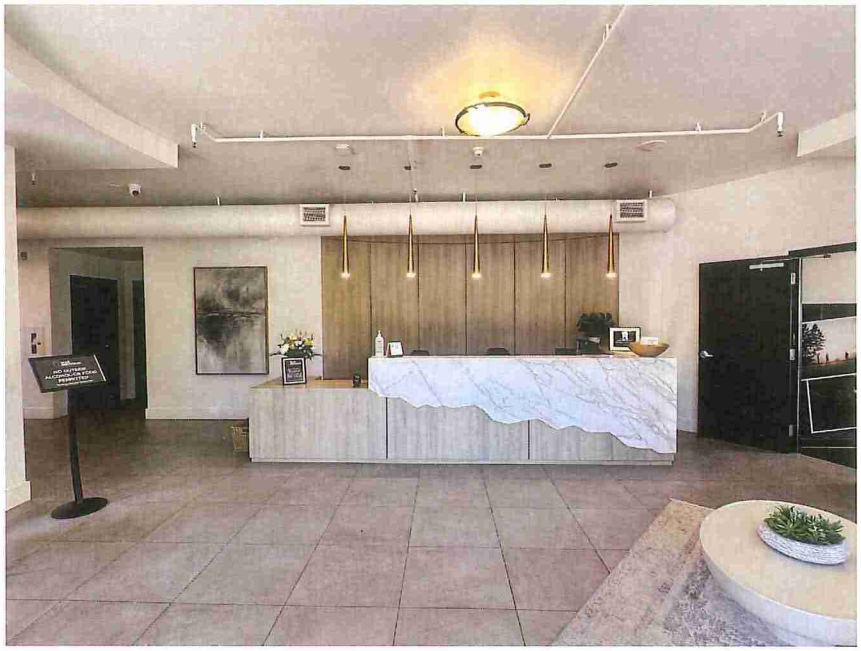
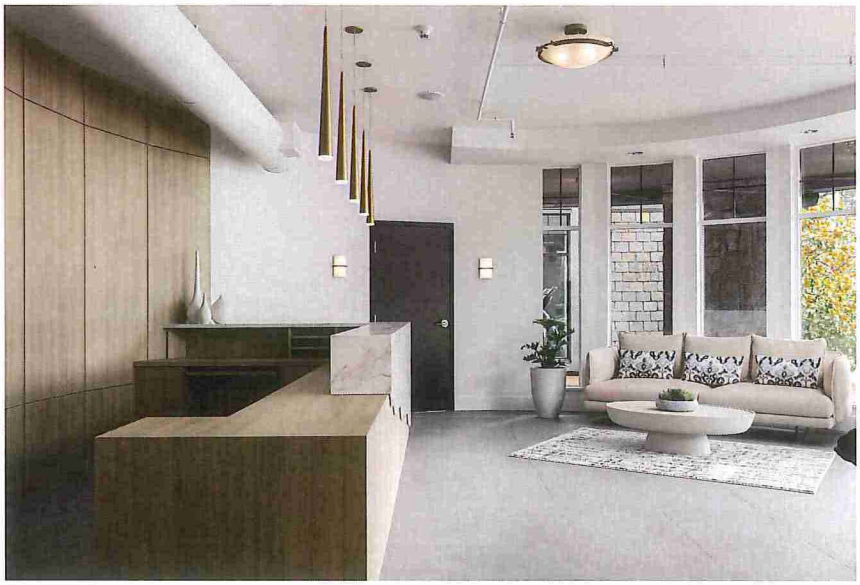


Image 6



I expect that this new temporary space will be a significant improvement over the existing leased pro shop space as it is newly renovated and its location offers improved accessibility for both vehicle and foot traffic.

(v) Our takeout window will be relocated from the Hotel golf staging area to the Resort Partnership's property adjacent to the driving range and tennis facility. The new location will have power to facilitate our refrigeration units and other takeout window requirements.

(vi) Our members' patio will be transitioned to the Lift Bar and Grill patio, which is located beside the BMAC pool. This facility has food and beverage licensing to accommodate 200 patrons (our current leased Hotel space is licensed for 27 patrons). Golf and tennis members will be able to utilize the existing Lift Bar and Grill patio space immediately, and a dedicated area for members and their guests can be set up if required. The Lift Bar and Grill will also serve as a transition space as we consult with our members on the concept and plans for a new members' lounge area. Photographs of BMAC's patio and outdoor restaurant deck are shown as Images 7 and 8 below. Image 7 was taken in 2022 by a professional photographer for marketing purposes; Image 8 was taken in 2022 by Resort Partnership staff. Both images continue to accurately reflect the Lift Bar and Grill patio setup.

Image 7

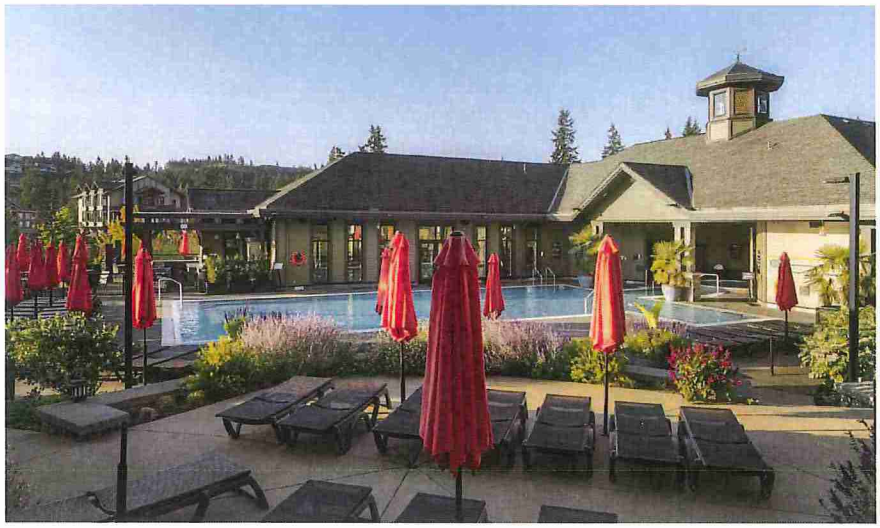
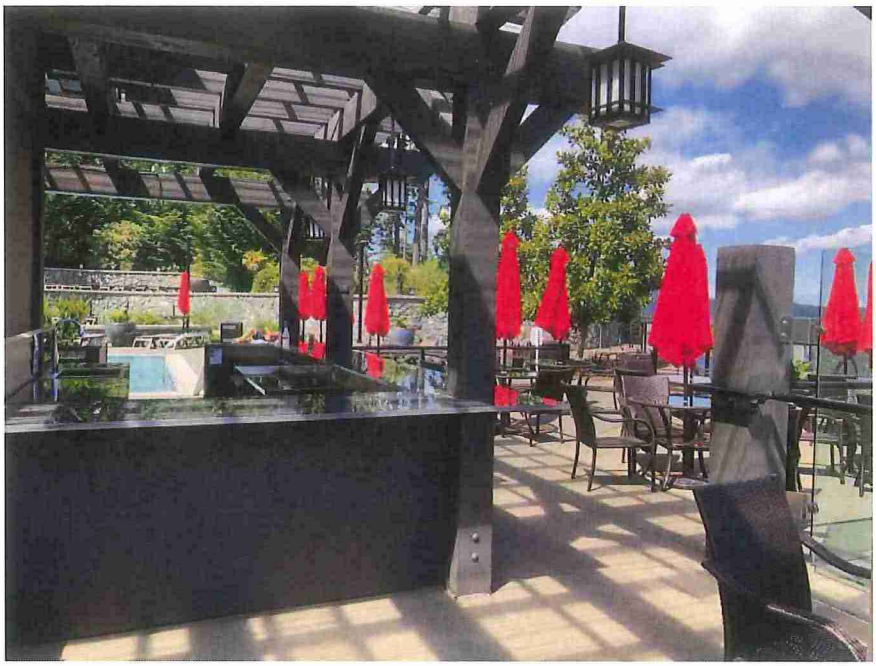


Image 8



(vii) For golf and tennis parking, the parking lot adjacent to Bear Mountain Tennis Centre will transition to member-only parking as of July 1, 2024. This upcoming change has already been announced.

(b) **Phase 2 of Facilities Transition.** Phase 2 will begin following the completion of Phase 1. It will include the following:

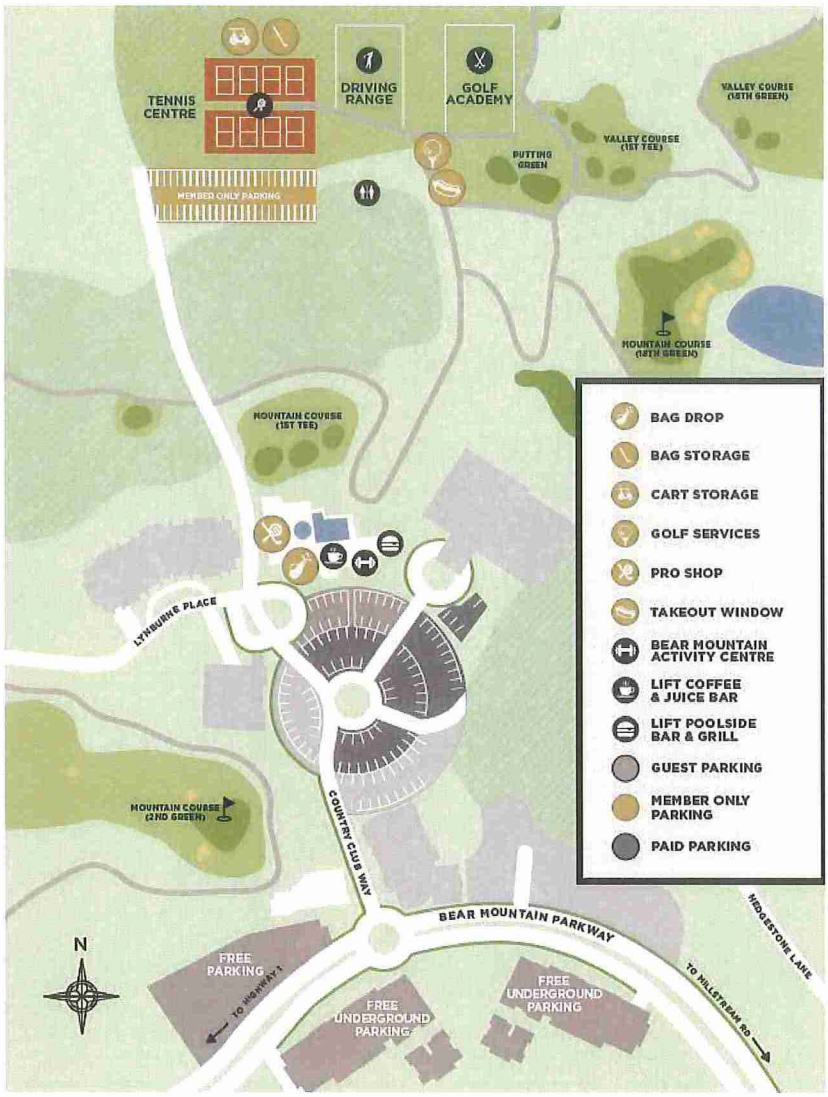
(i) Golf and pro shop facilities will be transitioned from BMAC's reception and entry area to a dedicated space within BMAC's building (shown with the "HUB" sign in the centre of Image 9 below). Image 9 was taken recently by Resort Partnership staff. The concept drawings for this new pro shop have been completed, a true copy of which I attach as **Exhibit "K"**. Work can begin on millwork and flooring once funding for Phase 2 is available. This location will also provide new office space for Resort Partnership staff. This is expected to be completed by fall of 2024.

Image 9

(ii) As noted above, in consultation with our members, we intend to develop a concept and plans for a new, permanent members' lounge area. The scope of this work, and the time required to complete it, will depend on the results of the planning and consultation process.

40. The intention to transition from the leased Hotel premises was announced to our members on February 23, 2024, and followed up with a full member open house over the weekend of April 13-14, 2024. During this open house, I heard directly from our golf and tennis members who expressed support for our transition plan.

41. The following is the current site plan delineating the outcome of our transition plan (with the exception of the permanent members' lounge space):



42. In response to Tian Kusumoto's assertion at paragraph 76 of Kusumoto Affidavit #1, that "[t]he work proposed by Mr. Matthews would not address the requirements for a members' space or pro shop and comes at significant costs that the Partnership are unable to pay":

(a) The transition to new facilities as of June 30, 2024 *does* address the requirement for a pro shop, which will be moved to BMAC, as described above.

(b) Although our transition plan does not address an indoors members' lounge space for the near term, the Resort Partnership has not had full use of its existing lounge space under the Hotel lease since February 2020 when the Hotel terminated food services for our members and their guests. Further, as noted above, development

of a concept and plans for a new members' lounge area will be an important part of our Phase 2 transition. In the interim, members will have access to the outdoor Lift Bar and Grill patio space, open seasonally during the summer months, while we also explore plans to extend use of the Lift Bar and Grill space to all seasons with a trellised heated feature.

(c) The Resort Partnership is currently paying rent and costs for our leased Hotel premises of approximately $360,000 per year, and doing so in circumstances where those premises are deficient and cannot be utilized for the intended purposes of the lease and operations agreement. Going forward, the funds saved by the Resort Partnership can be used to create enhanced spaces and/or a permanent facility to meet our membership and operational needs to fully realize on the potential of our resort operations.

(d) Our transition plan will be an immediate upgrade in terms of experience for our non-member golf and tennis guests. These guests represent roughly 60% of our golf revenues (excluding member initiation fees) and will benefit from the enhanced visibility and premises of BMAC, which is in the heart of the Bear Mountain community and closer to guest parking and services.

(e) Having all resort operations centrally located at BMAC will also provide better synergies and efficiencies in terms of our labour pool and enhance team culture.

D. Refinancing Efforts

43. Since the fall of 2023, I have been going to market in an effort to secure third-party financing for the Partnership. In response, there has been serious interest among investors, but only provided that the Partnership has the ability to carry out land sales.

44. My counsel described these efforts to Sanovest's and Tian Kusumoto's counsel in a letter dated October 19, 2023 regarding financing, among other matters. That letter noted, among other things, that a potential lender was "interested in principle in advancing financing secured by the Bear Mountain lands" but that it had "reviewed the pleadings in the various litigation matters,

and is not prepared to proceed under the current structure, where all land sales are effectively frozen", and the lender was "justifiably concerned that the Partnership will not have access to the cash flow required to service and ultimately repay a loan at maturity". That letter accurately reflected my discussions with the potential lender at the time.

45. On March 26, 2024, my counsel sent a "with prejudice" email to counsel for Sanovest and Tian Kusumoto attaching a term sheet from the potential lender to replace the Sanovest financing in full. Attached hereto and marked as **Exhibit "L"** is a true copy of my counsel's March 26, 2024 email, excluding the term sheet itself in light of the term sheet's confidentiality provision and with the name of the lender redacted. Sanovest and Tian Kusumoto's counsel responded by letter dated April 5, 2024, a true copy of which is attached hereto and marked as **Exhibit "M"**, with redactions for the same reason. In that April 5, 2024 letter, Sanovest and Tian Kusumoto requested, among other things, that I negotiate with the potential lender to eliminate the "additional covenant" in the term sheet, which required repayment of $30M by lot sales or cash equity within the first 14 months of the loan term, or if this had not occurred, minimum monthly payments of $3M for the balance of the term. When I returned to the potential lender asking to remove the "additional covenant", they viewed this as a non-starter and did not agree to continue negotiation on that basis. My counsel wrote to Sanovest's and Tian Kusumoto's counsel regarding these negotiations and Sanovest's term sheet in a letter dated April 22, 2024, a true copy of which is attached as Exhibit "F" to my Second Affidavit. Counsel for Tian Kusumoto and Sanovest responded on April 25, 2024, refusing to negotiate further. Attached hereto and marked as **Exhibit "N"** is a true copy of that letter with the name of the lender redacted.

46. I therefore do not agree with the description of these negotiations in paragraphs 40 and 41 of Kusumoto Affidavit #1: we could not proceed with replacement financing because Sanovest refused conditions necessary for a replacement lender to be eventually repaid. I also note that Sanovest's own term sheets for potential amendments to the Sanovest Loan Agreement were also conditional; and, further, that it has been standard practice for construction loans for site servicing that both Sanovest and my company, 599, have guaranteed those loans for the entire period of ownership.

E. Sanovest's Refusal to Accept Full Payment on the Sanovest Loan

47. As noted above, on April 22, 2024, my lawyers wrote to Tian Kusumoto's and Sanovest's lawyers on a "with prejudice" basis, proposing, among other solutions a buy-sell process that would result in one partner purchasing the other partner's interest in the Partnership and Resort Partnership.

48. On May 10, 2024, 599 delivered a letter of intent to purchase Sanovest's entire interest in the Bear Mountain Project, including repayment of the Sanovest Loan in full. This letter of intent was delivered on a confidential basis, so I have not included a copy of it here, but I reserve the right to seek appropriate confidentiality or protective orders if it becomes necessary to put a copy before the Court in order to fully resolve the present issues. While Sanovest has not accepted that offer, I confirm that the financial backing supporting it remains available today.

49. I have had discussions with both mezzanine financing and replacement financers (*i.e.*, for the full outstanding amount of the Sanovest Loan) regarding the scenario of a Court granting an order permitting sales (such as sought in my application to appoint a marketing agent for the Hole 5 Multi Parcels, the Victoria Peak Parcels, and the Players Drive Parcels). From those discussions, I understand that both mezzanine and replacement financing will be available in such a scenario. Accordingly, it would not be necessary for Sanovest to continue to advance funds under a receiver, in the manner described at paragraph 8 of Kusumoto Affidavit #1.

F. Tian Kusumoto's Allegations Regarding Funds

50. In his Affidavit #1, Tian Kusumoto suggests that I have taken funds from the Resort Partnership for my personal use and failed to reimburse those funds (Kusumoto Affidavit #1 at paragraphs 64 through 70). This is untrue. I am concerned that Tian is making these allegations in order to harm my reputation. Tian has even gone as far as copying a banking representative on emails advancing his allegations. I attach as **Exhibit "O"** a true copy of email correspondence between Tian Kusumoto and others, including Erwin Dondoyano (a prior controller for the Partnership) and Sam Wang, a representative of RBC, between April 10 and 16, 2024.

51. As CFO for EBMD, Tian Kusumoto has had complete insight into the Partnership and the Resort Partnership's financial affairs. The Partnership and the Resort Partnership's day-to-day financial transactions operate through our accounting department. All financial transactions are accounted for in the general ledger records of EBMD, to which Tian Kusumoto has real-time access from any device.

52. Tian Kusumoto's allegations concerning my personal use of funds have also been the subject of several letters exchanged between our lawyers (see, for example, paragraph 69 of Kusumoto Affidavit #1, including Exhibit "S", which is a letter from my lawyers addressing Tian's allegations concerning credit cards). Most recently, on April 26, 2024, my lawyers wrote to Tian Kusumoto's and Sanovest's lawyers demanding that Tian retract his statements to third parties concerning my alleged improper use of funds, a true copy of which is attached hereto and marked as **Exhibit "P"**. There has been no response or retraction.

53. At paragraph 66 of his Affidavit #1, Tian Kusumoto reports a conversation with Ryan Mogensen, stating that Mr. Mogensen allegedly advised him that I was "taking cash receipts from the Resort Partnership". The implications in Tian Kusumoto's affidavit are incorrect. In September 2023, I concluded that the Resort Partnership ought to have increased cash on hand to pay suppliers as our outstanding accounts payable had increased and certain vendors were asking to be paid in cash. I was also concerned that a critical supply interruption may occur, and wished to have cash available to deal with such a scenario. In order to address this issue, I wished to "earmark" a reserve cash fund. I did so by withdrawing $24,500 in cash in four transactions through the accounting staff and in accordance with our established cash payment protocols. Specifically, I instructed our accounting staff to apply the cash against the account owing for my unpaid management fees, and signed and provided to them a receipt of cash payments in accordance with the protocol. I subsequently advised the relevant accounting staff – our controller at the time and our accounting clerk – that these funds would be available as required. I used the management fee account in order to ensure the cash reserve was recorded and so that the transaction could readily be reversed if and when the cash was used for Partnership purposes (*i.e.*, it would only affect my management company, Ecoasis Innovative Communities Inc. ("**EIC**")). These funds were at all times available for Partnership purposes. Simply put, it was not

my money. A majority of this cash was in fact required for Partnership purposes and placed back into the Partnership when needed, which was again documented in the accounting system with full knowledge and cooperation of the accounting staff. These incoming and outgoing transfers were recorded in the general ledger when they occurred — which, as noted above, is a ledger to which Tian Kusumoto has real-time remote access. Indeed, our accounting clerk recently confirmed to me that only she and Tian Kusumoto have access to the general ledger, which is maintained by way of a QuickBooks Online account. The current amount of the cash reserve, which sits under lock in my office, totals $5,000.

54. In specific response to paragraph 44 of Kusumoto Affidavit #1, regarding the Partnership's financial statements: audited financial statements have never been required. By email on March 21, 2014, Tian Kusumoto (trk@sanovest.com) confirmed to Mr. Clarke, who was then EBMD's CFO, that "[w]e do not require audited financials as per the loan agreement for any of the projects". A true copy of that email, on which I was copied along with Tom Kusumoto, is attached hereto and marked as **Exhibit "Q"**.

55. With respect to financial statements from and after 2018, Tian Kusumoto well knows that these have remained incomplete or unfiled due to several factors, including delays that form part of the dispute in the arbitration. Tian Kusumoto is also aware that the 2019 and 2020 financial statements are now completed but have not been filed due to disagreement regarding the characterization of certain matters that are the subject of the underlying litigation. I am prepared to sign the 2019 and 2020 financial statement in a manner that reflects the decisions made by the directors in those years (*i.e.*, Tom Kusumoto and myself). However, Tian Kusumoto refuses to accept this. As a result, and while the information required for the 2021 to 2023 financial statements has been compiled, these too cannot be finalized given the disagreement as to past transactions.

56. None of this has interfered with Tian Kusumoto's complete access to the Partnership and the Resort Partnership's detailed financial information. Indeed, Tian Kusumoto has had the information, access and ability to unilaterally and without my authorization to initiate more than $165,000 in payments to the CRA, to which my lawyers objected in the letter included at Kusumoto Affidavit #1, Exhibit "S", as these payments interfered with cash flow and were

apparently done to ensure that Sanovest would not rank behind the CRA as creditor, rather than made in the best interest of the Partnership.

57. In specific response to paragraphs 61 through 63 of Kusumoto Affidavit #1, where Tian Kusumoto notes the lack of a written agreement for my management fees: while it is correct that no written agreement exists, these management fees were paid, with the agreement of Tom Kusumoto and consistently from the outset of the project in about October 2013 until January 2023. As stated in my First Affidavit at paragraphs 95 and 96, this is because Tian Kusumoto has, since January 2023, refused to authorize these payments, despite knowing for years prior that I was entitled to and was receiving these payments. For example, I attach as **Exhibit "R"** a true copy of emails concerning management fee payments to EIC between Mr. Clarke and Tom Kusumoto in April 2015, where Tian Kusumoto and I were each copied. The management fees were recorded in the general ledger, and the payments were reported in various forms. As a further example among many, I attach as **Exhibit "S"** an email dated June 3, 2016 from Mr. Clarke to Tom Kusumoto, copying Tian Kusumoto, along with the relevant enclosure, reporting on the payments made over the previous two weeks, including the $15,750 "Ecoasis Innovative – Fee". Therefore, I do not believe that Tian Kusumoto could have only learned of the management fee in 2021, as he states at paragraph 61 of Kusumoto Affidavit #1.

G. Property Taxes & Funding Under the Sanovest Loan Agreement

58. In his Affidavit #1, Tian Kusumoto states, at paragraph 49: "… property taxes owing on the lands held by the Nominee Guarantors is approximately $1.6 million and will be due in early July. The Partnerships will be unable to pay these amounts without additional funding."

59. I agree with Tian Kusumoto's statement that, without additional funding, the Partnership will not be able to pay property taxes owing on its development lands. However, this is not the first time that Sanovest and Tian Kusumoto have sought to leverage funding for property taxes while seeking concessions in Sanovest's favour:

(a) Historically, if funds were required to pay property taxes, I would authorize a funding request as CEO of EBMD. Sanovest then would advance funding for property taxes under the Sanovest Loan Agreement. Further, EBMD's company

office would receive all tax notices for the Partnership's properties, confirm that those notices were correct, and then prepare a spreadsheet for accounting. The total amount would be communicated to Sanovest along with the Partnership's request for funding, and the amount would then be funded by Sanovest and property taxes paid prior to the due date.

(b) After replacing his father, Tian Kusumoto unilaterally directed the City of Langford to send all of the Partnership's property tax notices to his personal address, rather than EBMD's company office. When I asked Tian Kusumoto to change the address back to the company office, he did not respond.

(c) In about April or May 2021, EBMD sent Sanovest a request for funding for the Partnership's 2021 property taxes. On June 1, 2021, Tian Kusumoto was appointed director of the Ecoasis companies. Tian Kusumoto then waited until June 30, 2021 before trying to leverage certain concessions and agreements from me (in exchange for Sanovest funding property taxes by the next day deadline). I did not agree and Sanovest refused to fund the property taxes. In fact, the Partnership's property taxes went unpaid until February 4, 2022 (and incurred a 10% penalty of approximately $140,000). The 2021 property taxes were eventually paid out of proceeds from closing on a vendor-takeback mortgage of $8M. This is addressed in further detail at paragraphs 67 through 77 of my First Affidavit.

(d) As the Partnership's 2022 property taxes came due, Sanovest and Tian Kusumoto again tried to leverage concessions and agreements from me in exchange for funding. On August 18, 2022, Sanovest finally funded property taxes for the Partnership equal to $1,398,646.17. A 5% penalty of approximately $70,000 was incurred for this late payment. These circumstances are described at paragraph 78 of my First Affidavit.

(e) On August 26, 2022, Sanovest also funded property taxes for the Gondola Lands (which are owned by BMA), which taxes had been unpaid since 2021, incurring a

10% penalty on 2021 taxes and 5% on 2022. Again, these taxes had been withheld in the context of Tian Kusumoto seeking certain concessions from me. Even while paying the Gondola Lands' taxes, Sanovest refused to fund property taxes owing for BMAC (owned by the same entity as the Gondola Lands).

(f) For 2023, Sanovest paid the Partnership's property taxes by the due date (directly), along with property taxes for the Gondola Lands, but again refused to fund property taxes owing for BMAC.

60. Regarding the Sanovest loan summary attached as Exhibit "M" to Kusumoto Affidavit #1, and although I do not accept Sanovest's position that the total amount owing under the Sanovest Loan is $62,317,943.93 (see my Second Affidavit at paragraph 25), I note that from June 30, 2019 to May 15, 2024, Sanovest has only advanced approximately $6M to the Partnership — less than the total property taxes for 2019 through 2024 — but has received over $38M in repayments under the Sanovest Loan Agreement. I note that the schedule incorrectly attributes approximately $3M as an advance to the Partnership, when this was in fact repayment of funds to Tom Kusumoto personally. With the exception of the Hotel Sale noted at Exhibit "M" to Kusumoto Affidavit #1, all repayments to the Sanovest Loan have been from lot sales or land sales.

H. Litigation Against the Partnership

61. At paragraphs 50 and 51 of Kusumoto Affidavit #1, Tian Kusumoto notes the existence of two actions filed against the Partnership — a claim by Gold Tee's Developments Ltd., and a claim by Island West Coast Developments Ltd. — stating that the Partnership "does not have sufficient funds to pay the costs of defending those actions", and that "Sanovest has agreed to, on behalf of [the Partnership] as an additional loan, pay certain legal costs associated with the above actions". In response, I note that the total amount claimed in these related Actions appears to be limited to approximately $1.5M: Gold Tee's Development Ltd. alleges, and is seeking to enforce, a settlement that it says provided for the resolution of both matters for approximately $1.5M. The Partnership has also advanced counterclaims in both matters. Both Actions relate to the same

project; and the two plaintiffs are, to my understanding, controlled by the same individual, Greg Constable.

62. In my view, there is currently no prejudice or risk of prejudice to the Partnership's litigation position in these matters. If it becomes necessary to put more information about these matters before the Court in this proceeding, then I reserve the right to seek appropriate confidentiality or protective orders.

I. Vertical Development

63. At paragraph 53 of Kusumoto Affidavit #1, Tian Kusumoto states that "[i]n Sanovest's capacity as partner in the Developments Partnership and my capacity as director of the relevant corporate entities, I have always believed that the Partnerships should seek to maximize the value of their assets, whether by lot sales, bulk site sales, site servicing, or vertical development, including through further partnerships". While I agree with Tian Kusumoto's sentiment that the Partnership should seek to maximize the value of its assets, this must be done with the framework agreed to at the outset of the relationship between 599 and Sanovest: the Bear Mountain Business Plan, as discussed at paragraph 14 of my First Affidavit. Vertical development has never been a serious focus for the Partnership and I disagree that it should be pursued now.

64. Prior to purchasing the Bear Mountain Assets in 2013, Tom Kusumoto and I went through several financial models all of which contemplated bulk land sales (multi-family sites) and lot sales on single-family sites, and we staffed our operation accordingly with civil land engineers that had limited vertical construction expertise. The financial requirement for vertical construction is very different in terms of size and risk, and Tom and I did not view such development as part of the Partnership's long-term business strategy.

65. Our intentions regarding land development were widely communicated to our staff, the community in open houses, the municipality and the press. Our focus was to develop relationships with outside developers that were skilled in the area of construction/verticals, while our focus would be on land development/horizontals. See, for example, an article published in Western Investor, dated June 7, 2017, where a representative of EBMD is quoted as saying, "The

principals of Ecoasis are primarily investors; they're not developers". A true copy of that media article (retrieved from https://www.westerninvestor.com/british-columbia/bear-mountain-golf-resort-owners-ponder-sale-3829750) is attached hereto and marked as **Exhibit "T"**.

J. Corporate Filings

66. Prior to making this affidavit, I also reviewed the Affidavit #1 of Suzanne Volkow, made on May 16, 2024 ("**Volkow Affidavit #1**"), which attaches various limited liability partnership searches and company searches at Exhibits "A" through "O".

67. For Exhibits "H", "I", "J", "K", "L", "M" and "N" to Volkow Affidavit #1, the referenced company summaries note that each of BM 81/82 Lands Ltd. (Exhibit "H"), BM 83 Lands Ltd. (Exhibit "I"), BM 84 Lands Ltd. (Exhibit "J"), BM Capella Lands Ltd. (Exhibit "K"), BM Highlands Golf Course Ltd. (Exhibit "L"), BM Highlands Lands Ltd. (Exhibit "M"), and BM Mountain Golf Course Ltd. (Exhibit "N") are "in the process of being dissolved", with the last annual reports for those companies filed on September 27, 2020.

68. As of April 2024, each of these companies had obtained an extension of time to file its annual report until October 16, 2024. True copies of the notices stating that extension are attached hereto and marked as **Exhibit "U"**. My understanding is that the filings required by October 16, 2024 have been prepared, and I have signed the necessary documents that require my signature and have returned them to our corporate lawyers. My understanding is that all that remains is the formality of Tian Kusumoto's signatures and his approval to pay the corporate filing fees.

K. Tian Kusumoto's Recent Communications with Third Parties

69. I am concerned that Tian Kusumoto and Sanovest continue to take steps to compromise the reputation and financial integrity of the Bear Mountain Project, and to interfere with my ability to carry on my duties as President and CEO of EBMD.

70. Most recently, on May 29, 2024, I became aware that Tian Kusumoto had reached out to Colliers International and a third-party investor with links to a media article titled "Bear

Mountain Court Filings Cloud Future Operations" (https://www.timescolonist.com/local-news/bear-mountain-court-filings-cloud-future-operations-8887963). I attach as **Exhibit "V"** a true copy of email correspondence that I received from Ian Gragtmans at Colliers International, dated May 29, 2024, which included Kusumoto Affidavit #1 as an attachment to that email, along with a copy of the linked media article from the Times Colonist. Due to size, I have only included the body of Mr. Gragtmans' email to me; I have not included its attachment, Kusumoto Affidavit #1.

71. Further, I attach as **Exhibit "W"** a true, redacted copy of an email that I received from the potential investor, dated May 29, 2024. Early in May 2024, that individual's identity and contact information was shared with Tian Kusumoto's lawyers on a confidential basis only and with an express caveat that Tian/Sanovest was not entitled to contact the investor. Tian Kusumoto apparently contacted the same individual again on June 12, 2024 to attach his Affidavit #1 and link to a separate news article. A true, redacted copy of that email, excluding its attachment, is attached hereto and marked as **Exhibit "X"**.

72. On June 6, 2024, my lawyers sent a letter to Sanovest's and Tian Kusumoto's lawyers, addressing an allegation that I had defamed Sanovest and Tian Kusumoto through the above-noted media article. A copy of that letter, excluding enclosures, is attached hereto and marked as **Exhibit "Y"**.

L. Update on Current Situation

73. My Second Affidavit sets out my concern that the Partnership's operations are not sustainable without sales, and that the Resort Partnership could not continue funding the Partnership's expenses. I expressed my concern that, in the circumstances at that time — including the potential disruption to golf operations — payroll and utility bills could go unpaid.

74. While I continue to hold these concerns, the risk of an immediate payroll crisis or shutdown has been avoided. With Phase 1 of the transition plan now developed and with stronger than expected revenues year-to-date in the Resort Partnership, I expect that operations will be sustained at least through the summer and into the early fall. In particular:

(a) based on budgeted projections, I expect the Resort Partnership's cash flow will enable a substantial reduction of aged accounts payable – in the range of $780,000 –over the next four months; and

(b) the transition away from the Hotel's leased facilities is now well underway and on track to have Phase 1 completed by end of month, with non-renewal of the lease freeing up important cash flow for the Resort Partnership as of July 1, 2024.

75. I acknowledge that the available cash will not permit the Partnership to pay its property taxes due by July 1, 2024. However, and as set out above, this will not be the first time this has occurred (Sanovest having refused to fund payment of property taxes on time in 2021 and 2022).

76. Having gone to market for third-party funding, for both refinancing of the Sanovest Loan, and to buy out Sanovest's interest in the Partnership, I am confident that there is strong market support for financing the Partnership's land assets. Therefore, there would be ample financing available under a monitored sale process to provide liquidity while land is sold to provide operating capital and to repay the Sanovest Loan. By contrast, I fear that appointment of a receiver over all Partnership assets, including the Resort Partnership's operations, will reverberate negatively through the Bear Mountain community, as it would be perceived as similar to the 2009 creditor protection reorganization (discussed in my Second Affidavit), which resulted in long-term reputational impact and value suppression of the Bear Mountain Project. I strongly believe that such an outcome is unnecessary and should be avoided.

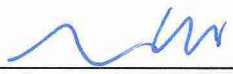
AFFIRMED BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits for British Columbia

GORDON BRANDT
Barrister & Solicitor
1600 - 925 WEST GEORGIA ST.
VANCOUVER, B.C. V6C 3L2
(604) 685-3456

Daniel Matthews

This is Exhibit "A" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.



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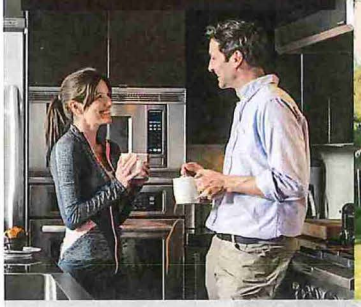
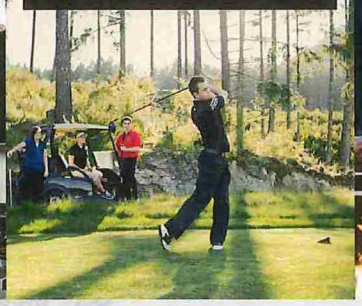


RECREATION



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This is Exhibit "B" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

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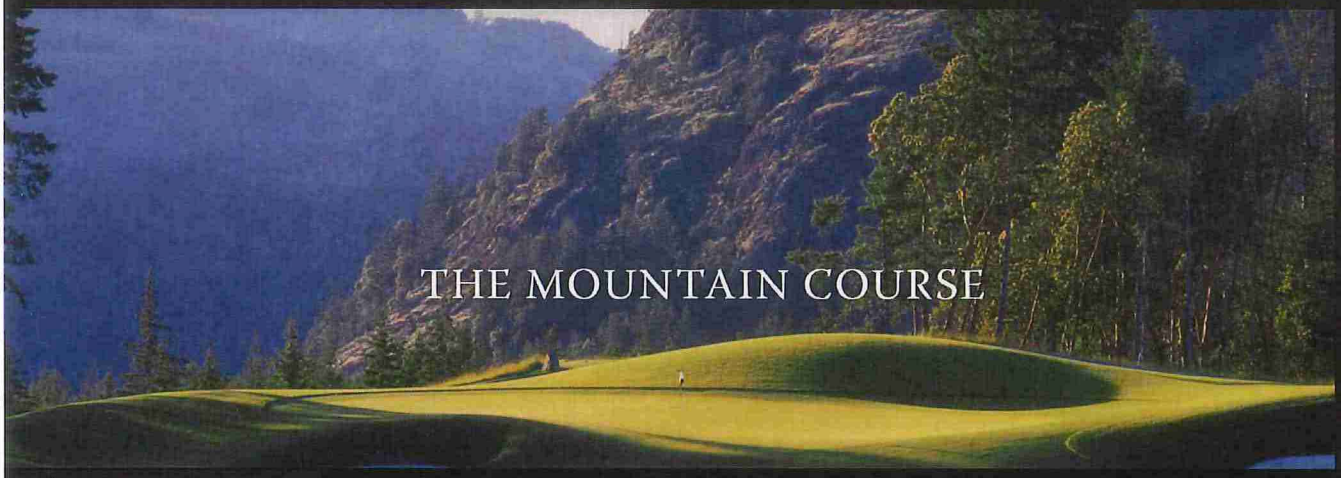

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Local Rules:
- Lost Ball or Ball Out of Bounds: local rule is in effect.
- Natural Habitat Areas: Defined with 6mm Top Rules. No Relief - Proceed to drop area. 1 Stroke Penalty.
- For additional local rules, please refer to GPS on power carts.

Please utilize the divot mix, rake bunkers and repair all ball marks.

Please maintain pace by keeping up to the group in front.

Outside alcohol is NOT PERMITTED on Bear Mountain property.

Golfers are responsible for errant golf balls and any damage caused.

Men's Ratings/Slopes	
Golden	73.5/140
Grizzly	71.1/139
Grizzly/Black	69.6/137
Black	69.3/134
Black/Spirit	68.3/133
Spirit	67.0/123
Spirit/Cinnamon	64.8/113
Cinnamon	63.5/103

Women's Ratings/Slopes	
Black	75.4/143
Black/Spirit	74.0/140
Spirit	72.2/134
Spirit/Cinnamon	69.1/125
Cinnamon	66.4/120

BEAR MOUNTAIN GOLF & TENNIS RESORT COMMUNITY

1999 Country Club Way, Victoria, BC V9B 6K3
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250.744.2327

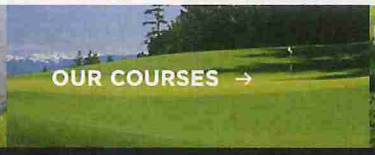
VALLEY COURSE

NICKLAUS DESIGN

MOUNTAIN COURSE

Hole	1	2	3	4	5	6	7	8	9	OUT		10	11	12	13	14	15	16	17	18	IN	TOT
Golden	540	375	395	164	308	432	173	483	437	3367		152	429	510	523	165	471	189	361	603	3423	6810
Grizzly / Cinnamon Tees	533	348	362	159	332	410	155	449	415	3179 / 3158	INITIALS	135	407	495	509	136	432	177	343	564	3197 / 3160	6376 / 6351
Black / Cinnamon Tees	523	313	329	150	328	397	148	431	400	3019 / 2858		128	369	453	490	116	399	166	323	533	2109 / 2014	6038 / 5872
Spirit	420	295	329	150	301	283	148	413	321	2653		116	389	437	464	99	399	158	269	500	2651	5314
Men's PAR	5	4	4	3	4	4	3	4	4	35		5	4	5	5	3	4	3	4	5	36	71
Men's HCP	5	11	9	17	15	1	13	3	7			16	6	10	12	14	2	8	18	4		
Women's PAR	5	4	4	5	4	4	3	5	3/4	37		5	4	5	5	3	4	3	4	5	36	73
Women's HCP	5	15	13	17	1	7	11	3	9			16	6	14	8	18	2	12	10	4		
Cinnamon Tees	420	247	259	88	271	283	131	331	321	2351		90	315	345	387	64	279	95	259	449	2283	6634
PAR	5	4	4	3	4	4	3	4	4	35		5	4	4/5	4/5	3	4	3	4	5	36/37	71/72

Player: Attest: Date:



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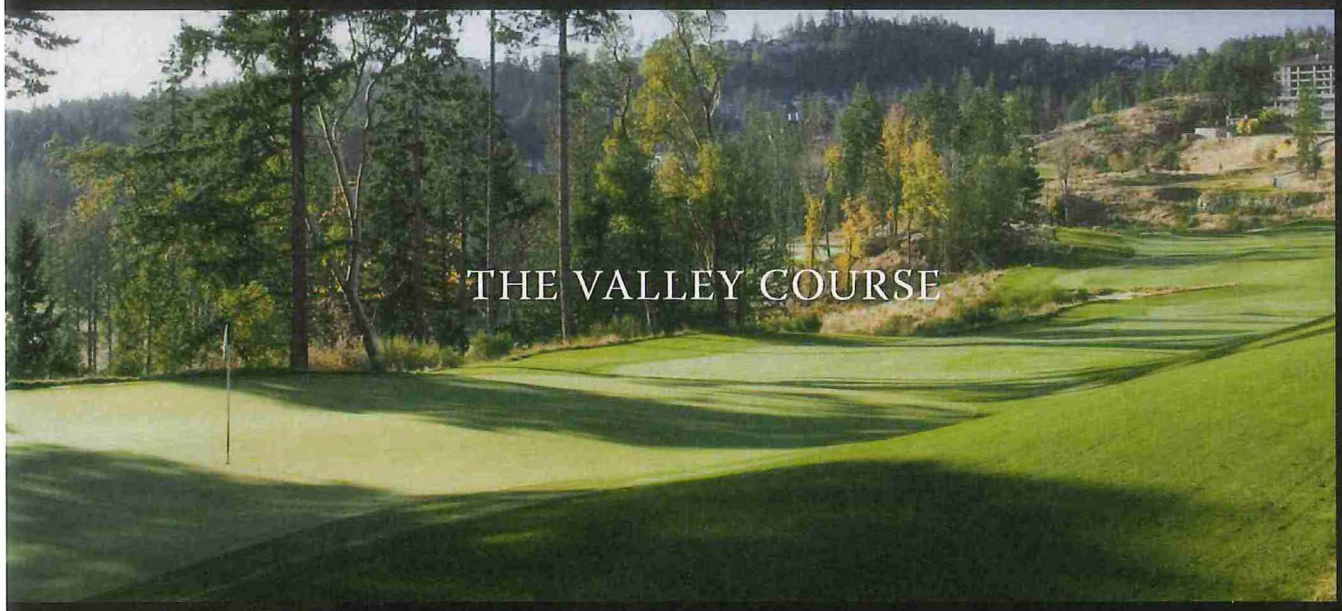
Book a Tee-Time

This is Exhibit "C" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.



THE VALLEY COURSE

DISCOVER SOME OF THE FINEST GOLF VICTORIA HAS TO OFFER.

Centre

The Valley Course meanders through forest, borders lakes and traverses creeks throughout its 18 holes, offering spectacular views of Vancouver Island's beautiful landscape. In contrast to the Mountain Course, the par 71 Valley Course measures 6807 yards from the Golden Bear tees. Factor in elevated tee boxes, more generous fairway widths, fewer bunkers and larger greens and the Valley course will likely be considered a 'friendlier' experience.

All green fees at Bear Mountain include power cart with GPS, club valet & club cleaning services as well as warm up balls at the practice facility. Come and find out why Golf Canada calls Bear Mountain home to its only national development centre.

BOOK YOUR ROUND

All green fees at Bear Mountain include power cart with GPS, club valet & club cleaning services as well as warm up balls at the practice facility.

BOOK YOUR ROUND

CALL 250-744-BEAR (2327)

STAY & PLAY

Come experience Bear Mountain.

LEARN MORE

SCORECARD

Bear Mountain is a proud member of the Audubon Cooperative Sanctuary Program. Please respect natural habitat areas and all wildlife.

Play governed by Golf Canada Rules of Golf except where modified by local rules.

Local Rules:
- Lost Ball or Ball Out of Bounds local rule is in effect.
- Natural Habitat Areas: Defined with Green Top Stakes. No Entry - Proceed to drop area. 1 Stroke Penalty.
- For additional local rules, please refer to GPS on power carts.

Please utilize the divot mix, rake bunkers and repair all ball marks.

Please maintain pace by keeping up to the group in front.

Outside alcohol is NOT PERMITTED on Bear Mountain property.

Golfers are responsible for errant golf balls and any damage caused.

Men's Ratings/Slopes	
Golden	73.5/140
Grizzly	71.1/139
Grizzly/Black	69.6/137
Black	69.3/134
Black/Spirit	68.3/129
Spirit	67.0/123
Spirit/Cinnamon	64.8/113
Cinnamon	63.5/103
Women's Ratings/Slopes	
Black	75.4/143
Black/Spirit	74.0/140
Spirit	72.2/134
Spirit/Cinnamon	69.1/123
Cinnamon	66.4/120

BEAR MOUNTAIN

1999 Country Club Way
Victoria, BC V9B 6R3
bearmountain.ca
250.744.2327

VALLEY COURSE

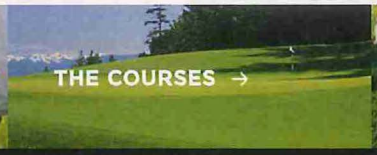
NICKLAUS

VALLEY COURSE

Hole	1	2	3	4	5	6	7	8	9	OUT		10	11	12	13	14	15	16	17	18	IN	TOT
Golden	501	225	403	398	357	215	395	366	442	3312		202	370	488	471	152	588	207	459	558	3495	6807
Grizzly	425	186	341	370	350	207	385	360	423	3101		190	365	480	443	139	560	160	424	539	3299	6392
Black	406	168	326	349	319	185	340	346	412	2911		185	345	469	137	125	528	136	393	303	3121	6032
Spirit	419	146	317	305	311	153	280	302	397	2830		173	293	439	414	109	437	121	372	497	2855	5537
Men's PAR	5	3	4	4	4	3	4	4	4	35		3	4	5	4	3	5	3	4	5	36	71
Men's HCP	17	15	5	1	13	9	7	11	3			12	6	10	2	18	8	16	4	14		
Women's PAR	5	3	4	4	4	3	4	4	4	35		3	4	5	4	3	5	3	4	5	36	71
Women's HCP	5	11	13	17	1	15	9	7	3			16	14	4	10	18	2	12	6	8		
Cinnamon / Spirit	449	146	317	305	311	113	280	302	337	2560		89	293	305	383	109	411	121	291	443	2445	5005
PAR	5	3	4	4	4	3	4	4	4	35		3	4	4	4	3	5	3	4	5	35	71
Cinnamon Tees	427	127	217	237	198	113	264	296	337	2216		89	206	305	383	79	411	104	291	443	2311	4527
PAR	5	3	3	4	4	3	4	4	4	34		3	4	4	4	3	5	3	4	5	35	69

HCP / NET

Player: Attest: Date:



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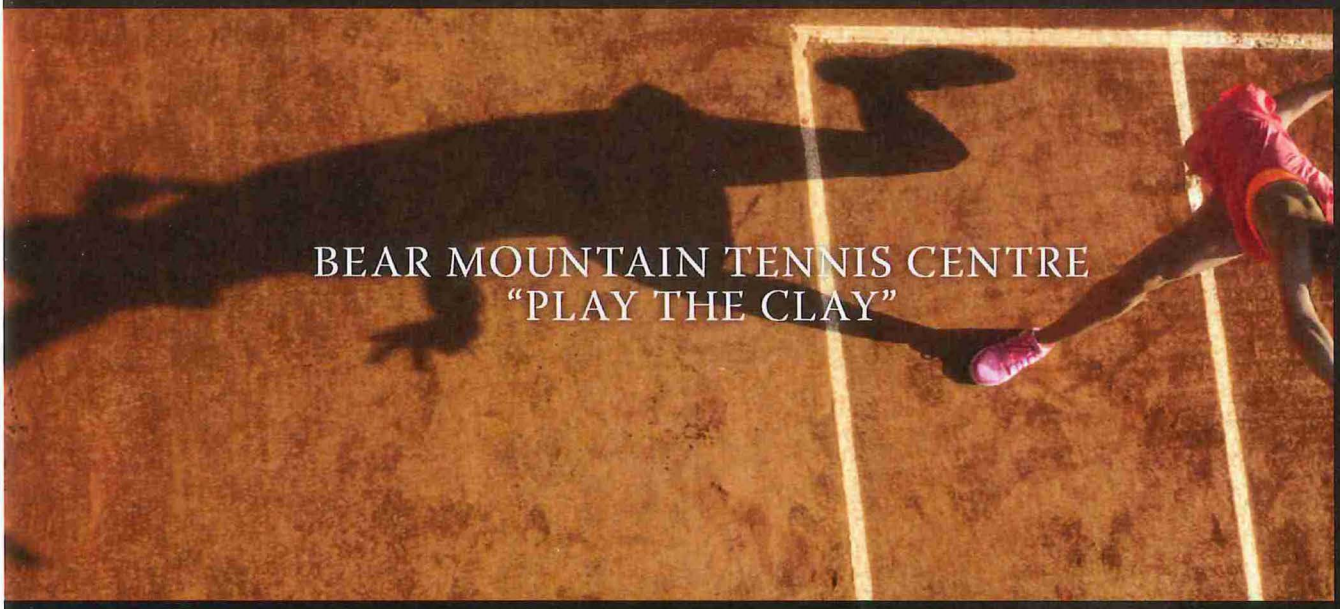
This is Exhibit "D" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.



BE OUR GUEST!

Come to Bear Mountain and visit our Tennis Centre – you're invited to experience our beautiful red clay courts.

Our Tennis Centre is open to the general public as well as Resort guests. Visit us for a day, enjoy 90-minute booking periods and upon availability, play as much as you want on "open" courts with same day "walk-in" bookings. As Canada's largest indoor/outdoor red clay court tennis facility, there is nothing like it.

Adults and Juniors also have access to top-level coaching by our team of Tennis Canada certified professionals.

As the most played surface in the world, you have to experience clay to understand why.

Get out there and kick up a little dust!

CODE OF CONDUCT, COVID-19 PROTOCOLS AND WAIVER POLICIES

Please click on the links below to review all of our policies and protocols. Every member of your tennis party will need to print out, sign and return our waiver prior to entry.

TENNIS CODE OF CONDUCT

BEAR MOUNTAIN GOLF AND TENNIS WAIVER

RESORT GUESTS GENERAL PUBLIC FEES

Rates are per person for the day and include all court and guest fees. Guests may reserve a 90-minute court up to 3 days in advance by contacting the Pro Shop 250.744.2327. Additional same day court time is based on availability at no additional charge. Maximum of two drop-ins per month, up to a yearly maximum of 10.

Outdoor Season, Bubbles Down	**$35**
Indoor Season, Bubbles Up	**$50**

FACILITY HOURS

Indoor Facility Hours: Every Day: 7:30am – 9:00pm
Outdoor Facility Hours: Every Day: 7:30am – Dusk

THE ORIGINS OF THE RED CLAY COURT

Thought to be an invention of the British, the clay court came to be near the end of the 19th century. A man by the name of William Renshaw, giving tennis lessons on grass courts in the south of France in Cannes, became frustrated at how harsh the sun was on the grass – causing it to burn and lose its luster. In an effort to protect the grass, Renshaw decided to cover it with a thin layer of red powder obtained from grinding down the rejects of the clay pots manufactured in the nearby town of Vallauris.

Use of modern clay courts started in the mid-1900s when clubs and homes used locally available clay, or ground up brick, as surface material that caused a considerable variation in the way tennis balls played from court to court.

There are two types of clay courts: red clay courts are made from crushed brick, and green clay courts are made from a crushed basalt, which is volcanic rock. The use of clay courts is much more common in Europe and South America.

Rather than natural clay, almost all red clay courts are made of crushed brick, packed down, then covered with a topping of loose crushed particles. True natural clay courts are rare as the surface does not absorb water easily and can take two to three days to dry.

In an effort to address the drainage problem of pure clay, a crushed brick surface was introduced by a British firm in 1909. The crushed brick court then spread through Europe in the 1920s and became known as a fast-dry surface allowing more water to run through resulting in quicker drying time after a rain. This court played similarly to natural clay despite its considerably more granular appearance. In France, Spain and Italy, fast-dry surfaces were generally more shallow, consisting of powdered brick or red sand, which made them appear more like natural clay surfaces.

Play on red clay is slower, making for a brand of tennis that is less direct and more tactical – a veritable game of chess, where a certain shot can lead to a conclusion four or five "moves" later. It also brings out spin and use of lobs and drop shots. All of these subtleties come to the fore, while in terms of movement it is of paramount importance for players to learn how to slide effectively.

And while play on clay may be more demanding physically due to longer points, clay is the most forgiving of surfaces – protecting the joints and limiting the risk of injury which makes it ideal for any level of player, from the earnest amateur to the top pro.

WHY IT'S GREAT TO PLAY ON CLAY

One of the greatest benefits is to your long-term health!

With clay courts the granular surface acts as a shock absorbing cushion, preventing joint jarring stops and changes in direction. Recent studies have revealed that there are 85% fewer injuries on clay surfaces as opposed to hard surfaces. We would all like to play this game we love for a long time and clay will allow you to play more frequently with less soreness and pain and most importantly, for a lifetime. So, with your fitness and health in mind spend more time on the clay! Read this article on the benefits of clay courts by Biomechanics expert Anthony Blazevich.

READ THE ARTICLE

Another benefit to clay is the surface's playing characteristics.

The clay surface slows down the ball when it bounces resulting in longer rallies and points. This change of pace requires a player to develop their shot selection, tactics, and strategies, and promotes endurance, concentration and patience. This helps players develop a greater variety of strokes and a more controlled and thoughtful game. The rise of European and South American players on the Pro Tour can be mostly attributed to their development on clay surfaces. Tennis Canada and the USTA are now encouraging their most promising players to train primarily on clay in order to develop a fully rounded game.

HERE ARE A FEW TIPS WHEN PLAYING ON CLAY

Come prepared to play longer points. You will be able to get to balls on clay that you wouldn't have been able to on hard courts.

Stay adequately hydrated – drink water!

Activate early by doing dynamic stretching prior to play.

It really does make a difference playing in court shoes designed specifically for clay – shoes made for play on clay give you better footing specific to this surface. If you are looking to pick up some clay court shoes, talk to the experts in the Golf and Tennis Pro Shop.

The use of polyester strings is becoming more and more popular because of their durability, spin production, and the bonus of playability on clay. Natural gut and synthetic strings will quickly dry out and start to crack when coming into contact with the clay, causing them to lose their feel and effectiveness. Polyester strings will not dry out or crack which gives them great long lasting playability. Just make sure to string them lower than your usual strings as the lower tension will help you draw more power from your racket, be easier on your arm and you won't have to work as hard. Due to the slower game, you will be "counter-punching" less and "hitting-out", along with hitting more balls per point. A lower tension in your racket will help!

Some balls will slow down and get a bit heavier as they pick up clay during play, especially after the courts have been watered and on damp days. For this reason, select balls designed specifically for clay which have less felt. "Extra Duty" balls are better on hard courts because they last longer, but due to thicker felt, they pick up a lot of clay and get heavier.

Be sure to clean your shoes of all the clay after you play. Mats, brushes, and foot sprays, are there for your use. Bring along a second pair of shoes and switch out of your clay shoes when you come off the courts. Let's keep our Resort beautiful and free of clay. See you on the courts!

Be sure to clean your shoes of all the clay after you play. Mats, brushes, and foot sprays, are there for your use. Bring along a second pair of shoes and switch out of your clay shoes when you come off the courts. Let's keep our club beautiful and free of clay.

See you on the courts! "Play the Clay"!

This is Exhibit "E" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

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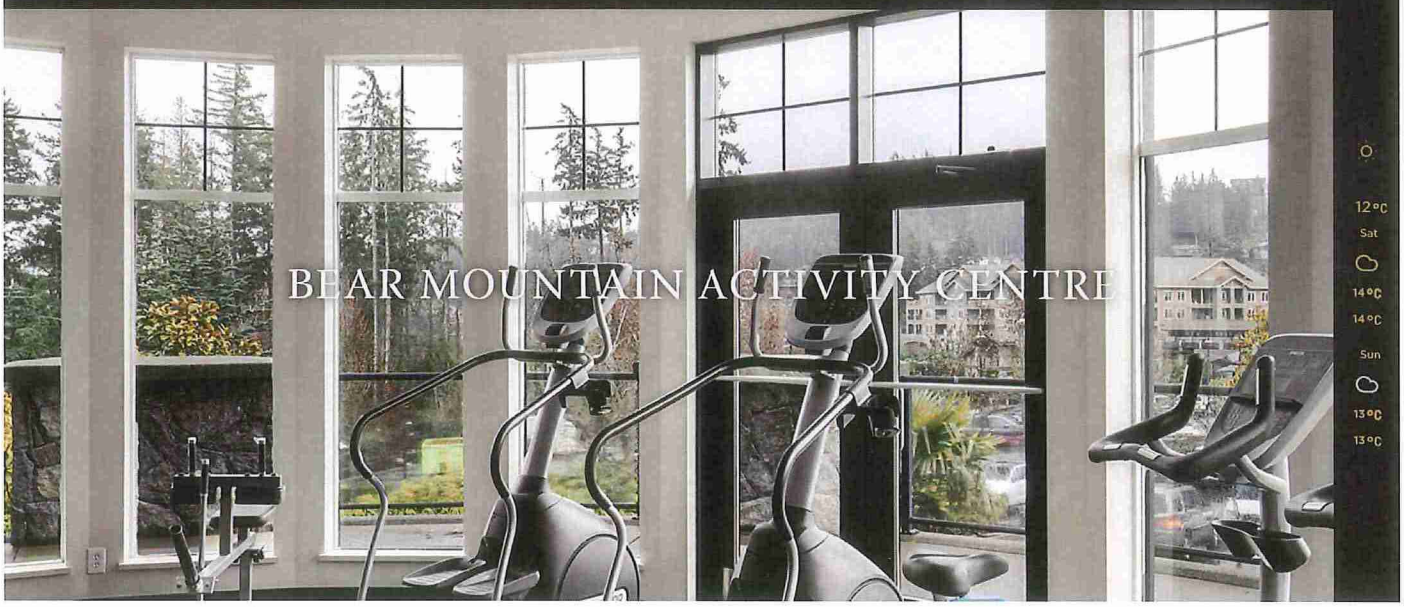


WELCOME TO THE BEAR MOUNTAIN ACTIVITY CENTRE

Located in the heart of Bear Mountain, the Bear Mountain Activity Centre is designed to inspire a lifestyle of health and wellness.

Featuring a year-round heated pool and spacious hot tub to compliment your workout or encourage a relaxing social experience with friends while taking in the natural and majestic landscape of Mount Finlayson.

This premier athletic facility will provide exceptional recreational, social and competitive opportunities in a warm and friendly environment.

In addition to the year-round heated outdoor pool and hot tub, the Bear Mountain Activity Centre has several options for your workout. With three gyms you can get your heart pumping with a full selection of cardio machines, including treadmills, spin bikes, cross-trainers, and stair climbers, or work your muscles with precision strength machines and a full selection of free weights.

MEMBERSHIP INFORMATION

ONE DAY, THREE DAY, FIVE DAY RESORT PASS

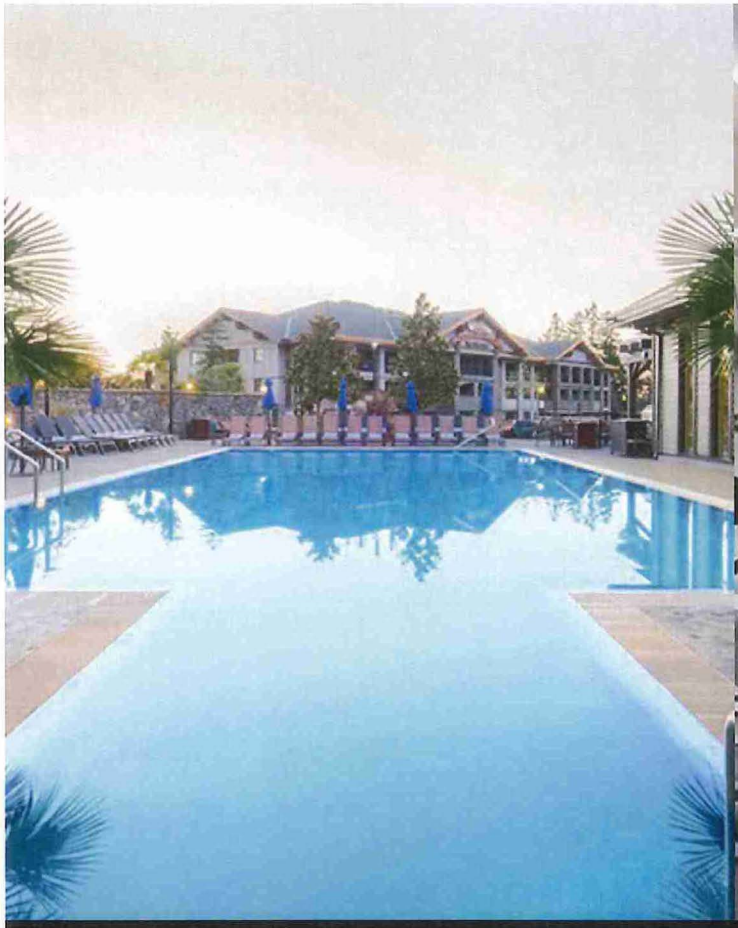
FOR MORE INFORMATION, PLEASE CALL 778-405-1645

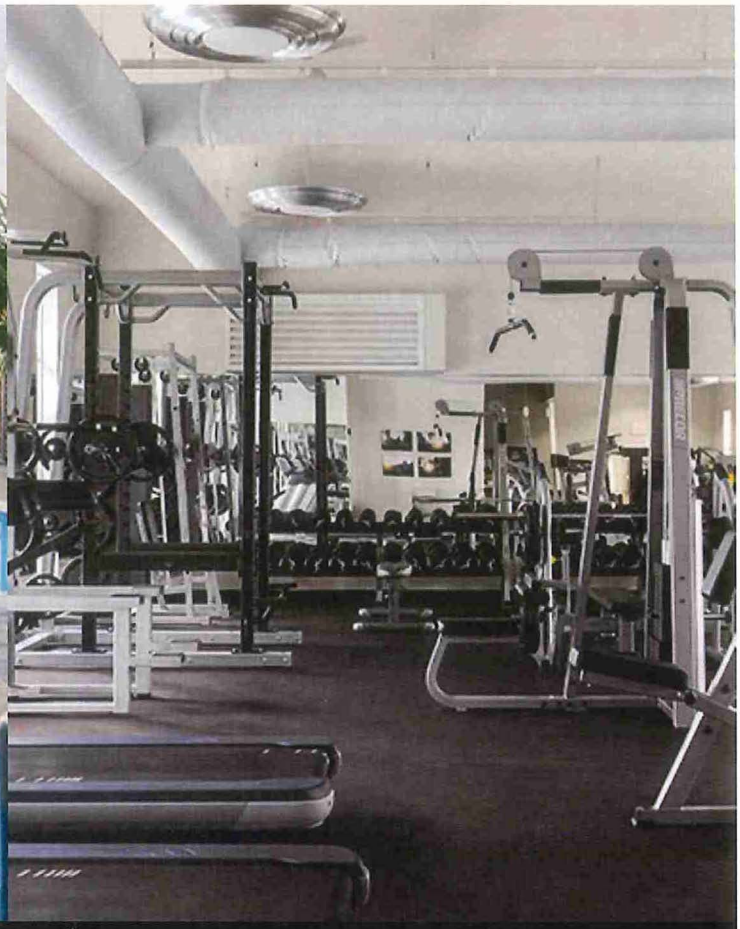
HOURS OF OPERATION:

MONDAY TO FRIDAY 5:30 AM – 9:00 PM

SATURDAY & SUNDAY 7:00 AM – 7:00 PM

STATUTORY HOLIDAYS 9:00 AM – 5:00 PM





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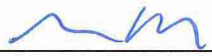
This is Exhibit "F" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.



A Commissioner for taking Affidavits within British Columbia.

Execution Version

COMMERCIAL LEASE

THIS LEASE is dated for reference the 11th day of July, 2019

BETWEEN:

BM RESORT ASSETS LTD. (Inc. No. BC0891420), a company duly incorporated under the laws of the Province of British Columbia, having an office at 7th Floor - 1175 Douglas Street, Victoria, British Columbia, V8W 2E1 (the "**Registered Owner**"); AND

2600 VIKING WAY LIMITED (Inc. No. BC0839577), a company duly incorporated under the laws of the Province of British Columbia, having an office at 7th Floor - 1175 Douglas Street, Victoria, British Columbia, V8W 2E1 (the "**Beneficial Owner**")

(the Registered Owner and Beneficial Owner are herein referred to, collectively, as the "**Landlord**")

AND:

ECOASIS RESORT AND GOLF LLP, a limited liability partnership duly constituted under the laws of the Province of British Columbia, having an office at 2050 Country Club Way, Victoria, BC V9B 6R3

(the "**Tenant**")

WHEREAS:

A. The Landlord is the owner of those lands and premises municipally known as a part of 1999 Country Club Way, in the City of Langford, in the Province of British Columbia, legally known and described as:

PID: 026-706-202
Strata Lot 1, Section 82, Highland District, Strata Plan VIS6037

(the "**SL 1 Property**"); and

B. The Landlord has agreed to lease the Premises (hereinafter defined) to the Tenant on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be respectively paid, observed and performed, the Landlord hereby demises to the Tenant, upon and subject to the covenants and conditions hereinafter set forth, the Premises as hereinafter defined.

1. DEFINITIONS

In this Lease the following terms have the following meanings:

1.1 **"Additional Rent"** means all monies stipulated as Additional Rent in this Lease, save and except for Basic Rent.

1.2 **"Basic Rent"** means the basic rent as set forth in Schedule A.

1.3 **"Building"** means all buildings and other improvements erected upon the Strata Plan and comprising the destination resort strata hotel (comprising strata lots 1 through 57 of the Strata Plan) currently operated as *"The Westin Bear Mountain Golf Resort and Spa"* and located at 1999 Country Club Way, Victoria, British Columbia, and all alterations, expansions and additions thereof from time to time.

1.4 **"Commencement Date"** as set forth in Section 2.1.

1.5 **"Hotel, Golf Course and Tennis Operations Agreement"** means that certain agreement made the 11th day of July, 2019, between the Tenant, as the golf course operator, and 1210110 B.C. LTD., as the hotel operator, and the Beneficial Owner.

1.6 **"Lease Year"** shall mean a twelve-month period commencing on the first day of January in any one calendar year, provided that the first Lease Year shall commence on the Commencement Date and end on the last day of December next following and the last Lease Year shall commence on the first day of January in the calendar year in which the Term expires and end upon the expiry of this Lease.

1.7 **"Mortgage"** includes a mortgage, pledge, charge, hypothec, encumbrance, general security agreement, financing agreement or financing statement, and "Mortgagee" includes the holders of such Mortgage.

1.8 **"Premises"** means that part of the SL 1 Property shown shaded orange colour on sketch plans of the SL 1 Property attached as Schedule B hereto, namely, "Main Floor", "Sub Level 1" and "Sub Level 2".

1.9 **"Prime"** means the variable annual rate of interest established and adjusted by HSBC Bank Canada from time to time as its reference rate for purposes of determining rates of interest it will charge on loans denominated in Canadian dollars.

1.10 **"Proportionate Share"** means the percentage obtained when ONE HUNDRED (100) is multiplied by the fraction which has as its numerator the leasable area of the Premises (being 16,410 square feet) and which has as its denominator the gross leasable area of the SL 1 Property (being 38,295 square feet); for the purposes of this Lease, the parties agree that the Proportionate Share is **43%**.

1.11 **"Real Property Taxes"** means all real estate taxes, general taxes, local improvement rates, school taxes, levies, rates, duties, assessments, and charges levied or assessed against the SL 1 Property but excludes business taxes, income taxes and corporation capital taxes or wealth taxes now or hereinafter enacted and relating to the Landlord or any business carried on by the Landlord or any assets owned or controlled by the Landlord.

1.12 **"Rent"** means Basic Rent and Additional Rent.

1.13 "**Strata Corporation**" means The Owners, Strata Plan VIS6037.

1.14 "**Strata Fees**" means the assessments or maintenance fees levied by the Strata Corporation directly against the SL 1 Property, without duplication, gross-up or profit.

1.15 "**Strata Plan**" means Strata Plan VIS6037.

2. **TERM**

2.1 **TO HAVE AND TO HOLD** the Premises for a Term of Five (5) years less five (5) days (the "**Term**") computed from **July 11, 2019** (the "**Commencement Date**") and terminating on **June 30, 2024**, unless such term shall be terminated pursuant to the provisions of this Lease.

Term as defined and used herein shall (mutatis mutandis) include all extensions and renewals thereof.

3. **RENT**

3.1 The Tenant shall pay to the Landlord, its successors, or assigns, at such place in Canada as the Landlord may designate in writing, in lawful money of Canada, a fixed annual Basic Rent in the amounts set out in Schedule A in equal consecutive monthly installments as set out in Schedule A, on the terms set out in this Lease, including Schedule A.

3.2 If the Commencement Date is a day other than the first day of a calendar month, the instalment of Rent payable on the Commencement Date shall be that proportion of Rent which the number of days from the Commencement Date to the last day of the month in which the Commencement Date falls bears to three hundred sixty-five (365).

4. **ADDITIONAL RENT**

4.1 The Tenant shall also pay to the Landlord, as Additional Rent, by way of monthly payments on account, the following amounts:

4.1.1 the Tenant's Proportionate Share of the Strata Fees,

4.1.2 the Tenant's Proportionate Share of the Real Property Taxes subject to Section 6.1, and

4.1.3 any other costs, charges and expenses as are specifically provided in this Lease to be paid by the Tenant as Additional Rent.

4.2 The Tenant agrees to pay and shall pay to the Landlord such amount in monthly installments, in advance, during the period on the dates and at the times for payment of Basic Rent provided for in this Lease the Tenant's Proportionate Share of the Strata Fees as the same may be estimated by the Strata Corporation in respect of each Lease Year or portion thereof. Within sixty (60) days of the end of each Lease Year or other period for which the estimated payments have been made, the Tenant shall be advised in writing of the actual amounts required to be made as Additional Rent pursuant to this Section and, if necessary, an adjustment shall be made between

the parties as to over-payment or under-payment of Additional Rent within thirty (30) days of the Tenant's receipt of the Landlord's statement in such regard which statement shall be consistent with the Strata Corporation's annual statement of Strata Fees for the SL 1 Property.

4.3 The Tenant shall also pay directly to the relevant taxing or governmental authority when they become due and payable, all rates, duties, assessments, and other charges that may be levied, rated, charged or assessed against or in respect of the improvements, equipment and facilities of the Tenant or in respect of the use or occupancy thereof by the Tenant and every tax and licence fee in respect of every business conducted on or from the Premises or in respect of the use or occupancy thereof by the Tenant, and not by any and every sub-tenant, concessionaire or licensee conducting business on or from the Premises. Upon request by the Landlord, the Tenant shall promptly deliver to the Landlord receipts for payment thereof.

4.4 The Tenant acknowledges that G.S.T. is payable on the Rent and on all Additional Rent.

4.5 If the Strata Fees payable by the Tenant referred to herein relate to any Lease Year which is not a full calendar year, the Tenant's Proportionate Share of Strata Fees shall be pro-rated on the basis of a 365 day calendar year.

5. INTEREST

5.1 If the Tenant fails to make any payments when due under the terms of this Lease after written notice in accordance with Section 15.1.1, the Tenant shall pay interest to the Landlord at Prime plus two per cent (2%) per annum on the unpaid amount from the date when payment is due and payable.

6. LANDLORD'S REAL PROPERTY TAXES OBLIGATIONS

6.1 It is agreed that the Landlord is responsible for payment of the Real Property Taxes after excluding from such obligation any amount required to be paid by the Tenant pursuant to Section 4.1.2 herein.

7. COVENANT TO PAY

7.1 The Tenant covenants to pay without deduction, set-off or abatement (unless specifically provided otherwise in this Lease) all Basic Rent and Additional Rent as provided in this Lease.

7.2 The Tenant will pay when due all charges for telephone and cable/internet directly charged by the utilities service providers to the Premises for such services.

7.3 With respect to electricity, gas and water, the Tenant agrees to pay the Tenant's Proportionate Share of the amount allocated to the SL 1 Property in accordance with the terms of the Hotel, Golf Course and Tennis Operations Agreement.

8. PERMITTED USE

8.1 The Tenant shall not use the Premises for any purpose other than the purpose of conducting the businesses (whether separately or together) of: operating a golf course and tennis operation

and any other amenities or facilities related to the Tenant's business plan from time to time including, but not limited to, pro-shop, member's lounge and locker/change room facilities in connection therewith as well as a real estate sales office and general office purposes (hereinafter collectively called the "**Permitted Use**") without the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed).

8.2 The Tenant shall have access to and use of the Premises 24 hours per day, 365 days per year unless restricted by local government by-laws, which use shall be for the all-inclusive cost of the Rent as herein defined and no more.

9. SIGNS

9.1 The Tenant may, but only with the consent of the Landlord, with such consent not to be unreasonably withheld, conditioned or delayed, and after receipt of all required governmental approvals, erect, paint, display, maintain or change or remove:

9.1.1 facia signs on the exterior of the Building;

9.1.2 intentionally deleted;

9.1.3 neon and other types of window displays, graphics and signs;

9.1.4 lighted or non-lighted awnings or canopies on the exterior of the Building; and

9.1.5 any other signage permitted by relevant authorities;

provided that the design, construction and erection of the aforesaid shall be at the sole expense of the Tenant and further provided that any such signs are, in the Tenant's reasonable opinion, required for identification of the Permitted Use.

The Landlord hereby acknowledges and agrees that, notwithstanding the foregoing, all of the Tenant's current signage (as in existence as at the Commencement Date) is hereby consented to and approved by the Landlord and may remain as is subject to the Tenant's right to alter, replace and/or remove such signage from time to time.

10. REPAIRS

10.1 The Tenant shall at the Tenant's cost, keep and maintain the leasehold improvements and trade fixtures. Notwithstanding anything in this Lease to the contrary, the Tenant shall not be required to perform and/or pay for the costs in respect of the maintenance, repair and/or replacement of any structural elements of the Building (including the Premises), including, but not limited to, repairs to the roof, foundations and bearing structure of the Building and repairs of damage to the Building caused by perils against which the Strata Corporation shall be obligated to insure, all of which shall be the sole responsibility and liability of the Landlord or Strata Corporation as provided in Section 10.4 below.

10.2 The Tenant shall permit the Landlord, upon 48 hours' written notice, to enter the Premises and view the state of repair of the Premises, and the Tenant shall repair the Premises pursuant to the obligations of the Tenant as set forth in this Lease, as requested by the Landlord in writing.

10.3 The Landlord covenants with the Tenant to repair, maintain and replace when necessary, or use its best efforts to cause the Strata Corporation to repair, maintain and replace (as applicable) when necessary all common areas of the Building including all heating, ventilating, air-conditioning, plumbing, sprinkler, diffusers, heat pumps, mechanical and electrical equipment and fixtures (including all the parts, wiring and pipes thereof) within or servicing the Building.

10.4 Pursuant to the *Strata Property Act* (British Columbia), the Strata Corporation shall be responsible for maintaining, repairing and, if required, replacing, the exterior of the Building and all structural elements of the Building (including the Premises), including, but not limited to, repairs to the roof, foundations and bearing structure of the Building and repairs of damage to the Building caused by perils against which the Strata Corporation shall be obligated to insure. Accordingly, the Landlord agrees, in its capacity as the owner of the Premises, to use its best efforts to cause the Strata Corporation to maintain and make such repairs to the Premises and the Building as required pursuant to the *Strata Property Act* (British Columbia).

10.5 The Landlord covenants and agrees that, in respect of any matters requiring a vote of the Strata Corporation which would or could adversely or materially affect or impact the ability of the Tenant to carry on its Permitted Use of the Premises and/or its use and enjoyment of the Premises or which would increase the Tenant's obligations (monetary or otherwise) under this Lease, the Landlord will provide the Tenant with proxies for 49 of the one quarter share strata titled real estate interests in the Building owned by the Landlord, in order to allow the Tenant to vote on any such matters.

11. FIXTURES

11.1 The Tenant may make, or cause to be made, any alterations, additions, or improvements, or erect, or cause to be erected, any partitions, or install, or cause to be installed, any fixtures, trade fixtures, exterior signs, floor coverings, interior or exterior lighting, plumbing fixtures, shades, awnings, exterior decorations; or otherwise deal with the Premises, provided that none of the aforesaid shall constitute a structural change to the Premises and further provided that the Tenant shall not make or cause to be made any structural changes to the Premises without first obtaining the Landlord's written approval such approval not to be unreasonably withheld, conditioned or delayed.

11.2 The Tenant may install in or for the Premises locks, safes or vaults provided that, upon the termination of this Lease, all keys or combinations are provided to the Landlord. The Tenant shall not install any apparatus for illuminating, air conditioning, cooling, heating, refrigerating or ventilating the Premises without first obtaining the Landlord's written approval, such approval not to be unreasonably withheld, conditioned or delayed.

11.3 As long as the Tenant is not in default under this Lease at the expiry of the Term, the Tenant shall, at the expiry of the Term, have the right (at the Tenant's option) to remove its trade fixtures, but the Tenant shall make good any damage caused to the SL 1 Property resulting from

the installation or removal of its trade fixtures. The term trade fixtures when used in this Lease shall include all normal trade fixtures.

11.4 If the Tenant fails to remove its trade fixtures within thirty (30) days after the expiry of the Term or any extension or renewal of the Term or overholding thereof, and receives written notice from the Landlord to do so, all such trade fixtures shall become the property of the Landlord.

11.5 Notwithstanding the provisions of Section 15 or anything to the contrary in this Lease, the Tenant may, during the Term, pledge, mortgage or otherwise encumber the Tenant's trade fixtures, leasehold improvements and the leasehold interest created by this Lease to an arm's length lender providing capital or operating financing to the Tenant, which encumbrance may be by the way of mortgage, general security agreement or otherwise.

12. INSURANCE

12.1 The Tenant shall, during the whole of the Term and during such other time as the Tenant occupies the Premises, and at the sole expense of the Tenant, take out and maintain insurance policies insuring against the risks and providing the coverage set out below:

12.1.1 primary public liability and property damage insurance, for the benefit of the Landlord and Tenant, in such amounts as may be required by the Landlord in respect of injury or death to one or more persons, or property damage occurring but in no event in an amount less than five million ($5,000,000.00) dollars;

12.1.2 insurance in respect of fire and such other perils as are, from time to time, defined in the usual standard coverage endorsement covering the Tenant's leasehold improvements, trade fixtures, furniture and equipment, and business interruption to their full insurable value; and

12.1.3 the Landlord shall be an additional insured under any and all policies of insurance hereinbefore required to be maintained by the Tenant.

12.2 All insurance shall be effected with insurers and brokers and upon terms and conditions satisfactory to the Landlord and certificates of such insurance shall be delivered to the Landlord upon request.

12.3 The Tenant agrees that if it does not provide or maintain in force such insurance, the Landlord may (but shall not be obligated to) take out the necessary insurance and pay the premium thereof for periods of one (1) year at a time, and the Tenant shall immediately upon request pay to the Landlord (as Additional Rent), the amount of such premium.

12.4 The Landlord covenants and agrees with the Tenant that, throughout the Term and any Renewal Term or other extension thereof, it shall carry or use its best efforts to cause the Strata Corporation to maintain insurance in respect of the Building (excluding Tenant's trade fixtures and personal property) and with respect to the operations of the Landlord in the Building as is normally insured against in the circumstances by prudent landlords of similar property.

12.5 All policies of insurance maintained by the Landlord and Tenant, respectively, shall contain a waiver of subrogation clause in favour of the other party and shall also contain a clause requiring the insurer not to cancel or change the insurance without first giving the other party thirty (30) days prior written notice thereof.

13. ASSIGNMENT AND SUB-LETTING

13.1 The Tenant shall not assign this Lease, in whole or in part, nor sublet, license, or otherwise part with possession or occupation of the SL 1 Property or any part thereof without first obtaining the written consent of the Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. If the Tenant is a corporation or partnership, any change in control of the Tenant shall be deemed to be an assignment under this Lease. The consent by the Landlord to any assignment, subletting or licensing shall not constitute a waiver of the requirement for the Landlord's consent for any subsequent assignment, subletting or licensing. Notwithstanding the foregoing or anything to the contrary herein, the Tenant may assign this Lease without the consent or approval of the Landlord in connection with the sale of the Tenant's interest in the Golf and Tennis Business (as such terms are defined in the Hotel, Golf Course and Tennis Operations Agreement).

13.2 Notwithstanding any assignment, subletting or licensing of this Lease, the Tenant shall remain fully liable to the Landlord for all the covenants, obligations and agreements of the Tenant under this Lease for the remainder of the then existing Term, and the Tenant shall not be released from performing any of its covenants, obligations and agreements in this Lease and shall continue to be liable as a party to this Lease for the duration of the then existing Term; provided, however, that the Tenant shall be fully released from all its covenants, obligations and agreements under this Lease for the remainder of the then existing Term and all extensions and renewals thereof in connection with sale of the Tenant's interest in the Golf and Tennis Business (as such terms are defined in the Hotel, Golf Course and Tennis Operations Agreement).

13.3 Notwithstanding the foregoing or anything to the contrary herein, the Tenant shall be permitted to engage a third party, qualified operator to manage and operate the Permitted Use of the Premises and carry out the Tenant's covenants, obligations and agreements under the terms of this Lease without the approval or consent of the Landlord at any time and the provisions of this Section 13 shall not apply in respect of any such situation.

14. COMPLIANCE WITH LAWS

14.1 Each of the Landlord and the Tenant will, at its sole cost and expense, comply with all applicable laws including, without limiting the generality of the foregoing, all requirements of all federal and provincial legislative enactments, by-laws and other governmental or municipal regulations now or hereafter in force which relate to making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the SL 1 Property subject to the provisions of this Lease relating to the respective responsibilities of the Landlord (and Strata Corporation) and the Tenant with respect to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the SL 1 Property. Each of the Landlord and the Tenant will comply with all police, fire, building, sanitary and other governmental regulations, orders, laws, by-laws or rules of any federal, provincial or municipal authority. Provided the parties shall each have the right to contest by proper legal proceedings

the validity of any such regulations, orders, laws, by-laws or rules and may postpone compliance therewith until the final determinations of any such proceedings provided that any such proceedings shall be prosecuted with due diligence and dispatch and provided further that any such postponement shall not subject the SL 1 Property or any part thereof to forfeiture or sale. Nothing under this Lease shall require the Landlord or the Tenant to do any act or omission which contravenes any such statute, by-law, law, rule or regulation.

15. DEFAULT, REMEDIES, TERMINATION

15.1 The following events shall be defaults under this Lease.

15.1.1 the Tenant fails to pay any amount owing under this Lease as Basic Rent or Additional Rent whether expressly reserved or deemed as such, or any part thereof, and the Tenant continues to fail to pay such amount for five (5) business days following written notice by the Landlord;

15.1.2 the Tenant abandons the Premises for a period in excess of fifteen (15) successive days;

15.1.3 the Tenant fails to observe, perform, and keep each and every covenant, agreement, obligations, condition, and other provision of this Lease, and persists in such failure for fifteen (15) days (or such longer period of time as may be reasonable under the circumstances) after notice has been given to the Tenant by the Landlord of the Tenant's failure and the Tenant fails to rectify or to commence rectification of any failure to perform or breach of any covenant, agreement, obligations, condition or other provision of this Lease;

15.1.7 if the Tenant makes any assignment for the benefit of creditors or becomes insolvent or commits an act of bankruptcy or becomes bankrupt or takes the benefit of any statute that may be in force for bankrupt or insolvent debtors; or

15.1.8 the Tenant becomes involved, voluntarily or involuntarily, in a dissolution, winding-up or liquidation proceeding other than through a reorganization, merger or amalgamation.

15.2 If any of the events of default outlined in Section 15.1 occurs, the Landlord may terminate this Lease and, if the Landlord terminates this Lease, the Term shall be immediately forfeited and void and the Landlord may re-enter the Premises, or any part thereof, and in the name of the whole repossess and enjoy the same as its former estate, subject to existing laws then in effect.

16. BANKRUPTCY

16.1 Without derogating from the provisions of Section 15.2, if the Tenant's leasehold interest under this Lease, or any of the goods, chattels, inventory, or equipment of the Tenant located on the Premises, shall be at any time taken or seized in execution or attachment proceedings by any creditor of the Tenant; or if a receiver or receiver manager is appointed for the business, property, affairs, or revenues of the Tenant; or if any writ of execution shall issue against the Tenant; or if the Tenant makes any assignment for the benefit of creditors or becomes insolvent or commits an act of bankruptcy or becomes bankrupt or takes the benefit of any statute that may be in force for bankrupt or insolvent debtors; or the Tenant becomes involved in a

voluntary or involuntary winding up, dissolution, or liquidation proceedings, then in any such case this Lease may, at the option of the Landlord, cease and be determined, and the Term shall immediately become forfeited and void. If the Landlord elects to terminate this Lease then the current month's Basic Rent and Additional Rent together with the Basic Rent and Additional Rent for the three (3) months next ensuing shall immediately become due and owing to the Landlord by the Tenant, and the Landlord may, through appropriate legal proceedings and in compliance with then existing laws, re-enter upon and retake possession of the Premises and become the owner of and remove the Tenant's effects therefrom, without prejudice to and under reserve of all other rights, remedies, and recourse of the Landlord.

17. LANDLORD MAY PERFORM

17.1 If the Tenant fails to observe, perform, or keep any of the covenants, agreements, obligations, or other provisions of this Lease after receiving thirty (30) days' written notice from the Landlord of a specific failure of the Tenant's obligations as set forth in this Lease or such longer period of notice as may be expressly provided under the specific terms of this Lease, and provided the Tenant has failed to make reasonable efforts to rectify said failure within such notice or cure period, the Landlord may, at its discretion and without prejudice to any other remedies the Landlord may have, rectify the default of the Tenant, whether or not performance by the Landlord on behalf of the Tenant is otherwise expressly referred to in this Lease. For the purpose of rectifying a default by the Tenant, the Landlord may make any payment or do or cause to be done such things as may be necessary, including, but without limiting the generality of the foregoing, effecting entry upon the Premises. Any such performance by or at the behest of the Landlord shall be at the expense of the Tenant and recoverable as Additional Rent, which the Tenant shall pay forthwith within thirty (30) days after demand by the Landlord.

18. TENANT MAY PERFORM

18.1 If the Landlord fails to observe, perform, or keep any of the covenants, agreements, obligations or other provisions of this Lease after receiving fifteen days' written notice from the Tenant of a specific failure and provided that the Landlord fails to make reasonable efforts to rectify such failure, the Tenant may, at its discretion and without prejudice to any other remedies the Tenant may have, rectify the default of the Landlord, whether or not performed by the Tenant on behalf of the Landlord is otherwise expressly referred to in this Lease. For the purpose of rectifying a default by the Landlord, the Tenant may make any payment or do or cause to be done such things as may be necessary. Any such performance by or at the behest of the Tenant shall be at the expense of the Landlord and recoverable forthwith upon demand by the Tenant.

18.2 Where any payments to be made or obligations to be performed by the Landlord under this Lease are in fact required to be made or performed by the Strata Corporation, the Landlord will use reasonable commercial efforts to cause the Strata Corporation to make such payments or perform such obligations and the Landlord will be deemed to have fulfilled its obligations hereunder upon performance of such obligations by the Strata Corporation and any corresponding payment or obligations of the Tenant may thereafter be made to or performed for the benefit of the Strata Corporation.

19. DISTRESS

19.1 *Intentionally deleted.*

20. COSTS AND INTEREST

20.1. All expenses, costs and expenditures including, but without limiting the generality of the foregoing, the Landlord's or Tenant's legal costs on a solicitor and client basis, cost to the Landlord for any agents and bailiffs, or other costs incurred by the Landlord or the Tenant as a result of any default by the other beyond any notice or cure periods under this Lease applicable thereto, are payable by the other forthwith upon receiving demand for payment. Interest at the rate of Prime plus two per cent (2%) per annum, calculated from the first date when any such expenses, costs and expenditures are incurred by the party entitled to do so and make demand, shall be charged on all amounts payable under this Section until the amount owing is paid in full.

21. VACATE UPON TERMINATION

21.1 Upon the termination of this Lease, whether by effluxion of time or otherwise, the Tenant shall vacate and deliver up possession of the Premises and shall leave the SL 1 Property in the same condition as the Premises were in at the time of delivery of possession of the Premises to the Tenant, subject to reasonable wear and tear and the exceptions arising from the Tenant's obligations to repair in accordance with the terms of this Lease, and also subject to the Tenant's rights and obligations in respect of removal of trade fixtures set out in this Lease. The Tenant shall surrender all keys for any locks in or on the Premises to the Landlord at the place designated for the payment of Basic Rent, and the Tenant shall also provide the Landlord with the combinations of any locks, safes, or vaults located on the Premises. Notwithstanding the foregoing, the Tenant may remove its trade fixtures, furniture, equipment and other stock-in-trade from the Premises at any time during the Term or any extension or renewal thereof.

22. EXHIBIT PROPERTY

22.1 During the six (6) months prior to the expiration of the Term, the Landlord may, upon 48 hours' notice, exhibit the Premises to prospective tenants during the usual business hours of the Tenant, and may place upon the SL 1 Property "For Rent" notices of a commercially acceptable standard, which notices the Tenant shall permit to remain without hindrance. The Landlord may, upon 48 hours' notice and during the Tenant's usual business hours, exhibit the SL 1 Property to prospective purchasers or mortgagees of the SL 1 Property.

23. ADDITIONAL RIGHTS OF THE LANDLORD ON RE-ENTRY

23.1 If the Landlord re-enters the Premises or this Lease is terminated other than due to the effluxion of time, then the Landlord may use such commercially reasonable means as it deems necessary for the purpose of gaining admittance to and retaking possession of the Premises, and the Tenant hereby releases the Landlord from all actions, proceedings, claims, and demands whatsoever for or in respect of any forcible entry or any loss or damage in connection therewith provided all such actions of the Landlord are carried out within then-existing laws.

24. NON-WAIVER

24.1 The Landlord shall not be deemed to have waived any term or provision of this Lease, unless the Landlord executes and delivers a written waiver to the Tenant and, without limiting the generality of the foregoing, any acceptance of Rent subsequent to any default, any condoning, excusing or overlooking by the Landlord on previous occasions of any default, or any earlier written waiver given by the Landlord shall not be taken to operate as a waiver by the Landlord and shall not in any way defeat or affect the rights and remedies of the Landlord.

25. REMEDIES CUMULATIVE

25.1 No reference to or exercise of any specific right or remedy by the Landlord shall prejudice or preclude the Landlord from any other remedy, whether allowed at law or in equity or expressly provided for herein. No such remedy shall be exclusive or dependent upon any other such remedy, but the Landlord may from time to time exercise any one or more of such remedies independently or in combination.

26. LANDLORD NOT LIABLE

26.1 Except for the wilful acts or omissions of the Landlord and except for the negligence of the Landlord and its officers, servants, employees, agents or contractors for which the Landlord shall remain liable and except to the extent otherwise provided for in this Lease, the Landlord shall not be liable or responsible in any way for any loss, damage or injury of any nature whatsoever to any person or property arising out of the Landlord's ownership of the SL 1 Property and the Tenant's use and occupation of the SL 1 Property.

27. TENANT TO SAVE LANDLORD HARMLESS

27.1 Unless caused by the negligence or wilful act or omission of the Landlord or any other person for whose negligence or acts the Landlord is responsible at law or unless caused by a breach by the Landlord of its obligations under this Lease, the Tenant shall indemnify and save the Landlord harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury, or damage to property arising from any occurrence at or on the Premises, or arising from the use or occupancy of the Premises by the Tenant.

28. LANDLORD TO SAVE TENANT HARMLESS

28.1 Unless caused by the negligence or wilful act or omission of the Tenant or unless caused by a breach by the Tenant of its obligations under this Lease, the Landlord shall indemnify and save the Tenant harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury or damage to property or other loss or damage suffered or incurred by the Tenant as a result of a breach by the Landlord of its obligations under this Lease or arising from an act or omission of the Landlord or from the negligence of the Landlord or any other person for whose negligence or acts the Landlord is responsible at law.

29. SUBSTANTIAL DAMAGE AND EXPROPRIATION; RENOVATION WORK

29.1 If, during the Term or any renewal thereof, all or any portion of the Building (whether or not the Premises are included in such portion) is damaged or destroyed such that the Premises is rendered wholly or partially unfit for occupancy by the Tenant or such that access to the Premises and/or the operation of the Tenant's business in the ordinary course is adversely impeded to an extent to which the Tenant, in its sole opinion, acting reasonably, cannot continue to carry on its business from the Premises in an economically viable manner, this Lease shall not be rescinded or terminated, but the Rents hereby reserved or a proportionate part thereof shall be abated until the Premises shall have been rebuilt or the Premises made fit for occupancy by the Tenant or until the Tenant is once again able to operate its business in the normal course from the Premises in an economically viable manner, whichever is earlier, and such abatement shall be an amount to be determined by the Landlord's architect having regard to the nature and extent of such damage or destruction and having regard to the extent to which the Tenant can continue to carry on its business from the Premises in an economically viable manner. The Landlord shall forthwith and in a timely manner repair or reconstruct the Building (including the Premises if affected) and all improvements situate thereon or forming part thereof to substantially the same condition as existed prior to such damage or destruction and pay all costs thereof. The Term of the Lease shall be extended for the time during such reconstruction by the Landlord that the Tenant is unable to operate its business from the Premises in an economically viable manner. In the event of any such damage or destruction to the Premises, the Tenant shall commence and complete the Tenant's Work as defined herein upon receiving advice from the Landlord that the Tenant may work unimpeded on the SL 1 Property. Notwithstanding the foregoing, if the damage or destruction is such that the Building or the Premises are not capable of repair or restoration within a period of ninety (90) days following the date of such damage or destruction, then the Tenant, at its election, may terminate this Lease upon giving written notice to the Landlord within thirty (30) days after the date of such damage and destruction.

29.2 If, during the Term or any renewal thereof, all or any portion of the Building is temporarily closed due to renovation or other work such that the Premises is rendered wholly or partially unfit for occupancy by the Tenant or such that access to the Premises and/or the operation of the Tenant's business in the ordinary course is adversely impeded to an extent to which the Tenant, in its sole opinion, acting reasonably, cannot continue to carry on its business from the Premises in an economically viable manner, then, in any such case, the Tenant, at its election, may terminate this Lease upon giving written notice to the Landlord within thirty (30) days after the start date of such closure.

30. EXCUSE FOR NON-PERFORMANCE BY THE LANDLORD

30.1 In the event that the Landlord is unable to fulfil, or is delayed or restricted in the fulfilment of any of its obligations under this Lease by reason of strike, lock-out, war or acts of military authority, rebellion or civil commotion, fire or explosion, flood, wind, water, earthquake, act of God, or other casualty; or by reason of being unable to obtain the materials, goods, equipment, services, utilities, or labour required to enable it to fulfil such obligation; or by reason of any statute, law, or order-in-council, or any regulation or order passed or made pursuant thereto; or by reason of the order or direction of any administrator, controller, or board, or any governmental department or officer or other authority; or by reason of not being able to obtain

any permission or authority required thereby; or by reason of any other cause beyond its control or not wholly or mainly within its control, whether of the foregoing character or not, and not caused by its default or its act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by it, the Landlord shall, so long as any such impediment exists, be relieved from the fulfilment of such obligations, and the Tenant shall not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned provided further that the Tenant shall be entitled to an abatement of Rent to the extent that the Tenant cannot operate its business in or from the Premises in a viably economic manner or during the time such impediment exits.

31. EXCUSE FOR NON-PERFORMANCE BY THE TENANT

31.1 In the event that the Tenant is unable to fulfil, or is delayed or restricted in the fulfillment of any of its obligations under this Lease, other than the payment of any money, by reason or strike, lock-out, war or acts of military authority, rebellion or civil commotion, fire or explosion, flood, wind, water, earthquake, act of God, or other casualty; or by reason of being unable to obtain the materials, goods, equipment, services, utilities, or labour required to enable it to fulfil such obligation; or by reason or any statute, law, or order-in-council, or any regulation or order passed or made pursuant thereto; or by reason of the order or direction of any administrator, controller, or board, or any governmental department or officer or other authority; or by reason of not being able to obtain any permission or authority required thereby; or by reason of any other cause beyond its control or not wholly or mainly within its control, whether of the foregoing character or not, and not caused by its default or its act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by it, the Tenant shall, so long as may such impediment exists, be relieved from the fulfilment of such obligations except for payment of Rent (unless such impediment is caused by an act or omission of the Landlord or those for whom the Landlord is responsible in the law, in which case the obligation to pay Rent shall abate) and, provided the Tenant is acting reasonably in its efforts to overcome such impediments and fulfil the obligations of the Tenant pursuant to the terms of the Lease, the Landlord shall not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned.

32. OBSTRUCTIONS

32.1 The Landlord shall not, at any time during the Term permit any constructions, alteration, signage, addition or change to the SL 1 Property which would:

32.1.1 interfere with the operation of the Tenant's business from the Premises; or

32.1.2 interfere with access to and from, or the use and enjoyment of, the Premises.

33. FORCE MAJEURE

33.1 Subject to Sections 30.1 and 31.1, no party hereto shall be held responsible or liable or deemed to be in default or in breach of this Lease for its delay, failure or inability to meet any of its obligations under this Lease (other than an obligation to pay money) caused by or arising from any event of force majeure which, for purposes of this Lease, shall mean any cause which is

unavoidable or beyond the reasonable control of such party (other than impecunious circumstances).

34. QUIET ENJOYMENT

34.1 The Landlord represents, warrants and covenants that it has full right and lawful authority to enter into this Lease for the Term and any renewal thereof and that the Tenant shall have quiet enjoyment of the Premises undisturbed and uninterfered with by the Landlord or by anyone claiming by, through or under the Landlord.

35. TRANSFER OF LANDLORD'S INTEREST

35.1 The Landlord may at any time, and from time to time, sell, transfer, lease, assign, or otherwise dispose of the whole or any part of its interest in the SL 1 Property; provided, however, that the party acquiring such interest shall have agreed in writing to assume and to perform each of the covenants, obligations and agreements of the Landlord under this Lease in the same manner and to the same extent as if originally named as Landlord in this Lease, and, in such case, the Landlord shall, to the extent of such assumption, be released from all its covenants, obligations and agreements under this Lease.

36. SUBORDINATION AND ATTORNMENT

36.1 This Lease and all the rights of the Tenant under this Lease are and shall be subject and subordinate to all Mortgages now or hereafter made by the Landlord if the holders thereof shall have entered into an agreement in writing with the Tenant (the "**Non-Disturbance Agreement**") in a form acceptable for registration in the appropriate Land Title Office and otherwise in a form and content satisfactory to the Tenant, acting reasonably, to modify said Lease or Mortgage, to permit the Tenant to remain in possession of the Premises in accordance with the terms of this Lease, so long as the Tenant is not in default under this Lease beyond any applicable notice or cure periods. The Tenant, if so requested and subject to being granted a Non-Disturbance Agreement, shall attorn to the Mortgagee upon the foreclosure of any such Mortgage and to the purchaser under a sale of the Premises pursuant to any such Mortgage or foreclosure and shall recognize such mortgagee or purchaser as the Landlord under this Lease provided said mortgagee or purchaser covenants and agrees with the Tenant to be bound by all obligations of the Landlord as set forth in this Lease.

36.2 The Tenant shall execute any form of priority or postponement agreement presented to the Tenant (in a form and content reasonable and satisfactory to the Tenant) by the Landlord or its solicitors, within seven (7) days of being presented with same provided the Tenant concurrently receives a Non-Disturbance Agreement (in a form acceptable for registration in the appropriate Land Title Office and otherwise in a form and content satisfactory to the Tenant, acting reasonably) from the party in whose favor the priority or postponement agreement is granted.

37. REGISTRATION

37.1 Upon the written request of the Tenant, the Landlord will execute and deliver to the Tenant a short form of lease for purposes of registration, provided that:

37.1.1 such short form of lease shall be subject to the provisions of Section 52.1.

37.1.2 the Tenant shall be responsible for the all the expenses for the delivery of the short form of lease.

37.2 Except as provided in Section 37.1 above, the Landlord shall not be obligated to execute and deliver this Lease in registrable form.

38. CERTIFICATE AS TO LEASE

38.1 The Landlord or the Tenant shall, from time to time and within ten (10) days of receiving a request from the other, execute and deliver a certificate acknowledging the following:

38.1.1 that the Tenant is in possession of the Premises as tenant under the terms of this Lease;

38.1.2 that the Landlord is the owner of the SL 1 Property as the Landlord under the terms of this Lease;

38.1.3 that this Lease is in full force and effect and unamended or, if the same has been amended, specifying such amendments;

38.1.4 that the Landlord or the Tenant, as the case may be, is not currently in default under any terms, conditions or covenants required to be performed by said party hereunder or, if there is a default, then specifying the nature of each such default.

38.1.5 the date to which the Rents have been paid;

38.1.6 the amount of any deposit paid and outstanding hereunder.

39. OVERHOLDING

39.1 If the Tenant remains in possession of the Premises after the end of the Term or any renewal or extension thereof, and without the execution and delivery of a new lease or a written renewal or extension of this Lease, there shall be no tacit or other renewal of this Lease, and the Tenant shall be considered to be occupying the Premises as a Tenant from month to month at a monthly rental payable in advance on the first day of each month equal to 120% of the monthly instalment of fixed Basic Rent payable for the last month of the Term, and otherwise upon the same terms and conditions, including Additional Rent, as set forth in this Lease, so far as the same are applicable.

40. ENTIRE AGREEMENT

40.1 The Tenant acknowledges that there are no covenants, representations, warranties, agreements or conditions, expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease of the Premises, save as expressly set out in this Lease, and this Lease including the Schedule attached hereto constitutes the entire agreement between the Landlord and the Tenant and may not be modified except as herein explicitly provided for or except by subsequent agreement in writing of equal formality hereto executed by the Landlord and the Tenant.

41. TIME

41.1 Time shall be of the essence in this Lease.

42. NO PARTNERSHIP

42.1 It is understood and agreed that nothing contained in this Lease nor any of the acts of the parties shall be deemed to create any relationship between the parties other than the relationship of Landlord and Tenant.

43. CONFIDENTIAL INFORMATION

43.1 The Landlord and the Tenant both covenant and agree that any and all information provided by one party to the other, either as required pursuant to the obligations of the parties under this Lease or as provided voluntarily, shall be kept confidential and shall not be disclosed by the receiving party (other than to its professional advisors or as required by law) and shall only be used for the purpose for which it is provided to the receiving party.

44. NOTICE

44.1 Any notice, demand, request, consent or objection (the "**Notices**") required or contemplated to be given or made by any of the provisions of this Lease shall be given or made in writing and either delivered personally or sent by registered mail, postage prepaid, to:

the Landlord at:

7th Floor – 1175 Douglas Street
Victoria, BC V8W 2E1
Attention: Raoul Malak

the Tenant at:

2050 Country Club Way
Victoria, BC V9B 6R3
Attention: Dan Matthews

or such other address in British Columbia as the Landlord or the Tenant may from time to time advise the other in writing and the Notices shall be deemed to be received, if delivered personally, upon delivery, and if mailed, on the third business day after the mailing in a post office in the Greater Victoria area of British Columbia; provided that if mailed and there is between the time of mailing and the actual receipt of the Notice a mail strike, slowdown or other labour dispute which might affect the delivery of the Notices, then, such Notices shall only be effective when actually delivered.

45. HEADINGS

45.1 The headings and captions appearing in this Lease are inserted for the convenience of the parties and shall not affect the interpretation of this Lease.

46. WARRANTIES AND REPRESENTATIONS

46.1 The Tenant hereby warrants and represents to the Landlord that it is a limited liability partnership duly formed under the laws of the Province of British Columbia and has full power and capacity to enter into this Lease and to carry on the business of the Permitted Use within and from the Premises.

46.2 The Beneficial Owner hereby warrants and represents to the Tenant that it is a corporation duly incorporated under the laws of the Province of British Columbia and has full power and capacity to enter into this Lease and to lease the Premises as herein set forth. The Registered Owner hereby warrants and represents to the Tenant that it is a corporation duly incorporated under the laws of the Province of British Columbia and has full power and capacity to enter into this Lease and to lease the Premises as herein set forth.

46.3 The Landlord warrants and represents to the Tenant that (as between the Landlord and the Tenant) the Tenant shall not, during the Term or any extension or renewal thereof, be prevented by the Landlord or anyone claiming by or through the Landlord including any other tenant of the Landlord, from carrying on the Permitted Use from the SL 1 Property twenty-four hours per day, during each day of the year and the Landlord herby agrees that the Tenant is relying upon this representation and warranty in executing this Lease and that the matters so warranted and represented are material and, if the warranties or representations of the Landlord herein contained should at any time during the Term or any renewal thereof be untrue or become untrue, the Tenant may, at its sole option, terminate this Lease without recourse from the Landlord.

46.4 The Landlord represents and warrants that:

46.4.1 it is the registered and beneficial owner of the SL 1 Property;

46.4.2 its title to the SL 1 Property is good and marketable title, free and clear from all liens, charges and encumbrances except those disclosed by registered title to the SL 1 Property and that all restrictive covenants registered against the SL 1 Property (if any) have been complied with;

46.4.3 it will not encumber the SL 1 Property so as to prevent the Premises from being operated in accordance with this Lease.

47. ARBITRATION

47.1 In the event of any bona fide dispute arising between the Tenant and the Landlord under this Lease, said dispute shall be referred to an arbitrator agreed upon by the Landlord and the Tenant or, failing such agreement within 30 days following receipt by the Landlord or the Tenant (as the case may be) of a notice of such dispute, by an arbitrator appointed pursuant to the

terms of the *Arbitration Act*, R.S.B.C. c. 55, as amended, whose decision shall be final and binding upon the Landlord and the Tenant and the cost of such arbitration shall be borne equally by the Landlord and the Tenant. The arbitrator shall have access to such records of the Landlord and the Tenant as may be reasonably necessary.

48. CONSENT

48.1 All consents or approvals requested or required to be given pursuant to the terms of this Lease by one party hereto to the other shall not be unreasonably withheld or delayed notwithstanding any other terms or conditions of this Lease.

49. LANDLORD'S WORK

49.1 The Landlord shall provide and the Tenant shall accept the Premises on an "as is, where is" basis.

50. TENANT'S WORK

50.1 At any time during the Term, the Tenant shall be permitted at its cost, to perform such work within the Premises as may be reasonably required for the Permitted Use (the "**Tenant's Work**"). The Tenant's Work shall fully comply with all the requirements of the appropriate civic authorities. All conditions imposed by the civic authorities shall be carried out by the Tenant at its expense. All Tenant's Work shall be done in a timely manner and in a good and workmanlike manner, it being understood and agreed by the parties that time shall be of the essence.

51. BUILDERS LIENS

51.1 The Tenant shall and does hereby agree to indemnify and save the Landlords harmless from and against all claims which may arise pursuant to the *Builders Lien Act*, R.S.B.C. c. 45 as it may from time to time be amended in respect of any materials or services supplied in respect of the Premises and the Tenant shall forthwith, upon receiving notice from the Landlord, remove any builders liens placed against the Premises and the Tenant shall allow the Landlord to post and to keep posted on the SL 1 Property any notice which the Landlord may wish to post under the provisions of the said *Builders Lien Act*. The Landlord shall permit the Tenant to use its name in any application before a court of competent jurisdiction to have any lien discharged from title to the SL 1 Property upon the Tenant posting necessary security and the Tenant shall indemnify and save harmless the Landlord from any and all costs arising from the use by the Tenant of the Landlord's name in such action.

52. SHORT FORM OF LEASE

52.1 The Landlord and the Tenant may agree to enter into and register against title to the SL 1 Property a short form of lease (prepared and registered at the sole cost of the Tenant in accordance with Section 37) containing a brief summary of the terms and conditions contained herein. The Landlord and the Tenant acknowledge and agree that any inconsistency between the terms of the said short form of lease and this Lease shall be determined through an interpretation of this Lease, which document shall be paramount.

53. ENVIRONMENTAL MATTERS

53.1 For the purposes of this Section:

(a) **"Contaminants"** means any pollutants contaminants, deleterious substances, underground or above-ground tanks, asbestos materials, hazardous, corrosive, or toxic substances, special waste of any kind, or any other substance which is now or hereafter prohibited, controlled or regulated under Environmental Laws; and

(b) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any governmental authority having jurisdiction over the Premises now or hereafter in force relating in any way to the environment, health, occupational health and safety, or transportation of dangerous goods, including the principles of common law and equity;

and the Tenant covenants and agrees as follows:

53.1.1 not to use or permit to be used all or any part of the Premises for the sale, storage, manufacturer, disposal, use, or any other dealing with any Contaminants, without the prior written consent of the Landlord, which may be unreasonably withheld, except for Contaminants in reasonable quantities used by the Tenant in the ordinary course of its business;

53.1.2 to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the premises;

53.1.3 to promptly notify the Landlord in writing of any release of a Contaminant or any other occurrence or condition at the Premises or on any adjacent property which comes to the attention of the Tenant which could contaminate the Premises or subject the Landlord or the Tenant to any fines, penalties, orders, investigations, or proceedings under Environmental Laws;

53.1.4 on the expiry or earlier termination of this Lease, or any Renewal term or at any time if requested by the Landlord or required by any governmental authority under Environmental Laws to remove from the Premises all Contaminants, and to remediate any contamination of the premises or any adjacent property resulting from Contaminants, in either case brought onto, used at, or released from the Premises by the Tenant or any person for whom it is in law responsible. The Tenant shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants shall remain the property of the Tenant, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding the degree of their affixation to the Premises; and

53.1.5 to indemnify the Landlord and its directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, fines, penalties, and expenses whatsoever (including all legal and consultants' fees and expenses and the cost of remediation of the Premises and any adjacent property) arising from or in connection with:

(a) any breach of or non-compliance with the provisions of this Section by the Tenant; or

(b) any release of any Contaminants at or from the Premises related to or as a result of the use and occupation of the Premises or any act or omission of the Tenant or any person for whom it is in law responsible,

save and except to the extent caused by or attributable to the wilful acts or omissions of the Landlord and/or the negligence of the Landlord and/or its officers, servants, employees, agents or contractors for which the Landlord shall remain liable.

The obligations of the Tenant under this Section will survive the expiry or earlier termination of this Lease.

54. RENEWAL OPTIONS

54.1 Subject to the provisions set forth below, the Tenant shall have the following renewal rights:

54.1.1 If the Tenant is not then in default under the terms of this Lease beyond any applicable notice or cure periods, and at least six months prior to expiry of any Term gives notice of intention to renew the Lease, the Landlord shall grant to the Tenant a renewal of this Lease of the Leased Premises for five further terms, each of five (5) years duration (the "**Renewal Terms**" and each a "**Renewal Term**") upon such terms and conditions as are set out in this Lease save as to Basic Rent which shall be replaced by the Basic Rent agreed to between the Landlord and the Tenant or, failing agreement no later than 30 days prior to the commencement of the relevant Renewal term, then such Basic Rent shall be determined by a single arbitrator as provided in Section 47 herein. Such arbitration shall be governed by the provisions of the immediately following Section 54.1.2.

54.1.2 Basic Rent for each Renewal Term shall be based on the following factors:

(a) Subject to subparagraphs (b) and (c) below, the Basic Rent shall be equivalent to the prevailing annual basic rate paid by tenants (as at the relevant renewal date but subject to annual increases) for comparable premises in the proximate area;

(b) In no event shall the annual Basic Rent for a Renewal Term be less than the Basic Rent payable for the last year of the initial Term or immediately preceding Renewal Term, as the case may be; and

(c) In no event shall the annual Basic Rent for a Renewal Term exceed the Basic Rent payable for the last year of the initial Term or immediately preceding Renewal Term, as the case may be, by more than the increase in the Consumer Price Index (Canada – All Items) over the five (5) year Term, or Renewal Term of the Lease, as published by Statistics Canada from time to time.

55. EARLY TERMINATION

55.1 The Tenant may, on not less than three month's written notice to the Landlord, terminate this Lease as to that part of the Premises identified on Schedule B – Main Floor as "1220 ft^2", and upon the expiry of such notice period, the Tenant shall be released from all of its obligations under this Lease in respect of such portion of the Premises.

56. GOVERNING LAW

56.1 The Lease shall be construed and governed by the laws of the Province of British Columbia.

57. ENUREMENT

57.1 This Lease shall enure to the benefit of and be binding upon the Landlord and the Tenant and their respective heirs, executors, administrators, successors and permitted assigns.

IN WITNESS WHEREOF the Landlord and the Tenant have duly executed this Lease as of the year and date first above written.

BM RESORT ASSETS LTD.
by its authorized signatory:

Raoul Malak
I have authority to bind the Landlord

2600 VIKING WAY LIMITED
by its authorized signatory:

Name:
I have authority to bind the Landlord

ECOASIS DEVELOPMENTS LLP
by its authorized signatory:

(signature)

DAN MATTHEWS

(print name)
I have the authority to bind the Tenant

SCHEDULE A

BASIC RENT

The Tenant shall pay to the Landlord or, if applicable, its successors and assigns, at such place in Canada as the Landlord may designate in writing, in lawful money of Canada, a basic rent ("**Basic Rent**") over the first Term of this Lease in the amount of $232,950.00 per annum, payable in equal consecutive monthly instalments of $19,413.00.

The first monthly instalment of Basic Rent shall be paid on the Commencement Date and all monthly installments thereafter shall be paid on the first day of each month for the remainder of the Term.

For clarity it is provided that the Basic Rent is calculated as follows:

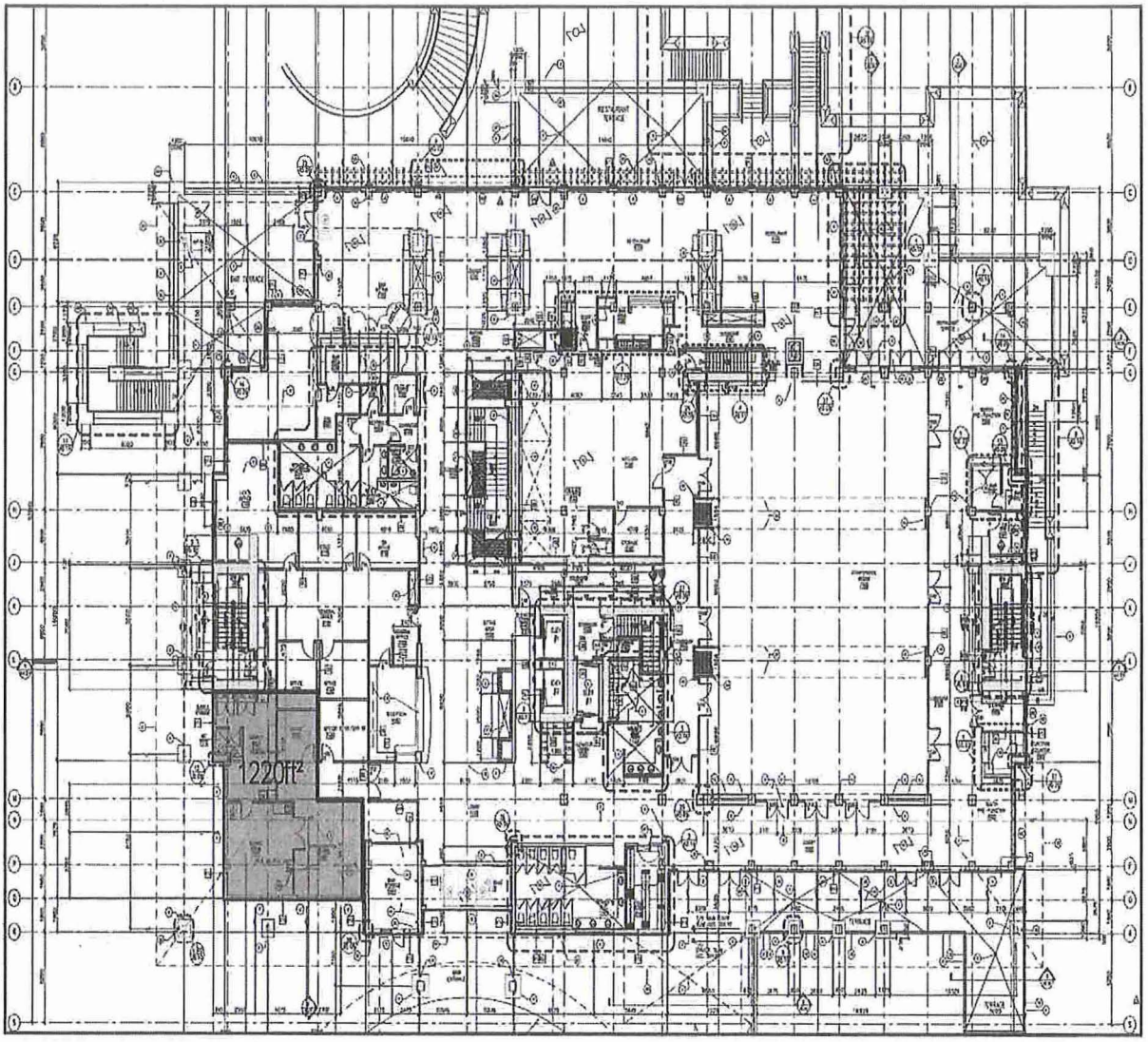
Clubhouse Main Level - Real Estate Center	1,220 Square Feet	$17.50 psf	$21,350.00
Clubhouse Sub Level 1 - Pro Shop, Offices	2,670 Square Feet	$17.50 psf	$46,725.00
Clubhouse Sub Level 1 - Member Lounge, Locker Room	4,960 Square Feet	$17.50 psf	$86,800.00
Clubhouse Sub Level 1 - Locker Room	330 Square Feet	$17.50 psf	$5,775.00
Clubhouse Sub Level 2 - Storage, Bags, Carts	7,230 Square Feet	$10.00 psf	$72,300.00

ALL RENT OBLIGATIONS ARE SUBJECT TO APPLICABLE TAXES, INCLUDING G.S.T.

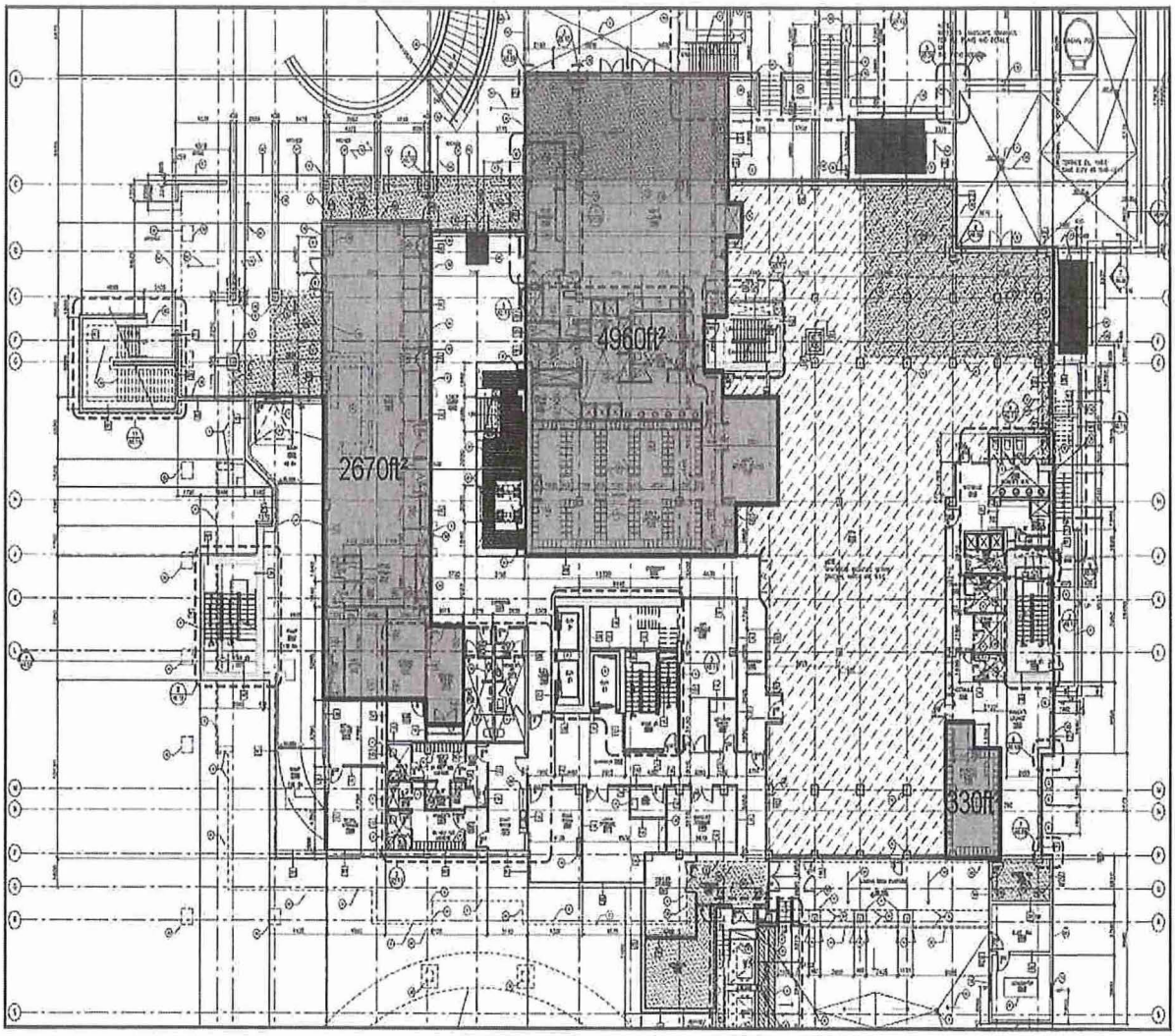
SCHEDULE B

FLOOR PLANS OF PREMISES

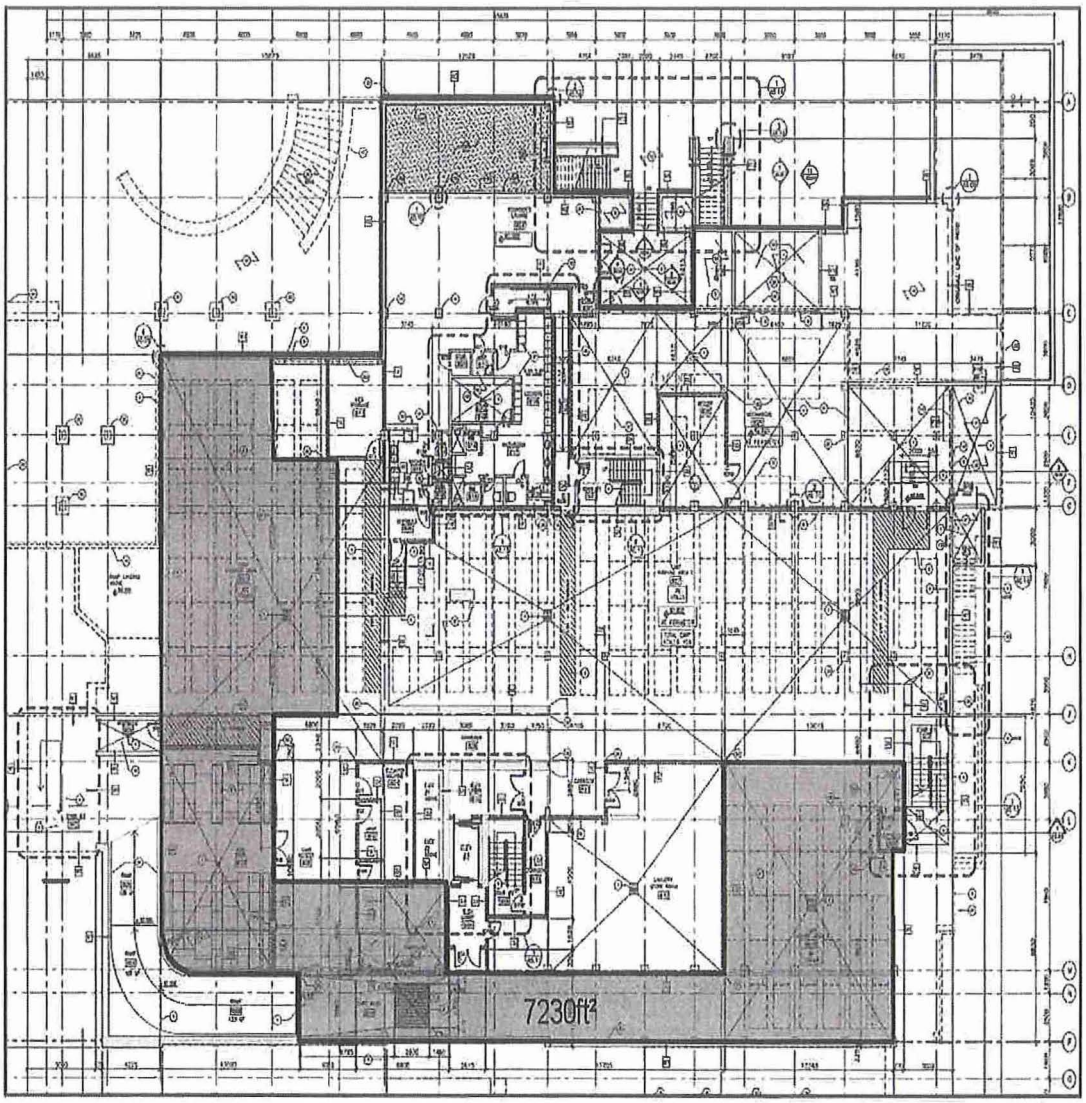
Club House - Main Level



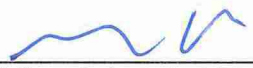
Club House - Sublevel 1



Club House – Sublevel 2



This is Exhibit "G" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.



A Commissioner for taking Affidavits within British Columbia.

Execution Version

HOTEL, GOLF COURSE AND TENNIS OPERATIONS AGREEMENT

THIS AGREEMENT made the 11th day of July, 2019,

BETWEEN:

ECOASIS RESORT AND GOLF LLP, a limited partnership duly constituted under the laws of the Province of British Columbia, having an office at 2050 Country Club Way, Victoria, BC V9B 6R3

(herein called "**GT Operator**")

AND:

1210110 B.C. LTD., a company duly incorporated under the laws of the Province of British Columbia and having an office at 7th Floor – 1175 Douglas Street, Victoria, BC V8W 2E1

(herein called "**Hotel Operator**")

AND:

2600 VIKING WAY LIMITED, a company duly incorporated under the laws of the Province of British Columbia and having an office at 7th Floor – 1175 Douglas Street, Victoria, BC V8W 2E1

(herein called "**Hotel Owner**")

WHEREAS:

A. The Hotel Owner is the owner of the Hotel Property (as hereinafter defined) within the destination resort strata hotel known as "*The Westin Bear Mountain Golf Resort and Spa*" located at 1999 Country Club Way, Langford, BC (the "**Hotel**"), from which the Hotel Operator carries on, or causes to be carried on, the Hotel Business (as hereinafter defined);

B. GT Operator leases certain premises located within the Hotel from the Hotel Owner used in connection with the Golf and Tennis Business (as hereinafter defined), including a retail store, pro shop, members' lounge, locker/change room facilities, and a real estate office (located in the hotel lobby), pursuant to a commercial lease dated for reference July 11, 2019 (the "**Lease**"); and

C. The Hotel Owner, the Hotel Operator and the GT Operator wish to enter into this Agreement to govern their respective rights and obligations to and with each other with respect to the standard of operation of the Hotel Operations and the Golf and Tennis Operations and the provision of certain services that will be shared by, or obtained for the mutual benefit of, the GT Operator and the Hotel Operator.

NOW THEREFORE, pursuant to the premises and in consideration of the sum of One Dollar ($1.00) now paid by each of the Parties to the other and of the mutual covenants and agreements hereinafter set forth (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the Parties covenant and agree as follows:

SECTION 1 – DEFINED TERMS

1.1 For the purposes of this Agreement, the following terms shall have the meanings respectively ascribed to them:

(a) "**Affiliate**" has the meaning ascribed to such term in the Business Corporations Act (British Columbia);

(b) "**Applicable Laws**" means:

(i) all statutes, laws, common law, rules, regulations, ordinances, codes or other legal requirements of any Governmental Authority, stock exchange, board of fire underwriters and similar quasi-governmental authority; and

(ii) any judgment, injunction, order or other similar requirement of any court or other adjudicatory authority, in effect at the time in question and in each case to the extent the person or property in question is subject to the same;

(c) "**Bear Mountain**" means the resort community known as "Bear Mountain" of which the Hotel, Hotel Property and the Golf and Tennis Operations form a part;

(d) "**Building**" means the building located at 1999 Country Club Way, Victoria BC, of which the Hotel Business and the Leased Premises form a part;

(e) "**Business Day**" means a day that is not a Saturday, a Sunday or a statutory holiday in British Columbia;

(f) "**Golf and Tennis Business**" means: (i) the combined private membership and public play golf course business conducted from and in respect of the two (2) golf courses at Bear Mountain, being the eighteen (18) hole golf course known as the "Mountain Course" and the eighteen (18) hole golf course known as the "Valley Course, together with the driving range and practice facility associated therewith and the business conducted by the GT Operator from the Leased Premises, and (ii) the indoor/outdoor tennis centre and facilities, tennis academy and other tennis related operations carried on by the GT Operator at Bear Mountain;

(g) "**Golf and Tennis Members**" means private members of the Golf and Tennis Business, including social members of the Golf and Tennis Business;

(h) "**Governmental Authority**" means any federal, provincial, regional, municipal or local government, governmental authority, office or official having jurisdiction, or other political subdivision of any of them, or any authority, agency or court or person exercising executive, legislative, judicial, regulatory or administrative functions on behalf of such government, governmental authority, office or official or other political subdivision thereof;

(i) "**GST**" means goods and services tax payable pursuant to the *Excise Tax Act* (Canada), as amended and in effect from time to time;

(j) "**Hotel Business**" means hotel, restaurant and bar, event space rental and catering operations, meeting facilities and other related facilities carried on by the Hotel Operator at the Hotel;

(k) "**Hotel Management and Licensing Agreements**" means:

(i) the Association Management Agreement dated December 15, 2004 between The Fairways at Bear Mountain Owners' Association, Bear Mountain Resort Management Corp. and The Owners Strata Plan VIS5687;

(ii) the Association Management Agreement dated June 19, 2006 between The Clubhouse at Bear Mountain Owners' Association, Bear Mountain Resort Management Corp. and The Owners Strata Plan VIS6037; and

(iii) the licence agreement dated October 8, 2013 made between the Vendor and Westin Hotel Management L.P. and any amendments thereto;

(l) "**Hotel Property**" means: (i) the 49 ¼ share strata titled real estate interests in the guest rooms at the Hotel operated by the Hotel Operator under the "Westin Hotels & Resorts" flag, and (ii) the strata lots legally described in Schedule "D" attached hereto, which comprise the operational areas of the Hotel including the front desk, reception and common areas, restaurant and lounge, meeting rooms, bathroom, golf pro shop and spa area;

(m) "**Lease**" has the meaning ascribed to such term in the preamble;

(n) "**Leased Premises**" means the premises located within the Hotel leased by the Hotel Owner to the GT Operator pursuant to the Lease;

(o) "**National Sports Agreements**" means the agreements listed in Schedule "B" hereto;

(p) "**person**" means an individual, corporation, body corporate, partnership, joint venture association, society or unincorporated organization, or any trustee, executor, administrator or other legal representative;

(q) "**Party**" means the GT Operator and its successors and permitted assigns or both the Hotel Owner and the Hotel Operator and their respective successors and permitted assigns, and "**Parties**" means the GT Operator, on the one hand, and both of the Hotel Operator and the Hotel Owner, on the other, and each of their respective successors and permitted assigns;

(r) "**Standards**" means: (A) with respect to the Golf and Tennis Business, the standard of operation of the Golf and Tennis Business existing as of the date hereof; and (B) with respect to the Hotel Business, the standard of operation existing as of the date hereof;

(s) "**Strata Corporation**" means The Owners, Strata Plan VIS6037;

(t) "**Term**" has the meaning assigned in Section 2.1.

1.2 The Schedules referred to herein and attached hereto shall form part of this Agreement and are as follows:

Schedule A – Shared Services Rates

Schedule B – List of National Sports Agreements

Schedule C – Hotel Room Rates

Schedule D – Hotel Property

Schedule E – Utilities Allocation

SECTION 2 - TERM

2.1 The term (the "**Term**") of this Agreement will commence on the date this Agreement is executed and delivered by each of the Parties and shall terminate on the date the Lease expires or terminates.

2.2 This Agreement shall apply to and govern the relationship of the Parties only with respect to the Golf and Tennis Operations and the Hotel Operations and shall have no application to any other business or projects undertaken by either Party separately or with third parties. Except as otherwise specifically provided in this Agreement, nothing herein shall be deemed to restrict in any way the freedom of either Party to conduct any business or activity whatsoever.

2.3 The Parties hereby disclaim any intention to create a partnership or to constitute either of them the agent of the other except as expressly set out herein. Nothing in this Agreement shall constitute the Parties or either of them partners of each other or constitute either of them the agent of the other Party.

SECTION 3 - STANDARD OF OPERATIONS

3.1 Standard of Golf and Tennis Operations. Throughout the Term, the GT Operator agrees to manage, maintain and operate the Golf and Tennis Business in a commercially reasonable manner consistent with the Standards as would a prudent owner of a reasonably similar golf and tennis operation. The Hotel Owner and the Hotel Operator acknowledge that the GT Operator may elect, at its sole discretion and at any time, to modify or alter the layout of the current 36 hole golf facility, which modifications or alterations may include, but are not limited to, a reduction of the number of golf holes to less than the current 36 hole facility. The GT Operator acknowledges that the ongoing operation of the Golf and Tennis Business is an essential element to the Hotel Business and that any interruption in the operation of the Golf and Tennis Business will be a detriment to the Hotel Owner and the Hotel Operator.

3.2 Standard of Hotel Operations. Throughout the Term, the Hotel Operator and the Hotel Owner agree to manage, maintain and operate the Hotel Business in a commercially reasonable manner consistent with the Standards as would a prudent owner of a reasonably similar Hotel Business, and in accordance with the terms and conditions of the Hotel Management and Licensing Agreements. The Hotel Operator will maintain the Westin/Marriott brand or a brand of an equivalent internationally recognized standard throughout the Term. The Hotel Owner and the Hotel Operator acknowledge that the ongoing operation of the Hotel Business is an essential element to the Golf and Tennis Business and that any interruption in the operation of the Hotel Business will be a detriment to the GT Operator.

3.3 Discretion. Each Party recognizes that the standard of operation and service are described in general terms and each Party is authorized to exercise reasonable discretion in modifying such services and privileges, or implementing operation rules and policies based on operational experience, if in the reasonable opinion of the applicable Party, the same will ensure the delivery and availability thereof in a manner consistent with the Standards and will not result in any material loss of services, privileges or rights to the other Party.

SECTION 4 – SHARED SERVICES

4.1 Shared Services Provided by Hotel Operator

(a) The Hotel Operator agrees to provide the following services to the GT Operator:

(i) accounting services for the Golf and Tennis Business, including processing of daily revenue, bi-weekly payroll, accounts payable and event billing;

(ii) on-call repairs and maintenance services for the Leased Premises;

(iii) on-call IT support for systems, workstations and point-of-sale terminals;

(collectively, the "**Shared Services**")

(b) The Shared Services may be provided by the Hotel Operator's own employees or by third party contractors retained by the Hotel Operator to provide such services. In either case, the Hotel Operator agrees to use commercially reasonable efforts to ensure that the Shared Services are provided at all times to the GT Operator, without interruption, and that an equal service level with respect to the Shared Services is provided to the GT Operator as is provided to the Hotel Operator.

(c) The Hotel Operator shall be responsible for all costs relating to any employees providing the Shared Services, including salaries, benefits, employee remittances, termination costs and the like.

(d) The GT Operator shall pay a flat rate (or fixed hourly rate) for the Shared Services as set forth in Schedule "A". The rate payable in respect of such Shared Services shall be subject to review and approval of the Parties at a meeting to be held in accordance with Section 6 ninety (90) days after the date of this Agreement and on an annual basis thereafter.

(e) The GT Operator may discontinue the flat-rate portion of the Shared Services at any time upon delivery of thirty (40) days' prior written notice to the Hotel Operator. The GT Operator will be under no obligation to exclusively use the Hotel Operator for any Shared Services at any time.

(f) The Hotel Operator shall provide a reasonably detailed invoice of the Shared Services within five (5) days of the end of each month and the GT Operator shall pay such monthly invoice within ten (10) business days. Upon the GT Operator's request, the Hotel Operator shall make available to the GT Operator any supporting materials and calculations used to create the invoice.

4.2 Food and Beverage.

(a) The Hotel Operator agrees to provide food and beverage services to the GT Operator for use in the course of the Golf Course Business, including, but not limited to sales to golf course and tennis members and guests at the takeout window, members lounge and comfort station. The GT Operator shall pay the Hotel Operator's cost as set out on the Hotel Operator's financial statements for the preceding month for food cost, non-alcoholic beverage cost and liquor costs plus twenty percent (20%). The GT Operator may charge any price for such food and beverages, provided that same shall not be lower than those established by the Hotel Operator and charged to hotel guests and members of the general public. The GT Operator shall be entitled to all revenue it receives in its food and beverage sales.

(b) The Hotel Operator agrees to make all food and beverages prepared or provided on the Hotel available to Golf and Tennis Members at a twenty percent (20%) discount from the prices made available to its hotel guests and the general public.

(c) The Hotel Operator shall continue to offer executive members of the GT Operator and all employees and staff of Ecoasis Developments LLP a staff discount of 20% on all food and beverages.

4.3 Horticulture Services. The GT Operator agrees to use commercially reasonable efforts to maintain, or cause to be maintained by way of entering into a service agreement with a third party provider, the landscaping located on areas not maintained by the Strata Corporation (the "**Horticulture Services**"). The GT Operator will provide an estimate for such services from time to time, which estimate may vary depending on the requirements of the Hotel Operator. On reasonable notice, the Hotel Operator may elect to carry out the Horticulture Services. If the Hotel Operator elects to carry out the Horticulture Services, the Hotel Operator agrees to use commercially reasonable efforts to provide the Horticulture Services in accordance with the Standards.

4.4 Shared Utilities. Certain utilities serving the Building, including gas, hydro and water (the "**Building Utilities**") are not separately metered. The Parties agree that the costs of the Building Utilities shall be allocated among the Hotel Operator, The Clubhouse at Bear Mountain Owners' Association, the Strata Corporation and the GT Operator. The costs of the Building Utilities allocated to the GT Operator is set out in Schedule "E". In respect of the 2019 calendar year, the GT Operator shall pay a flat rate for the Building Utilities of $1,850 per month (as calculated in Schedule "E"). Within fifteen (15) days of receipt of all utility invoices relating to the Building Utilities for a particular calendar year, either the GT Operator, in the case of underpayment, or the Hotel Operator, in the case of overpayment, shall pay to the other the difference between the actual cost of the Building Utilities and the amount paid by the GT Operator during the applicable calendar year. In each subsequent calendar year, the GT Operator shall pay a flat monthly rate calculated based on the actual costs of the Building Utilities in the preceding year. Upon the GT Operator's request, the Hotel Operator shall deliver copies of any invoices and receipts relating to the Building Utilities.

4.5 Website. During the term of this Agreement, the GT Operator shall use commercially reasonable efforts to maintain the website "https://bearmountain.ca/resort/westin/" in accordance with the Standards and to cooperate with the Hotel Operator to grant reasonable use of and access to such website.

SECTION 5- PRICING AND JOINT PROMOTIONS

5.1 Golf and Tennis Rates. The Hotel Operator and the GT Operator shall use commercially reasonable efforts to establish, from time to time, various promotions involving discounted rates for combined hotel and golf/tennis packages. The registered hotel guests of the Hotel shall be entitled to pay the current "guest of member rates" for rounds of golf that are included in stay and play packages and a 15% discount to the daily drop-in rate for use of the tennis courts. All promotions and discounted rates shall be reviewed by the Parties at a meeting to be held in accordance with Section 6 on an annual basis and subject to annual approval by each of the parties.

5.2 Hotel Rates. Employees of the GT Operator and Ecoasis Developments LLP shall be entitled to the current corporate hotel room rates set out in Schedule "C" (which rates are inclusive of the resort fee); the rates provided on Schedule "C" are subject to annual review.

5.3 National Sports Agreements. The Hotel Operator agrees to make hotel rooms available at the times and at the rates as set out in the National Sports Agreements, subject to availability within the hotel.

5.4 Event Pricing. The Parties agree to act reasonably and in good faith to negotiate, on an event by event basis, terms whereby the Hotel Operator will grant the GT Operator a licence to use one or more event spaces in the Hotel Property at a discounted rate subject to availability and a discounted hotel rate will be offered by the Hotel Operator to event participants, provided that a minimum number of hotel rooms are booked by event participants subject to availability.

5.5 Reciprocal Employee Benefits. The Parties agree that all employees of the Hotel Operator shall be entitled to staff discounts on retail products in the GT Operator's Pro Shop and tennis/golf privileges on the "Mountain Course" or the "Valley Course" that the GT Operator offers to its own staff (which, among other things, is subject to availability, frequency of play restrictions and the GT Operator's code of conduct) as per the Employee Handbook provided by the Vendor (Ecoasis Resort and Golf LLP). The Parties further agree that all employees of the GT Operator shall be entitled to current staff food and beverage discounts and to maintain privileges through the hotel franchise agreement with Marriott to book hotel rooms at discounted rates through the Marriott Website, subject to availability and subject to the current terms and conditions of this employee benefit.

5.6 Marketing. The Hotel Operator and the GT Operator agree to act reasonably and in good faith to cooperatively market the hotel, food and beverage, tennis, golf and other resort amenities or initiatives. The Hotel Operator and the GT Operator will work together to coordinate in house and external marketing, social media, and other forms of promotion to ensure consistent branding, messaging and quality of offerings.

SECTION 6 – MEETINGS, DECISION MAKING AND STRATA MATTERS

6.1 The Parties shall meet at a mutually agreeable time in each calendar month at the Hotel, or such other location approved by the Parties.

6.2 Either the GT Operator or the Hotel Operator may convene a meeting by giving not less than seven (7) days' notice to the other and such notice shall set out in reasonable detail the business to be considered at such meeting.

6.3 At any meeting of the GT Operator and the Hotel Operator, a quorum shall consist of two (2) or more persons present in person, one or more representing each of them. Any advisor of the GT Operator or the Hotel Operator may attend any meeting.

6.4 Minutes of all resolutions and proceedings at every meeting shall be maintained by the Hotel Operator and the GT Operator.

6.5 The Hotel Owner covenants and agrees that, in respect of any matters requiring a vote of the Strata Corporation which would or could adversely or materially affect or impact the ability of the GT Operator to carry on the Golf and Tennis Business or which would increase the GT Operator's obligations (monetary or otherwise) under this Agreement, the Hotel Owner will provide the GT Operator with proxies for 49 of the one quarter share strata titled real estate interests in the guest rooms at the Hotel owned by the Hotel Owner, in order to allow the GT Operator to vote on any such matters.

SECTION 7 - ASSIGNMENT

7.1 The GT Operator shall not be entitled to assign this Agreement or its rights hereunder to any other party without the prior written consent of the Hotel Owner and the Hotel Operator, which consent shall not be unreasonably withheld, conditioned or delayed. If the Hotel Owner or the Hotel Operator does not respond to a request for consent to an assignment within five (5) days of a request for consent from the GT Operator, such consent shall be deemed to have been given. In connection with any permitted assignment of this Agreement by the GT Operator, the assignee shall be required to enter into an agreement with the Hotel Owner and Hotel Operator to assume the obligations of the GT Operator under this Agreement.

7.2 Neither the Hotel Owner nor the Hotel Operator shall be entitled to assign this Agreement or its rights hereunder to any other party without the prior written consent of the GT Operator, which consent shall not be unreasonably withheld, conditioned or delayed. If the GT Operator does not respond to a request for consent to an assignment within five (5) days of a request for consent from the Hotel Owner or the Hotel Operator, such consent shall be deemed to have been given. In connection with any permitted assignment of this Agreement by the Hotel Owner or the Hotel Operator, the assignee shall be required to enter into an agreement with the GT Operator to assume the obligations of the Hotel Owner or the Hotel Operator, as the case may be, under this Agreement.

SECTION 8 – IMPOSSIBILITY OF PERFORMANCE

8.1 Whenever either Party is unable to fulfill any obligation hereunder in respect of the provision of any service, utility, work or repair by reason of being unable to obtain the materials, goods, equipment, service, utility or labour required to enable it to fulfill such obligation or by reason of any law or regulation or by reason of any other cause beyond its reasonable control or event of force majeure, but excluding the availability of funds, such party shall be entitled to extend the time or fulfillment of such obligation by a time equal to the duration of the delay or restriction. The other Party shall not be entitled to any compensation for any inconvenience, nuisance or discomfort thereby occasioned or to cancel this Agreement. The Party who is prevented from performing, in event of such interruption, shall proceed to overcome same with all reasonable diligence.

SECTION 9 - EVENT OF DEFAULT

9.1 Each of the following circumstances shall be considered a separate default under this Agreement (hereinafter called an "**Event of Default**") with respect to a Party:

(a) if it shall be in default in the payment of any amount required to be paid by it hereunder and such default shall continue for a period of five (5) days after written notice thereof has been given by the other Party; or

(b) if it shall be in default under any of the provisions of this Agreement, other than provisions requiring payment of monies, and such default shall continue for a period of fourteen (14) days after written notice thereof has been given by the other Party (or, if the relevant default reasonably requires more than fourteen (14) days to cure, if the defaulting Party has not commenced to cure such default as soon as is reasonably possible within such fourteen (14) day period or thereafter ceases to actively and diligently proceed to cure such default); or

(c) in the case of the Hotel Operator, the Hotel Operator is in default under any provision of the Hotel Management and Licensing Agreements beyond any applicable cure period; or

(d) if it shall become insolvent or bankrupt or subject to the provisions of the *Winding-up and Restructuring Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), or the *Companies' Creditors Arrangement Act* (Canada), or any successor legislation to any of the foregoing, or shall go into liquidation, either voluntarily or under an order of a court of competent jurisdiction, or make a general assignment for the benefit of its creditors, or otherwise acknowledge its insolvency or accept the appointment of a receiver of all or substantially all of its assets.

In this Agreement, the Party in respect of whom an Event of Default has occurred is called the "**Defaulting Party**" and the other Party is called the "**Non-Defaulting Party**".

9.2 If an Event of Default by a Defaulting Party shall have occurred, the Non-Defaulting Party shall, so long as such Event of Default continues, have the right to do any or all of the following:

(a) bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by the Parties that damages at law may be an inadequate remedy for a default or breach of this Agreement; and/or

(b) bring any action at law as may be necessary or advisable in order to recover damages.

SECTION 10- INDEMNITY

10.1 The Hotel Operator and the Hotel Owner shall, jointly and severally, indemnify and hold harmless the GT Operator in respect of any demand, claim, loss, cost or damage whatsoever arising out of any breach of any representation, warranty, covenant or agreement of either or both of the Hotel Owner and the Hotel Operator contained in this Agreement.

10.2 The GT Operator shall indemnify and hold harmless the Hotel Operator in respect of any demand, claim, loss, cost or damage whatsoever arising out of any breach of any representation, warranty, covenant or agreement of the GT Operator contained in this Agreement.

SECTION 11- DISPUTE RESOLUTION

11.1 Primary Dispute Resolution Procedure. If a dispute arises between the Parties hereto in connection with this Agreement, the Parties agree to use the following procedure as a condition precedent to any party pursuing other available remedies:

(a) either Party may notify the other by written notice ("**Notice of Dispute**") of the existence of a dispute and a desire to resolve the dispute by mediation;

(b) a meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute;

(c) if, within forty eight (48) hours after such meeting or such further period as is agreeable to the Parties (the "**Negotiation Period**"), the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation;

(d) the Parties shall jointly appoint a mutually acceptable mediator (who must be an expert in the subject matter of the dispute), within forty eight (48) hours of the conclusion of the Negotiation Period;

(e) the Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days following appointment of the mediator or for such longer period as the Parties may agree.

11.2 Arbitration. If the Parties are not successful in resolving the dispute through mediation or if mediation has not commenced within fourteen (14) days following the appointment of the mediator or if the Parties cannot agree upon the mediator appointment with the time referred to in Section 11(b) above, then each party to the arbitration shall nominate one arbitrator and the nominated arbitrators shall elect an additional arbitrator to determine the matter at issue. The determination of the arbitrators shall be final and binding upon the Parties and there will be no appeal of any such determination on any grounds, and it may be entered in any court having jurisdiction thereof

11.3 Costs. All fees and expenses of the arbitrators and all other expenses of the arbitration, except for solicitors' fees, shall be shared equally by the Parties. Each Party shall bear its own solicitors' fees.

SECTION 12 - NOTICES

12.1 All notices, requests, demands or other communications herein shall be deemed to have been well and sufficiently given and received when the same shall be reduced to writing and signed and the writing securely placed in an envelope duly sealed, with postage prepaid for registered or certified mail, deposited in the Canadian mail addressed to the Parties as follows:

(a) to the GT Operator at:

2050 Country Club Way
Victoria, BC V9B 6R3
Attention: Dan Matthews

(b) to the Hotel Owner / Hotel Operator at:

7th Floor – 1175 Douglas Street
Victoria, BC V8W 2E1
Attention: Raoul Malak

Any such notice shall be deemed to have been given if delivered, when delivered, and if mailed, on the expiration of five (5) days after the postmarking of such notice by any government post office in Canada, provided that should the postal service be disrupted by labour disputes at the time of mailing, including strikes or lock-outs, such notice shall be deemed to have been given, if mailed, on the fifth (5^{th}) business day following the resumption of the postal service.

SECTION 13 - MISCELLANEOUS

13.1 If the date for the performance of any act or thing falls on a day which is not a Business Day, then the date for the performance of such act or thing will be extended to the next Business Day.

13.2 All references to dollar values in this Agreement shall be interpreted as references to Canadian dollars.

13.3 This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by a further agreement in writing signed by each of the Parties hereto.

13.4 The captions of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provisions hereof.

13.5 This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective heirs, trustees, successors and permitted assigns, and shall be governed by and construed in accordance with the laws in force from time to time in the Province of British Columbia.

13.6 This Agreement constitutes the entire agreement of the Parties and the same may not be amended or modified orally. All understandings and agreements heretofore made between the Parties are merged in this Agreement, which alone fully and completely expresses their understandings.

13.7 Wherever the singular or masculine is used in this Agreement, the same shall be deemed to include the plural or feminine or body politic or corporate, also the respective heirs, executors, administrators, successors and assigns of the Parties hereto and each of them where the context or the Parties so require.

13.8 The invalidity of any particular portion or section of this Agreement shall not affect any other provisions herein, and in such event, this Agreement shall be construed as if such invalid provision was omitted.

13.9 Time shall be of the essence of this Agreement.

13.10 This Agreement may be signed in counterpart and delivered by facsimile, portable document format or other electronic means.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed under seal as of the day and year first above written.

1210110 B.C. LTD.

Per: _____
Authorized Signatory

2600 VIKING WAY LIMITED

Per: _____
Authorized Signatory

ECOASIS RESORT AND GOLF LLP, by its Managing Partner, **ECOASIS BEAR MOUNTAIN DEVELOPMENTS LTD.**

Per: _____
Authorized Signatory

Schedule "A"

Rates:

- Accounting Services $8,000 per month
- IT Services $90 per hour
- Building Maintenance Services $100 per hour

These rates are subject to review after one year.

Schedule "B"
National Sports Agreements

All rates and obligations provided are subject to room availability

Rugby Canada Agreement Rates – Through to May 31/2020

Discounted corporate room rates, includes resort fee (plus applicable tax). Note that a 5% increase will be applied in year (2) and three (3) of the Term respectively:

Year 1 (2017-2018)

- January 1 – April 30: $110
- May 1 – June 30: $131
- July 1 – September 30: $147
- October 1 – December 31: $110

Discounted meeting space, subject to availability during Rights Holders' events taking place at the Sponsor's resort.

Twelve and one half (12.5) complimentary room nights to be used throughout the Term of this agreement.

Golf Canada – Through to June 30/2023

- 5 complimentary room nights per year to be used by GOLF CANADA coaches or officials.
- 20% off the lowest available hotel rate for additional room nights.
- Complimentary shuttle service to and from airport for arrivals and departures.
- Complimentary gym membership for training for all GOLF CANADA team players and coaches.

Cycling Canada – Through to December 31, 2020

- Free access to the North Langford Rec Centre for training by staff and cyclists while onsite
- 5.5 complimentary rooms for 14 nights for the annual training camp (Jan-Mar each year)
- 10% discount on food and beverage for all athletes and coaches
- Preferred room rates
  - Jan-March Traditional $105-Suite $155
  - Apr-Sept Traditional $130-Suite $180
  - Oct-Dec Traditional $105 – Suite $155

Schedule "C"
Hotel Rates

October 1 – May 31
$125.00 per night traditional
$150.00 per night suite
Above rate includes resort fee – excludes taxes

June 1 – September 30
$150.00 per night traditional
$175.00 per night suite
Above rate includes resort fee – excludes taxes

Schedule "D"
Hotel Property

Description	Asset	Company Name	PID	Tax Folio	2019 Property Tax
RESORT COMMERCIAL STRATA LOTS	St 1 Strata Plan VIS5687 (Fairways - Parking)	BM Resort Assets Ltd.	026-140-446 Strata Lot 1, Strata Plan VIS5687 (Fairways Parking Level)	327-85687.010	499.90
RESORT COMMERCIAL STRATA LOTS	St 2 Strata Plan VIS5687 (Fairways - Office)	BM Resort Assets Ltd.	026-140-454 Strata Lot 2, Strata Plan VIS5687 (Fairways Office)	327-85687.020	15.03
RESORT COMMERCIAL STRATA LOTS	St 1 Strata Plan VIS6037 (Hotel & Golf Ops)	BM Resort Assets Ltd.	026-706-202 Strata Lot 1, Strata Plan VIS6037 (Front Desk, Offices, Pro Shop, Members Areas)	327-86037.010	1,880.70
RESORT COMMERCIAL STRATA LOTS	St 2 Strata Plan VIS6037 (Founders Lounge)	BM Resort Assets Ltd.	026-706-211 Strata Lot 2, Strata Plan VIS6037 (Founders Lounge)	327-86037.020	445.25
RESORT COMMERCIAL STRATA LOTS	St 3 Strata Plan VIS6037 (Wine Cellar)	BM Resort Assets Ltd.	026-706-229 Strata Lot 3, Strata Plan VIS6037 (Wine Cellar)	327-86037.030	165.26
RESORT COMMERCIAL STRATA LOTS	St 4 Strata Plan VIS6037 (Sante Spa)	BM Resort Assets Ltd.	026-706-237 Strata Lot 4, Strata Plan VIS6037 (Spa)	327-86037.040	1,234.68
RESORT COMMERCIAL STRATA LOTS	St 5 Strata Plan VIS6037 (F & B)	BM Resort Assets Ltd.	026-706-245 Strata Lot 5, Strata Plan VIS6037 (Food and Beverage)	327-86037.050	2,338.24
RESORT-HOTEL QUARTERS	Hotel Quarter 1	BM Clubhouse 40 Ltd.	026-706-261 Strata Lot 7, Strata Plan VIS6037 (Rotations B, C, D)	327-86037.070	1,148.64
RESORT-HOTEL QUARTERS	Hotel Quarter 2	BM Clubhouse 40 Ltd.	026-706-318 Strata Lot 12, Strata Plan VIS6037 (Rotation C)	327-86037.120	367.47
RESORT-HOTEL QUARTERS	Hotel Quarter 3	BM Clubhouse 40 Ltd.	026-706-326 Strata Lot 13, Strata Plan VIS6037 (Rotations A, C, D)	327-86037.130	1057.71
RESORT-HOTEL QUARTERS	Hotel Quarter 4	BM Clubhouse 40 Ltd.	026-706-342 Strata Lot 15, Strata Plan VIS6037 (Rotation D)	327-86037.150	320.43
RESORT-HOTEL QUARTERS	Hotel Quarter 5	BM Clubhouse 40 Ltd.	026-706-351 Strata Lot 16, Strata Plan VIS6037 (Rotation B)	327-86037.160	324.68
RESORT-HOTEL QUARTERS	Hotel Quarter 6	BM Clubhouse 40 Ltd.	026-706-369 Strata Lot 17, Strata Plan VIS6037 (Rotation D)	327-86037.170	128.07
RESORT-HOTEL QUARTERS	Hotel Quarter 7	BM Clubhouse 40 Ltd.	026-706-385 Strata Lot 19, Strata Plan VIS6037 (Rotation B)	327-86037.190	425.25
RESORT-HOTEL QUARTERS	Hotel Quarter 8	BM Clubhouse 40 Ltd.	026-706-474 Strata Lot 28, Strata Plan VIS6037 (Rotations A, B, C, D)	327-86037.280	1,432.75
RESORT-HOTEL QUARTERS	Hotel Quarter 9	BM Clubhouse 40 Ltd.	026-706-482 Strata Lot 29, Strata Plan VIS6037 (Rotation C)	327-86037.290	363.58
RESORT-HOTEL QUARTERS	Hotel Quarter 10	BM Clubhouse 40 Ltd.	026-706-504 Strata Lot 31, Strata Plan VIS6037 (Rotations A, B, C)	327-86037.310	1,144.05
RESORT-HOTEL QUARTERS	Hotel Quarter 11	BM Clubhouse 40 Ltd.	026-706-512 Strata Lot 32, Strata Plan VIS6037 (Rotations A, B, C, D)	327-86037.320	1,838.19
RESORT-HOTEL QUARTERS	Hotel Quarter 12	BM Clubhouse 40 Ltd.	026-706-521 Strata Lot 33, Strata Plan VIS6037 (Rotations A, C, D)	327-86037.330	1,278.90
RESORT-HOTEL QUARTERS	Hotel Quarter 13	BM Clubhouse 40 Ltd.	026-706-563 Strata Lot 37, Strata Plan VIS6037 (Rotation A)	327-86037.370	169.93
RESORT-HOTEL QUARTERS	Hotel Quarter 14	BM Clubhouse 40 Ltd.	026-706-601 Strata Lot 41, Strata Plan VIS6037 (Rotation A)	327-86037.410	356.97
RESORT-HOTEL QUARTERS	Hotel Quarter 15	BM Clubhouse 40 Ltd.	026-706-644 Strata Lot 45, Strata Plan VIS6037 (Rotations A, B, C, D)	327-86037.450	1,888.26
RESORT-HOTEL QUARTERS	Hotel Quarter 16	BM Clubhouse 40 Ltd.	026-706-652 Strata Lot 46, Strata Plan VIS6037 (Rotation B)	327-86037.460	453.20
RESORT-HOTEL QUARTERS	Hotel Quarter 17	BM Clubhouse 40 Ltd.	026-706-679 Strata Lot 48, Strata Plan VIS6037 (Rotations C, D)	327-86037.480	1,131.45
RESORT-HOTEL QUARTERS	Hotel Quarter 18	BM Clubhouse 40 Ltd.	026-706-687 Strata Lot 49, Strata Plan VIS6037 (Rotations C, D)	327-86037.490	313.44
RESORT-HOTEL QUARTERS	Hotel Quarter 19	BM Clubhouse 40 Ltd.	026-706-695 Strata Lot 50, Strata Plan VIS6037 (Rotations A, D)	327-86037.500	344.94
RESORT-HOTEL QUARTERS	Hotel Quarter 20	BM Clubhouse 40 Ltd.	026-706-709 Strata Lot 51, Strata Plan VIS6037 (Rotation D)	327-86037.510	455.28
RESORT-HOTEL QUARTERS	Hotel Quarter 21	BM Clubhouse 40 Ltd.	026-706-717 Strata Lot 52, Strata Plan VIS6037 (Rotations C, D)	327-86037.520	871.92
RESORT-HOTEL QUARTERS	Hotel Quarter 22	BM Clubhouse 40 Ltd.	026-706-750 Strata Lot 56, Strata Plan VIS6037 (Rotations B, C, D)	327-86037.560	432.18
RESORT-HOTEL QUARTERS	Hotel Quarter 23	BM Clubhouse 40 Ltd.	026-706-768 Strata Lot 57, Strata Plan VIS6037 (Rotations A, B, C, D)	327-86037.570	1,591.21
Finlayson Reach	Tennis/Squash	BM Clubhouse 40 Ltd.	Lot 1 Plan VIS6701	327-15250.640	4,935.71
Finlayson Reach	Guest Suite	BM Clubhouse 40 Ltd.	Lot 2 Plan VIS6701	327-15250.641	0.95

Schedule "E"
Building Utilities

Allocation to GT Operator

Building sq/ft	78,602
Leased Premises sq/ft	16,410
Leased Premises as percentage of Building	21%

	Per Sq Foot	Adjustment	Total	
Gas	21%	-17%	4%	$ 1,480.47
Water	21%	-8%	13%	$ 2,724.65
Hydro	21%	0%	21%	$17,994.85
				$22,199.98
			per month	$1,850.00

This is Exhibit "H" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

No. S213239
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BEAR MOUNTAIN RESORT & SPA LTD., BM MANAGEMENT HOLDINGS LTD. and BM RESORT ASSETS LTD.

PETITIONERS

AND:

ECOASIS RESORT AND GOLF LLP

RESPONDENT

NOTICE OF DISCONTINUANCE

Filed by: the Petitioners, Bear Mountain Resort & Spa Ltd., BM Management Holdings Ltd. and BM Resort Assets Ltd.

TAKE NOTICE that the Petitioners

x discontinue this proceeding against the Respondent, Ecoasis Resort and Golf LLP

x Notice of Hearing has been filed and this discontinuance is:

x with the consent of all parties of record

☐ by leave of the court

Dated: January 18, 2022

Martin Sennott
Signature of Lawyer for Filing Party

Martin C. Sennott

This NOTICE OF DISCONTINUANCE is filed by Martin C. Sennott of Martin C. Sennott Law Corporation on behalf of Boughton Law Corporation, whose place of business and address for delivery is PO Box 49290, 700 - 595 Burrard Street, Vancouver, BC V7X 1S8, 604-687-6789. (File No. 92809.4)

#10

IN THE MATTER OF AN ARBITRATION PURSUANT TO:

Asset Purchase Agreement, Commercial Lease, Hotel, Golf Course and Tennis Operations Agreement and Non-Competition and Non-Solicitation Agreement dated July 11, 2019, between Ecoasis Resort and Golf LLP, 1210110 B.C. Ltd, BM Resort Assets Ltd. and 2600 Viking Way Limited,

BETWEEN:

ECOASIS RESORT AND GOLF LLP

AND:

BEAR MOUNTAIN RESORT & SPA LTD., BM MANAGEMENT HOLDINGS LTD. AND BM RESORT ASSETS LTD.

This is Exhibit "I" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

PARTIAL FINAL AWARD
February 26, 2021

ARBITRATOR:
Murray L. Smith, Q.C.

Table of Contents

Partial Final Award

Introduction

1. Prior to July 11, 2019, Ecoasis Resort and Golf LLP ("Ecoasis") owned The Westin Bear Mountain Golf Resort & Spa near Victoria, British Columbia – consisting largely of a hotel and two 18-hole Jack Nicklaus-designed golf courses. By a purchase agreement effective July 11, 2019, 1210110 B.C. Ltd. and 2600 Viking Way Limited purchased the hotel from Ecoasis and entered into an Operations Agreement and Commercial Lease for the integrated operation of the hotel and golf businesses. The purchasers changed names such that they are now known as Bear Mountain Resort & Spa Ltd, BM Management Holdings Ltd. and BM Resort Assets Ltd. (collectively "Hotel").

2. Hotel purchased the Westin Hotel referred to by the parties as the Clubhouse Building. The Clubhouse Building included a number of residential and commercial strata lots. Hotel also purchased two commercial strata lots in a building known as the Fairways Building as well as two strata lots in the Finlayson Building. Hotel also purchased the Ecoasis interest in a lease with the City of Langford for a recreational facility that included a gym and a pool.

3. The remaining Ecoasis assets included the Mountain Golf Course, Valley Golf Course and a practice facility and driving range. Ecoasis leased back space in the hotel for the operation of the Pro Shop, a members lounge and a real estate sales office.

4. The parties entered into an Operations Agreement for the cooperative management of the hotel and golf businesses. Under that Agreement, Hotel was to provide, *inter alia*, food and beverage service and accounting services for Ecoasis.

5. Issues arose between the parties regarding requirements to be included in the accounting services and the cost of the food and beverage service. The relationship between the parties deteriorated to the point where 15 separate heads of disagreement arose with respect to obligations owed under the Operations Agreement, the Commercial Lease and a Non-Competition and Non-Solicitation Agreement.

6. The parties ultimately agreed to seek third-party binding resolution through arbitration.

Submission to Arbitration / Applicable Law / Appointment of Arbitrator

7. Ecoasis was represented by Roger Lee and Struan Robertson of DLA Piper (Canada) LLP in Vancouver, British Columbia. Hotel was represented by Martin Sennott and Susan Do of Boughton Law Corporation in Vancouver, British Columbia.

8. By email dated June 8, 2020, counsel for Hotel advised Murray Smith that various matters were in dispute and that both sides had agreed to his selection as sole arbitrator. By return email, the appointment was accepted.

9. Various exchanges between the parties and the arbitrator took place over the Summer of 2020 regarding the organization of the proceedings. Neither party wished to be identified as Claimant or Respondent because each were raising certain of the issues. While the various contracts that were signed included dispute resolution provisions, the arbitration proceeding that was established was pursuant to a Submission Agreement rather than a triggering of an arbitration clause in one of the agreements.

10. There was no Notice of Arbitration filed by either party. The parties agreed to a list of 15 issues on September 14, 2020. On September 16, 2020, the parties agreed formal Terms of Reference that attached as Schedule "A" the 15 issues and questions that would establish the scope of authority of the arbitrator on the reference. Listed below are the issues:

    -Equipment Lease Payments
    -Food and Beverage
    -Liquor Licence
    -December 2019 Meeting
    -Hotel Rates and Discounts
    -Driving Range Access
    -Limited Common Property and Additional Areas of Use
    -Access to the North Langford Recreation Centre
    -Additional Outstanding Invoices and Issues Related to Invoices Generally
    -Accounting Services
    -Termination of the NLRC Lease
    -Disruption of Ecoasis Business Operations
    -Termination of the Commercial Lease
    -Termination of the Operations Agreement
    -Breach of the Non-Solicitation Agreement

11. The parties agreed that substantive matters in issue would be governed by the laws of British Columbia. The parties also agreed that the applicable procedural law would be the *Arbitration Act*, S.B.C. 2020, c. 2 and that the rules of procedure of the Vancouver International Arbitration Centre would be generally followed. These latter agreements were confirmed on the first day of evidentiary hearings on January 5, 2021.

12. Counsel agreed to timelines for steps in the proceedings. These timelines were confirmed at a procedural meeting convened on November 13, 2020. Procedural Order #1 was issued to set dates for requests for documents, delivery of expert reports, witness statements and written briefs in advance of evidentiary hearings scheduled for two weeks commencing January 5, 2021.

13. Following the delivery of Redfern Schedules setting out requests for production of documents, Procedural Order #2 was issued on December 2, 2020. Hotel was required to produce certain categories of documents under that Order.

14. Evidentiary hearings were held between January 5 and January 13, 2021 on the Zoom platform, administered by Charest Legal Solutions Inc. Written arguments were delivered on December 31, 2020 and updated on January 21, 2021. Oral arguments were made on January 22, 2021. Evidentiary proceedings and oral arguments were recorded, and transcripts were provided by Charest.

15. At the outset of the evidentiary hearings, certain issues were raised regarding the admissibility of portions of witness statements and expert reports. Violations of the parol evidence rule were argued in respect of witness statements and expert reports were challenged for bias and violation of the rule against experts interpreting contractual documents. The portions of witness statements and expert reports that were objected to were not struck out but were left to be considered in the final award on the basis of rules of law relating to construction of contracts and expert evidence.

16. Challenges to expert reports based on bias and a lack of independence arising out of the fact that certain experts were retained as advocates for the parties in other proceedings were taken into consideration and were dealt with as a matter going to the weight of the evidence.

17. Requests for production of experts' files relating to the matters in issue were allowed and those files were produced in due course to the satisfaction of counsel.

Factual Background

18. Under the Commercial Lease, Ecoasis leased back areas in the hotel for the Pro Shop, the members lounge and a real estate sales office. Under the Operations Agreement each party agreed to provide benefits and services related to the ongoing hotel and golf operations. In addition, the parties entered into a Non-Competition and Non-Solicitation Agreement, the relevant part of which prohibited the solicitation of employees of the other party.

19. The parties acknowledged in the Operations Agreement that the ongoing operation of the business of one was an essential element of the business of the other, and that any interruption in the operation of their respective businesses would be a detriment to the other.

20. Section 3.3 of the Operations Agreement provided that:

> Each Party recognizes that the standard of operation and service are described in general terms and each Party is authorized to exercise reasonable discretion in modifying such services and privileges, or implementing operation rules and policies based on operational experience, if in the reasonable opinion of the applicable Party the same will ensure the delivery and availability thereof in a manner consistent with the Standards and will not result in any material loss of services, privileges, or rights to the other Party.

21. The term Standards was defined to mean:

> (A) With respect to the Golf and Tennis Business, the standard of operation of the Golf and Tennis Business existing as of the date hereof; and
> (B) With respect to the Hotel Business, the standard of operation existing as of the date hereof.

22. Under Section 4 of the Operations Agreement, it was agreed that Hotel would provide food and beverage service and accounting services to Ecoasis.

<u>Accounting Services</u>

23. Section 4.1 of the Operations Agreement established that Hotel would provide "accounting services for the Golf and Tennis Business, including processing of daily revenue, bi-weekly payroll, accounts payable and event billing."

24. Section 4.1(b) provided that Hotel would use commercially reasonable efforts to provide Shared Services including the accounting services "without interruption, and that an equal service level with respect to the Shared Services is provided to the GT Operator [Ecoasis] as is provided to the Hotel Operator."

25. Section 4.1(f) of the Operations Agreement provided:

> The Hotel Operator shall provide a reasonably detailed invoice of the Shared Services within five (5) days of the end of each month and the GT Operator shall pay such monthly invoice within ten (10) business days. Upon the Gt Operator's request, the Hotel Operator shall make available to the GT Operator any supporting materials and calculations used to create the invoice.

Food and Beverage Services

26. Section 4.2 of the Operations Agreement provided:

(a) The Hotel Operator agrees to provide food and beverage services to the GT Operator for use in the course of the Golf Course Business, including, but not limited to sales to golf course and tennis members and guests at the takeout window, members lounge and comfort station. The GT Operator shall pay the Hotel Operator's cost as set out on the Hotel Operator's financial statements for the preceding month for food cost, non-alcoholic beverage cost and liquor costs plus twenty percent (20%). The GT Operator may charge any price for such food and beverages, provided that same shall not be lower than those established by the Hotel Operator and charged to hotel guests and members of the general public. The GT Operator shall be entitled to all revenue it receives in its food and beverage sales.

(b) The Hotel Operator agrees to make all food and beverage prepared or provided on the Hotel available to Golf and Tennis Members at a twenty percent (20%) discount from the prices made available to its hotel guests and the general public.

(c) The Hotel Operator shall continue to offer executive members of the GT Operator and all employees and staff of Ecoasis Developments LLP a staff discount of 20% on all food and beverages.

27. Under Section 5 of the Operations Agreement, registered hotel guests were entitled to pay "guest of member rates" for rounds of golf included in stay-and-play packages, employees of Ecoasis were entitled to current corporate hotel room rates and employees of Hotel were entitled to staff discounts in the Pro Shop and golf privileges on the Valley and Mountain courses. In addition, employees of Ecoasis were entitled to "maintain privileges through the hotel franchise agreement with Marriott to book hotel rooms at discounted rates through the Marriott Website."

Breakdown in Relationship

28. The CFO for Ecoasis was David Clarke. He was involved in finding a purchaser for the hotel and in negotiating the details of the purchase agreement, operations agreement and lease-back agreement. Mr. Clarke entered into personal negotiations with the principal of the purchaser, Raoul Malak, as early as May of 2019. In those negotiations it was agreed that Mr. Clarke would ultimately be employed by Hotel, potentially as CEO. No disclosure was made to Ecoasis of this arrangement, nor of the fact that after the sale Mr. Malak retained the services of Mr. Clarke's wife in purchasing strata units. Over the next year, Mr. Clarke's wife was paid approximately $27,000.

29. In October 2019, Hotel sent an email to David Clarke with invoices for a very large amount owing from Ecoasis to Hotel for the reconciliation of cash and deposits relating to the July sale. The amount owing was $1,447,508.90. These invoices were not brought to the attention of Ecoasis until December 3, 2019. Mr. Clarke left for a one-month honeymoon overseas in early November 2019.

30. On December 3, 2019, Mr. Clarke brought the Reconciliation issue to the attention of Dan Matthews, the principal of Ecoasis. On that same day, Hotel invoiced Ecoasis for July 2019 food and beverage charges. Mr. Matthews was concerned that there was no back-up for the Reconciliation or for the invoice for food charges.

31. On December 18, 2019, Ecoasis requested back-up for the food invoices to which Mr. Malak replied that back-up would be provided in February 2020. Mr. Malak further advised that Hotel would be cutting off food service to Ecoasis the following day. Mr. Matthews sought a meeting to discuss matters including the Reconciliation, to which Mr. Malak responded that the amount of the Reconciliation must be paid immediately. On December 20, 2019, Hotel discontinued Marriott privileges to Ecoasis staff. On December 23, 2019, Mr. Matthews repeated his request for a meeting and advised that Ecoasis was providing a cheque that day for the full amount of the Reconciliation.

32. On December 30, 2019, Mr. Malak on behalf of Hotel, and Mr. Matthews and Tom Kusumoto on behalf of Ecoasis, met to discuss matters. Amongst other things, it was agreed in that meeting that Ecoasis would get out of the food and beverage business. It had already been agreed that Hotel would terminate accounting services to Ecoasis effective January 31, 2020.

33. On January 3, 2020, food service was restored notwithstanding the fact that invoices for food and beverage service had not been paid and that Ecoasis was demanding back-up to prove that Hotel was charging for the cost of food plus 20% as provided under Section 4.2 of the Operations Agreement. On January 31, 2020, food and beverage services were again terminated with a demand by Mr. Malak that previous invoices be paid without the back-up requested by Ecoasis.

34. At the same time that disagreements were developing in respect of accounting services and food and beverage services, a dispute arose regarding liquor licences. At the time of the sale of the hotel it was necessary for Ecoasis to transfer the liquor licence associated with the hotel restaurant and bar. There was a disagreement between the parties regarding whether or not portions of that liquor licence that related to the Valley Golf Course and the members lounge were intended to be transferred to Hotel or were instead to be transferred back to Ecoasis. Under liquor licensing regulations Hotel was not entitled to use the liquor licence for the members lounge or the golf course because the Hotel did not control those premises. The position of Hotel was that the licence related to the members lounge and the golf course were intended to be registered in the name of Hotel, and the position of Ecoasis was that those portions of the licence were intended to be transferred back to Ecoasis.

35. In late January 2020 issues were also outstanding regarding invoices from Hotel relating to usage of the North Langford Recreation Centre. On February 11, 2020 Hotel provided limited back-up for July 2019 food costs but did not provide the requested prior month's financial statement setting out the line item for food cost that Ecoasis

maintained was necessary under the Operations Agreement. In February 2020 Ecoasis learned that Hotel was not providing the employee discount promised under the Operations Agreement for hotel stays.

36. Invoices for food costs remained unpaid, ostensibly because the required accounting back-up was not provided. In March 2020 Ecoasis sent Hotel an invoice for approximately $500,000 for hotel guest use of the driving range. Use of the driving range had not been provided for under the Operations Agreement. In March 2020 Hotel learned that Ecoasis was using areas for staging golf carts that were not covered under the Commercial Lease and issued a demand that Ecoasis vacate those areas. On April 8, 2020 Hotel entered the areas said to be beyond the terms of the lease, cut locks and threatened to tow golf carts. On April 14, 2020, counsel for Hotel wrote to advise that the Operations Agreement and Commercial Lease were terminated and that Ecoasis must vacate the premises. A court proceeding was launched to enjoin Hotel from evicting Ecoasis. The parties then agreed to resolve all of their disputes in one arbitration.

Issues to be Determined

37. As set out in paragraph 10 above, the parties identified the issues to be determined by jointly submitting 15 issues along with the questions that were said to arise from those issues. The list was titled "Arbitration Questions" and was attached as Schedule "A" to formal Terms of Reference dated September 16, 2020.

Evidence at Hearings

Ecoasis Witnesses

38. It was agreed that witness statements and expert reports would stand as evidence in chief. Ecoasis delivered two expert reports from Dennis Coates dated December 15, 2020 and December 22, 2020, the latter in response to the corresponding expert report of Mr. Hick on behalf of Hotel. Mr. Coates offered opinions on the law and practice of liquor licensing under the authority of the Liquor and Cannabis Regulation Branch of British Columbia. He said that there was no way in which Hotel could serve alcoholic beverages in the members lounge or on the Valley golf course because Hotel did not control those premises or the businesses operated thereon.

39. Ecoasis also delivered two expert reports from Dana Adams dated December 15, 2020 and December 22, 2020, the latter in response to the report of Mr. Polson, the corresponding expert for Hotel. Ms. Adams offered an opinion as to the requirements to be expected of a similar corporate accounting department, listing 17 expected functions. Both Mr. Coates and Ms. Adams attended for cross-examination.

40. Ecoasis delivered statements for 15 witnesses, 10 of whom were Golf and Tennis Club

members. Of those 10, only two testified: Fred Edwards and Lloyd Richards. Counsel agreed that the statements of witnesses that were not called for cross-examination would stand as their evidence in chief. The witnesses for Ecoasis that were called to testify were Dan Matthews (the CEO of Ecoasis), Daina Rozitis (the Controller for Ecoasis), Melissa Hodson (the Executive Assistant to Mr. Matthews) and Rob Larocque (the Director of Golf).

41. Tom Kusumoto attended for questioning off-the-record before a court reporter pursuant to a subpoena. The transcript of those questions and answers was tendered as evidence in the proceedings. Mr. Kusumoto was a part-owner, shareholder and director of Ecoasis.

Hotel Witnesses

42. Hotel tendered the reports of two experts, one in accounting and the other in liquor licensing. Christopher Polson provided a report dated October 14, 2020 in which he opined that the accounting services provided for under the Operations Agreement would cost far more than the compensation specified under the Agreement. He also commented that the accounting functions required under the Agreement were confined to the four listed items of daily revenue, bi-weekly payroll, accounts payable and event billing. His opinion regarding the interpretation of the Agreement was not given any weight.

43. Hotel tendered the expert reports of Bert Hick regarding the law and practice of liquor licensing. His report, dated December 16, 2020, confirmed the requirements for a licence-holder to maintain control over the premises and business which are the subject of the licence. In a supplementary report dated December 23, 2020, Mr. Hick responded to the expert report of the Ecoasis expert, Mr. Coates, to suggest that Hotel could obtain a licence over the members lounge and the Valley golf course through a sublease arrangement. Hotel also tendered the expert report of Pino Bacinello regarding the valuation of liquor licences. He provided an opinion that a Liquor Primary Licence is valued in the range of four to five times EBITDA.

44. Hotel delivered witness statements from two witnesses, Raoul Malak (the sole director of Bear Mountain Resort & Spa Ltd. and operator of the hotel business) and David Clarke (the previous CFO of Ecoasis now working as a consultant for Hotel). Brian Harrington, the hotel manager, attended for questioning off-the-record before a court reporter pursuant to a subpoena. The transcript of those questions and answers was tendered as evidence in the proceedings.

45. Mr. Malak provided two lengthy witness statements dated December 16, 2020 and December 23, 2020 outlining the history of dealings with Ecoasis. Mr. Clarke provided a witness statement dated December 16, 2020 that was confined to an explanation of his personal reasons for leaving the employment of Ecoasis. Mr. Malak was examined

at length at the evidentiary hearings. Mr. Clarke was not called for cross-examination.

Issue #1 – Equipment Lease Payments

46. This issue relates to amounts owing from Hotel to Ecoasis for lease payments for items including photocopiers and dish washers. Ecoasis was required to assign these leases under the Asset Purchase Agreement.

Position of Ecoasis

47. Ecoasis confirmed receipt of payment for the equipment leases, has now executed assignment of photocopier leases and is preparing assignment agreements regarding dishwashers. Ecoasis does not expect any difficulty in the final steps to resolve this issue.

Position of Hotel

48. Hotel states that all outstanding amounts have been paid and that execution of assignment documents is in process but seeks an order that Ecoasis immediately complete any outstanding lease assignments.

Analysis

49. The parties appear to have amicably resolved this issue. If there is any issue that remains outstanding the parties are at liberty to apply.

Issue #2 – Food and Beverage

50. Under Section 4.2 of the Operations Agreement, Hotel agreed to provide food and beverage service to Ecoasis at locations including but not limited to the takeout window, members lounge and comfort station. Hotel also agreed to provide a 20% discount on food and beverages to Golf and Tennis Members. Ecoasis was not permitted to undercut the hotel menu prices in the members lounge.

51. The primary issue for consideration under this head is whether or not Hotel was obliged to charge for the cost of food alone or the cost of food plus labour associated with the obtaining, storage and preparation of food. Other issues are (1) whether or not Hotel is liable for breach of Sections 4.2(b) of the Operations Agreement for failure to provide a 20% discount to Ecoasis members for food and beverages, (2) whether or not Ecoasis was undercutting hotel menu prices in the members lounge and (3) whether or not Ecoasis was required under Section 4.2 to obtain alcohol beverage services exclusively from Hotel.

Position of Ecoasis

52. Mr. Lee, on behalf of Ecoasis, says this issue is to be resolved on the basis of principles of contractual interpretation as set out in *Creston Molly Corp. v. Sattva Capital Corp.*, 2014 SCC 53 and *Canaccord Genuity Corp. v. Reservoir Minerals Inc.*, 2019 BCCA 278. In essence these cases establish that the objective intention of the parties is to be determined on the basis of the words used, having regard to the factual matrix underlying the negotiation of the contract but not the subjective intentions of the parties. The interpretation of the contract must accord with sound commercial principles. It is only if the contract language is ambiguous that extrinsic evidence may be considered.

53. Mr. Lee relies upon the plain and ordinary meaning of "food cost" and the express reference to the Hotel Operator's financial statements in Section 4.2 of the Operations Agreement. The term "food cost" was not qualified to include references to labour costs and it is clear from Hotel's financial statements that "food cost" is a separate line item.

54. Mr. Lee submits that the position of Hotel that "food cost" includes labour was not shared by Mr. Clarke, Mr. Harrington, Mr. Larocque or Mr. Matthews. Mr. Lee further argues that Hotel's position that Section 4.2 entitled Hotel to a 20% profit on food services is not supported on the evidence. The position of Ecoasis is that Mr. Malak was unhappy with the agreement for food and beverage services and wanted to revise those provisions of the Operations Agreement.

55. Ecoasis says that invoices for food and beverage were not paid because they were incorrect and provided no back-up to establish that food costs were confined to the cost of food in that line item in the previous month's financial statements plus 20%. Despite requests for the back-up, Ecoasis says Mr. Malak refused despite having that information in December 2019. Ecoasis says that the decision by Mr. Malak to cut off food services in December 2019 was not reasonable and was in violation of contractual obligations.

56. In response to the allegation by Hotel that Ecoasis was undercutting hotel menu prices, Ecoasis says that to the extent there was any such conduct it was inadvertent and, in any event, not brought to its attention in a timely way. Ecoasis also disputes the Hotel position that Ecoasis was required to exclusively purchase food and beverage from Hotel. Ecoasis says no such provision was contained in the Operations Agreement.

57. Ecoasis submits that Hotel improperly submitted invoices for alcohol purchased by Ecoasis for sale in its own outlets. Hotel invoiced Ecoasis on February 29, 2020 for 20% on liquor obtained by Ecoasis from the liquor store. Contrary to the Hotel position that Section 4.2 of the Operations Agreement required Ecoasis to exclusively purchase alcohol from Hotel, Ecoasis says there is no such provision. Ecoasis argues that it would

be illegal to purchase liquor from Hotel for sale on premises not controlled by Hotel.

58. Ecoasis also argues that Hotel was in violation of Section 4.2(b) of the Operations Agreement in suspending the 20% discount to Golf and Tennis Members on food and beverages. The Golf and Tennis Members who testified at the hearings, Mr. Richards and Mr. Edwards, confirmed that discounts were not being provided.

59. In response to the Hotel submission that an adverse inference ought to be drawn because Ecoasis did not take the opportunity to cross-examine Mr. Clarke in relation to matters in issue, Ecoasis says there is no requirement in law to conduct a cross-examination.

60. Ecoasis seeks relief including an order that Hotel revise and reissue invoices for the cost of food alone plus 20%. Ecoasis seeks a finding that Hotel breached Section 4.2 of the Operations Agreement by suspending food and beverage services and the 20% discount to Golf and Tennis Members with damages to be assessed.

Position of Hotel

61. Hotel argues that the Operations Agreement provided for food and beverage services to the "Golf and Tennis Business," defined under the Operations Agreement to include the two golf courses, driving range and tennis centre. Mr. Sennott argues that Section 4.2(a) of the Operations Agreement states that "the Hotel Operator agrees to provide food and beverage services to the GT Operator for use in the Golf Course Business including but not limited to sales to golf course and tennis members and guests at the takeout window, members lounge and comfort station."

62. Hotel says the initial invoices for food and beverage services were not issued to Ecoasis until December 2019 because accounting staff were occupied with completing work that should have been completed by Ecoasis as part of the Asset Purchase Agreement. By February 11, 2020, Hotel had issued invoices totaling $58,939.64 that have yet to be paid. Food and beverage services were suspended on or about January 31, 2020 because invoices remained unpaid. Ecoasis was advised to cease selling alcohol in the members lounge because Ecoasis was required to obtain its liquor from Hotel pursuant to the Operations Agreement. Hotel submits that it was entitled to receive a 20% profit on the cost of food and beverage, otherwise there would be little benefit to Hotel in providing food and beverage service. Hotel also says Ecoasis must pay the 20% premium for liquor obtained by Ecoasis from sources other than Hotel.

63. Hotel further argues that Ecoasis was provided with the back-up calculations that broke down the cost including the food item, stewarding labour, cook labour and 20% of the total. The cost of tableware and overhead was not included. Hotel says Section 4.2 of the Operations Agreement does not specify that food to be delivered must be prepared or cooked.

64. Hotel submits that a spreadsheet detailing the cost of food and beverage was provided to Ecoasis on or about February 11, 2020. On April 17, 2020, counsel for Ecoasis sent a letter to Hotel suggesting that the proper amount for food and beverage services was $26,279.84 lower than the Hotel calculation. Hotel says it requested back-up for the Ecoasis calculations but has yet to receive that information.

65. Hotel argues that it is unreasonable of Ecoasis to have failed to pay any amount for food and beverage services when Ecoasis itself acknowledged owing at least $32,659.80. If Ecoasis disputed the amount owing, it was incumbent upon it to pay the amount owing and then follow the dispute resolution procedures in the Operations Agreement.

66. Hotel also argues that Ecoasis was undercutting hotel menu prices in the members lounge. The difference in pricing was said to have been brought to the attention of Ecoasis in a meeting on or about December 4, 2019, but the contravention continued. Golf members were thus incentivized to order in the members lounge rather than other food and beverage outlets in the hotel.

67. In respect of the allegation that the 20% discount to Golf and Tennis Members was suspended, Hotel argues that at no time did it intentionally remove or refuse to honour the discount. Hotel argues that if there was a problem, the fault was that of Ecoasis when the point-of-sale system was changed from that used by Hotel. Golf and Tennis Members could no longer charge their member accounts while using hotel food and beverage outlets. Golf and Tennis Members do not carry proof of membership, making it difficult to honour the discount.

68. Hotel relies upon *Sattva* and related cases to argue that Section 4.2 of the Operations Agreement clearly contemplated the provision of food and beverage services but was ambiguous regarding the determination of the cost of food. The only commercially reasonable interpretation, considering the factual matrix and objective evidence, is that Hotel would provide a complete and profitable service rather than a piecemeal offering with marginal returns. Hotel says the ambiguity ought to be resolved in favour of a finding that Hotel was to receive a 20% profit on the costs of food and beverage services, otherwise there would be little benefit to provide such services. The ambiguity is said to extend to the meaning of "food" and whether it must be cooked. It would not be commercially reasonable to stipulate food costs as relating to ingredient costs only. Hotel says the ambiguity must be resolved in a manner that promotes a sensible commercial result. This would include costs of fully cooked, prepared and packaged food.

69. In response to the position of Ecoasis that there were give-and-take elements to the hotel purchase transaction that may have compensated for lower prices for food and beverage services, Hotel argues there is no evidence. Hotel submits that a reasonable

interpretation of the Operations Agreement is that Hotel is entitled to a 20% profit on food and beverage services.

70. Hotel seeks to have an adverse inference drawn from the failure of Ecoasis to cross-examine Mr. Clarke. Hotel relies *upon Insurance Corporation of British Columbia v. Mehat*, 2018 BCCA 242 for principles governing the drawing of an adverse inference where a party fails to call a witness who would have knowledge of facts that would assist that party. The failure to call such evidence is an implied admission that the evidence of the absent witness would not support the party's case. Hotel says Mr. Clarke was only willing to provide a witness statement addressing his reasons for leaving the employment of Ecoasis. He remained available for cross-examination by Ecoasis generally. The failure of Ecoasis to do so is said to warrant an adverse inference, particularly on the issue of whether or not there was "give-and-take" as argued by Ecoasis.

71. Hotel seeks relief including a declaration that Ecoasis was in breach of the Operations Agreement by failing to pay the outstanding food and beverage invoices, and that the discontinuance of food and beverage services by Hotel was justified. Hotel seeks an order that Ecoasis pay outstanding invoices in the amount of $62,252.14, plus $14,894.92 for 20% of liquor costs obtained from sources other than Hotel. Hotel also seeks a declaration that Ecoasis breached the Operations Agreement by charging less for food and beverage in the members lounge than charged elsewhere in the hotel and seeks a declaration that, as a result of the various breaches by Ecoasis, hotel properly terminated the Operations Agreement. Hotel also seeks a declaration that the 20% discount to Golf and Tennis Members under Section 4.2 of the Operations Agreement was not suspended by Hotel.

Analysis

72. The interpretation of a commercial contract requires the decision-maker to give effect to the parties' intentions as derived from the words used, in the context of the contract as a whole, and within the factual matrix (also called surrounding circumstances). The relevance of the factual matrix was described in *Sattva Capital Corp. v. Creston Moly Corp.*, [2014] 2 S.C.R. 633, by Rothstein J. at paras. 57-58:

> [57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services*, at para. 14; and Hall, at p. 30). The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (Hall, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 1997 CanLII 4085 (BC CA), 101 B.C.A.C. 62).

> [58] The nature of the evidence that can be relied upon under the rubric of "surrounding circumstances" will necessarily vary from case to case. It does, however, have its limits. It should consist only of objective evidence of the background facts at the time of the execution of the contract (*King*, at paras. 66 and 70), that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting. Subject to these requirements and the parol evidence rule discussed below, this includes, in the words of Lord Hoffmann, "absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man" (*Investors Compensation Scheme*, at p. 114). Whether something was or reasonably ought to have been within the common knowledge of the parties at the time of execution of the contract is a question of fact.

73. The task at hand is to decide what a reasonable person with knowledge of the surrounding circumstances would have understood the parties to mean by the words used at the time the Operations Agreement was signed. The words used must be given their usual and ordinary meaning. Surrounding circumstances at the time of the making of the contract may be considered for the purpose of gaining insight into the mutual intention of the parties. The facts known to both parties must be considered to ascertain objectively their mutual intention. The combination of the parol evidence rule and the entire agreement clause in Section 13.6 of the Operations Agreement render inadmissible any understandings outside the written agreement for the purpose of qualifying the words used.

74. Section 4.2(a) of the Operations Agreement provided:

> The GT Operator shall pay the Hotel Operator's cost as set out on the Hotel Operator's financial statements for the preceding month for food cost, non-alcoholic beverage cost, and liquor costs plus twenty percent (20%).

75. Having regard to the principles governing the interpretation of contracts as set out in *Sattva* and related cases cited by counsel there is no foundation for a finding of ambiguity in the provision of Section 4.2 of the Operations Agreement for calculating the cost of food. It is clear from the plain meaning of the words used and the factual matrix that food costs were to be determined on the basis of the costs set out in Hotel's financial statements for the preceding month. Section 3 of the Operations Agreement set out clearly that the standard of operations prior to the sale of the hotel were to be continued. Food cost in the hotel's financial statements was a line item separate from labour and other costs. There is no basis for construing the provisions of Section 4.2 to read the cost of food as set out in the financial statements for the preceding month plus any other costs for labour associated with the purchase and preparation of food that Hotel in its sole discretion may choose to include.

76. Ecoasis was not required under Section 4.2 of the Operations Agreement to obtain alcohol beverage services exclusively from Hotel. There is no language in that Section that would give effect to such an intention. It was not open to Hotel to charge a 20% mark-up on liquor that Ecoasis purchased from other sources. On the issue of whether

or not Hotel suspended the 20% discount for Golf and Tennis Members, the evidence presented, including the evidence of Mr. Richards and Mr. Edwards, establishes that Hotel did suspend the discount contrary to the requirements of Section 4.2(b) of the Operations Agreement.

77. Hotel failed to provide proper back-up for the invoices for food and beverage services. It was not unreasonable in the circumstances for Ecoasis to refuse to pay the outstanding invoices. It was incumbent upon Hotel to provide the necessary back-up if prompt payment was expected.

78. There was no legal obligation for Ecoasis to cross-examine Mr. Clarke. If there is an adverse inference to be drawn, it is in respect of the failure of Mr. Clarke to refute the words and conduct attributed to him in the witness statements tendered by Ecoasis. The words and actions attributed to him were not contradicted. At the time of the arbitration Mr. Clarke was working for Hotel. In the limited statement that he did give he demonstrated an animus toward Ecoasis. There is no principle of law that obliges a party to cross-examine a witness tendered by the other party.

79. Hotel is liable for failure to comply with the obligations under Section 4.2 of the Operations Agreement to provide food and beverage service to Ecoasis and to provide a 20% discount for food and beverage in hotel outlets to Golf and Tennis Members. Hotel is ordered to reissue invoices for food costs based on the food cost in the previous month's financial statements plus 20%. Ecoasis is not obliged to pay the Hotel invoice for alcohol purchased by Ecoasis from sources other than Hotel.

80. The claim that Ecoasis was undercutting hotel menu prices in the members lounge is not supported on the evidence. Even if there were menu price increases that were not caught by Ecoasis, it is not clear that any undercharge would have resulted in an incentive to Ecoasis members to dine elsewhere than the members lounge given that golf members were entitled to a 20% discount in other hotel food and beverage outlets.

81. Hotel is liable for damages to be assessed for breach of Sections 4.2(a) and 4.2(b) of the Operations Agreement.

Issue #3 – Liquor Licence

82. As an aspect of the Asset Purchase Agreement, it was necessary for Ecoasis to transfer over the liquor licence for the hotel restaurant and bar facilities. This was Liquor Primary Licence #302754 ("Licence 54"). Licence 54 also covered the members lounge and the Valley Golf Course. The Mountain Golf Course was covered by a different licence, Liquor Primary Licence #301488 ("Licence #88"). The requirement under liquor licensing regulations was that the licence holder must have a valid interest by way of ownership or a lease of the premises covered by the licence. As a result, Licence #54, owned by Hotel, would not allow Hotel to supply alcoholic beverages to the members

lounge or the Valley Golf Course. As Ecoasis did not retain a licence applicable to those premises, neither could Ecoasis serve liquor in those places.

83. The issue that arises is whether or not the parties intended, under the Asset Purchase Agreement, that the portions of the licence covering the members lounge and Valley Golf Course would be transferred back to Ecoasis. In addition, there was a collateral issue as to whether or not it was intended that Ecoasis would be entitled to serve liquor in the members lounge and on the Valley Golf Course, or rather, that Ecoasis was required to obtain alcohol beverage service for those locations exclusively from Hotel. This latter question was resolved under Issue #2 above in the finding that Ecoasis was not required under Section 4.2 of the Operations Agreement to obtain alcohol beverage services exclusively from Hotel.

Position of Ecoasis

84. Ecoasis submits that the portion of Licence #54 covering the Valley Golf Course was transferred to Hotel by mistake. Ecoasis was actually able to recover the portion of Licence #54 that covered the Valley golf course. With the blessing of the LCRB those privileges were transferred to Licence #88 that covered the Mountain Golf Course. Ecoasis submits that it is nevertheless necessary to rule on the mistake issue in respect of that portion of Licence #54 in order to answer the Hotel argument that Ecoasis breached the Operations Agreement by interfering with ownership of the portion of Licence #54 relating to the Valley Golf Course.

85. Ecoasis relies upon *Yu v. Xu*, 2020 BCSC 1291 for the proposition that the law recognizes three types of mistake, common, mutual and unilateral. A common mistake is one by both parties, a mutual mistake arises upon a misunderstanding between the parties, and a unilateral mistake arises when only one party makes a mistake and the other party is aware of that mistake. Ecoasis also relies upon *Canada (AG) v. Fairmont Hotels Inc.*, 2016 SCC 56 for the principles governing the remedy of rectification to correct mistakes in contracts.

86. Ecoasis argues that the parties made a common or mutual mistake and did not intend to include the Valley Golf Course licence in the transfer. Ecoasis relies upon the evidence of Mr. Matthews that Ecoasis never intended to transfer the Valley Golf Course licence, and that there were no discussions regarding the Valley Golf Course licence before the sale. Ecoasis also relies upon the testimony of Mr. Malak, who said that he was surprised to learn in December 2019 that the hotel owned a liquor licence that controlled the two golf carts that served the Valley Golf Course.

87. Ecoasis argues that the absence of any intention to transfer the Valley Golf Course licence is supported by the evidence showing that Hotel never questioned the fact that it was not getting revenue from the sale of liquor on the Valley Golf Course, and that there was no evidence that Hotel took steps to provide that service subsequent to the

sale.

88. Ecoasis submits that the transfer of the liquor licence governing the Valley Golf Course did not accord with the true agreement of the parties. Golf seeks a remedy of rectification of the Asset Purchase Agreement.

89. In respect of the transfer of the portion of Licence #54 covering the members lounge, Ecoasis seeks to have a term implied in the Asset Purchase Agreement that Hotel would transfer that portion of the licence back to Ecoasis. Ecoasis relies upon *Moulton Contracting Ltd. v. British Columbia*, 2015 BCCA 89 for the principles of law related to when a term may be implied in a contract. These principles include a requirement that the implied term is necessary to make the contract effective and reflect the true intentions of the parties.

90. In support of its position, Ecoasis submits that the requested term ought to be implied in order to give business efficacy to the Asset Purchase Agreement because Ecoasis leased the members lounge as part of the contractual arrangement at the time of the sale of the hotel and because liquor licensing regulations are clear that Hotel was not entitled to sell alcohol in the members lounge. Ecoasis also relies upon a number of other arguments including the fact that there is no provision in the Operations Agreement to require exclusive purchase of liquor from Hotel. Negotiations included points of agreement for Ecoasis to purchase its own liquor and there was an exclusion under Schedule "G" to the Asset Purchase Agreement of liquor inventory in the members lounge. Ecoasis also relies upon conversations between Mr. Harrington and Mr. Malak in the Summer of 2019 regarding the transfer back to Ecoasis of those portions of Licence #54 relating to the members lounge.

91. Ecoasis submits that it is necessary for the portion of Licence #54 covering the members lounge to be transferred back to Ecoasis to give business efficacy to the Asset Purchase Agreement, the Commercial Lease, and the Operations Agreement. In the alternative, Ecoasis submits that the remedy of an implied term is available to fill gaps in parts of the agreements to which the parties did not turn their minds.

92. Ecoasis relies upon the expert opinion of Dennis Coates establishing that only the party that owns or leases the premises covered by a liquor licence may hold the licence. Ecoasis disputes the opinion of Bert Hick to the effect that Hotel could achieve such control through a sublease.

93. Ecoasis seeks relief including a finding that the parties did not intend to transfer the Valley Golf Course portion of Licence #54, and that there was either a common or mutual mistake warranting an order of rectification to remove the Valley Golf Course portion from the Asset Purchase Agreement.

94. Ecoasis also seeks a finding that it was an implied term of the Asset Purchase

Agreement that Hotel was to transfer the members lounge portion of Licence #54 back to Ecoasis after the sale, with an order that Hotel transfer that portion of Licence #54 back to Ecoasis.

95. Further relief requested includes a finding that Ecoasis is allowed to obtain liquor from third parties for resale in its operations, a finding that Hotel is not allowed to advertise liquor resales or consumption in Ecoasis owned or leased premises and a finding that Hotel is liable for damages for failing to transfer the portions of Licence #54 relating to the Valley Golf Course and members lounge back to Ecoasis – with damages to be assessed.

Position of Hotel

96. Hotel submits that the parties always intended to transfer the whole of Licence #54 to Hotel under the Asset Purchase Agreement. Hotel relies upon the absence of any evidence that there was any discussion prior to the sale relating to the transfer back to Ecoasis of the portions of Licence #54 covering the members lounge or the Valley Golf Course.

97. Hotel submits that the parties agreed that Hotel would provide alcoholic beverage services for the Valley Golf Course pursuant to Section 4.2 of the Operations Agreement and says that the unilateral actions of Ecoasis to cause the Liquor and Cannabis Regulation Branch ("LCRB") to remove the Valley Golf Course portion of Licence #54 rendered it impossible for Hotel to provide that service. Hotel says that the removal of the golf course portion and the members lounge portion of Licence #54 from the hotel's licence would render Section 4.2 of the Operations Agreement redundant and that there would be no need to pay 20% of all liquor sales to Ecoasis, as required under Section 4.2 of the Operations Agreement, if all liquor sales were not being provided by Hotel.

98. Hotel submits that Ecoasis was offside in speaking unilaterally with the LCRB, and that if there was a dispute regarding the licences it was incumbent upon Ecoasis to follow the dispute resolution procedures under the contract before contacting the LCRB.

99. Hotel relies upon the expert opinion of Bert Hick that Hotel would have been able to obtain regulatory approval for sale of alcohol in the members lounge and the Valley Golf Course through a sublease arrangement that provided Hotel with the necessary ownership or control over the licenced premises.

100. Hotel also refers to other issues that arose subsequent to the sale, including a suspension of those portions of Licence #54 covering the members lounge because of structural changes and Hotel's concern that Ecoasis was improperly storing liquor that was not obtained under Hotel's liquor licence.

101. Hotel submits that there was a clear agreement for the transfer of the entirety of Licence #54 to Hotel under the Asset Purchase Agreement, and that Ecoasis subverted the clear intention of the parties and jeopardized Hotel's liquor licence. Hotel seeks relief including declarations that the parties intended the transfer of the entirety of Licence #54 and that there was no agreement for Hotel to transfer any portion of Licence #54 back to Ecoasis. Hotel also seeks an order that damages are payable for the loss of the ability to serve alcohol on the Valley Golf Course – with damages to be assessed in accordance with the expert report of Mr. Bacinello that a Liquor Primary Licence is to be valued on the basis of four to five times EBITDA. Hotel also seeks an order that damages are payable by Ecoasis for the loss of food and beverage sales generally, including alcohol.

Analysis

102. There were many moving parts to the sale of the hotel in July 2019 and in the contracts including the Asset Purchase Agreement, the Commercial Lease, and the Operations Agreement. It is not clear on the evidence that the parties ever turned their mind to the fact that portions of Licence #54 covered the members lounge and the Valley Golf Course. It is clear that it was necessary to transfer Licence #54 to Hotel so that Hotel could continue offering restaurant and bar services. It is also clear that by simple operation of law, those portions of Licence #54 that related to the Valley Golf Course and the members lounge would expire, be extinguished, or would be otherwise inoperable upon Licence #54 being transferred into the name of Hotel. The reason that those portions of Licence #54 could not be saved was agreed by both experts, Mr. Coates and Mr. Hick, on grounds that it is essential for the owner of a licence to have ownership or control over the premises covered by the licence.

103. While it is correct to say that the parties may not have intended to transfer that portion of Licence #54 that related to the Valley Golf Course, it was not the sort of common mistake or mutual mistake that would allow for the remedy of rectification. The probable mistake that occurred was that the parties simply did not realize that the Valley Golf Course was covered by Licence #54. The evidence of Mr. Matthews is to the effect that he did not appreciate that Licence #54 covered the Valley Golf Course, thinking that it was covered by Licence #88 the same as the Mountain Golf Course. Mr. Malak never turned his mind to the fact that Licence #54 covered the Valley Golf Course.

104. This is not the kind of mistake that was addressed by the Supreme Court of Canada in *Sylvan Lake Golf & Tennis Club Ltd. v. Performance Industries Ltd.*, [2002] 1 SCR 678, where the parties agreed to the transfer of property measured in yards but the signed contract mistakenly referred to the property measured in feet. In the case at hand, the parties never shared any intention or even turned their minds to the fact that the portion of Licence #54 covering the Valley Golf Course was meant to be reserved to Ecoasis or otherwise transferred back to Ecoasis. It would be impossible to rewrite the

Asset Purchase Agreement, under the equitable jurisdiction to order rectification, to read that Ecoasis was only transferring that portion of Licence #54 that related to the Hotel restaurant and bar facilities.

105. The reason that it would be impossible to so rewrite the Asset Purchase Agreement is that it was not within the power of the parties to make such an agreement. Only the LCRB could approve a separation or other division of Licence #54. The only logical solution to the parties' mistake in not realizing that Licence #54 covered the Valley Golf Course was for Ecoasis to make an application subsequent to the sale of the hotel for a new licence covering the Valley Golf Course. Any agreement of the parties for the transfer back to Ecoasis of that portion of the licence would be of doubtful efficacy insofar as it would require the approval of a third party not party to the contract. While it might be said that the Asset Purchase Agreement could be rewritten to set out a provision that the parties would cooperate in submissions to the LCRB to allow Ecoasis to regain liquor licensing privileges over the Valley Golf Course, the very same result would obtain simply by Ecoasis making the same submission to the LCRB once Licence #54 was transferred to the name of Hotel and the right of Hotel to serve liquor on the Valley Golf Course fell away. There was no provision of the Asset Purchase Agreement, express or implied, that would preclude Ecoasis from applying to the LCRB for the right to serve alcohol on the Valley Golf Course just as it was doing on the Mountain Golf Course under Licence #88.

106. Similarly, it is not feasible to imply a term in the Asset Purchase Agreement for the transfer back to Ecoasis of that portion of Licence #54 relating to the members lounge. Not only is there no evidentiary base to support a finding that the parties objectively intended that to occur, there is no basis upon which Ecoasis can meet the requirement at law to establish that such a term was essential to make the Asset Purchase Agreement work. It could not be said that a reasonable bystander, if asked, would say that the parties obviously intended at the time of the sale of the hotel that Hotel would transfer the members lounge portion of Licence #54 back to Ecoasis. The reason is that it was outside the power of the parties to effect a transfer back. The reasonable bystander is more likely to say, if questioned, that they obviously could not have intended such a term. It cannot be said that the implied term that Hotel would transfer the members lounge portion of Licence #54 back to Ecoasis was necessary to give business efficacy to the Asset Purchase Agreement. As with the Valley Golf Course portion of Licence #54, it will be necessary for Ecoasis to apply to the LCRB for a new licence over the members lounge, patio and take out window. There is no provision of the Asset Purchase Agreement, express or implied, that would preclude Ecoasis from making this application to the LCRB.

107. The opinion of Mr. Hick that Hotel could offer alcohol service to the members lounge and the Valley Golf Course by the device of a sublease arrangement is not supported on the evidence. This opinion is speculative and unsupported by any evidence. It is to be doubted that the LCRB would approve of such artifice. It would clearly be a sham to

suggest that Hotel controlled the premises of the Valley Golf Course and the members lounge. The complexity of such a sublease arrangement, including liability and insurance issues, are far too great to allow for any conclusion that any such arrangement would be possible. The testimony of Mr. Hick that he received assurance from an official with the LCRB that such a scheme might work is far too vague and unreliable to be given any weight.

108. The relief requested by Ecoasis, seeking rectification of the Asset Purchase Agreement or implication of a term to either remove the Valley Golf Course portion of Licence #54 or transfer the members lounge portion of Licence #54 back to Ecoasis is denied. It follows that Hotel is not liable for damages for failing to transfer those portions of Licence #54 related to the Valley Golf Course and the members lounge back to Ecoasis.

109. Likewise, the relief sought by Hotel, seeking declarations that the parties intended that Hotel own liquor licences over the Valley Golf Course and the members lounge is denied. There is no basis upon which to order that Ecoasis pay damages. Ecoasis is allowed to obtain liquor from third parties for resale in its operations, Hotel is not allowed to advertise liquor resales or consumption in Ecoasis owned or leased premises.

Issue #4 – December 2019 Meeting

110. Over the Fall of 2019 a number of issues arose relating to such things as food and beverage services, accounting services and liquor licensing. In an attempt to resolve some of these issues, the parties agreed to meet in December. On December 31, 2019, Mr. Malak met with the two principles of Ecoasis, Dan Matthews and Tom Kusumoto. In the course of that meeting, it was agreed that Ecoasis would no longer be in the food and beverage business and would concentrate its efforts on the golf and tennis business. The parties agreed that Hotel would pay Ecoasis an amount equal to 20% of liquor sales and 20% of rental income generated from the members lounge. In addition, it was agreed that the Marriott discount would be reinstated and that the management teams of Hotel and Ecoasis would meet in January 2020 to finalize the details of the verbal agreement that Ecoasis would no longer be in the food and beverage business.

111. The issue that arises from the December meeting is whether or not a binding agreement was reached under which Hotel would henceforth provide all food and beverage services to Ecoasis, including the supply of alcohol.

<u>Position of Ecoasis</u>

112. Ecoasis cites case authorities setting out the principles of law regarding contract formation that require an intention to contract, an agreement on all essential terms and certainty. The cases also note the requirement that the analysis be objective and exclude subjective intentions of the parties. There is also a reference in the caselaw to

the relevance of subsequent conduct to determine whether or not the parties made a binding contract.

113. Ecoasis submits that the December 31, 2019 negotiations did not result in a binding agreement because key terms were missing including what Ecoasis was to provide in exchange for the 20% of rental income generated by the members lounge and what benefit would accrue to Ecoasis for Hotel assuming all food and beverage services. Ecoasis notes that there were differences in the evidence of Mr. Malak, Mr. Matthews and Mr. Kusumoto regarding what items were agreed in respect of a kickback for alcohol sales and whether or not such agreement was confined to certain nights such as the Wednesday night "Mens' Night."

114. Ecoasis also relies upon subsequent conduct to argue that no written amendments to the Operations Agreement were ever proposed or signed and that the parties did not meet further to finalize matters that had been put over to January 2020 for further discussion.

115. Ecoasis seeks a finding that no binding agreement was reached between the parties.

Position of Hotel

116. Hotel submits that a binding oral agreement was made at the December 2019 meeting in which Ecoasis clearly agreed to get out of the food and beverage business and Hotel would be the exclusive provider of those services. The essential terms for compensation were agreed on the basis that Hotel would pay Ecoasis a 20% kickback on liquor sales and 20% of rental income generated from the members lounge.

117. Hotel concedes that there were further matters to be finalized, but that these were limited to minor issues including operational hours for the members lounge and the procedure for functions and events held in the members lounge.

118. Hotel relies upon the evidence of Mr. Kusumoto confirming the agreement that Ecoasis would not be involved in the food and beverage business in the future, and that it was expected that the agreement made at the December 2019 meeting would be implemented. As stated by Mr. Malak, it was not progressed further because the representative of Ecoasis failed to attend the subsequent meeting in January 2020 to implement the agreement made.

119. Hotel seeks relief including a declaration that the December 2019 agreement is valid and was breached by Ecoasis and that Hotel was thus entitled to terminate the Operations Agreement.

Analysis

120. Under general principles of contract law, an agreement to agree is not enforceable. However, where the main elements of an agreement are established, with the necessary proof of intention, essential terms and certainty, minor matters can be left for further agreement. In the case at hand, Hotel concedes that there were remaining details to be finalized but says that these details were in respect of minor matters relating to hours of operation and protocols for functions in the members lounge.

121. There was agreement on points of principle at the December 31 meeting, including the agreement that Hotel would henceforth be the exclusive provider of food and beverage services to Ecoasis. However, there were essential terms that were not agreed with certainty such that a final agreement remained inchoate. It is not clear on the evidence of Mr. Malak, Mr. Matthews and Mr. Kusumoto what the agreement was for payment by Ecoasis for food services and which provisions of Section 4.2 of the Operations Agreement would continue. The agreement for Hotel to pay Ecoasis an amount equal to 20% of the rental income generated from the members lounge was too vague and uncertain to establish a binding contract.

122. The negotiations on December 31, 2019 established an agreement to agree. This view is reinforced by the failure of the parties to reduce the agreed terms to a written amendment to the Operations Agreement. It is not open to make a finding that an enforceable oral contract was made in the December meeting. The required certainty of essential terms was absent and any modification of the Operations Agreement would require an agreement in writing under the entire agreement clause in Section 13.6.

Issue #5 – Hotel Rates and Discounts

123. Section 5 of the Operations Agreement provided for Hotel to give various discounts and benefits to Ecoasis employees and certain organizations as set out in Schedule "B" and Schedule "C". The relevant provisions of the Operations Agreement are:

> 5.2 Hotel Rates.
> Employees of the GT Operator and Ecoasis Developments LLP shall be entitled to the current corporate hotel room rates set out in Schedule "C" (which rates are inclusive of the resort fee); the rates provided on Schedule "C" are subject to annual review.
>
> 5.3 National Sports Agreements.
> The Hotel Operator agrees to make hotel rooms available at the times and at the rates as set out in the National Sports Agreements, subject to availability within the hotel.

5.4 Event Pricing.
The Parties agree to act reasonable and in good faith to negotiate, on an event by event basis, terms where the Hotel Operator will grant the GT Operator a licence to use one or more event spaces in the Hotel Property at a discounted rate subject to availability and a discounted hotel rate will be offered by the Hotel Operator to event participants, provided that a minimum number of hotel rooms are booked by event participants subject to availability.

5.5 Reciprocal Employee Benefits.
The Parties agree that all employees of the Hotel Operator shall be entitled to staff discounts on retail products in the GT Operator's Pro Shop and tennis/golf privileges on the "Mountain Course" or the "Valley Course" that the GT Operator offers to its own staff (which, among other things, is subject to availability, frequency of play restrictions and the GT Operator's code of conduct) as per the Employee Handbook provided by the vendor (Ecoasis Resort and Golf LLP). The parties further agree that all employees of the GT Operator shall be entitled to current staff food and beverage discounts and to maintain privileges through the hotel franchise agreement with Marriott to book hotel rooms at discounted rates through the Marriott Website, subject to availability and subject to the current terms and conditions of this employee benefit.

124. Ecoasis maintains that Hotel has failed to honour the obligation to offer benefits as required under Section 5. Hotel says all obligations were honoured and that increases in room rates were permitted under the Operations Agreement that allowed for annual review.

Position of Ecoasis

125. Ecoasis submits that the Marriott privileges promised to Ecoasis employees under Section 5.5 of the Operations Agreement were unilaterally terminated by Hotel in December 2019. Ecoasis submits that Hotel removed access to Marriott privileges on or about December 18, 2019, during the Christmas season when those privileges would have been of most benefit. The Marriott privileges were denied at the same time that Mr. Malak advised that food and beverage services would be terminated.

126. Ecoasis says the Marriott privileges were restored when it was agreed that Hotel would be paid $3,000 per month for HR Services. However, in June 2020 Hotel again withdrew access to the Marriott privileges

127. Mr. Matthews states that he was informed by Marriott Canada's president that there was no initiative by Marriott that would result in access to those privileges being cancelled for Ecoasis employees. Ecoasis argues that Hotel has provided no proof that Marriott requirements precluded access for Ecoasis employees.

128. Ecoasis also argues that hotel discounts for Ecoasis employees were unlawfully increased by Hotel. The agreed rates were set out at Schedule "C" to the Operations Agreement. Section 5.2 provided that the scheduled rates were subject to annual review. Ecoasis also argues that it was understood in negotiations that the discount would also be available for other contractors working for Ecoasis, so long as Ecoasis made the reservation. Likewise, Ecoasis argues that the rate would be made available to various charity groups that worked with Ecoasis. The argument of Ecoasis is that it would not make commercial sense that the discount would be available only for employees who, for the most part, were local and would not need a hotel room.

129. Ecoasis notes that on December 17, 2019, Hotel unilaterally increased the corporate room rates. In January 2020, Mr. Larocque was charged $175 for a room rather than the agreed rate of $125 per night set out in Schedule "C." When hotel discounts became an issue in the arbitration, Hotel credited Ecoasis for this overcharge in July 2020. In February 2020, Ecoasis tried to book a room for the Ecoasis accountant and was charged $175. On June 3, 2020, Hotel advised that it was increasing the corporate rates.

130. Ecoasis also submits that the obligation under Section 5.3 of the Operations Agreement for Hotel to make rooms available at rates set out in the National Sports Agreements was breached. These rates, as set out in Schedule "B" to the Operations Agreement, were said by Mr. Matthews to not have been honoured in respect of Cycling Canada.

131. Ecoasis also alleges a breach of Section 5.4 of the Operations Agreement under which the parties were to act reasonably and in good faith to negotiate event pricing. Mr. Matthews listed a number of instances in which the obligation under Section 5.4 was violated by Hotel – including the Golf for Kids Charity Classic, the Greater Victoria Sports Hall of Fame, the Yes Victoria Golf Tournament, Sport Assist, Johnston Wholesale, Ronald McDonald House Golf Tournament and the Sport Assist Charity Golf Tournament. Mr. Matthews outlined the different circumstances under which these events were frustrated by the actions of Hotel. Some of these circumstances were confirmed in the statement of Mr. Larocque.

132. Ecoasis seeks findings that Hotel violated Sections 5.2, 5.3, 5.4 and 5.5. of the Operations Agreement with damages to be assessed.

Position of Hotel

133. Hotel submits that Ecoasis employees were entitled to the discounted corporate rate as set out in Schedule "C" to the Operations Agreement subject to annual review. Following an annual review of those rates, Ecoasis was given notice of the Revised Discounted Hotel Rates. Hotel had previously permitted the discounted rates for employees of Ecoasis and third-party contractors, but currently the discount is not available to third-party contractors who are not covered by Section 5.2 of the Operations Agreement.

134. In respect of Marriott privileges, Hotel says that the privileges were provided as originally agreed but were no longer available under applicable Marriott guidelines. Accordingly, Ecoasis was notified in June 2020 that only Hotel employees qualified for Marriott privileges and it was impossible to comply with the obligation under Section 5.5 of the Operations Agreement. Hotel says the Marriott privileges could not be provided to Ecoasis employees without putting the Marriott franchise agreement at risk.

135. In respect of event pricing, Hotel submits that it has been ready and willing to negotiate with Ecoasis for event space, but Ecoasis has been unwilling. Hotel agrees that it was obliged under Section 5.3 of the Operations Agreement to make rooms available as set out in Schedule "B" to the Operations Agreement, the National Sports Agreements, and submits that those obligations have been honoured.

136. Hotel seeks a declaration that there was no violation of Sections 5.2, 5.3 and 5.4 of the Operations Agreement as well as a declaration that the Marriott privileges are not available to employees of Ecoasis.

Analysis

137. Under Section 5.2 of the Operations Agreement, Hotel was obliged to offer a discounted corporate rate to Ecoasis employees as scheduled to the Operations Agreement subject to annual review. It is not clear on the evidence that Hotel was in violation of the obligation under Section 5.2. Where there was an example of an overcharge, a refund was provided. Other evidence of failure to honour the obligation to provide room discounts was too vague to allow a finding of breach.

138. Hotel was obliged to provide Ecoasis employees with the benefits of Marriott privileges pursuant to Section 5.5 of the Operations Agreement. Hotel submits that it cannot honour that requirement without jeopardizing the Marriott franchise agreement. Mr. Matthews offers hearsay evidence that there is no reason to doubt the ability of Hotel to offer Marriott privileges to Ecoasis employees. Mr. Malak says his reading of the Marriott guidelines disqualifies Ecoasis employees from eligibility.

139. The contractual obligation to provide Marriott privileges to Ecoasis employees is clearly set out in the Operations Agreement. It is incumbent upon Hotel to establish on a balance of probabilities that it cannot comply with that agreement. The evidence tendered by Hotel falls far short of establishing that the Marriot franchise was in jeopardy or that Marriott privileges could not be offered to Ecoasis employees. Hotel was in violation of the obligation under Section 5.5 of the Operations Agreement and is liable for damages to be assessed.

140. The evidence tendered by Ecoasis of a violation of the obligation to honour National Sports Agreements was not supported by sufficient evidence to allow a finding that there was such a breach. There is accordingly no finding that Hotel breached Section 5.3 of the Operations Agreement.

141. The evidence tendered by Ecoasis of a violation of Section 5.4 of the Operations Agreement in respect of unreasonable event pricing was not supported by sufficient evidence to allow for a finding that there was such a breach. The description by Mr. Matthews of problems with various organizations, even though supported to some extent by Mr. Larocque, did not meet the required threshold of proof that Hotel violated Section 5.4.

Issue #6 – Driving Range Access

142. There is no contractual provision for use of the driving range by hotel guests. Prior to the sale of the hotel, guests were permitted to use the driving range as an amenity that went with their registration. Ecoasis never kept track of which hotel guests were using the driving range.

143. When the cooperative relationship between Hotel and Ecoasis broke down, Ecoasis billed Hotel approximately $500,000 for driving range access over the period July 11, 2019 to December 31, 2019 with a further invoice for usage between January 1, 2020 and March 14, 2020. The driving range was closed in March 2020 as a result of the pandemic.

144. Ecoasis seeks reasonable compensation for driving range use, while Hotel denies that any meaningful compensation is appropriate in the circumstances of very limited use.

Position of Ecoasis

145. Ecoasis submits that prior to the sale of the hotel, Ecoasis negotiated with Marriott to justify the $25 resort fee charged on hotel room registrations. It was necessary to prove value for the resort fee, which value was justified on the basis that guests would be given access to the driving range. Ecoasis notes that Hotel continued to advertise access to the driving range as a benefit associated with the resort fee through at least the Summer of 2020. Ecoasis submits that there was an understanding with Hotel that

in exchange for access to the driving range, Ecoasis would receive a fee of $25 per room registration.

146. On this basis, Ecoasis invoiced Hotel on March 12, 2020 the sum of $415,850.00, later adjusted to $440,265.00 in October 2020 to remove a set-off for recreation centre invoices that were included in the earlier invoice. The Ecoasis invoices were based on Flash Reports for the actual number of rooms booked. On October 14, 2020, Ecoasis invoiced Hotel $99,828.75 for the period January 2020 to March 15, 2020 based on estimated room nights. On March 14, 2020, Hotel advised Ecoasis that driving range privileges had been suspended for Hotel guests, but Hotel continued to promote driving range access as part of the resort fee through the Summer of 2020.

147. The Ecoasis position is that there was an implied agreement that Hotel would pay for guest access to the driving range and practice facilities. In the alternative, Ecoasis submits that fees for driving range access should be determined on the basis of *quantum meruit*. Ecoasis submits that Hotel would be unjustly enriched by receiving the $25 resort fee that was charged to guests for access to the driving range facilities.

148. Ecoasis relies upon *Rafal v. Legaspi*, 2007 BCSC 1944 for the principles underlying *quantum meruit*. Where goods or services are provided under a contract, reasonable remuneration may be claimed if goods or services are furnished at the request or acquiescence of the other party in circumstances that render it unjust for the other party to retain the benefit conferred. In addition, Ecoasis relies upon *Noh v. Plaza 88 Developments Ltd.*, 2010 BCSC 1491 (BCCA) for the rule that unjust enrichment is established where one party is enriched with a corresponding deprivation to the other party without a juristic reason for the deprivation.

149. Ecoasis further relies upon *Aerovac Systems Ltd. v. Darwon Construction (Western) Ltd.*, 2010 BCSC 654 for the principle that there is a broad discretion to consider many indicia in the calculation of a *quantum meruit* claim including estimates, reasonable expenses, negotiations and expert opinions.

150. Finally, Ecoasis cites *Infinity Steel Inc. v. B&C Steel Erectors Inc.*, 2011 BCCA 215 for the principle that compensation ought to be awarded where there is a contract between the parties, but they have not agreed upon a price for goods or services to be provided under the contract.

151. Ecoasis relies upon various admissions made by Mr. Malak, including concessions on cross-examination that hotel guests were allowed to use the driving range in the period July 11, 2019 to March 14, 2020, that a $25 resort fee was charged for each room stay in that period and that access to the driving range was advertised as a component of the resort fee.

152. Ecoasis seeks an order that Hotel pay the invoices submitted for driving range access

on the basis of *quantum meruit*.

Position of Hotel

153. Hotel states that it is prepared to pay for actual guest usage of the driving range. However, Hotel states that there is no back-up information to confirm actual usage despite repeated requests. Hotel submits that the Resort Fee includes various amenities including such things as parking and Wi-Fi access as well as access to the business centre, gym, pool and driving range. Driving range privileges for hotel guests were removed as of March 14, 2020.

154. Hotel estimates that there were nine hotel guests who used the driving range in the period July 1, 2019 to December 31, 2019 who did not otherwise have access to the range through green fees or by virtue of being a Golf and Tennis Member. On the basis of this estimate, Hotel submits that the value of actual usage of the driving range in 2019, based on $25 per visit, would be in the amount of $225. Hotel notes that Ecoasis internally allocated 5.5% of the resort fee to driving range access when Ecoasis was operating the hotel.

155. Hotel seeks a declaration that there is no agreement relating to driving range access and that Hotel should only be responsible under a *quantum meruit* calculation for the sum of $225. In the alternative, Hotel seeks an order that Ecoasis is only entitled to payment in an amount equal to 5.5% of the $25 resort fee collected by Hotel.

Analysis

156. The parties did not address separate payment for use of the driving range under the Asset Purchase Agreement or the Operations Agreement. The deprivation to Ecoasis for such use was not of sufficient moment for Ecoasis to keep track of which hotel guests used the driving range or practice facilities.

157. The causal connection between the resort fee and any entitlement to compensation for driving range use is too remote to constitute a foundation for calculation of either unjust enrichment to Hotel or deprivation to Ecoasis. The resort fee was a matter between Hotel, Marriott and hotel guests – there is no basis for Ecoasis to make any claim on the resort fee, or to claim that the resort fee is in some way a measure of compensation for such guests as may have used the driving range without having been a Golf and Tennis Member or having paid a green fee.

158. There is nothing in the evidence tendered by Ecoasis that would allow for any meaningful calculation of the number of hotel guests that may have used the driving range. The estimates tendered by Hotel are equally not meaningful, and the claim that the correct number is nine guests approaches a *de minimis* level.

159. Access to the driving range was an aspect of the purchase of the hotel and the ongoing intermingled operations of the hotel and golf businesses. Use of the driving range was part and parcel of the cooperative arrangement between the parties. There was no need to particularize every detail of the continuing cooperative arrangement for the operation of the hotel and golf businesses. Business was to continue as usual. The parties never intended for there to be separate compensation for driving range use. The contractual arrangement between Hotel and Ecoasis provided a juristic reason for Hotel to have the benefit of access to the driving range for its guests so as to preclude any claim for *quantum meruit*.

160. There is no foundation for the claim by Ecoasis that it was an implied term of the Operations Agreement that Hotel would pay for driving range usage. It was not necessary, in order for the Operations Agreement to work, that Hotel pay for guest access to the driving range. There is no basis upon which a claim for an implied term of for *quantum meruit* can stand. This claim by Ecoasis is dismissed. Ecoasis is no more entitled to half a million dollars for payment for driving range use than Hotel is entitled to the approximately $175,000 that is claimed for use of the members lounge patio and the golf cart staging area to be discussed under the next Issue #7.

Issue #7 – Limited Common Property and Additional Areas of Use

161. After months of deteriorating relations between Hotel and Ecoasis, a new issue emerged regarding Ecoasis use of Limited Common Property and additional areas not covered by the defined areas under the Commercial Lease for which Ecoasis was making lease payments. In addition, it emerged that Hotel was using some of the space that had been leased back to Ecoasis.

162. The main areas in contention regarding use of Limited Common Property is the staging area for golf carts outside the pro shop and the patio for the members lounge. The Additional Use areas said to be used by both Ecoasis and Hotel were for the most part minor storage areas. The issues that arise are whether or not Ecoasis should be ordered to cease use of the disputed areas and make compensatory payment for use of those areas back to July 2019. Likewise, there is an issue as to whether or not Hotel is liable for use of areas leased by Ecoasis and for interruption of Ecoasis' business by Hotel restricting access to the staging area and the members lounge patio as a result of renovation work on the hotel.

<u>Position of Ecoasis</u>

163. Ecoasis says use of the disputed areas was permitted as either an express or implied term of the Operations Agreement and Lease, or was allowed as a matter of promissory estoppel.

164. Under the Commercial Lease, Ecoasis leased premises that were part of Strata Lot 1 for

the members lounge, pro shop, real estate sales centre and cart storage. The areas that were not covered by the lease included the staging area for golf carts outside the pro shop and the members lounge patio. The Additional Space in dispute included level two of the parking lot of the Fairways Building that was used to park golf carts and store maintenance materials, cart storage areas in the hotel and areas used for storage of bottled water and liquor.

165. Ecoasis submits that it was only in March 2020, when Hotel was trying to apply pressure on Ecoasis in respect of other matters, that Hotel raised the issue of disputed use of Limited Common Property and Additional Areas. Ecoasis notes that Hotel also used areas of Ecoasis space, including storage of miscellaneous equipment in the Elevate Building and the mens' locker room that was leased and paid for by Ecoasis for its members. Hotel allows its male spa guests to have complete access to the Ecoasis mens' locker room and all of the supplies provided by Ecoasis.

166. The Additional Space is no longer used by Ecoasis, but portions of the Limited Common Property are still used in the operation of the golf and tennis business and are said by Ecoasis to be a "critical cog of the golf operations."

167. The Limited Common Property that remains in dispute is the staging area for golf carts, and the patio – both of which are said to be essential to Ecoasis operations. Ecoasis submits that its business would be severely impacted without the ability to park as many as 144 golf carts in staging for golf tournaments and for golfers to congregate outside the pro shop before departing in their carts. Ecoasis notes that it does not have exclusive use of the staging area, which is also used by Hotel, as it is the only entrance and exit to the Level 2 Underground Area. Hotel also uses the staging area for banquet carts and transit by guests for numerous purposes. Ecoasis submits that the staging area is common property beneficially used by both parties.

168. Ecoasis argues that there are many signs designated for various purposes specific to the staging area and the patio that have been in place for many years. Ecoasis submits that the members lounge patio offers the only external direct access to the members lounge.

169. Ecoasis first submits that use of the Limited Common Property is contemplated under the Operations Agreement in those provisions establishing that Ecoasis operations would be permitted to continue after the hotel sale in a manner consistent with pre-sale business operations, including Sections 1.1(f) and (r) and Section 3. Section 1.1(f) defines the Golf and Tennis Business to mean the combined private and public golf course business conducted from the Valley Course and the Mountain Course, the driving range and premises covered by the Commercial Lease.

170. Section 1.1(r) defines "Standards" to mean the standard of operation of the golf business existing as of July 11, 2019.

171. Section 3 of the Operations Agreement recognizes that the golf business is an essential element of the hotel business, that any interruption in the golf business will be a detriment to Hotel, and that each party recognizes a reasonable discretion in the other to modify privileges in a manner consistent with the Standards.

172. Ecoasis argues that the doctrine of promissory estoppel prevents a landlord from relying on a tenants' past unauthorized use of property as a basis to allege a default, citing *1328773 Ontario Inc. v. 2047152 Ontario Ltd.*, 2013 ONSC 4953.

173. Ecoasis also argues legal principles applicable in the law on the right to quiet enjoyment of property. Ecoasis cites *Siddoo v. OJJJ Enterprises Ltd.*, 2020 BCSC 297 for the requirements to establish a breach of the covenant of quiet enjoyment. A landlord may not act in such a way as to render the premises substantially less fit for the purposes for which they were leased. Reference is made in *Siddoo* to decisions discussing the common law implied right to "quiet enjoyment."

174. Ecoasis refers to a number of decisions relating to calculation of damages for breach of quiet enjoyment that establish that, while difficult, a court must do the best it can even if it is a matter of guesswork.

175. Ecoasis seeks relief including an order that it is entitled to continued use of the staging area and members lounge patio at no additional cost and seeks damages for Hotel's breach of the right to quiet enjoyment further to Section 34.1 of the Commercial Lease. Ecoasis also seeks a finding that Hotel was not entitled to use portions of premises leased by Ecoasis.

Position of Hotel

176. Hotel submits that upon review of the areas covered by the Commercial Lease, it became apparent that Ecoasis was using additional areas including the members lounge patio, the liquor storage room on level two of the hotel and numerous parking stalls on level P2 of the Fairways Building. Hotel submits that Ecoasis had no permission to use those additional areas without paying rent. If the areas were critical to the golf business, Hotel says they should have been included in the Commercial Lease. The golf staging area comprised approximately 8,000 square feet of Limited Common Property for Strata Lot 1. Hotel submits that Ecoasis is trespassing and seeks rent for use of those areas.

177. Hotel submitted an invoice in the amount of $91,651.93 for use of the cart staging area from July 1, 2019 to April 30, 2020, $47,534.73 for rent payable for the period May 1, 2020 to September 30, 2020 and $28,582.97 for the period October 1, 2020 to December 31, 2020. Rent claimed is calculated on the basis of $13.50 per square foot, which is an average of rent paid under the Commercial Lease. Hotel was not aware that

it was storing equipment on premises leased to Ecoasis and immediately removed that equipment once discovered.

178. Hotel disputes the claim by Ecoasis for breach of a right to quiet enjoyment of the Leased Premises. In particular, Hotel submits that there were renovations underway that did not render the leased premises wholly or partially unfit and have not adversely impeded access.

179. Hotel submits that the Commercial Lease clearly identified the areas that were leased by Ecoasis. Hotel seeks relief including a declaration that Ecoasis is not entitled to use the unauthorized use areas and that the unauthorized use is a breach of the Commercial Lease, entitling Hotel to terminate the Commercial Lease. Hotel also seeks an order that damages be paid by Ecoasis and that Ecoasis immediately vacate those areas. Hotel also seeks an order that no damages are payable by Hotel for its unauthorized use of areas leased to Ecoasis. Finally, Hotel seeks a declaration that it has not breached the Ecoasis right to quiet enjoyment.

Analysis

180. The matters that remain in contention relate to use of Limited Common Property associated with Strata Lot 1. The other areas in dispute are no longer being used. In respect of the claims for unauthorized use of the Additional Areas by both Hotel and Ecoasis for such things as storage that have now been rectified there is no basis for an award of damages. It is inherent in a complex agreement that there will be some confusion. The respective claims of Hotel and Ecoasis are of a *de minimis* nature.

181. The substantial issue that remains relates to past, present and future use of the cart staging area outside the pro shop and the patio for the members lounge.

182. Any issue of impaired access to premises leased by Ecoasis relating to renovations is not of such moment as to warrant a finding of liability on the part of Hotel. With any agreement for cooperation between businesses such as Ecoasis and Hotel, there will be give and take for which there is an implied licence under the leasing and cooperation agreements.

183. It is an implied term of such leasing and cooperation agreements that the lessee will have access to Limited Common Property in order to meaningfully use premises covered by the lease and to conduct the businesses contemplated under the agreements. A lessee must be able to use sidewalks, roads, paths, elevators and structures such as balconies and patios in order to gain access to leased premises and to operate a business from the leased premises.

184. It is not clear on the evidence, and Hotel has not tendered evidence specifically to establish, that it is feasible for Hotel to rent out Limited Common Property associated

with Strata Lot 1 that is available for use generally by hotel guests, golf members and the general public.

185. More pertinent to the resolution of the Limited Common Property issue is the objective intention of the parties under the combined operation of the Commercial Lease and Operations Agreement in respect of the use of premises not dedicated to the exclusive use of either party. The Operations Agreement contains a number of implied and express terms that contemplate the use of Limited Common Property in the operation of the golf business that pre-existed the sale of the hotel.

186. It is an implied term of any agreement in the nature of a lease of premises that there will be use of common property. In this case there are additionally express terms of the Operations Agreement that contemplate use by Ecoasis of the staging area and the members lounge patio without additional payment. Section 1.1(f) acknowledges the operation of the golf and tennis business from hotel premises, and Section 1.1(r) acknowledges the golf and tennis business pre-existing the sale of the hotel as establishing a standard to be recognized by the parties. The parties objectively intended that it would be business as usual after the sale of the hotel to the extent possible in the same manner as before the sale. There was an implied term of good faith in both agreements that would preclude either party from post-contractual conduct that would deny the other party the benefit of the bargain. Use of the patio and cart staging areas are examples of such benefits. There was pre-existing common use of such areas as the driving range and the mens' locker room that were important for the business of Hotel and use of the patio and common area outside the pro shop that were important for the business of Ecoasis.

187. Other provisions of the Operations Agreement that bear on the Limited Common Property issue include Section 2.2 that provides that nothing in the Operations Agreement shall be deemed to restrict the freedom of either party to conduct its business and Sections 3.1 and 3.2 that recognize that the golf business and hotel business are essential to each other. In addition, Section 3.3 provides that both parties recognize a discretion in the other to modify such services and privileges based on operational experience that, in the reasonable opinion of the other party, will ensure the availability of such services and privileges "in a manner consistent with the Standards". The defined term "Standards" relates to the operations of the golf business existing at the date of sale of the hotel.

188. It is common ground that the staging area and the members lounge patio were part and parcel of the golf business at the date of the sale of the hotel. Continued use of the staging area and the members lounge patio by Ecoasis is thus contemplated in both implied and express terms of the Operations Agreement and the Commercial Lease.

189. It is not necessary to address issues of promissory estoppel or quiet enjoyment of property in order to resolve the Limited Common Property issue. The request by

Ecoasis for an order entitling Ecoasis to continued use of the staging area and the members lounge patio is granted. The order requested for a finding that Hotel was not entitled to use premises leased by Ecoasis is dismissed. There is an implicit obligation on both parties to act in good faith in the respective operation of the hotel and golf businesses, with cooperative use of areas that may be owned or leased by the other party that are necessary to give efficacy to the Operations Agreement and the Commercial Lease. Just as Ecoasis may have a right to continued use of the members lounge patio, Hotel is entitled to use of the driving range and the mens' locker room facilities for its guests.

190. The Hotel claim that Ecoasis is liable for trespass on the Limited Common Property areas in issue is dismissed as is the request that damages be paid by Ecoasis. Given these findings there was no basis for Hotel to terminate the Commercial Lease.

Issue #8 – Golf and Tennis Member and Social Member Access to the North Langford Recreation Centre

191. Part of the combined hotel and golf operations at the time of sale of the hotel included use of the North Langford Recreation Centre ("NLRC") that included gym and pool facilities. The NLRC was owned by the City of Langford and leased to Ecoasis. As part of the sale of the hotel in July 2019, Ecoasis was obliged to assign the NLRC lease to Hotel.

192. There were different types of membership that allowed access to the NLRC. Golf and Tennis Members were allowed access as part of their membership fees. There were also Social Members who, for the most part, were homeowners in the Bear Mountain Resort who were allowed access to the NLRC as part of the fees paid for their homeowner card. In addition, hotel guests and members of the public were allowed to use the NLRC. These were classified as Regular Members.

193. The NLRC was closed on March 15, 2020 because of the pandemic. Up until then the centre was used by the members described above but without specific agreement between Hotel and Ecoasis as to how the use would be accounted for. There was no provision in the Operations Agreement for NLRC usage.

194. The payments attributable to the NLRC were, for the most part, credited to Ecoasis because Ecoasis collected the fees for Golf and Tennis Members, collected payment for the homeowner card issued to Social Members and, for accounting reasons, received fees attributable for NLRC usage by hotel guests and the general public. These latter fees were deposited to the Ecoasis bank account. While there was no written agreement for how Hotel would be reimbursed for payments for NLRC usage, it was understood that Hotel would invoice Ecoasis for the various categories of usage.

195. Over the period December 2019 to the Spring of 2020, Hotel issued a number of invoices to Ecoasis including $54,091.26 for Golf and Tennis Members, $43,893.73 for

Social Members, $2,581.98 for additional Social Members and $134,136.49 for Regular Members. Ecoasis disputed these invoices for reasons including the number of members, the rate charged and the failure of Hotel to provide the necessary accounting back-up to explain monies said to have been deposited to the accounts of Ecoasis.

Position of Ecoasis

196. Ecoasis concedes that there is no agreement with respect to NLRC access fees. Ecoasis argues that an appropriate fee would be $25 per member per month based on actual use. The main objection by Ecoasis to the invoices submitted by Hotel for NLRC access is that Hotel has not provided an accounting for social membership fees alleged to have been deposited to the Ecoasis bank account.

197. Upon receiving invoices in December 2019 for 334 Golf and Tennis Members at a cost of $40 per month, Ecoasis objected that there were not that many members actually using the NLRC. Mr. Clarke claimed that the correct total was 116 Golf and Tennis Members using the facility. He suggested an appropriate rate of $25 per month. Sometime in January 2020, Mr. Clarke, on behalf of Ecoasis, is said to have agreed with Mr. Malak that the appropriate rate would be $55 per month per member.

198. On January 30, 2020, Michelle Patton sent Mr. Clarke (cc. to Mr. Matthews) a revised invoice for Golf and Tennis Members stipulating 122 members at a rate of $55 per month. When combined with the invoice for February 2020 dated April 20, 2020, the amount that Hotel invoiced Ecoasis for Golf and Tennis Member access to the NLRC was $54,091.26. Mr. Matthews conceded at the hearing that the invoices for the number of Golf and Tennis Members and the rate charged were acceptable.

199. Ecoasis notes that the Operations Agreement was silent on the cost for Social Members use of the NLRC but the Asset Purchase Agreement provided that Social Memberships remained part of the golf and tennis business. In February 2020, Ecoasis raised the issue of whether or not Hotel was keeping revenue related to Social Memberships for its own, in essence taking those members as their own. After arguments back and forth Ecoasis says Mr. Malak relented on March 13, 2020 by conceding that Social Memberships should continue to form part of the golf business. Mr. Malak advised that Social Member dues were deposited to the bank account of Ecoasis. In response to the Hotel claim for reimbursement for Social Member use of the NLRC in the amount of $43,893.73 Ecoasis submits that it has not received an accounting of revenues collected for Social Members that would allow Ecoasis to verify the amount claimed.

200. Ecoasis seeks relief in in the form of an order that Hotel produce the required backup information to verify the amounts that Hotel claims were credited to the Ecoasis bank account.

Position of Hotel

201. Hotel took over operation of the NLRC on July 11, 2019. Golf and Tennis Members were allowed access as part of their membership fees. Ecoasis was collecting those fees and it was agreed that Hotel would bill Ecoasis for Golf and Tennis Member use.

202. In December 2019, Hotel billed Ecoasis but the number of members and the rate charged were disputed. Following an agreement in January 2020, Hotel revised the invoices to charge 122 members a fee of $55 per month for the period July 2019 to the end of February 2020 in the amount of $54,091.26. In cross-examination Mr. Matthews conceded that the number of members charged, and the rate charged, were accepted.

203. Hotel submits that after the disagreement in March 2020 regarding withholding membership fees paid by Social Members, Mr. Malak wrote on March 13, 2020 to advise that Hotel was not holding any funds relating to Social Members and that all such funds were being deposited to the bank account of Ecoasis. Hotel invoiced Ecoasis for 99 Social Members at the rate of $55 per month for the period July 11, 2019 to March 14, 2020. The first invoice was in the amount of $43,893.73 and the second invoice was in the amount of $2,581.98. Hotel submits that neither of these invoices was paid. In the same letter of March 13, 2020, Ecoasis was advised that all funds collected with respect to Regular Members were deposited to the Ecoasis bank account. On May 6, 2020 Hotel sent Ecoasis the Regular Members invoice in the amount of $134,136.49 attaching accounting back-up that included a printout of the IBS point-of-sale reports showing funds collected along with spreadsheets showing transactions in the Ecoasis bank account.

204. Hotel seeks relief including declarations that Ecoasis pay invoices for Golf and Tennis Members in the amount of 54,091.26, Social Members in the amount of $43,893.73 and $2,5891.98 and Regular Members in the amount of $134,136.49.

Analysis

205. Ecoasis disputes the amounts owing insofar as Ecoasis has not been able to verify the amounts that were credited to the Ecoasis bank account. Mr. Matthews did concede that the invoices relating to Golf and Tennis Members was accepted. The amount invoiced for Golf and Tennis Members is thus sufficiently verified to warrant an order that Ecoasis pay Hotel the amount of $54,091.26.

206. The amounts invoiced by Hotel for Social Members have not been conceded absent the accounting back-up necessary to verify the amounts claimed by Hotel. This back-up may have formed part and parcel of the reconciliation latterly delivered by Hotel in January 2021, but it is not clear on the evidence that there has been sufficient verification. Accordingly, the order for Ecoasis to pay Hotel for access to the NLRC by Social Members is reserved pending further agreement of the parties or further

submissions regarding verification of amounts owing.

207. Hotel says Ecoasis was invoiced for Regular Member usage of the NLRC in the amount of $134,136.49 with sufficient back-up including IBS point-of-sale reports and spreadsheets of banking transactions. Hotel says that this accounting back-up is sufficient to allow Ecoasis to verify the amount owing. Ecoasis has not conceded the adequacy of the accounting back-up. The many pages of accounting documents that were provided by Hotel in support of the invoices are not sufficiently clear to allow for a conclusion that the amount claimed for Regular Member usage is correct. It is beyond the competence of an arbitration tribunal to digest and interpret the many pages of accounting documents that were tendered by Hotel. As with the order in respect of Social Member fees, the order in respect of payment of the invoice for Regular Members is reserved pending further agreement of the parties or further submissions confirming verification of amounts owing.

Issue #9 – Additional Outstanding Invoices and Issues Related to Invoices Generally

208. There are a number of issues relating to amounts owed for goods and services. These issues include accounting services provided by Hotel in issuing T4 slips and for the Horticulture and Parkway Maintenance operations, building utilities invoices, cash reconciliations, hotel stays and room charges, food and beverage invoices, and goods and services provided to hotel guests by Ecoasis.

209. The controversy over these issues turns largely on the scope of accounting services to be provided by Hotel under the Operations Agreement and the amount of back-up that each party was obliged to provide with the invoices tendered. Ecoasis submits that the amounts owed are not clear without further back-up. Hotel says Ecoasis has all the information that is necessary to verify the invoices. At the same time, Hotel says it is not obliged to pay the Ecoasis invoices until further back-up is provided.

Position of Ecoasis

210. Ecoasis begins by submitting that issues relating to the outstanding invoices dovetail with Issue #10 in the arbitration – Accounting Services. Amounts are owed between the parties, but the correct amount owed is uncertain because of Hotel's failure to provide adequate accounting information both to substantiate invoices and to meet obligations to provide accounting services.

211. In respect of Horticulture, Ecoasis says that Hotel failed to pay for services provided for which invoices tendered in the amount of $7,114.09 on January 31, 2020 and $2,569.60 on March 31, 2020 remain unpaid.

212. Hotel in turn billed Ecoasis for accounting services relating to Horticulture and Parkway Maintenance. Ecoasis submits that these services were part of the Golf and Tennis

Business and should have been included in the accounting services provided by Hotel under Section 4.1 of the Operations Agreement.

213. Hotel also issued an invoice for $1,575.00 for preparation of T4 slips that Ecoasis says were both part of the normal payroll processing covered by Section 4.1 and were redundant as T4 preparation is actually done by the Ecoasis payroll provider, Ceridian.

214. In respect of the invoices for hotel stays, Ecoasis says that further information is required as detailed in Exhibits A-G of the second witness statement of Melissa Hodson. There were ongoing credits and debits relating to such things as Stay and Play Packages, access to the recreation centre, golf events and banquet services, food and beverage charges and golf and tennis services provided to hotel guests. However, Ecoasis says it was impossible to determine the correct amounts owing without proper accounting back-up. Ecoasis calculates that it is owed $975,164.14 for various outstanding invoices that remain unpaid by Hotel.

215. Ecoasis submits that the amounts claimed by Hotel are a moving target and notes that the reconciliation in Hotel Document #271, produced in January 2021, shows numerous examples of excessive payments made by Ecoasis to Hotel in the $1.4 million reconciliation payment made in December 2019. Under the new reconciliation Ecoasis notes significant amounts owing by Hotel to Ecoasis from July 2019 including cash reconciliation, accounts receivable and payroll transactions.

216. Ecoasis submits that the evidence tendered by Hotel relating to accounting matters was inadequate. Mr. Malak admitted that he was not involved in the accounting operations. Mr. Clarke restricted his evidence to his employment relationship with Ecoasis. The critical witness, Michelle Patton, provided no evidence at all – even though she was the Controller for Hotel.

217. Ecoasis seeks relief including findings that nothing is owed to Hotel for accounting services relating to Horticulture and T4 preparation, and that Hotel be ordered to pay such amounts as may be owing to Ecoasis after accounting reports haves been finalized and back-up information has been provided. In addition, Ecoasis seeks an order that Hotel pay the invoices for Horticulture services.

Position of Hotel

218. Hotel submits that the preparation of T4 slips fell outside the accounting services required of Hotel under the Operations Agreement. Likewise, Hotel submits that accounting services relating to Horticulture and Parkway Maintenance were outside the scope of accounting services required under the Operations Agreement.

219. Hotel submits that the Asset Purchase Agreement in Sections 1(b)(vii) and (viii) excluded Horticulture and Parkway Maintenance from the Golf and Tennis Business,

defined in Section 1(b)(vi) and were thus excluded from the scope of Section 4.1.

220. Hotel submits that Ecoasis is in arrears in the amount of $161,900.42 for food and beverage services plus $57,400.79 for hotel room invoices sent on April 23, 2020. Hotel notes the statement of Melissa Hodson showing a large number of hotel stays that were approved by Ecoasis but nevertheless remain unpaid.

221. In respect of amounts owing to Ecoasis, Hotel submits that it will provide payment upon being properly presented with an invoice and back-up information. Hotel says the total of unpaid Ecoasis invoices is $685,954.59.

222. Hotel notes that Ecoasis failed to pay the reconciliation amounts billed in October 2019 until late December 2019.

223. Hotel seeks relief including a declaration that the invoice for preparation of T4 slips is valid, as are the invoices for accounting services in respect of Horticulture and Parkway Maintenance. Hotel also seeks a declaration that invoices for food and beverage services and hotel room stays were validly issued.

Analysis

224. Most of the issues that arise under this heading fall to be determined in accordance with the ruling under Issue #10 – Accounting Services. As noted below in that section, the scope of Accounting Services is much broader than claimed by Hotel. While Horticulture and Parkway Maintenance may have been defined under the Asset Purchase Agreement to be separate from the Golf and Tennis Business, the accounting services in respect of those operations were part and parcel of the accounting services prior to the sale of the hotel and would have continued to be part of the accounting services Hotel was obliged to provide under the Operations Agreement. The claim by Hotel for separate payment for those services is dismissed.

225. The amount charged to Hotel for Horticulture services was properly invoiced by Ecoasis. Hotel is ordered to pay those invoices in the amounts of $7,114.09 and $2,569.60.

226. The amounts owed between Hotel and Ecoasis for such items as food and beverage services and hotel stays will depend upon the provision of proper back-up as detailed in this award under Issue #10 – Accounting Services.

227. The failure of Hotel to provide a witness statement from the Controller, Michelle Patton, is a significant evidentiary gap that militates against the Hotel position that Ecoasis is to be faulted for failure to pay outstanding invoices. The matter of fixing the amounts owed for outstanding invoices must be reserved to a future date to allow Ecoasis an opportunity to review accounting records, especially the 2021 reconciliation

set out at Hotel Document #271.

Issue #10 – Accounting Services

228. As part of the hotel sale it was agreed in the Operations Agreement that Hotel would assume responsibility for providing accounting services for the golf operations. In the Fall of 2019 disputes arose as to the scope of accounting services Hotel was required to provide and the amount of compensation. Ecoasis was dissatisfied with the failure of Hotel to provide reports such as income statements and an up-to-date general ledger as well as back-up generally for invoices issued by Hotel.

229. Background facts to Hotel assuming responsibility for accounting included the fact that the entire accounting staff of Ecoasis was hired by Hotel at the time of the purchase. David Clarke was responsible for oversight of accounting staff prior to the sale and continued to be the contact person for Ecoasis after the sale in dealing with accounting staff.

230. As disagreements arose between Hotel and Ecoasis regarding accounting services, it appeared to Ecoasis that Mr. Clarke was acting in a manner contrary to the best interests of Ecoasis – including alleged unauthorized agreements between Mr. Clarke and Hotel to pay Hotel for pre-sale accounting services, to pay increased compensation for accounting services and ultimately to terminate the obligation to provide accounting services entirely.

231. Expert witnesses were called to establish the scope and cost of accounting services to be expected in a similar accounting department. Dana Adams gave an opinion regarding the range of accounting services to be expected in an internal accounting department for an organization like Ecoasis – including 17 enumerated items related to the recording and reporting of financial activities. Christopher Polson provided an opinion on behalf of Hotel that the accounting services provided by Hotel, and alleged by Ecoasis to be expected of Hotel, had a market value far in excess of the compensation amount set out in the Operations Agreement. Mr. Polson's opinions on the interpretation of the Operations Agreement and the scope of accounting services intended by the parties were inadmissible.

232. The issue that arises under this head turns on the interpretation of Section 4.1 of the Operations Agreement. That provision required that Hotel provide accounting services to Ecoasis including processing of daily revenue, bi-weekly payroll, accounts payable and event billing. There are also issues relating to the level of services that were actually provided by Hotel, and in particular the level of financial reporting that was provided.

Position of Ecoasis

233. Ecoasis notes that prior to the sale of the hotel, accounting services for both the hotel and golf businesses were done by the same accounting team. The Ecoasis accounting team reported to David Clarke. The accounting services that were provided were extensive. Ecoasis retained no accounting staff beyond Mr. Clarke after the sale. Michelle Patton, the Controller, became an employee of Hotel. The Operations Agreement provided that the accounting services provided would be at an equal level with accounting services provided to Hotel (Section 4.1(b)). The compensation for accounting services was scheduled to the Operations Agreement with a provision for review in 90 days, and thereafter on an annual basis.

234. Ecoasis says it was not aware of any problem with the delivery of accounting services until December 2019. At that time, it was discovered that there were issues known to Mr. Clarke that had not been communicated to Ecoasis. One issue related to Ms. Patton and the accounting staff being tied up with due diligence for Hotel auditors associated with the sale – for which Mr. Clarke, without authority, agreed that Ecoasis would pay Hotel $8,000 for June 2019 accounting work. In October 2019, Mr. Clarke agreed to increase the monthly fee for accounting services from $8,000 to $10,000 without prior authority. In December 2019, again without prior authority from Ecoasis, Mr. Clarke agreed that the accounting services being provided would be terminated as of January 31, 2020.

235. Ecoasis notes that Hotel tendered a witness statement from Mr. Clarke that detailed the personal breakdown in relations between Mr. Clarke and Ecoasis but did not dispute any of the allegations or characterizations of his conduct that were included in the witness statements of Mr. Matthews and other Ecoasis witnesses. Ecoasis seeks a ruling that evidence of the words and conduct attributed to Mr. Clarke was uncontradicted. Ecoasis also argues that Hotel failed to call Michelle Patton as a witness. In addition, evidence of deficiencies in the accounting services provided by her on behalf of Hotel was not contradicted. Ecoasis seeks to have an adverse inference drawn from the failure of Hotel to provide a witness statement from Ms. Patton. Ecoasis argues that Mr. Malak had little independent knowledge of accounting matters.

236. After January 31, 2020, Ecoasis hired Kevin Isomura to assist with 2019 tax returns and accounting issues. Mr. Isomura inquired of Ms. Patton in the Spring of 2020 regarding trial balances and financial statements but was told by Ms. Patton that the information was not available and that no further financial information would be provided by Hotel.

237. Ecoasis hired Daina Rozitis as the new Controller in March 2020. Ms. Rozitis discovered that the accounting services provided by Hotel up to January 31, 2020 were wholly lacking. There was no back-up for any of the accounts in trial balances, recording of transactions was incomplete, January payrolls had not been entered, bank receipts were not entered, no bank reconciliations had been provided, monies were withdrawn from Ecoasis accounts improperly and access to 2019 accounting information was denied.

238. A very unusual situation arose in the Spring of 2020 when Ms. Rozitis attempted to access accounting records and data that Hotel said were provided to Ecoasis. Mr. Clarke told her the accounting information was on the S: and O: drives of the Ecoasis server but those drives could not be located. The Ecoasis IT provider discovered that those drives had been deleted from the Ecoasis server in mid-March 2020. The only Ecoasis staff person with access to those drives was Mr. Clarke. The information stored in those drives was later provided to Ecoasis on a thumb drive.

239. Upon review of the accounting data that was ultimately provided Ms. Rozitis was able to confirm with Ms. Patton that Hotel continued to make adjusting entries in the Ecoasis books up to August 2020. However, Ms. Patton advised that she was not authorized to provide those adjustments to Ecoasis. Ms. Rozitis also discovered that bank reconciliations for Ecoasis for 2019 showed October 31, 2019 as the last entry. The last month-end completed by Hotel for Ecoasis was July 31, 2019.

240. On August 4, 2020 Mr. Lee, on behalf of Ecoasis, wrote to Mr. Sennott, acting for Hotel, to explain the difficulties that Ecoasis was having in getting year end accounting information for 2019. Mr. Lee made a demand for 23 categories of accounting information needed by Ecoasis:

    1. the current year trial balance and general ledger ("GL") downloaded to Excel as at December 31, 2019 and January 31, 2020;

    2. the bank reconciliations for each general ledger bank account at December 31, 2019 and January 31, 2020, as well as the bank statements for each account;

    3. the prepaid expense schedule at December 31, 2019 and January 31, 2020;

    4. the accounts receivable listing reconciled to GL as at December 31, 2019 and January 31, 2020;

    5. inventory count and listing of inventory reconciled to GL at December 31, 2019;

6. analyses of year over year decrease in security deposit account (note that when an "analysis" is asked for, we are simply seeking the detail - e.g. the breakdown of information which shows the basis for the decrease in this case);

7. fixed asset schedule reconciled to GL as at December 31, 2019 and January 31, 2020;

8. list of fixed asset additions and dispositions during the 2019 year;

9. intercompany and loan schedules reconciled to GL as at December 31, 2019 and January 31, 2020;

10. accounts payable listing and accrued liabilities reconciled to GL as at December 31, 2019 and January 31, 2020;

11. list of all payables relating to wages including CRA, MSP, EHT, group benefits, WCB and accrued vacation and gratuities payable at December 31, 2019;

12. list of all deferred revenue, gift certificates, golf dues, credit and rain cheques payable reconciled to general ledger at December 31, 2019;

13. GST collectible and payable reconciled to GST returns December 31, 2019 and January 31, 2020;

14. copies and reconciliations of all monthly GST, WCB and payroll remittance and other government returns filed during 2019;

15. year-end list and reconciliation of capital leases payable, and deposits received to GL December 31, 2019 and January 31, 2020;

16. analysis and list of all commitments, including rent and lease schedules as at December 31, 2019 and January 31, 2020;

17. list of shared services and charges and transactions between the hotel and Ecoasis Resort & Golf LLP as at December 31, 2019, and January 31, 2020;

18. analysis of all insurance expensed for 2019;

19. analysis of consulting fees for 2019;

20. list of all golf and tennis members by category as at January 31, 2020;

21. analysis of repairs and maintenance accounts up to January 31, 2020;

22. analysis of all related party expenses including charges by hotel up to January 31, 2020; and

23. the monthly financial statement for Ecoasis for each month from July 1, 2019 through January 31, 2020.

241. Ecoasis submits that Hotel's failure to provide accounting services as required under the Operations Agreement has caused many problems including an inability to file 2019 tax returns and significant accounting fees to complete the work that Hotel should have done. Confusion relating to financial information for Golf and Tennis Members is said to have caused a disruption in business operations. The homeowner card program for Social Members had to be dismantled.

242. Ecoasis submits that Accounting Services under Section 4.1 of the Operations Agreement "including processing of daily revenue, bi-weekly payroll, accounts payable and event billing" are not confined to those enumerated items. Ecoasis cites the case of *Claus v. Claus*, 2008 BCSC 1523 for the principle that specific items preceded by the word "including" do not circumscribe the interpretation of matters to the items included. Instead, the items listed should be taken as providing examples only.

243. Ecoasis seeks relief including a finding that Hotel was required under Section 4.1 of the Operations Agreement to provide the same accounting services as were provided prior to the sale of the hotel, and that Hotel has failed to meet that obligation. Ecoasis also seeks an order that full accounting services be provided by Hotel for the period July 11, 2019 to January 31, 2020 including all back-up information. Ecoasis seeks damages for breach of Section 4.1 of the Operations Agreement – with damages to be assessed.

Position of Hotel

244. Hotel submits that accounting services required under Section 4.1 of the Operations Agreement should be confined to the four enumerated items following the word "including". Hotel says the broad range of accounting services argued by Ecoasis could not have been intended because the compensation scheduled to the Operations Agreement was far too low. Hotel submits that the difficulty encountered by Ecoasis after accounting services were terminated on January 31, 2020 was a reflection of the lack of Ecoasis preparation to take over accounting services. Hotel says Ecoasis chose to part ways with David Clarke in March 2020 with the result that there was no transition of knowledge to Ms. Rozitis who was hired two weeks later. Hotel says the antiquated SunSystems accounting program used by Ecoasis was inadequate.

245. Hotel says that at all times the accounting work for Ecoasis was treated with equal priority to the work done for Hotel. Hotel submits that Ecoasis was offered additional accounting services in March 2020 and says Ecoasis admitted that the additional services were beyond the scope of the original obligation of Hotel. Hotel also submits that Ecoasis had all of the accounting data that was necessary but had no idea as to how to access the information on the Ecoasis server. Hotel notes that a USB drive containing all of the accounting data was provided to Ecoasis on August 11, 2020.

246. Hotel relies upon the expert opinion of Christopher Polson to the effect that Hotel was providing accounting services with a value in the range of $11,000 to $13,500 per month. This was well beyond the compensation in the amount of $8,000 per month provided for under the contract. The broader services alleged by Ecoasis under the Operations Agreement would have cost much more. Hotel says the Ecoasis expert, Ms. Adams, confirmed the values used by Mr. Polson and confirmed that there is a range of services provided by accounting staff in different companies. Hotel says there is an ambiguity in Section 4.1 of the Operations Agreement that should be resolved on the basis of commercial reasonability. The parties could not have intended the broad scope of accounting services argued by Ecoasis given the limited amount of compensation provided in the Operations Agreement.

247. Hotel argues that an adverse inference should be drawn because Ecoasis failed to cross-examine Mr. Clarke on his witness statement citing *Insurance Corporation of British Columbia v. Mehat*, 2018 BCCA 242 for principles governing the drawing of an adverse inference. Hotel does not respond to the Ecoasis argument that an adverse inference ought to be drawn from the failure to call Ms. Patton.

248. Hotel seeks relief including a declaration that the accounting services required under the Operations Agreement were confined to the four enumerated items, and that Hotel completed all services required. Hotel also seeks a declaration that no further information is owed to Ecoasis with respect to accounting services.

Analysis

249. Case authority establishes that the enumeration of items after the word "including" does not serve to limit the matters to the enumerated items. In *Claus v. Claus* it was held that:

> "...where a general term is followed by specific terms, and those specific terms are preceded by the word "including", the meaning to be attributed to that general word is not circumscribed by these specific items. They should be taken as providing examples, but not setting strict limitations."

250. There is no ambiguity in the language of Section 4.1 of the Operations Agreement in the term "accounting services". The words used, the whole of the Agreement and the factual background establish a requirement to provide accounting services in the same manner and to the same level as existed prior to the sale of the hotel. The accounting services that were to be delivered under the Operations Agreement are those enumerated in the 17 bullet points listed in the expert report of Dana Adams. There was no limitation on the accounting services that would be provided under the Operations Agreement. Hotel was obliged to provide a full suite of accounting services consistent with the services that had been provided prior to the sale of the hotel and consistent with the accounting services that the accounting team provided to Hotel after the sale. The services to be provided were those to be expected in a similar accounting department including the preparation of income statements, balance sheets, up-to-date general ledger entries and the recording and reporting of financial data necessary for tax purposes.

251. On the evidence, the accounting services provided by Hotel were inadequate particularly in respect of reporting obligations to Ecoasis. Hotel breached its obligations under Section 4.1 of the Operations Agreement. The extensive failures of Hotel triggered a cascade of conflict between the parties, notably in respect of back-up for invoices issued by Hotel.

252. The argument by Hotel that the compensation provided under the Operations Agreement ought to be determinative in establishing the scope of Section 4.1 is not accepted. Commercial reasonability is but one factor to be considered when interpreting a contractual provision. The level of compensation does not serve to create an ambiguity in the language of Section 4.1 especially when there was a provision for review of that compensation.

253. The statements and conduct attributed to Mr. Clarke by Mr. Matthews and other Ecoasis witnesses are accepted as true and correct. It was open to Hotel to tender a full statement from Mr. Clarke. It was incumbent upon Hotel to tender evidence to contradict the allegations made by Mr. Matthews regarding Mr. Clarke acting without authority to agree matters that favoured the position of Hotel. The impropriety of the relationship between Hotel and Mr. Clarke will be dealt with further under Issue #15, the allegation of breach of the Non-Solicitation Agreement by Hotel.

254. Evidence that Ms. Patton refused to provide accounting information on request by Ecoasis and as instructed by Hotel is similarly accepted as true and correct as it was uncontradicted. It was open to Hotel to provide a witness statement from Ms. Patton to refute those allegations. It was incumbent upon Hotel to provide a witness statement from Ms. Patton. Evidence of deficiencies in accounting services as detailed in Ecoasis witness statements was likewise uncontradicted.

255. The relief sought by Ecoasis is granted in a finding that Hotel breached its obligation

under Section 4.1 of the Operations Agreement to provide accounting services. Hotel must provide Ecoasis with complete financial information as broadly defined in the letter from Mr. Lee dated August 4, 2020 noted above. Hotel must provide up-to-date statements of accounts receivable and accounts payable with complete back-up data. Hotel is liable for damages caused by breach of Section 4.1 of the Operations Agreement with damages to be assessed.

Issue #11 – Termination of the NLRC Lease

256. Prior to the sale of the hotel Ecoasis was renting the North Langford Recreation Centre from the City of Langford. The pool and the gym were available for use by Golf and Tennis Members, Bear Mountain community members, hotel guests, and the general public. Fees from the various categories of users were said to have been either collected by Ecoasis or deposited to the Ecoasis bank account by Hotel.

257. As part of the sale, it was agreed that the lease on the NLRC would be transferred to Hotel. It is common ground that the lease was long expired at the time of the sale. The month-to-month tenancy was assumed by Hotel. Ecoasis did not prepare an assignment of the expired lease.

258. The NLRC was closed in March 2020 because of the pandemic. Thereafter, the City of Langford terminated the month-to-month tenancy and put the NLRC up for sale. The City of Langford ultimately sold the NLRC to an entity owned by Mr. Matthews and Mr. Kusumoto. Hotel seeks damages for breach of the Asset Purchase Agreement in the failure of Ecoasis to execute an assignment of the expired lease.

Position of Ecoasis

259. Ecoasis notes that the original lease for the NLRC had an 11-month term from February 1, 2015 to December 31, 2015. On expiry of the term in 2015 Ecoasis continued to rent on a month-to-month basis. To the extent that the month-to-month tenancy could be assigned to Hotel, Ecoasis says this was effected by Hotel assuming the rental and, with the approval of the City of Langford, paying the monthly rent.

260. Ecoasis submits that attempts were made to assist Hotel in obtaining a new longer-term lease. On November 12, 2019, Patrick Julian of Koffman Kalef, on behalf of Ecoasis, wrote to Ralston Alexander of Cook Roberts, who was acting for Hotel. Mr. Julian asked Mr. Ralston for input regarding a request to be made of the City of Langford for a new lease for the NLRC. Mr. Julian attached a draft Lease Agreement commencing November 1, 2019 and a draft "Assignment and Assumption Agreement". Mr. Ralston did not get back to Mr. Julian. Mr. Matthews stated that it was assumed that Hotel did not wish to pursue the assignment. Mr. Matthews assumed Hotel was content with continuing to operate the NLRC on a month-to-month basis.

261. Ecoasis submits that it is relevant that Mr. Clarke had been negotiating terms of employment with Mr. Malak prior to the sale of the hotel. One of the job description items was to provide consulting services to purchase the NLRC. Further, Mr. Matthews stated that Mr. Malak was in direct discussions with the City of Langford to purchase the NLRC in December 2019. It was always understood that the City of Langford intended to eventually sell the NLRC.

262. Ecoasis submits that Hotel requested a formal assignment with respect to the NLRC Lease on May 19, 2020, but that this request seemed to be academic in that Hotel advised Ecoasis on the very same day that the City of Langford had terminated the rental and Hotel had been asked to vacate.

263. Ecoasis submits that the subsequent purchase of the NLRC is irrelevant to any issue in the arbitration and that the NLRC Lease was, for all practical purposes, assigned to Hotel when Hotel assumed the rental in 2019. Assignment of the expired lease would not have given Hotel any greater entitlement to the NLRC beyond a month-to-month tenancy and that the City of Langford was entitled to terminate the month-to-month lease. Ecoasis says no assignment would have changed that fact.

264. Ecoasis seeks an order that Hotel's claim with respect to a purported failure to assign the expired NLRC Lease be dismissed.

Position of Hotel

265. Hotel acknowledges that the lease for the NLRC had expired and that the rental had become a month-to-month tenancy. Hotel argues that Ecoasis was obliged under Section 1(c) of the Asset Purchase Agreement to assign the expired Lease. That provision required that Ecoasis obtain the consent of third parties for the assignment of contracts. Hotel accepts that the City of Langford was aware of the change of ownership and accepted rent payments by Hotel up to March 2020.

266. Hotel says it approached the City of Langford with an offer to purchase the NLRC in October 2019. The offer was not accepted, and in February 2020 the City of Langford released a request for expressions of interest for the sale of the NLRC. Hotel submitted a proposal that was not accepted. The City of Langford asked Hotel to vacate by May 20, 2020. Mr. Malak stated that he was advised by a city official on May 21, 2020 that the City had not been aware of an agreed assignment of the expired Ecoasis lease. On or about August 26, 2020, Hotel became aware of a sale of the NLRC to a company controlled by Mr. Matthews and Mr. Kusumoto.

267. Hotel submits that Ecoasis breached the Asset Purchase Agreement under which Ecoasis was obliged to execute such documents as may be required to give full effect to the Agreement and to use reasonable best efforts to implement the Agreement. Hotel submits that Ecoasis made no *bona fide* attempts to assign the NLRC Lease, and

actively took steps to disrupt the lease and obtain the NLRC for itself. Hotel seeks relief including a declaration that Ecoasis failed to assign the Lease and interfered with the Lease after July 11, 2019. Hotel seeks an order that Ecoasis is liable for damages to be assessed.

Analysis

268. Section 1(a)(iii)(1) of the Asset Purchase Agreement provided that Hotel would purchase "that certain lease agreement dated for reference the 9th day of April, 2015, between the City of Langford, as landlord, and the Vendor, as tenant, in respect of the pool and fitness facility located adjacent to the Hotel operated by the Vendor pursuant to such lease under the name 'North Langford Recreational Facility.'" It is common ground that the lease was long expired at the date of the sale of the hotel. The month-to-month tenancy that continued was assumed by Hotel with the consent of the City of Langford. The month-to-month tenancy, to the extent that it was capable of being assigned, was for all practical purposes assigned to Hotel when Hotel took over the rental of the NLRC. The lease identified in the Asset Purchase Agreement, dated April 9, 2015, had expired and could not be assigned.

269. In correspondence regarding an application for an extension of the Lease, Hotel expressed no interest in either the negotiation of an extended lease or the associated assignment of the extended Lease. Mr. Ralston Alexander, the lawyer for Hotel, did not respond in a timely way to the Ecoasis overture in that respect. It was apparent from subsequent dealings in May 2020, however, that Hotel did seek to have Ecoasis assign the expired lease to assist Hotel in its efforts to purchase the NLRC. There is no evidence that any purported assignment of the expired lease would have improved the bargaining position of Hotel.

270. To the extent that the month-to-month tenancy for the NLRC was capable of assignment, it was for all intents and purposes assigned. There was no breach by Ecoasis of any obligation under the Asset Purchase Agreement to implement the transfer of the month-to-month tenancy. The City of Langford accepted Hotel as the new tenant. The NLRC was closed in March 2020 because of the pandemic and the City of Langford proceeded thereafter with a plan to sell. The request for a declaration that Ecoasis was in breach of the Asset Purchase Agreement for failure to assign the expired Lease is dismissed.

Issue #12 – Disruption of Ecoasis Business Operations

271. Under this head, Ecoasis alleges numerous breaches of the Operations Agreement, breach of a right of quiet enjoyment, breach of the Non-Solicitation Agreement with respect to David Clarke and unlawful termination of the Commercial Lease and the Operations Agreement. Ecoasis seeks damages for those violations.

Position of Ecoasis

272. Ecoasis cites *Howeling Nurseries Ltd. v. Fisons Western Corp.*, 1988 CarswellBC 471 (BCCA) for the proposition that damages for lost profits caused by breach of contract may not be capable of precise calculation. Ecoasis cites *2502731 Nova Scotia Ltd. v. Plaza Corp Retail Properties Ltd.*, 2009 NSCA 40 for the principle that a methodology for assessment of damages can assist when quantum cannot be proved with exactitude. Ecoasis further cites case and text authorities in relation to damages being allowed for diminution of value and loss of profits, goodwill and business reputation.

273. Ecoasis identifies 10 separate breaches of contract by Hotel that collectively served to disrupt and devalue the golf and tennis business – including denying access to the members lounge by virtue of ongoing construction. Ecoasis submits that Hotel did not adduce any substantive evidence at the hearing to challenge the business losses described in the evidence of Mr. Matthews or even cross-examine Mr. Matthews in respect of those claimed damages. Ecoasis submits that the quantum of damages is uncontroverted. Accordingly, Ecoasis seeks relief in the nature of a finding of damages as set out in the list of damages contained at Exhibit "A" of the witness statement of Mr. Matthews dated December 16, 2020. Business losses were $1,799,699 and lost revenue was $549,921.

Position of Hotel

274. Hotel denies that the golf and tennis business was disrupted in any way by construction related to hotel renovations. Scaffolding erected to the exterior of the hotel did not block access to the premises leased by Ecoasis. In respect of the allegation that the golf and tennis business was disrupted by breach of the obligation to provide food and beverage services, Hotel submits that Ecoasis failed to pay for those services with a resulting suspension of service.

275. Hotel submits that the testimony of golf members, Mr. Edwards and Mr. Richards, revealed a breakdown in communications between Ecoasis and its members, including a failure to advise members that invoices for food and beverage services were not being paid. Both Mr. Richards and Mr. Edwards confirmed the sentiment that the hotel renovations were a benefit.

276. Hotel submits that the golf and tennis business operations were never disrupted and that there was no blocking of access to premises leased by Ecoasis. Hotel submits that any difficulty in golf members dealing with hotel outlets was a direct result of Ecoasis unilaterally separating its point-of-sale system. Hotel submits that the failure of Ecoasis to provide its members with complete information has resulted in misguided animosity toward Hotel. Hotel emphasizes the continuing refusal of Ecoasis to pay food and beverage invoices. Hotel says Ecoasis could have mitigated any damages by paying all outstanding invoices and later disputing them. Hotel seeks relief including a declaration

that Hotel did not interfere with or disrupt Ecoasis' ability to carry on its business.

Analysis

277. Even though the damages listed by Mr. Matthews were not challenged it would not be appropriate to order payment of those damages at this time. All of the claims for damages for disruption of business repeat damages claimed under other heads. It is not clear that the effect of multiple breaches of contract give rise to a cumulative loss greater than the sum of the parts addressed under each individual issue. To the extent that Ecoasis seeks to prove the losses set out at Exhibit "A" to the witness statement of Mr. Matthews on an assessment of damages on issues already reserved to a further hearing, there is no impediment to seeking to prove any loss associated with any particular breach of contract that is causally connected. To the extent that a combination of breaches gives rise to a loss greater than the sum of losses caused by individual breaches, it is open to Ecoasis to make a causation argument on a future assessment of damages.

Issue #13 – Termination of the Commercial Lease

278. Hotel seeks a declaration that there was a valid termination of the Commercial Lease based on Ecoasis' unauthorized use of areas outside the leased premises as discussed under Issue #7 and the failure of Ecoasis to pay utilities bills. On April 14, 2020, counsel for Hotel gave notice of termination of the Commercial Lease.

Position of Ecoasis

279. Ecoasis submits that use of property by a tenant without authority does not constitute a breach of a lease. In *1328773 Ontario Inc. v. 2047152 Ontario Ltd.*, 2013 ONSC 4953, it was held that ancillary use of property belonging to the landlord does not involve a breach of the lease *per se*. Ecoasis submits that any alleged breaches were, in any event, cured prior to the notice of termination in April 2020.

280. Ecoasis relies upon the decision of the Supreme Court of Canada in *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, [1994] 2 SCR 490 for the principle that relief against forfeiture is a discretionary equitable remedy having regard to the gravity of an alleged breach. In *Caromar Sales Ltd. v. Shura Real Estate Development Co.*, 2011 BCSC 1088, it was held that s. 24 of the *Law and Equity Act* of British Columbia provides a broad discretion to provide relief from forfeiture.

281. Ecoasis says Mr. Matthews was not aware of any unpaid utility invoices until April 7, 2020 and made immediate payment thereafter. The amount of the outstanding utility bill approximating $1,800 was minimal compared to the monthly rent payment of more than $27,000. Any unauthorized use of Limited Common Property is said to be minimal, and that there is a significant disparity between the property to be forfeited and the

alleged damage. Ecoasis seeks a finding that the Commercial Lease has not been lawfully terminated, or in the alternative a finding that it is entitled to relief from forfeiture.

Position of Hotel

282. Hotel submits that use of unauthorized areas by Ecoasis was a contravention of the Commercial Lease. Hotel submits that Ecoasis breached Section 7.3 of the Commercial Lease by failure to pay utilities accounts and Section 11.1 by constructing a storage room for liquor. Hotel further submits that Ecoasis breached Section 14 of the Commercial Lease by storing golf carts in the golf cart staging area on Limited Common Property. Hotel submits that while the utilities bill was paid prior to notice of termination, Ecoasis did not address the other contraventions.

283. In response to the request for relief from forfeiture, Hotel relies upon the principles set out by the Supreme Court of Canada in *Saskatchewan River Bungalows* requiring consideration of the reasonableness of the conduct, the gravity of the breaches, and the disparity in damages. Hotel submits that Ecoasis does not come to the arbitration with clean hands regarding the NLRC Lease and liquor licences. Hotel says Ecoasis has generally been uncooperative, unresponsive and difficult.

284. Hotel submits that Ecoasis was repeatedly advised of breaches of the Commercial Lease, and that termination of the lease was justified on the basis of a fundamental breach as described in *Karimi v. Gu*, 2016 BCSC 1060. Relevant factors are the nature and purpose of the contract, the intended benefit to the innocent party, the material consequences of the breach and the cumulative effect of a number of violations. Hotel emphasizes the continuing breach by Ecoasis of the unauthorized use areas. Such unauthorized use is said to go to the root of the Commercial Lease, and that such continued and rebellious use is a fundamental breach. Hotel seeks relief including a declaration that Hotel had a valid basis for terminating the Commercial Lease and that Ecoasis is not entitled to relief from forfeiture. Hotel seeks an order that Ecoasis immediately vacate the leased premises.

Analysis

285. As discussed under Issue #7, there was no breach by Ecoasis in respect of the use of the alleged unauthorized use areas. In respect of the alleged breach by failure to pay the utilities bill, there can be no finding of breach where the relatively small amount of the utilities bill was paid shortly after coming to the attention of Ecoasis. In any event, it would clearly be a case for relief from forfeiture given the amount of the utilities bill and the disparity in the consequences of the lease being terminated. The request by Hotel for a declaration that there was a valid termination of the Commercial Lease is dismissed.

Issue #14 – Termination of the Operations Agreement

286. By mid-April 2020, relations between the parties had deteriorated to such an extent that Hotel gave notice of termination of the Operations Agreement. The basis for termination was non-payment of invoices, most of which related to food and beverage services. The propriety of those invoices was addressed under Issue #2, Food and Beverage, and Issue #10, Accounting Services.

Position of Ecoasis

287. Ecoasis submits that Hotel had no reasonable basis for terminating the Operations Agreement. The primary basis for termination was the alleged non-payment of invoices mostly relating to food and beverage services. Ecoasis repeats its position that the invoices were improper insofar as Hotel was charging more for food and beverage services than was permitted under Section 4.2 of the Operations Agreement and because Hotel failed to provide the financial statements showing food costs that were necessary to determine the correct amount owing.

288. Ecoasis submits that Hotel waited until December 2019 and February 2020 to issue invoices and that even in February 2020 the requisite financial statements were not provided. Ecoasis says that the financial statements necessary for the calculation of food costs under Section 4.2 were not provided until December 2020, long after Hotel purported to terminate the Operations Agreement. Even when financial statements were provided in the course of the arbitration proceedings, Ecoasis says the invoices were incorrect because they included labour costs that were not contemplated under Section 4.2 of the Operations Agreement.

289. Ecoasis submits that Hotel was not allowed to terminate the Operations Agreement as that agreement specified the protocol to be followed for a breach. Section 9 of the Operations Agreement provided that in the event of a default in the payment of any amount required, Hotel has the right to either bring proceedings seeking specific performance, injunction or other equitable remedy or bring an action to recover damages. There is no provision for the Operations Agreement to be terminated upon default.

290. Ecoasis seeks a finding that the Operations Agreement continues in full force and effect.

Position of Hotel

291. Hotel submits that there were numerous invoices that remained unpaid as at mid-April 2020, primarily relating to food and beverage services. Payment of these invoices remain outstanding. Hotel submits that under Section 9 of the Operations Agreement, a party is in default for non-payment of amounts required to be paid. On April 14, 2020,

counsel for Hotel accordingly sent Ecoasis notice of termination of the Operations Agreement. In addition, Hotel submits that other invoices relating to hotel rooms, issued after April 14, 2020 pursuant to Section 5.2 of the Operations Agreement, remain unpaid.

292. Hotel says the wholesale non-payment of invoices required to be paid under the Operations Agreement constitutes a fundamental breach of the Operations Agreement for the same reasons that were argued under Issue #13 relating to the Commercial Lease. Hotel says the breaches by Ecoasis go to the very root of the Operations Agreement, depriving Hotel of the whole or substantially the whole of the benefit of the Agreement. Hotel says it was not open to Ecoasis to simply refuse to pay outstanding invoices. Rather, Ecoasis should have paid the invoices and disputed the amount under the provisions for dispute resolution.

293. Hotel seeks relief including a declaration that there was a valid termination of the Operations Agreement and that the Agreement is terminated.

Analysis

294. As discussed earlier, Hotel was in breach of the duty to issue proper invoices for food and beverage services and to provide proper accounting reports for the period July 2019 to the end of January 2020. Ecoasis was not obliged to pay whatever amount Hotel decided to charge for food, even on a partial basis. The Operations Agreement did not contemplate a right of termination in respect of disputed invoices but rather provided a mechanism for dispute resolution. There was no valid basis for Hotel to give notice of termination of the Operations Agreement on April 14, 2020. The Operations Agreement continues in full force and effect.

Issue #15 – Breach of the Non-Solicitation Agreement

295. As part of the package of agreements signed in July 2019 relating to the sale of the hotel and Hotel hiring scheduled employees, the parties entered into a Non-Competition and Non-Solicitation Agreement. Under that Agreement, the parties were prohibited from employing or otherwise enticing any individual currently employed by the other. The remedies provided for breach of the non-solicitation obligation included acknowledgement of irreparable harm should there be a violation.

296. Hotel entered into a consulting agreement with Mr. Clarke immediately after he left employment with Ecoasis. Mr. Clarke provided a witness statement in which he detailed a breakdown in relations with Ecoasis largely having to do with disagreements on personal matters. He said there was a steady decline in his treatment by Ecoasis as a result of his marrying an employee. In August 2019 he decided to not renew his employment contract when it came to an end in December. In January 2020, Mr. Clarke and Ecoasis entered into a consulting agreement for a three-month transition. On

March 9, 2020, he was told by Dan Matthews that Ecoasis no longer wanted him on site. Thereafter Mr. Clarke was hired as a consultant by Hotel. Mr. Clarke says that his decision to leave the employment of Ecoasis had nothing to do with any enticement or inducement from any outside source.

Position of Ecoasis

297. Ecoasis submits that as the CFO, David Clarke was critically involved in the sale of the hotel and in dealing with Hotel after the sale. Ecoasis says Mr. Clarke immediately began working for Hotel upon leaving his employment with Ecoasis.

298. In preparation for the arbitration proceedings Ecoasis discovered that Mr. Clarke had been working with Mr. Malak as early as May 2019 and was discussing terms of employment as a consultant prior to the sale of the hotel. Ecoasis also discovered that Mr. Clarke was providing services to Hotel while employed by Ecoasis. Ecoasis says the split loyalty of Mr. Clarke is of concern in light of the degree to which Ecoasis relied upon Mr. Clarke.

299. Ecoasis discovered communications between Mr. Clarke and Hotel in May 2019 in which Mr. Clarke proposed an agreement to perform services for Hotel including assistance in the transfer of the Marriott franchise, transfer of liquor licences, transfer of agreements relating to food and beverage operations, transition of all banking, liaison with strata owners, purchase of the NLRC and purchase of strata units in the hotel and Fairways Building. On that same day in May 2019 Mr. Clarke advised Marriott representatives that he would be the director of the hotel company and act as the go-between with Ecoasis and Hotel. Ecoasis states that neither Mr. Clarke nor Mr. Malak made disclosure of these arrangements.

300. On May 28, 2019, Mr. Malak communicated with Mr. Clarke regarding their proposed consulting agreement and attached an additional agreement for services that included Mr. Clarke acting as a facilitator in integration of the hotel and golf businesses, staffing reviews, acting as liaison with Marriott, representing Hotel in all negotiations with strata owners, acting as signatory in all bank accounts and meeting with Hotel to review financials. Mr. Malak advised Mr. Clarke on June 3, 2019 that he was anxious to sign the consulting agreement soon thereafter.

301. Ecoasis says that while Mr. Clarke was employed to act in the best interests of Ecoasis he was offering services to Mr. Malak including purchase of quarter-shares in the hotel and Fairway Buildings that would dilute Ecoasis' vote on decisions materially impacting the golf business. In addition, Mr. Clarke was negotiating with Marriott and Hilton on behalf of Hotel as well as the spa operator starting in August 2019. None of the work done by Mr. Clarke for Mr. Malak was disclosed to Ecoasis.

302. Mr. Malak also entered into agreements with Mr. Clarke's wife relating to the purchase

of strata units, for which she was paid approximately $27,000. This conflict of interest was not disclosed to Ecoasis. Mr. Malak said a decision was taken to not sign the consulting agreement with Mr. Clarke prior to the purchase of the hotel. Ecoasis notes that Mr. Clarke and Mr. Malak failed to produce any copies of consulting agreements that would indicate the date on which Mr. Clarke was engaged to provide services to Mr. Malak.

303. Ecoasis submits that it is uncontroverted that Mr. Clarke was employed by Ecoasis at the time the Non-Solicitation Agreement was signed, that Mr. Clarke was employed by Hotel within the three-year non-solicitation period, and that Hotel failed to obtain consent for such employment. Ecoasis says the breach of the Non-Solicitation Agreement is clear.

304. Ecoasis seeks relief including a finding that Hotel breached the Non-Solicitation Agreement, and damages linked to the cost of the arbitration proceeding and linked to the disruption of services caused by Hotel.

Position of Hotel

305. Hotel submits that Mr. Clarke is not now and never was an employee of Hotel. Hotel says Mr. Clarke was first engaged as a part-time consultant in January 2020 and became a full-time consultant in April 2020. Hotel says Mr. Clarke assisted Hotel after the purchase only with respect to items for which Ecoasis no longer held an interest or in respect of which Mr. Clarke was providing transitional assistance from Ecoasis to Hotel. Hotel submits that Mr. Clarke's services on behalf of Hotel did not conflict with his duty to Ecoasis, citing such services as matters involving strata owners and negotiations with the spa operator, the City of Langford and Marriott.

306. In respect of the services provided by Mr. Clarke and his wife regarding acquisition of strata units in the hotel and Fairways Building, Hotel submits that Ecoasis no longer had any interest. Hotel submits that no offer was made to employ Mr. Clarke or to solicit or entice Mr. Clarke to leave the employment of Ecoasis. Hotel says Mr. Clarke was planning to leave Ecoasis for reasons unrelated to Hotel.

307. Hotel seeks a declaration that there was no breach of the Non-Competition and Non-Solicitation Agreement.

Analysis

308. Hotel breached the Non-Competition and Non-Solicitation Agreement by working with Mr. Clarke behind the back of Ecoasis after July 11, 2019 and by entering into a consulting agreement with him in 2020. Mr. Clarke was the key person in the sale of the hotel and in the ongoing operation of the hotel and golf and tennis businesses. It is impossible to gauge the extent to which this duplicity contributed to the breakdown in

relations between the parties.

309. Both Mr. Malak and Mr. Clarke were sophisticated businessmen who were aware of the serious breach of trust inherent in their business dealings. The duty of loyalty owed to Ecoasis by an employee in the position of Mr. Clarke is one of the most significant obligations recognized in law. Hotel is liable for damages to be assessed or cost consequences caused by breach of the Non-Competition and Non-Solicitation Agreement.

Summary of Award

310. The parties agreed in the Summer of 2019 that Hotel would purchase the Westin Hotel at the Bear Mountain Resort and that thereafter the hotel and the golf and tennis businesses would be operated cooperatively in much the same manner as before the sale. Not long after the purchase the parties began to fall apart. Mr. Malak was not happy with the deal that had been made for the provision of accounting services and food and beverage services – and quickly moved to first renegotiate and then terminate those services. At the same time, Mr. Malak was very aggressive in pursuing collection of accounts for food and beverage services while refusing to provide the back-up necessary to validate those invoices.

311. As disagreements were ongoing between Hotel and Ecoasis, the CFO of Ecoasis, David Clarke, was secretly working for Hotel and making agreements on behalf of Ecoasis for increases in compensation for such things as accounting services, and ultimately the termination of accounting services, without the authorization of Ecoasis.

312. Within a year of having purchased the hotel, Mr. Malak gave notice of termination of the Operations Agreement and the Commercial Lease and sought to have Ecoasis removed from the premises. The impact of the terminations was devastating on the golf and tennis business. The financial consequences of Hotel's breaches of the Operations Agreement and the Non-Competition and Non-Solicitation Agreement will be assessed on a further hearing for the assessment of damages. The rulings on each of the Issues are summarized as follow:

Issue #1 – Equipment Lease Payments

313. The parties appear to have amicably resolved this issue. If there is any issue that remains outstanding the parties are at liberty to apply.

Issue #2 – Food and Beverage

314. Hotel is liable for damages to be assessed for breach of Sections 4.2(a) and 4.2(b) of the Operations Agreement. Hotel is ordered to reissue invoices for food costs based on the food cost in the previous month's financial statements plus 20%.

Issue #3 – Liquor Licence

315. The relief requested by Ecoasis seeking rectification of the Asset Purchase Agreement or implication of a term to either remove the Valley Golf Course portion of Licence #54 or transfer the members lounge portion of Licence #54 back to Ecoasis is denied.

316. The relief sought by Hotel seeking declarations that the parties intended that Hotel own liquor licences over the Valley Golf Course and the members lounge is denied.

Issue #4 – December 2019 Meeting

317. No enforceable oral contract was made in the December meeting. The required certainty of essential terms was absent and any modification of the Operations Agreement would require an agreement in writing under the entire agreement clause in Section 13.6.

Issue #5 – Hotel Rates and Discounts

318. There is no finding that Hotel breached Sections 5.2, 5.3 or 5.4 of the Operations Agreement.

319. Hotel violated the obligation under Section 5.5 of the Operations Agreement to provide Marriott privileges to Ecoasis employees and is liable for damages to be assessed.

Issue #6 – Driving Range Access

320. It was not an implied term of the Operations Agreement that Hotel should pay for driving range usage by guests. There is no basis upon which a claim for *quantum meruit* can stand.

Issue #7 – Limited Common Property and Additional Areas of Use

321. Hotel's claim for trespass on the Limited Common Property is dismissed. Ecoasis is entitled to use the Limited Common Property areas related to the members lounge patio and the cart staging area outside the pro shop without additional lease payment.

Issue #8 – Golf and Tennis Member and Social Member Access to the North Langford Recreation Centre

322. Ecoasis is ordered to pay Hotel the amount of $54,091.26 for Golf and Tennis Member access to the NLRC.

323. The order for Ecoasis to pay Hotel for access to the NLRC by Social Members is reserved pending further agreement of the parties or further submissions regarding verification of amounts owing.

324. The order in respect of payment of the invoice for Regular Members is reserved pending further agreement of the parties or further submissions confirming verification of amounts owing.

Issue #9 – Additional Outstanding Invoices and Issues Related to Invoices Generally

325. The claim by Hotel for separate payment for accounting services for Horticulture and Parkway Maintenance is dismissed.

326. Hotel is ordered to pay Ecoasis invoices for Horticulture services in the amounts of $7,114.09 and $2,569.60.

327. Amounts owed for such items as food and beverage services and hotel stays will depend upon the provision of proper back-up as detailed in this award under Issue #10 – Accounting Services.

Issue #10 – Accounting Services

328. Hotel breached its obligation under Section 4.1 of the Operations Agreement to provide accounting services. Hotel must provide Ecoasis with complete financial information as broadly defined in the letter from Mr. Lee dated August 4, 2020. Hotel must provide up-to-date statements of accounts receivable and accounts payable with complete back-up data. Hotel is liable for damages caused by the breach of Section 4.1 of the Operations Agreement with damages to be assessed.

Issue #11 – Termination of the NLRC Lease

329. The request for a declaration that Ecoasis was in breach of the Asset Purchase Agreement for failure to assign the expired Lease for the NLRC is dismissed.

Issue #12 – Disruption of Ecoasis Business Operations

330. To the extent that Ecoasis seeks to prove the losses set out at Exhibit "A" to the witness statement of Mr. Matthews on an assessment of damages on issues already reserved to a further hearing, there is no impediment to seeking to prove any loss associated with any particular breach of contract that is causally connected. To the extent that a combination of breaches gives rise to a loss greater than the sum of losses caused by individual breaches, it is open to Ecoasis to make a causation argument on a future assessment of damages.

Issue #13 – Termination of the Commercial Lease

331. The request by Hotel for a declaration that there was a valid termination of the Commercial Lease is dismissed. The Commercial Lease continues in full force and effect.

Issue #14 – Termination of the Operations Agreement

332. There was no valid basis for Hotel to give notice of termination of the Operations Agreement on April 14, 2020. The Operations Agreement continues in full force and effect.

Issue #15 – Breach of the Non-Competition and Non-Solicitation Agreement

333. Hotel breached the Non-Competition and Non-Solicitation Agreement. An assessment of damages or cost consequences is reserved to a further hearing.

PARTIAL FINAL AWARD

1. Further to the advice of counsel on January 5, 2021 that Bear Mountain Resort & Spa Ltd, BM Management Holdings Ltd. and BM Resort Assets Ltd. (collectively "Hotel") are proper parties to the arbitration and have agreed to be bound by the result, each of those entities is jointly and severally liable for the matters for which Hotel is held liable.

2. Hotel is ordered to reissue invoices for food costs based on the food cost in the previous month's financial statements plus 20%. Hotel is liable for damages to be assessed for breach of the obligations under Section 4.2(a) and 4.2(b) of the Operations Agreement to provide food and beverage service and a 20% discount to Ecoasis members.

3. Hotel is liable for damages to be assessed for breach of the obligation under Section 5.5 of the Operations Agreement to provide Marriott privileges to Ecoasis employees.

4. Ecoasis is ordered to pay Hotel the amount of $54,091.26 for Golf and Tennis Member access to the NLRC.

5. Ecoasis is ordered to pay Hotel for access to the NLRC by Social Members and Regular Members in amounts to be assessed.

6. Hotel is ordered to pay Ecoasis for Horticulture services in the amounts of $7,114.09 and $2,569.60.

7. Hotel is liable for damages to be assessed for breach of the obligation under Section 4.1 of the Operations Agreement to provide accounting services. Hotel must provide Ecoasis with complete financial information as broadly defined in the letter from Mr. Lee dated August 4, 2020. Hotel must provide up-to-date statements of accounts receivable and accounts payable with complete back-up data.

8. Hotel is liable for damages or costs to be assessed for breach of the Non-Competition and Non-Solicitation Agreement.

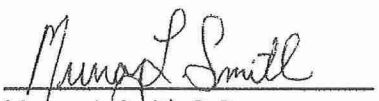
9. Claims by Hotel that the parties intended that Hotel own liquor licences over the Valley Golf Course and the members lounge, that an enforceable oral contract was made in the December meeting, that Ecoasis is obliged to pay rent for use of Limited Common Property, that separate payment is required by Ecoasis for accounting services for Horticulture and Parkway Maintenance, that Ecoasis was in breach of the Asset Purchase Agreement for failure to assign the expired Lease for the NLRC and that there were valid terminations of the Operations Agreement and the Commercial Lease are dismissed.

10. Claims by Ecoasis that rectification of the Asset Purchase Agreement should be ordered

or a term implied to remove the Valley Golf Course portion of Licence #54 and transfer the members lounge portion of Licence #54 back to Ecoasis, that Hotel breached Sections 5.2, 5.3 and 5.4 of the Operations Agreement, that Hotel breached a right to quiet enjoyment of the premises leased by Ecoasis and that it was an implied term of the Operations Agreement that Hotel should pay for driving range use by guests are dismissed.

11. The matter of costs is reserved.

MADE at the City of Vancouver, Province of British Columbia, February 26, 2021.



Murray L. Smith Q.C.,
Arbitrator

LAWSON LUNDELL LLP

Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC
Canada V6C 3L2
T: 604.685.3456

This is Exhibit "J" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

Craig A.B. Ferris, K.C.
D: 604.631.9197
F: 604.641.2818
cferris@lawsonlundell.com

April 16, 2024

VIA EMAIL

Fasken Martineau DuMoulin LLP
2900 – 550 Burrard Street
Vancouver, B.C. V6C 0A3

Attention: Andrew I. Nathanson, K.C.
Daniel Byma

Dear Counsel:

Ecoasis Resort and Golf LLP (the "Resort Partnership") – Hotel Lease Transition

We write regarding Mr. Tian Kusumoto's recent refusal to authorize payment of a deposit required to secure critical infrastructure for the Resort Partnership's transition away from the Hotel lease, which expires on June 30, 2024.

As you know, the Resort Partnership did not renew the Hotel lease. This decision was made by management, in consultation with staff and membership, due to the insuperable difficulties in dealing with the Hotel's operator.

The Hotel lease was entered into in conjunction with an operations agreement that established the rights and obligations of the Hotel and the Resort Partnership in the delivery of certain shared services. The operations agreement will also expire on June 30, 2024.

The Hotel has not worked cooperatively or provided the services to the Resort Partnership as required under the Hotel lease and the operations agreement. Examples of the operational difficulties have included, among other things:

(a) The Hotel's continued breach of the operations agreement, including with respect to its obligation to provide food services to Ecoasis' members and guests;

(b) Disruptions to the members lounge's liquor service, which the Hotel refused to rectify for more than two years, until ordered to do so by the LCRB;

(c) The Hotel's continued failure to provide required repairs and maintenance as well as basic services under the lease and operations agreements, including heat, access and functioning amenities;

(d) The Hotel's disregard, in its performance of the lease and operations agreements the nature and legitimate interests of the Resort Partnership's business.

Mr. Matthews had previously provided Mr. Kusumoto with a selection of correspondence that illustrates, in greater detail, the Hotel's breaches of its obligations to the Resort Partnership in respect of the Hotel lease. This correspondence may be accessed here:

REDACTED

Further correspondence, to similar effect, is also available with respect to the operations agreements.

Significantly, Mr. Clarke and Mr. Malak were also found by Arbitrator Smith to have engaged in a serious breach of trust in their business dealings, in light of Mr. Clarke's duty of loyalty owed to Ecoasis, while secretly working with Mr. Malak. Ecoasis was successful in the liability phase of the arbitration and the damages phase of that arbitration is ongoing. We also note Arbitrator Smith's finding that the Hotel's improper attempt at terminating the lease in 2020 had a "devastating" impact on the Resort Partnership's golf and tennis business. Mr. Kusumoto is well aware of the Resort Partnership's claimed quantum of damages in the upcoming damages phase of that arbitration.

There will be a similarly devastating result if Mr. Kusumoto prevents the Resort Partnership from effecting an orderly transition away from the hotel lease. This is particularly the case given Mr. Kusumoto's conduct, which is subject of the Oppression Petition and Partnership Action, to prevent real estate sales and otherwise financially oppress 599315 B.C. Ltd. and Mr. Matthews. As Mr. Kusumoto knows, the Resort Partnership's activities are currently the only source of Partnership revenues. We are instructed that Mr. Kusumoto has taken advantage of his threat to this only remaining revenue source in an attempt to extract concessions and agreements from Mr. Matthews on matters that are of no relevance to the straightforward payment of this deposit, which has been budgeted as part of the overall transition plan.

Mr. Matthews does not and will not agree to this manner of negotiating. Mr. Kusumoto's conduct represents a breach of his partnership duties and his duties as a director of Ecoasis Bear Mountain Developments Ltd. Mr. Matthews would risk breaching the same duties were he to condone or engage with Mr. Kusumoto's tactics.

In the circumstances, Mr. Matthews requests and requires that Mr. Kusumoto immediately authorize the release of the $34,074 required for the deposit payment, which funds are currently available from cash on hand. The timing in this regard could not be more urgent given the upcoming golf season, and club members' need for certainty as to the transition plan. Mr. Kusumoto should also cease any attempted negotiation with the Hotel owner as to a lease extension, which is not only unauthorized and disruptive, but is contrary to the Resort Partnership's best interests as outlined above.

Should Mr. Kusumoto fail to immediately authorize payment of this deposit, Mr. Matthews will hold Mr. Kusumoto responsible for the obviously foreseeable and inevitable consequences to the Resort Partnership's golf and tennis operations, its revenues, and its reputation.

We will be writing to you under separate cover with respect to a different matter. In that matter, Mr. Kusumoto corresponded yesterday with a Partnership employee, Mr. Mogensen, regarding the potential future management structure or ownership of the Partnership. Such correspondence is wholly inappropriate. It is damaging to Mr. Matthews' ability to carry out his role as President and CEO, and to his relationship with Partnership employees and beyond. There was no valid purpose for including Mr. Mogensen in that correspondence, let alone in such an indiscreet manner. Mr. Kusumoto is warned against repeating such communications to Partnership employees or to others.

Yours very truly,

LAWSON LUNDELL LLP

for

Craig A.B. Ferris, K.C.*
*Law Corporation
CAF/gbb
Encl.

This is Exhibit "K" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

CONCEPT

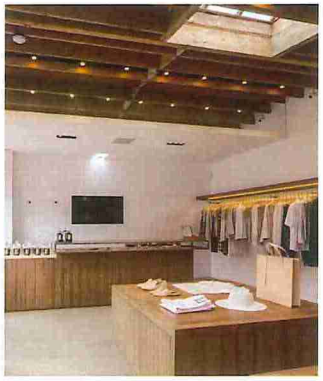
April 25th 2024

Pre Shop

CONCEPT





JENNY MARTIN

DESIGN

Pro Shop

MODULAR SHELVES

STACKED DISPLAY TABLES

M & W RAIN/WIND GEAR RACK

M & W ACCESSORIES

M & W SWEATER RACK

GOLF CLUB DISPLAY

M & W GOLF SHOES

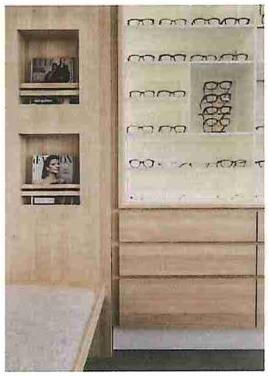
GOLF ACCESSORIES

JENNY MARTIN

DESIGN

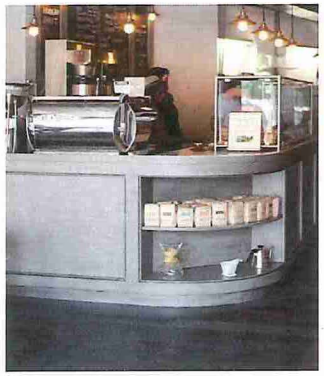
Pro Shop

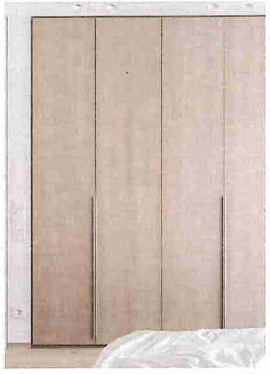
RECEPTION DESK WITH BUILT-IN DISPLAY SHELVES



LOCKED SUNGLASSES & GOLF COVERS

FLUTED TILE FEATURE WALL





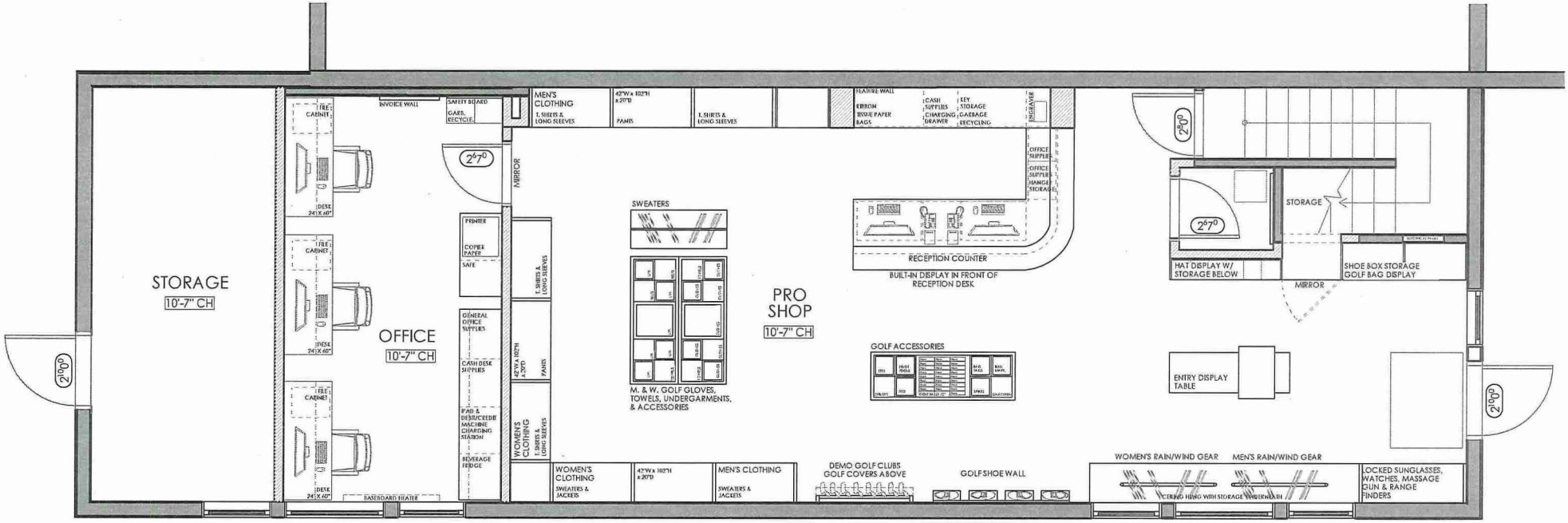
HIDDEN STORAGE DOOR

V-GROOVE PANEL FEATURE WALL

JENNY MARTIN

DESIGN

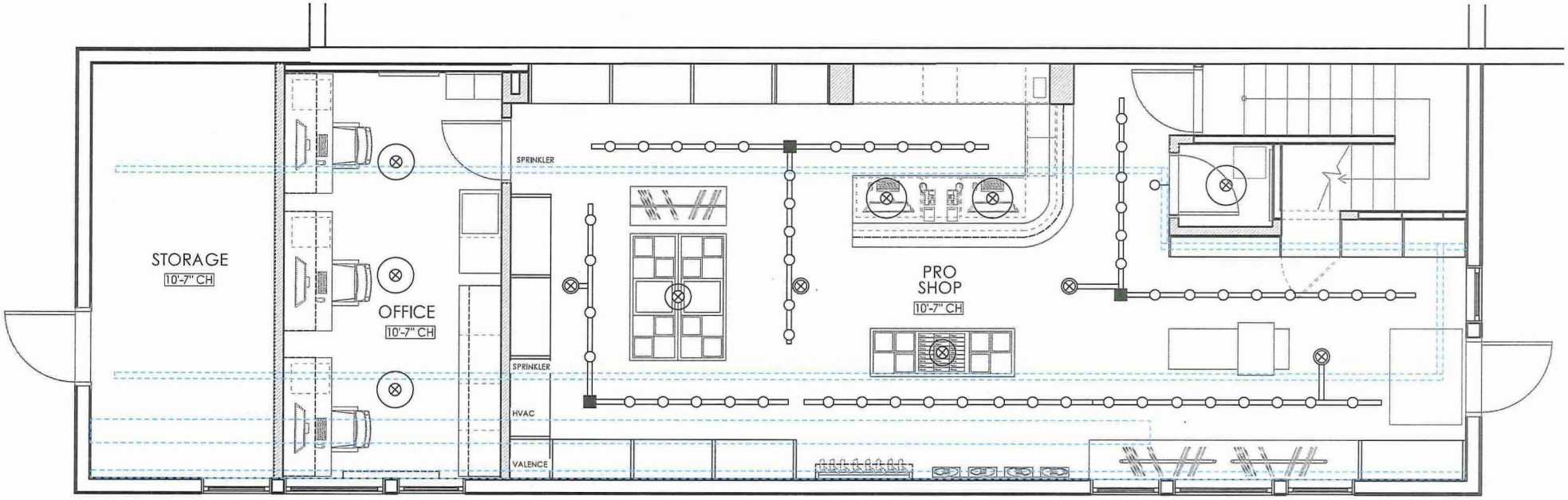
FLOOR PLAN



JENNY MARTIN
DESIGN

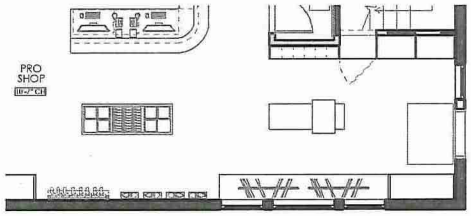
RCP

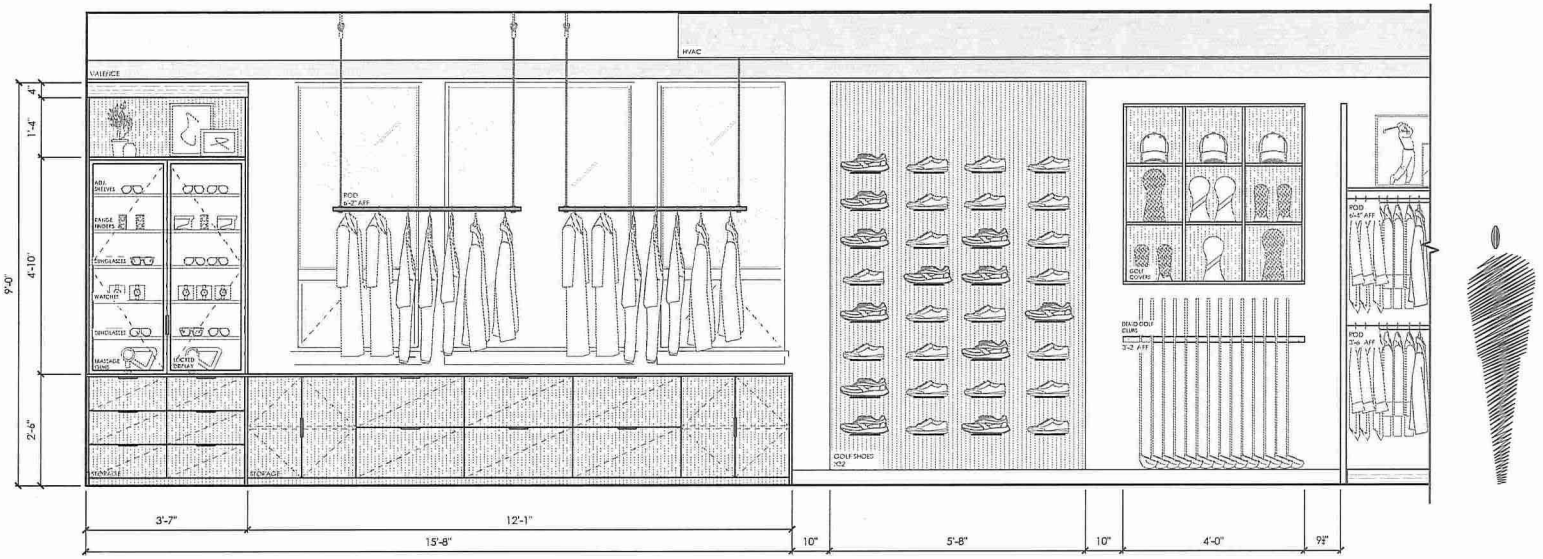
LIGHTING / ELECTRICAL LEGEND	
	WALL SCONCE
	PENDANT LIGHT
	TRACK LIGHT
	FLUSH/SEMI-FLUSH MOUNT
	LED STRIP LIGHT



JENNY MARTIN
DESIGN

LOCKED SUNGLASS CASE, SHOE WALL & DEMO CLUB ELEVATION

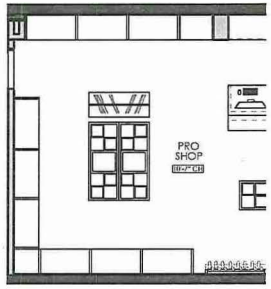


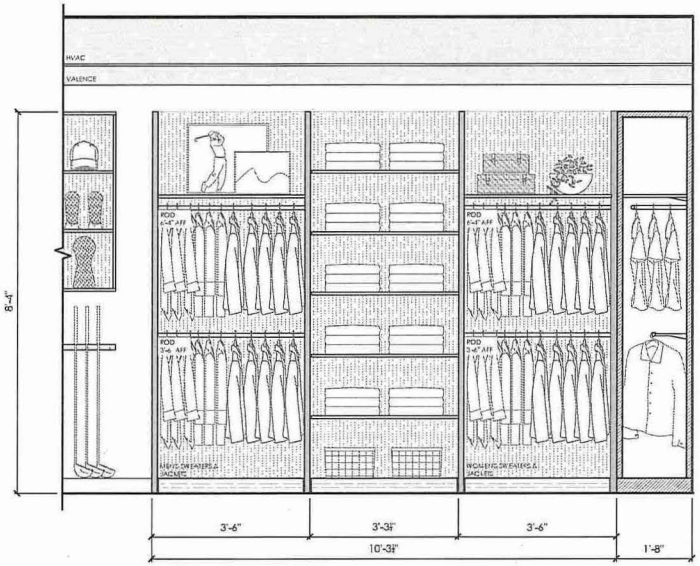


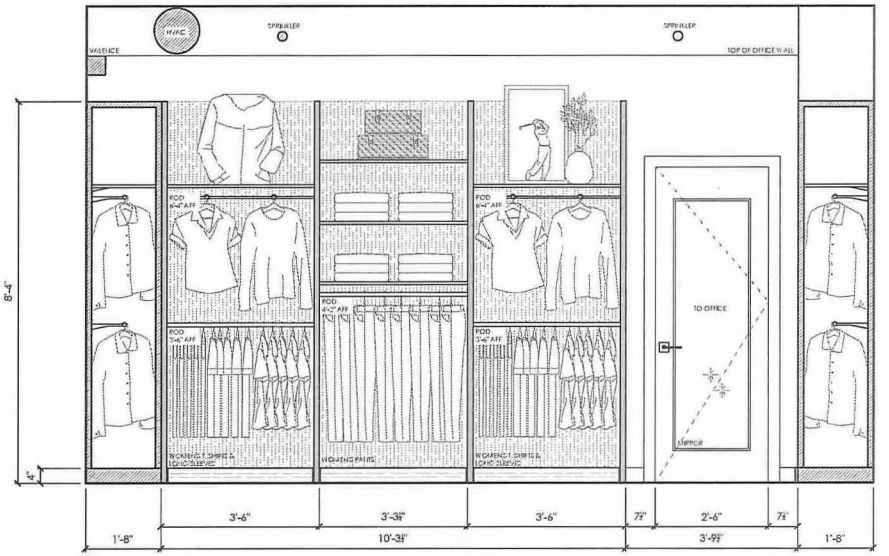
JENNY MARTIN

DESIGN

WOOD PANELED SHELF BACKS OPTION A ELEVATIONS

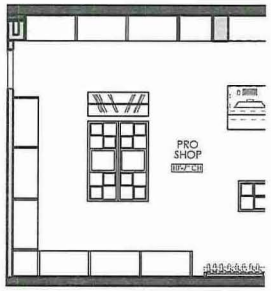






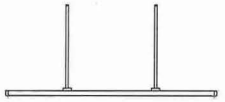
JENNY MARTIN
DESIGN

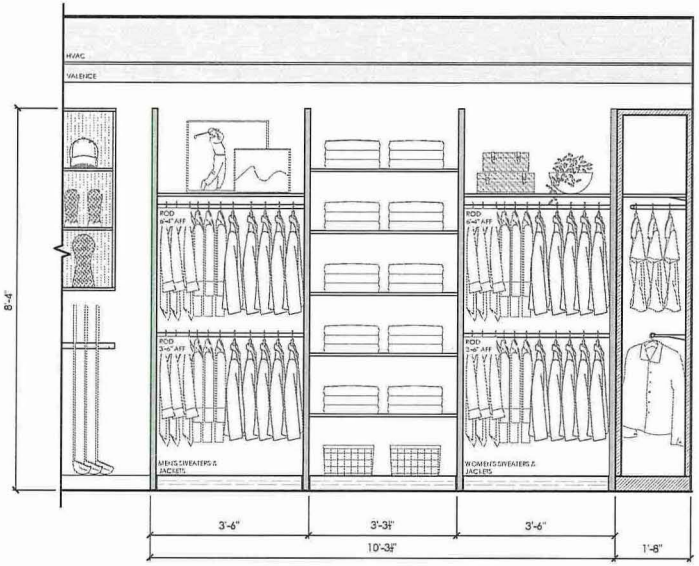
DRYWALL SHELF BACKS OPTION B ELEVATIONS

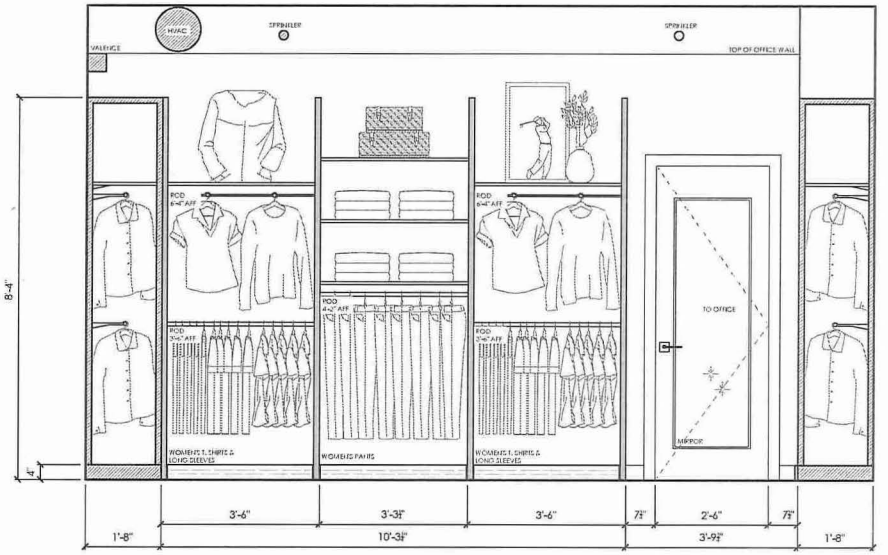



SHELVES


U RODS


FRONT FACING ROD

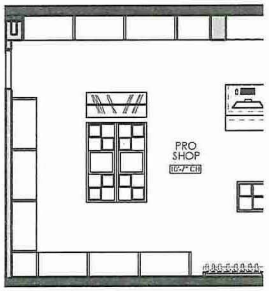


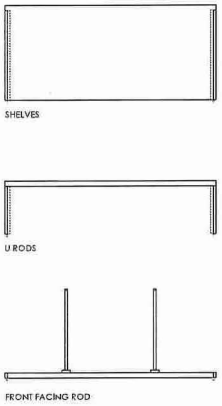


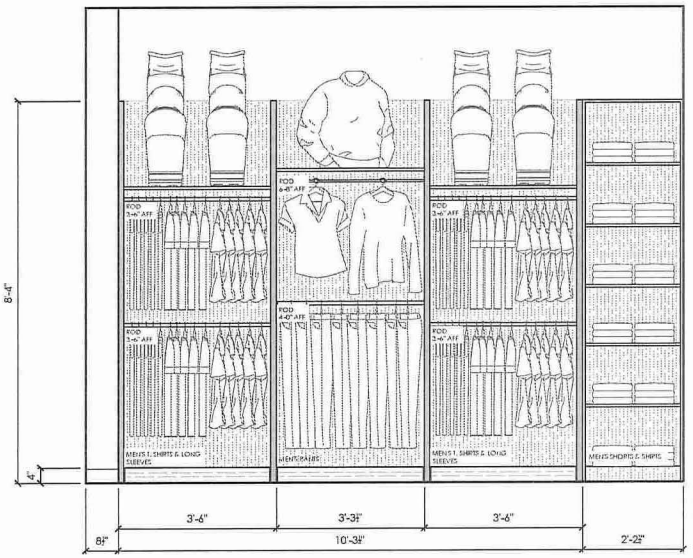
JENNY MARTIN
DESIGN

Pro Shop

WOOD PANELED SHELF BACK ELEVATION



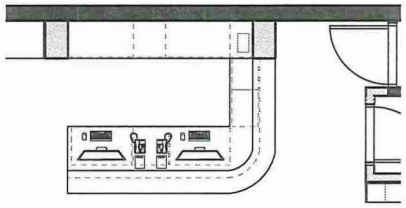


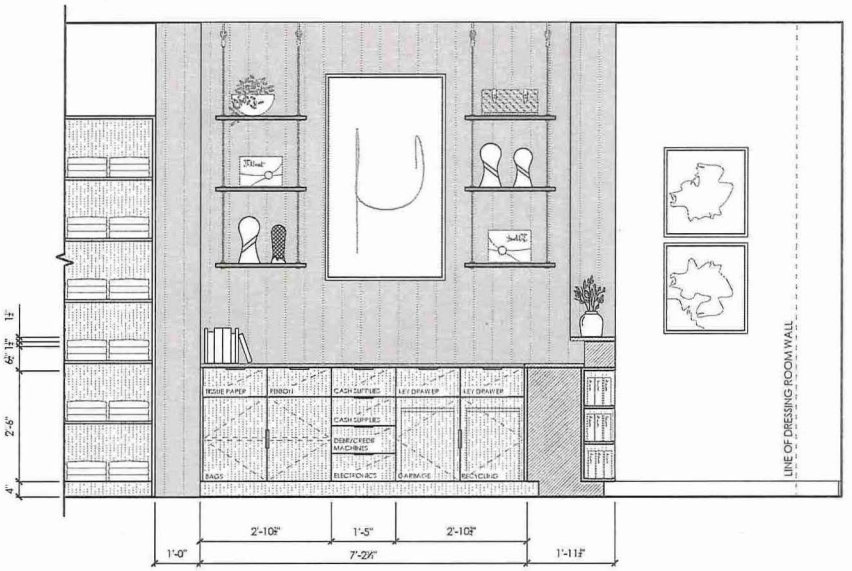


JENNY MARTIN

DESIGN

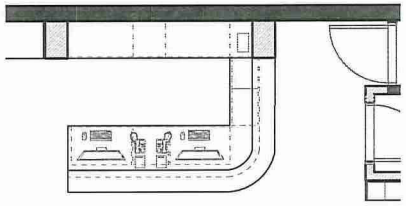
RECEPTION DESK OPTION A ELEVATIONS

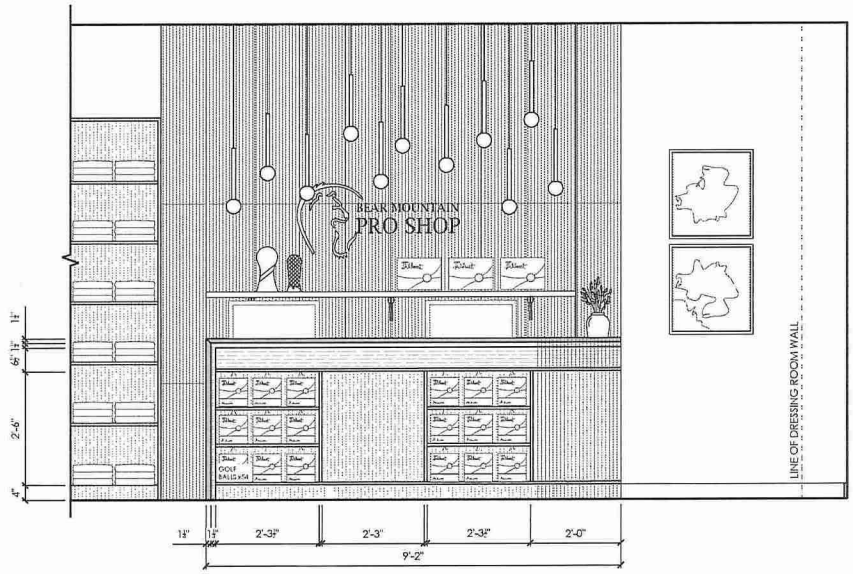


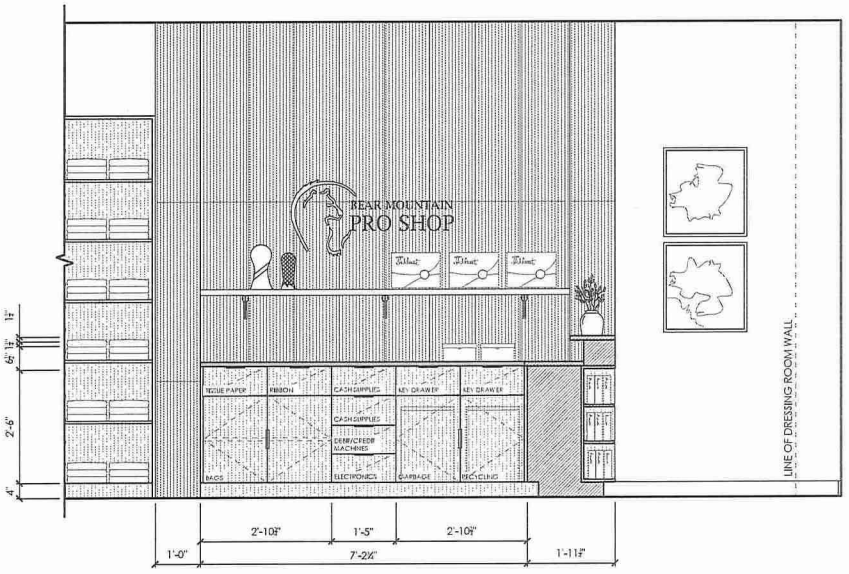


JENNY MARTIN
DESIGN

RECEPTION DESK OPTION B ELEVATIONS







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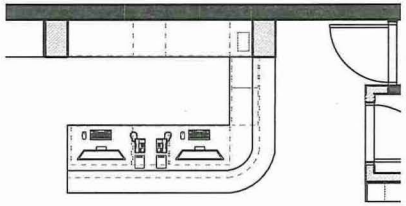
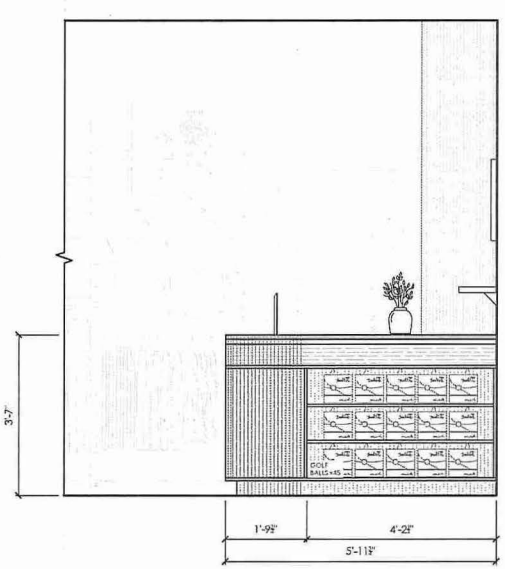
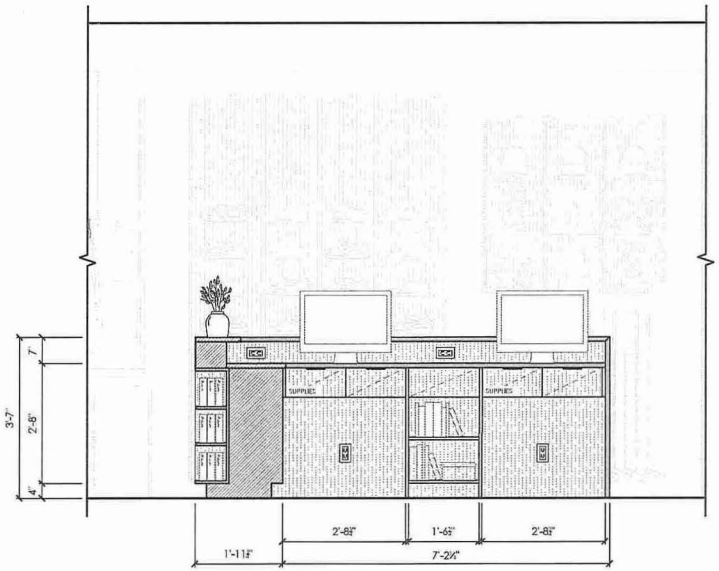
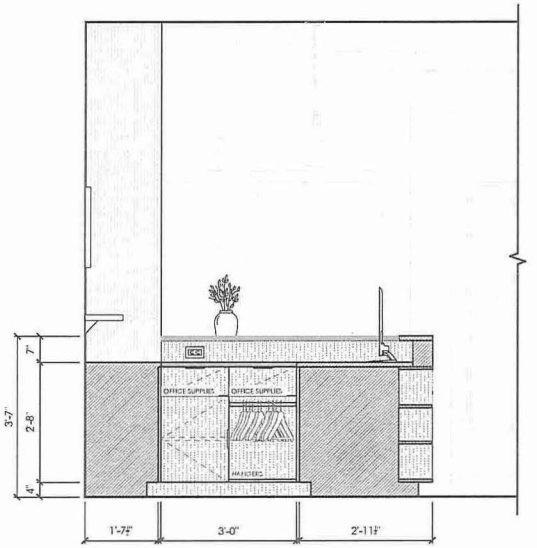


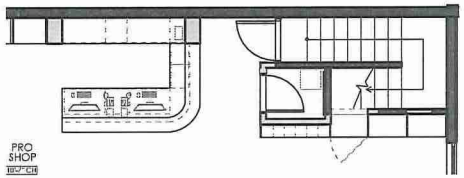


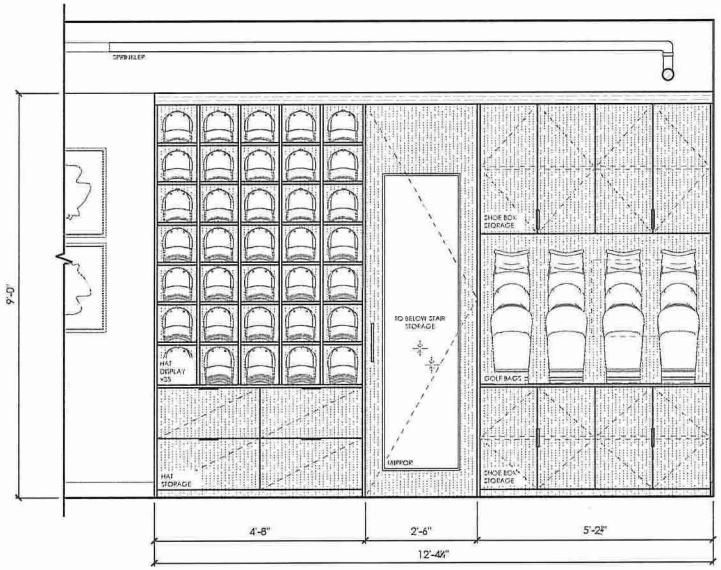


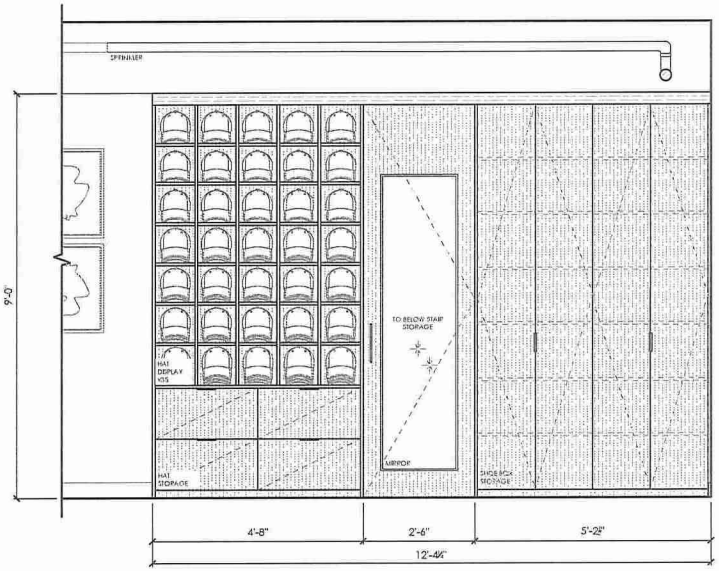


JENNY MARTIN
DESIGN

HAT & GOLF BAG OPTION A & B ELEVATIONS

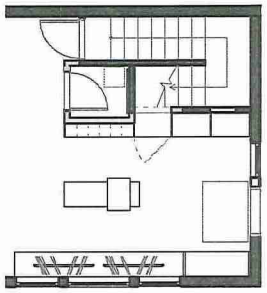


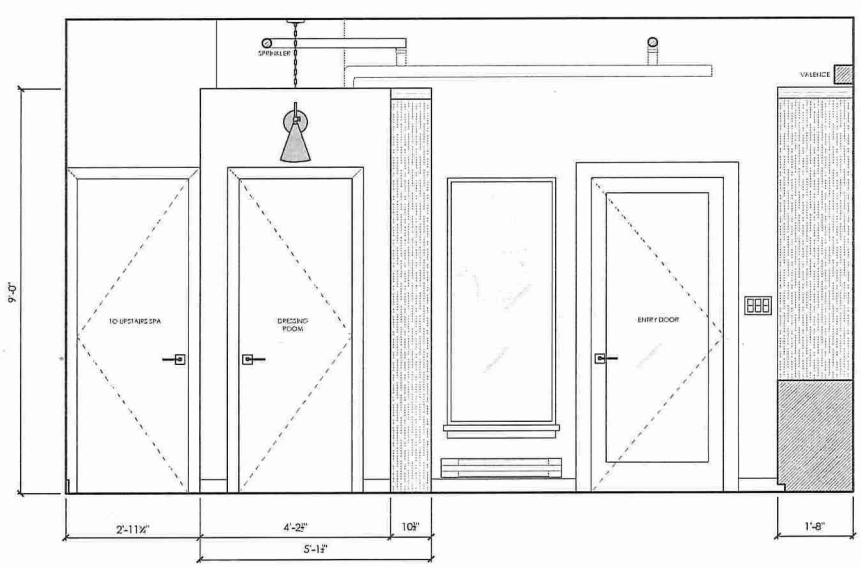


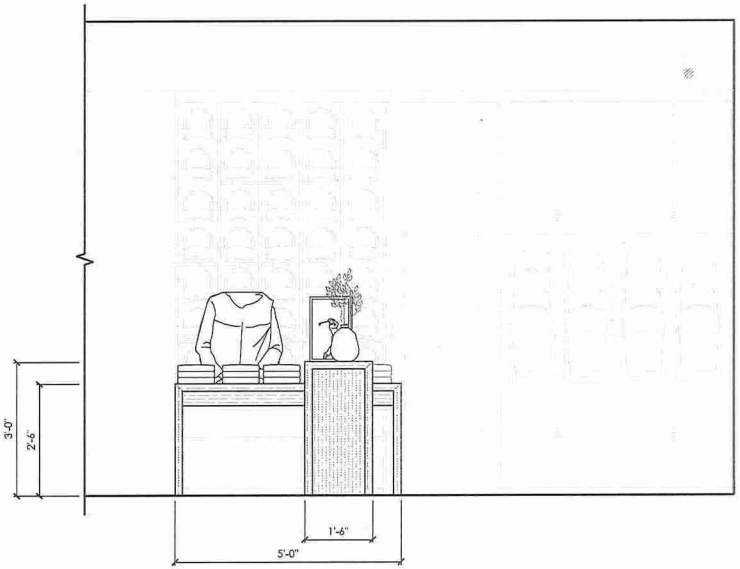


JENNY MARTIN
DESIGN

DRESSING ROOM & ENTRY DISPLAY ELEVATIONS

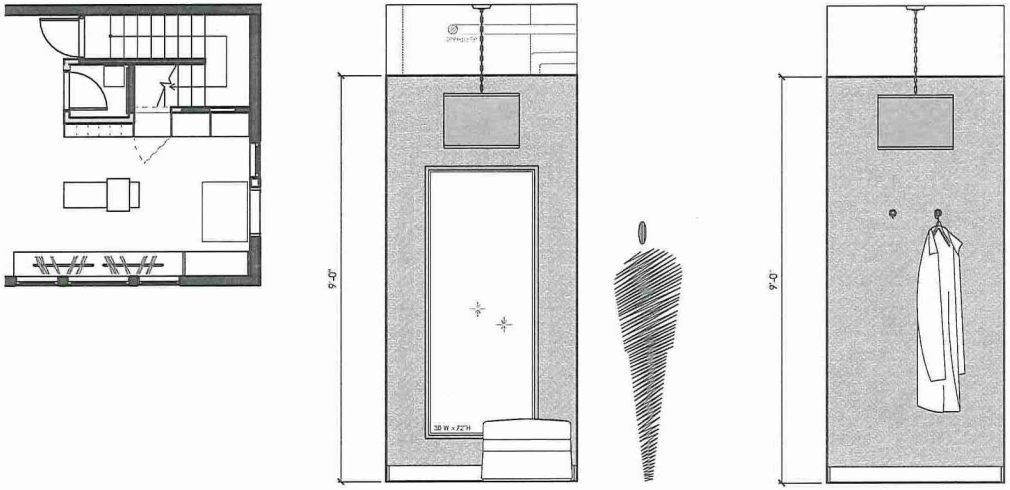




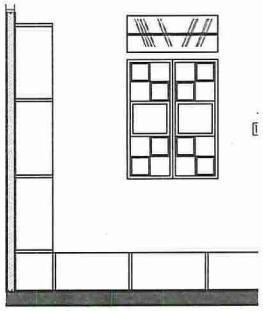


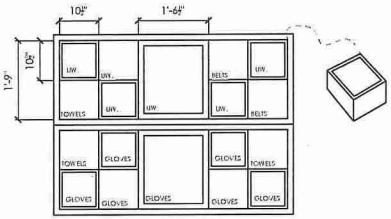
JENNY MARTIN
DESIGN

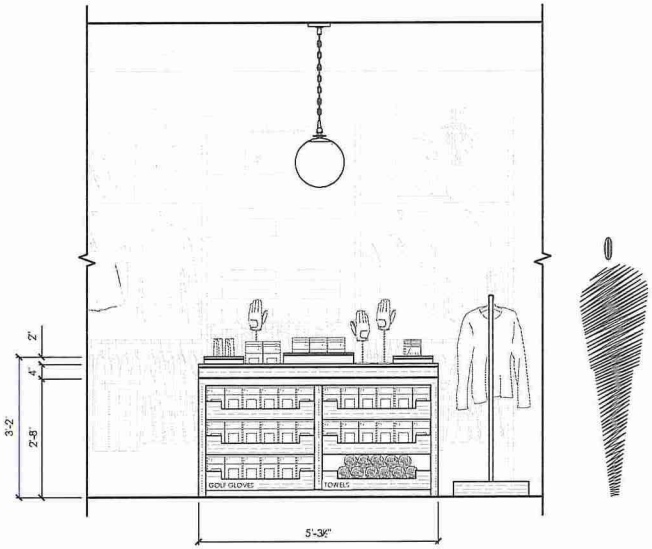
DRESSING ROOM

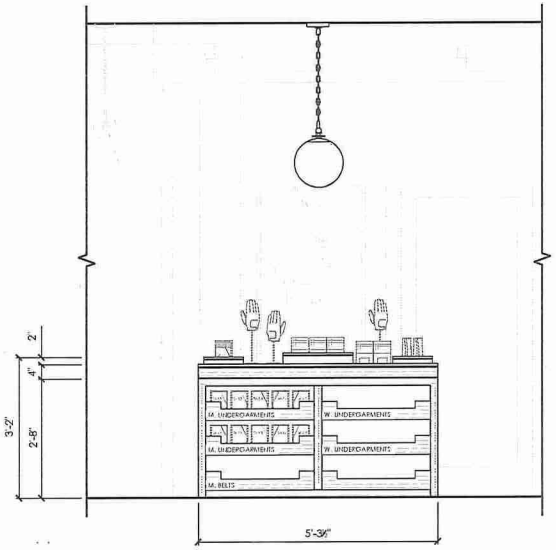


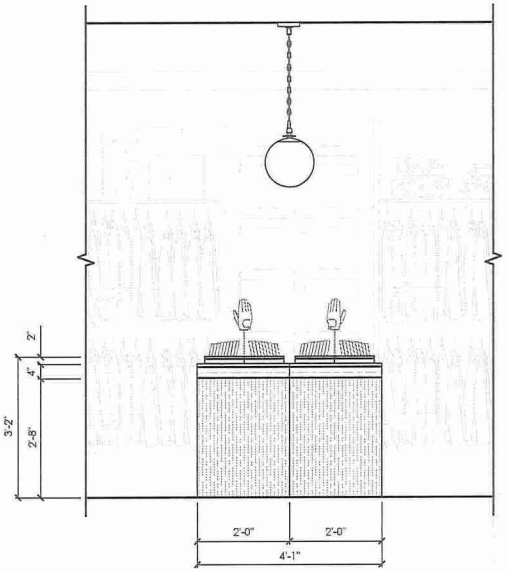
GLOVE & ACCESSORY DISPLAY ELEVATIONS





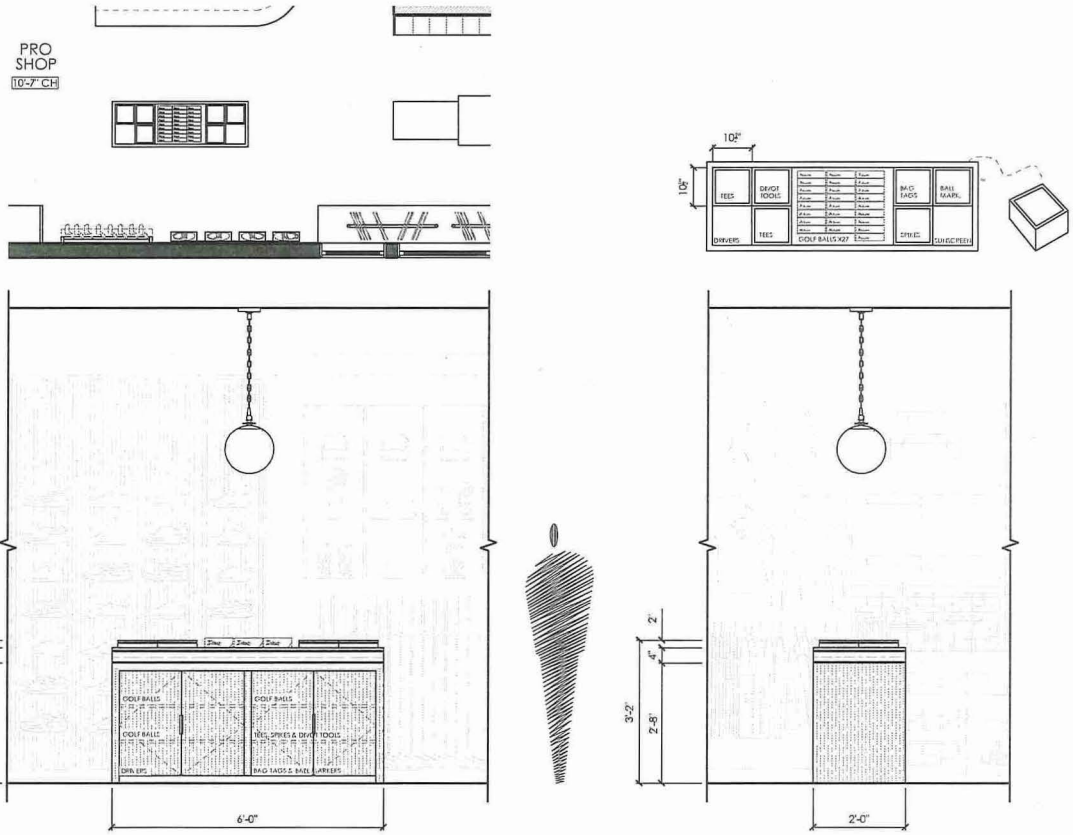






JENNY MARTIN
DESIGN

GLOVE ACCESSORY DISPLAY ELEVATIONS



JENNY MARTIN
DESIGN

From: Craig Ferris (3197) - 14Flr
Sent: Tuesday, March 26, 2024 11:45 AM
To: Andrew I. Nathanson; Daniel Byma
Cc: Gordon Brandt (3167) - 14Flr; Rachel Wollenberg (3111) - 14Flr; 'Brent Clark'
Subject: Ecoasis - WITH PREJUDICE
Attachments: LOI - Bear Mountain (03-25-2024) CL.docx.pdf

WITH PREJUDICE

Andrew and Dan,

See attached a term sheet received from REDACTED to replace the Sanovest financing in full. It is a superior offer to Sanovest's term sheet. However, it is an initial term sheet and our client would like to negotiate more favourable terms with REDACTED which he considers attainable. To do so, he requires the assistance of your client in that process. Please advise if he is willing to do so. If your client intends to declare his conflict of interest with respect to the financing replacement and provide Mr. Matthews with authority to negotiate and enter into such replacement financing, please let us know as soon as possible.

In the absence of alternate financing, our client does not believe it is in the best interests of Ecoasis to further consider the current term sheet offered by Sanovest. Given the conflict presented by Sanovest being both lender and a partner in light of the new attitude of Sanovest since Tian Kusomoto has taken control, our client does not believe Sanovest to be a reliable lender. In addition, the REDACTED offer is superior.

In the event the REDACTED financing is not finalized, our client will not authorize the renewal of the Sanovest facility based on the current term sheet. In that situation, we expect that he is prepared to engage in the orderly sale of assets to payout the Sanovest loan. Please confirm your client is agreeable to this. Again, if your client intends to declare a conflict of interest with respect to the sale of assets to pay out the Sanovest loan in full, please let us know as soon as possible and provide Mr. Matthews with the authority to negotiate and enter into such sale agreements as are necessary to fund the payout.

This email is with prejudice and will be used before the court in the event your client seeks to take any enforcement proceedings on the Sanovest loan

CRAIG A.B. FERRIS, K.C.* | Partner
D 604.631.9197 | **F** 604.641.2818 | **E** cferris@lawsonlundell.com
LAWSON LUNDELL LLP 1600 - 925 West Georgia Street, Vancouver, BC V6C 3L2
Vancouver | Calgary | Yellowknife | Kelowna
*Law Corporation

This is Exhibit "L" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

FASKEN

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

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Andrew I. Nathanson, K.C.
Direct +1 604 631 4908
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anathanson@fasken.com

April 5, 2024
File No.: 329480.00001/14082

WITH PREJUDICE

By Email

This is Exhibit "M" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

Lawson Lundell LLP
Barristers and Solicitors
Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC V6C 3L2

Attention: Craig A.B. Ferris, K.C. and Gordon Brandt

Dear Sirs:

Re: Loan Agreement between Sanovest Holdings Ltd. & Ecoasis Developments LLP made as of October 8, 2013, and amended June 15, 2016 and January 26, 2022 (the "Sanovest Loan Agreement")

Introduction

Thank you for your e-mail of March 26, 2024.

We acknowledge receipt of your further e-mail of 11:42 a.m. this morning, which we received after this letter had been substantially completed. We will respond to the matters not addressed in this letter in separate correspondence next week.

There remain fundamental points of disagreement between us. As explained below, EBMD and the Partnership face a liquidity and solvency crisis of Mr. Matthews' own making, now exacerbated by the impending May 1, 2024 maturity date of the Sanovest Loan, now in excess of $62 million. The REDACTED ("REDACTED letter of March 25, 2024 is not an "offer", as you characterise it in your e-mail, and it is not superior to the Sanovest term sheet. We reject Mr. Matthews' attempt to create the impression that the only alternatives available to the Partnership all must involve his preferred course of action, property or parcel sales ("property sales"). And we reject, as an obvious breach of fiduciary duty, Mr. Matthews' position that he wishes to negotiate better terms with REDACTED but that he is not prepared to do so with Sanovest.

As detailed below, Mr. Kusumoto and Sanovest agree that Mr. Matthews may pursue negotiations with REDACTED for improved terms, but on the conditions set out below. In particular, in view of the

May 1, 2024 maturity date of the Sanovest Loan, a deadline Mr. Matthews has long known of, those conditions include the requirement that Mr. Matthews obtain an offer on REDACTED best terms, capable of acceptance, by no later than April 19, 2024 so that Mr. Kusumoto and Sanovest can consider the terms.

The Partnership's present solvency crisis

EBMD and the Partnership face a liquidity and solvency crisis of Mr. Matthews' own making. You have complained of liquidity problems in correspondence and difficulties in making payroll. On March 14, 2024, the City of Langford commenced proceedings against the Partnership for breach of payment obligations under a settlement agreement, seeking damages of $1.881 million. The Partnership has been unable to meet its obligations to other suppliers and creditors. The Partnership now faces the imminent maturity of the $62 million Sanovest Loan.

These are not new problems. The Partnership's liquidity problems have been persisting since last year. Mr. Matthews has known about the Sanovest Loan maturity date. We sent the Sanovest term sheet for a renewal of the Sanovest Loan on February 27, 2024.

Mr. Matthews is responsible for this state of affairs. But for his unauthorised diversions of funds in the millions of dollars, including for the purchase of the BMAC outside the Partnership, the Partnership would not have faced the working capital challenges it has experienced. Even now, Mr. Matthews has continued unauthorised diversions of funds, the explanation for which Sanovest rejects. As detailed in our prior correspondence, Mr. Matthews has caused EBMD and the Partnership to repeatedly breach their obligations under the Sanovest Loan and security agreements. He has diverted money, failed to cause EBMD to prepare audited or even proper financial statements and has blocked preparation of business and operational plans required under the relevant agreements. He has refused to investigate reasonable business alternatives to his preferred course of action of selling properties. Mr. Matthews and 599 have commenced litigation attacking Sanovest and its rights under the Sanovest Loan and Partnership Agreements. Despite acting in a fiduciary capacity, Mr. Matthews has refused to fully disclose his efforts to secure financing to replace the Sanovest Loan. He has unreasonably delayed in dealing with the impending Sanovest Loan maturity, such that it now appears highly unlikely that any superior, replacement financing, even if such could be found, could be in place prior to the Sanovest Loan coming due.

The REDACTED "offer" is not superior to Sanovest's term sheet

Your assertion, without any explanation or analysis, that what you have called the REDACTED "offer", which is not an offer but a conditional, preliminary indication of interest, is superior to the term sheet presented by Sanovest, is not consistent with any reasonable commercial evaluation of the two documents, and reflects Mr. Matthews' unwillingness to discharge his duties of loyalty and care to EBMD and the Partnership.

The REDACTED "offer":

1. Is in an amount that is insufficient to repay the outstanding Sanovest Loan, meet the Partnership's current liabilities, and to provide the Partnership with the operating funding your client has repeatedly said is required. In particular, the costs of the REDACTED financing will be significant given the commitment fees, legal fees, title insurance, and interest reserve. These costs, together with the interest reserve, will take the net loan proceeds down to less than $53.5 million, more than $8 million less than is required to pay out the Sanovest Loan;

2. Would require repayment of $30 million of principal over the term of the loan, which the Sanovest term sheet would not;

3. Would require guarantees from Sanovest and 599, which the current Sanovest Loan does not and the new Sanovest offer would not, in circumstances where 599 has no assets of substance beyond its interest in the Partnership, placing the commercial risk of the guarantee squarely on Sanovest;

4. Is highly conditional and subject to significant execution risk, since REDACTED is a third party lender and EBMD and the Partnership are presently unable to satisfy the identified conditions precedent to funding including financial statements and operating plans, matters due to Mr. Matthews' management failures;

5. Would commit EBMD and the Partnership to property sales to the exclusion of and without investigating other reasonable alternatives, since Mr. Matthews has previously indicated he would block a capital call and 599 has not shown it has assets, means or willingness to supply additional equity to make the principal repayments required; and

6. Is highly unlikely to lead to completed agreements and funding before the date for repayment of the Sanovest Loan.

The marginal 0.05% interest rate advantage under the REDACTED "offer" is immaterial and does not outweigh these significant disadvantages.

In addition, unusually, the purpose section of the REDACTED "offer" does not provide for payment out of the Sanovest Loan.

Mr. Matthews' position that he wishes to further negotiate the REDACTED "offer" but that he will not consider further the term sheet presented by Sanovest[1] is further evidence of his unwillingness to faithfully perform his duties as a director and officer of EMBD.

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[1] Your e-mail provides:

"In the absence of alternate financing, our client does not believe it is in the best interests of Ecoasis to further consider the current term sheet offered by Sanovest. Given the conflict presented by Sanovest being both lender

Unlike Mr. Matthews, Mr. Kusumoto and Sanovest are prepared for Mr. Matthews, using his management authority, to seek to negotiate better terms with REDACTED and they will consider an offer of replacement financing from REDACTED to be presented to EBMD's board and to Sanovest, subject to the following conditions:

1. Mr. Matthews should seek the following improvements to the REDACTED terms:

   (a) Increase the loan amount to $77 million, which would include a $10 million interest reserve, so that there are sufficient funds to retire the Sanovest Loan and provide $5 million for the City of Langford claim, property taxes that will shortly be due, and operating expenses;

   (b) Eliminate the "additional covenant" on p. 5 of the REDACTED letter, as well as any requirement for repayment of principal during the term of the loan; and

   (c) Eliminate any requirement for guarantees from the partners and security over their interests in the Partnership;

2. Mr. Matthews explains to Sanovest **now** what disclosure he has made concerning EBMD and the Partnership's financial statements and the present litigation, and explains how he believes he can satisfy or obtain a waiver of REDACTED conditions precedent nos. 2-8 on pp. 7-8 of the REDACTED letter concerning financial statements, tax confirmations, operating statements, income and expense statements and business plan – none of which have to Sanovest's knowledge have been prepared or provided to EBMD's board or Sanovest, which has been one of Sanovest's repeated complaints;

3. The REDACTED terms are "based on the information provided" and would require an indemnity from the guarantors for misrepresentation. In these circumstances, and given that Mr. Matthews is the only one who has been communicating with REDACTED and can only have done so in a fiduciary capacity, **by April 11, 2024**, Mr. Matthews must make full disclosure of his communications with REDACTED concerning its indicative financing terms and letter, including but not limited to all relevant communications, documents and information provided orally to REDACTED

4. **By April 11, 2024**, Mr. Matthews similarly makes full disclosure of all of his efforts to secure replacement financing with parties other than REDACTED including all lenders, brokers and other potential counterparties, as requested in our prior correspondence; and

---

and a partner in light of the new attitude of Sanovest since Tian Kusomoto has taken control, our client does not believe Sanovest to be a reliable lender. In addition, the REDACTED offer is superior.

In the event the REDACTED financing is not finalized, our client will not authorize the renewal of the Sanovest facility based on the current term sheet. ...

[emphasis added].

5. In view of the May 1, 2024 maturity date of the Sanovest Loan, Mr. Matthews should obtain **by no later than April 19, 2024** an offer on REDACTED best terms, capable of acceptance, so that Mr. Kusumoto and Sanovest can consider the terms.

You raise the issue of conflict and ask if Mr. Kusumoto intends to declare his interest with respect to replacement financing and to provide Mr. Matthews with authority to enter into replacement financing or sell assets. Setting aside that Mr. Matthews has been untroubled by repeatedly acting in a conflict of interest, this question is premature as well as academic, as under the Sanovest Loan agreement, Sanovest must approve any replacement financing, or property or asset sales, which are subject to Sanovest's security.

The alternatives to the REDACTED financing terms

Contrary to the impression sought to be left in your e-mail, the Sanovest term sheet is an available, reasonable and indeed superior proposal to REDACTED s terms.

You assert that Sanovest is not a reliable lender. History indicates otherwise. Sanovest has extended financing to the Partnership on below market terms. It has been patient despite Mr. Matthews' mismanagement and breaches of duty, resulting in EBMD and the Partnership's many defaults under the Sanovest Loan and security agreements. Even now, despite the litigation and Mr. Matthews and 599's attacks on its contractual rights, Sanovest is prepared to extend the term sheet, which expired March 15, 2024, and remains willing to extend financing on terms more favourable than any Mr. Matthews has been able to obtain, including the terms from REDACTED And if its term sheet is accepted, Sanovest has offered, through counsel, to reasonably consider alternative, clearly superior financing and agree to step aside if such terms are presented. This would remove the default risk that the looming May 1, 2024 maturity date represents.

Your e-mail suggests that an alternative is for the Partnership to sell assets to repay the Sanovest Loan. This is of course the property sale policy that Mr. Matthews has attempted to promote, but without investigating the alternatives. But in any case, property sales are not a reasonable alternative because they cannot be completed in time to repay the Sanovest Loan when due, and because embarking on such extensive property sales would foreclose without proper consideration other potential alternatives like vertical development, further partnership or an en bloc sale of the Partnership's assets.

The only realistic alternatives to a May 1, 2024 default are significantly improved terms from REDACTED in a short time frame, or the Sanovest term sheet.

Conclusion

We invite Mr. Matthews to reconsider his position and to engage with us to renew the Sanovest Loan. This is the most favourable option for the Partnership, and does not preclude consummating a later refinancing with REDACTED or another lender. If Mr. Matthews intends to pursue improvement of the REDACTED terms on the conditions set out above, please let us know and provide the required disclosures. If no renewal or replacement financing is in place by the May 1, 2024 maturity date of the Sanovest Loan, we put Mr. Matthews, 599 and EBMD on notice that Sanovest will be taking prompt steps to enforce its security and to compel repayment of the indebtedness owed to it in full.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Andrew I. Nathanson, K.C.
Personal Law Corporation

AIN/

cc: Client

FASKEN

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
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fasken.com

April 25, 2024
File No.: 329480.00001/14082

Andrew I. Nathanson, K.C.
Direct +1 604 631 4908
Facsimile +1 604 632 4908
anathanson@fasken.com

By Email

WITH PREJUDICE

This is Exhibit "N" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

Lawson Lundell LLP
Barristers and Solicitors
Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC V6C 3L2

Attention: Craig A.B. Ferris, K.C. and Gordon Brandt

Dear Sirs:

Re: Loan Agreement between Sanovest Holdings Ltd. & Ecoasis Developments LLP made as of October 8, 2013, and amended June 15, 2016 and January 26, 2022 (the "Sanovest Loan Agreement")

Introduction

Thank you for your letter of April 22, 2024.

Your letter fundamentally fails to satisfy the conditions Sanovest set in our April 22, 2024 letter. Your clients have not produced an offer from REDACTED that addresses their concerns. They have not made the disclosures sought and did not do so by the deadlines given. They continue to insist, erroneously, that the REDACTED "offer" is superior.

On top of their already unreasonable delays since late February, your clients waited two and a half weeks to respond, and now seek yet further non-market concessions from Sanovest for forbearance or an interim agreement for financing, while at the same time accusing Sanovest and Tian Kusumoto of oppression and new allegations of bad faith.

In the circumstances, Sanovest is not prepared to agree to further financing or an extension on the terms sought.

Our prior correspondence was clear that if Sanovest's conditions were not met, and if no renewal or replacement financing was in place by maturity, Sanovest would be taking prompt steps to enforce its security and to compel repayment of the indebtedness owed to it in full.

Your clients have not met Sanovest's conditions. We will be proceeding accordingly.

The failure to satisfy Sanovest's conditions

Your clients have not satisfied the conditions that Sanovest set in our April 5, 2024 letter. The fundamental condition, that Mr. Matthews obtain an offer on REDACTED best terms, capable of acceptance, by no later than April 19, 2024 so that Mr. Kusumoto and Sanovest can consider the terms, has not been met.

You advise that Mr. Matthews has returned to REDACTED to seek the changed terms sought, but provide no details or assurance of improved terms or even a time frame for response.

Your letter also does not make the full disclosure required in respect of the matters identified in conditions 3 and 4, set out on page 4 of our April 5, 2024 letter. By way of one example, your letter asserts that Mr. Matthews has "not sought replacement financing from other lenders". We understand that Mr. Matthews has communicated with brokers to attempt to obtain replacement financing. We specifically identified communications with brokers in our letter. Mr. Matthews' apparent evasion of Sanovest's inquiries is concerning, not the least because of his fiduciary obligations.

The REDACTED "offer" is not superior

The REDACTED "offer", which remains unchanged, is not superior to the prior terms offered by Sanovest.

The "significant advantages" cited in your letter, with which we do not agree in any case, do not demonstrate superiority. They ignore the features identified at page 3 of our April 5, 2024 letter that make Sanovest's prior offer superior.

Your letter argues that "REDACTED offers a commitment to in fact advance the amounts offered under the loan terms, thereby providing the immediate, needed liquidity to the Partnership". Leaving aside the conditionality of the REDACTED "offer", this is, with respect, incorrect. The principal amount of the REDACTED financing is insufficient to repay even the Sanovest Loan. It would accordingly not supply any liquidity for the Partnership.

The Sanovest Term Sheet

As explained above, Sanovest is not prepared to further improve its terms, as your clients request.

The terms sought are not market. The circumstances are not comparable to when the January 26, 2022 Second Modification was made, both in terms of the market including interest rates and with respect to the state of affairs as between the partners.

Your clients have unreasonably delayed in all of this. We refer you, for example, to Brent Clark's e-mail to you of March 21, 2024 which warned of the consequences of inaction:

> We refer to our prior correspondence about the term sheet, including our Feb 27 and Mar 12, 2024 emails. Setting aside the without prejudice communication on March 14, 2024, the details of which we will not engage with here, there has been no substantive response to the term sheet.
>
> We require a response to our client's proposed renewal to the Sanovest Loan. If the partnership wishes to avoid further default under the loan, the parties need to move forward expeditiously with drafting a proper loan agreement so that everything is in place for the May 1, 2024 maturity date.
>
> The proposed term sheet is intended to provide bridge financing with an initial term of 6 months on substantially similar terms to those negotiated between your client and REDACTED This extension will provide the parties opportunity to negotiate longer term financing, potentially find alternate financing, or consider other business resolutions. Sanovest is prepared to reasonably consider any offer for financing that is clearly superior for the partnership, so the partnership is not prejudiced by entering into the renewal now if better terms can be found later.
>
> Our client has no intention of extending the maturity date on the current terms in circumstances where the loan is already in default. If your client is not prepared to negotiate a short-term extension on market terms in good faith in those circumstances, we will seek instructions from our client to enforce its rights and protect its interests.

Your clients' suggested "Financing Alternatives"

We do not agree with your characterisation that Mr. Kusumoto has refused to entertain the options described. Our prior correspondence shows otherwise.

A number of these options represent changes of your clients' prior positions.

Sanovest is not prepared to accept an "overholding period" as suggested in your letter under the heading "Financing Alternatives".

Sanovest's rights in respect of replacement financing

Contrary to your letter, Sanovest does have the right to approve any replacement financing.

Your letter asserts (at p. 2) that our position that "Sanovest, as lender, may somehow exercise a veto over replacement financing is wholly rejected. The assertion of such a position is oppressive, and is inconsistent with the terms of the Sanovest Loan Agreement itself, which allows for payment in full of the loan at any time".

Our prior letter read as follows:

> You raise the issue of conflict and ask if Mr. Kusumoto intends to declare his interest with respect to replacement financing and to provide Mr. Matthews with authority to enter into replacement financing or sell assets. Setting aside that Mr. Matthews has been untroubled by repeatedly acting in a conflict of interest, this question is premature as well as academic, as under the Sanovest Loan agreement, Sanovest must approve any replacement financing, or property or asset sales, which are subject to Sanovest's security.
>
> [emphasis added]

In addition to Sanovest's rights under its security agreements, we refer you to s. 4(a)(xi) of the Standard Terms and Conditions attached to the Sanovest Loan Agreement, which provides, inter alia, that apart from operating lines of credit or trade creditors in the ordinary course, the Partnership may not raise or borrow any money from any person other than Sanovest, the partners or the Resort. Section 4(a)(iii) provides that the Partnership may not prepay the Partnership's debt obligations to Sanovest without Sanovest's consent. This is not an exhaustive list of restrictions that operate to require Sanovest's consent.

Conclusion

Your clients have not satisfied Sanovest's conditions. Sanovest is not going to forbear or extend new financing on non-market terms when the Sanovest Loan is already in default, your clients continue to attack Sanovest's good faith, persist in their breaches of duty, and continue, in their litigation, to attack core terms of the Loan -- which is in fact contrary to the representations and warranties contained in s. 2(a)(viii) of the Standard Terms and Conditions attached to the Sanovest Loan Agreement, which is in itself a defined event of default under the Sanovest Loan.[1]

Sanovest will be taking prompt steps to enforce its security and to compel repayment of the indebtedness owed to it in full.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Andrew I. Nathanson, K.C.
Personal Law Corporation

AIN/

cc: Client

[1] Sanovest Loan Agreement, Standard Terms and Conditions, s. 5(a)(iii).

REDACTED

This is Exhibit "O" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

From: ecoasis.cfo@gmail.com
Date: April 16, 2024 at 10:59:35 AM PDT
To: Dan Matthews <dmatthews@ecoasis.com>, sam.j.wang@rbc.com
Cc: RMOGENSEN@ecoasis.com, kszteina@ecoasis.ca, "Schmidt, Mark" <mark.schmidt@dlapiper.com>, "Lee, Roger" <roger.lee@dlapiper.com>, Kevin Isomura <kisomura@dmcl.ca>
Subject: RE: Source of Funds

Hi Dan,
I understand that Erwin has left Ecoasis and I kindly request that you let me know when you will be replacing the cash you have taken as Erwin described in the attached email. I thought that the recent deposits of about $20k cash was from you replacing the cash you have taken but it appears from Erwin's comment below that it wasn't.

When are you going to give back the cash taken that Erwin describes in the attached email?

Also, please answer the following along with the weekly cash ledger from 2023 and 2024 of the cash intake, cash bank deposits and the weekly cash balance in the office.

1. Why was the $20k of deposits of cash in April in $100 bills and is this typical of the cash intake from operations?
2. Why was the deposits at just under $10k, below the bank regulatory disclosure limit?
3. How much cash is in the office right now?
4. How much cash was in the office on Dec 31st, 2023?
5. Why was cash stopped being deposited into the bank from operations in the summer of 2023 like it has been for the previous 10 years?

Thanks

Tian Kusumoto
Ecoasis Chief Financial Officer
PH: 604.685.9161
CL: 778.321.9161
EM: ecoasis.cfo@gmail.com

From: Erwin Dondoyano <edondoyano@ecoasis.ca>
Sent: Friday, April 12, 2024 5:07 PM
To: ecoasis.cfo@gmail.com; 'Dan Matthews' <dmatthews@ecoasis.com>; sam.j.wang@rbc.com
Cc: RMOGENSEN@ecoasis.com; kszteina@ecoasis.ca
Subject: RE: Source of Funds

Hi Tian,

All cash is from sales at Ecoasis Resort and Golf Operations between October and to date. We keep a petty cash however, with cash flow issues required that we deposited those funds over the past couple weeks as needed to cover payroll and other payables. We kept the amounts under 10k on purpose to avoid additional paperwork.

Best Regards,

Erwin Dondoyano

Controller
ECOASIS DEVELOPMENT LLP
2050 Country Club Way
Victoria, BC V9B 6R3
C: 250.507.2344
www.ecoasis.com

From: ecoasis.cfo@gmail.com <ecoasis.cfo@gmail.com>
Sent: Thursday, April 11, 2024 12:25 PM
To: 'Erwin Dondoyano' <edondoyano@ecoasis.ca>; ecoasis.cfo@gmail.com; 'Dan Matthews' <dmatthews@ecoasis.com>; sam.j.wang@rbc.com
Cc: RMOGENSEN@ecoasis.com; kszteina@ecoasis.ca
Subject: RE: Source of Funds

Hi Erwin,
What was the source of funds before the office had it on hand?

Was it obtained from Dan or was it from operations?

If it was obtained from Dan, what was the source of funds that Dan got it from?

Please provide the ledger of the cash received from operations, cash deposited into the bank and cash stored at the office for every week in 2023 and 2024.

Thanks

Tian Kusumoto

Ecoasis Chief Financial Officer
PH: 604.685.9161
CL: 778.321.9161
EM: ecoasis.cfo@gmail.com

From: Erwin Dondoyano <edondoyano@ecoasis.ca>
Sent: Thursday, April 11, 2024 11:39 AM
To: ecoasis.cfo@gmail.com; 'Dan Matthews' <dmatthews@ecoasis.com>; sam.j.wang@rbc.com
Cc: RMOGENSEN@ecoasis.com; kszteina@ecoasis.ca
Subject: RE: Source of Funds

Hi Tian,

Dan has asked me to respond. Accounting deposited the cash we had on hand in the office. It is easier to deposit in tranches of under $10,000. We have about $5,000 cash on hand left and any additional daily cash we received from Resort and Golf operations which will be deposited in due course as required. Also, we have additional petty cash on hand that Accounting holds and track what money goes in and out.

Best Regards,

Erwin Dondoyano

Controller
ECOASIS DEVELOPMENT LLP
2050 Country Club Way
Victoria, BC V9B 6R3
C: 250.507.2344
www.ecoasis.com

From: ecoasis.cfo@gmail.com <ecoasis.cfo@gmail.com>
Sent: Wednesday, April 10, 2024 2:56 PM
To: 'Dan Matthews' <dmatthews@ecoasis.com>; sam.j.wang@rbc.com
Cc: RMOGENSEN@ecoasis.com; 'Erwin Dondoyano' <edondoyano@ecoasis.ca>; kszteina@ecoasis.ca
Subject: Source of Funds

Hi Dan,
Please advise us if you know the source of funds from these two deposits last week 4 days apart. Why weren't they deposited at the same time and why was it broken into two amounts, just below $10k, the banking regulated disclosure limit?

<image001.png>

Tian Kusumoto
Ecoasis Chief Financial Officer
PH: 604.685.9161
CL: 778.321.9161
EM: ecoasis.cfo@gmail.com

<mime-attachment>

LAWSON LUNDELL LLP

Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC
Canada V6C 3L2
T: 604.685.3456

This is Exhibit "P" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

Craig A.B. Ferris, K.C.
D: 604.631.9197
F: 604.641.2818
cferris@lawsonlundell.com

April 26, 2024

VIA EMAIL

Fasken Martineau DuMoulin LLP
2900 – 550 Burrard Street
Vancouver, B.C. V6C 0A3

Attention: Andrew I. Nathanson, K.C.
Daniel Byma

Dear Counsel:

Ecoasis Resort and Golf LLP (the "Resort Partnership") – Petty Cash Fund

We write regarding Mr. Tian Kusumoto's recent communications to employees and third parties concerning the Resort Partnership's petty cash fund.

This matter was previously raised in your letter dated March 19, 2024. We provided a complete answer in our letter of March 25, 2024, stating the following:

> Every single dollar that comes in or out of Ecoasis is accounted for in its accounting records. Your client is and has been for nearly 3 years the CFO of Ecoasis with complete access to those accounting records. As a result, raising this allegation at this time appears more strategic than realistic. As CFO, Mr. Tian Kusomoto has complete control over the finances.
>
> As your client knows, Ecoasis does collect limited cash from sales for a petty cash float. It uses this float to pay tips to its staff as well as to some suppliers who prefer payment in cash. It is all accounted for in the g/l records of Ecoasis. This petty cash float remains in the office to this day. Mr. Kusomoto is welcome to go and see it. As of last week, it amounted to approximately $36,000. Not one dollar goes in or out of it without it being accounted for. We expect he will see a further entry shortly because, given the dire financial circumstances created by your client's failure to allow Ecoasis to conduct its business of ongoing property sales, the cash will now be needed to fund payroll. Accordingly, it will be deposited in the payroll account sometime this week. We understand a portion of it (roughly $20,000 has already been or is in the process of being deposited).

The Partnership's controller Erwin Dondoyano confirmed to Mr. Kusumoto on April 12, 2024 that "All cash is from sales", that the funds are used for legitimate Partnership purposes: "to cover

payroll and other payables". Nevertheless, Mr. Tian Kusumoto saw fit to write to the Partnership's staff and professional advisors (copied on this letter) alleging theft. Mr. Kusumoto stated the following:

> I understand that Erwin has left Ecoasis and I kindly request that you let me know when you will be replacing the cash you have taken as Erwin described in the attached email. I thought that the recent deposits of about $20k cash was from you replacing the cash you have taken but it appears from Erwin's comment below that it wasn't.
>
> When are you going to give back the cash taken that Erwin describes in the attached email?

These statements are defamatory and are entirely gratuitous. Firstly, there was no proper purpose for including Partnership staff and professional advisors on such correspondence. Secondly, Mr. Kusumoto had been told that "All cash is from sales" and was in a position to verify that these funds were applied for Partnership purposes, as Mr. Matthews had said was the case. As Mr. Kusumoto must well know, the transactions stated to be to ECL in Mr. Dondoyano's email were never effectuated; it is plain from the running petty cash balance and general ledger, to which Mr. Kusumoto has complete access, that those funds were never in fact paid out to ECL. It is not coincidental that Mr. Kusumoto waited until Mr. Dondoyano's departure, when the latter was no longer in a position to clarify and correct the February 26, 2024 email that Mr. Kusumoto referenced or the general ledger entries.

Mr. Matthews has not taken any petty cash funds for personal use or as management fees. Contrary to Mr. Kusumoto's suggestion of regulatory evasion, there was also nothing improper in depositing cash amounts under $10,000 days or weeks apart.

In the circumstances, Mr. Kusumoto's s defamatory statements were not his honestly held views, but were published with actual malice for the purpose of directly harming Mr. Matthews' reputation and interfering with his ability to carry out his duties as CEO and President; in the alternative, they were published recklessly. The consequential effects include, among other things, harm to the Partnership's ability to engage and retain qualified staff. We note that Mr. Dondoyano has recently resigned as controller; which we are instructed is in large part due to untoward stress occasioned by Mr. Kusumoto's conduct in communicating with him and other staff for the purpose of advancing allegations against Mr. Matthews. The result is additional delay and disruption to the Partnership's operating financials, which in turn, harm the Partnership's operations and its ability to negotiate with third parties; as well as difficulty in hiring a replacement for the controller position.

In light of the above, Mr. Kusumoto must immediately and unequivocally retract to all recipients his statement to the effect that Mr. Matthews made improper use of petty cash funds. We are instructed that if Mr. Kusumoto has not done so by **Friday May 3, 2024**, Mr. Matthews will, without further notice to you, take such actions as he considers appropriate in order to protect his reputation and to prevent Mr. Kusumoto from publishing further false and malicious allegations against him.

Mr. Matthews reserves all of his rights and remedies in this regard.

Yours very truly,

LAWSON LUNDELL LLP

Craig A.B. Ferris, K.C.*
*Law Corporation
CAF/gbb
Encl.

cc. Sam Wang, Royal Bank of Canada
Mark Schmidt, DLA Piper
Roger Lee, DLA Piper
Kevin Isomura, DMCL
Ryan Mogensen, Ecoasis Developments LLP
Kay Szteina, Ecoasis Developments LLP

From: TRK <TRK@SANOVEST.COM>
Sent: Friday, March 21, 2014 7:38 PM
To: David Clarke
Cc: Dan M; <tom@sanovest.com>
Subject: Re: Ecoasis Developments LLP

David,
We do not require audited financials as per the loan agreement for any of the projects. Please proceed with management prepared financials. Thanks

Sent from my iPad

On Mar 21, 2014, at 5:47 PM, "David Clarke" <dclarke@ecoasis.com> wrote:

> Hello all
>
> Please see below from Dana at Fleming and Co.
>
> Was it your intention for Ecoasis Pacific, Ecoasis Resort or Ecoasis Developments to have audited financial statements as the mortgage agreements state?
>
> Please let me know as that will significantly impact cost and timing.
>
> Thanks,
> David

This is Exhibit "Q" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

From: Dana Adams [mailto:dadams@flemingcga.ca]
Sent: March-21-14 5:39 PM
To: 'David Clarke'
Subject: FW: Ecoasis Developments LLP
Importance: High

Hi David,

We've run into a glitch for all 3 limited partnerships. Upon review of the mortgage agreements we discovered the lender requires audited financial statements by a Chartered Accountant for all 3 partnerships (the ERGLLP is a subsidiary of EDLLP so falls under this as well) - plus the mortgage agreement for the Hualalai project contains references to provinces - I don't think this was intended for a US based project. See paragraph (l) (page 13) of loan agreement.

Unless this was an unintentional oversight and the mortgage agreements are amended to only require compilation (Notice to Reader) or internal financial statements prepared by management in accordance with GAAP I have to wait for audited financial statements to be prepared before I can finish the T5013. If the Sanovest mortgage is to be amended I would need something in writing from them before I can submit the T5013's.

Thanks,
Dana

From: Jim Dakin [mailto:jdakin@flemingcga.ca]
Sent: March 21, 2014 7:40 AM
To: 'Dana Adams'
Subject: Ecoasis Developments LLP

Morning Dana,

I reviewed the Sanovest Holding mortgage agreement for the $35 million loan and it requires Ecoasis Developments FS's to be audited by a CA. See paragraph (l) (page 13) of loan agreement in perm folder on Bambi

I will not be able to prepare/finalize the T5013 until the audited FS are completed (at least in draft form) due to the potential significant changes to financial statement presentation.

Jim Dakin, CGA
Fleming and Company Inc.
Certified General Accountant
111 - 2787 Jacklin Road
Victoria, B.C. V9B 3X7
Phone: 250-474-5131
Fax: 250-474-2117
Email jdakin@flemingcga.ca

From: tom kusumoto <tomkusumoto@hotmail.com>
Sent: Friday, April 3, 2015 2:35 PM
To: David Clarke
Cc: trk@sanovest.com; Dan M
Subject: Re: Cheques issued

This is Exhibit "R" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

David
I feel silly. Sorry about that.

Sent from my iPhone

On Apr 3, 2015, at 1:19 PM, David Clarke <dclarke@ecoasis.com> wrote:

> Hello Tom
>
> This is not an expense report but rather the monthly management fee of $15,000 plus GST.
>
> Thanks
>
> David Clarke
> Chief Financial Officer
> Ecoasis Developments LLP
> 250 213 3356 cell
> 250 391 3752 office
>
> On Apr 3, 2015, at 12:41 PM, tom kusumoto <tomkusumoto@hotmail.com> wrote:
>
> > Hi. David
> > Please provide details for expense
> > of $15,750. / Ecoasis innovative.
> > Expenses of this size need my review.
> > Tom
> >
> > Sent from my iPhone.
> >
> > On Apr 3, 2015, at 11:15 AM, David Clarke <dclarke@ecoasis.com> wrote:
> >
> > > Hello all
> > >
> > > Please see attached the listing of cheques issued this week on the Developments and Resort companies.
> > >
> > > In addition to these - transfers of $10,500 each were done in Ecoasis Pacific and Ecoasis Properties to Ecoasis Innovative for management fees.
> > >
> > > Thanks

DAVID
CLARKE
Chief Financial Officer

ECOASIS
2050 Country Club Way, Victoria BC, V9B 6R3 Canada
T 250.391-3752 *M* 250.213.3356

www.ecoasis.ca www.bearmountain.ca

<ECL CDN Chq Run week of March 30 2015.xls>

<ECR CDN Chq Run Apr 2, 2015.xls>

From: David Clarke <dclarke@ecoasis.com>
Sent: Friday, June 3, 2016 5:10 PM
To: 'tom kusumoto'; trk@sanovest.com; Dan Matthews
Subject: Cheques issued - Resort and Developments
Attachments: ECL CDN Chq Run May 14 to June 3 2016.xls; ECR CDN Chq Run May 14- June 3, 2016.xls; Expenses - Ecoasis Development - April 2106.pdf

Flag Status: Flagged

Hello all

Please see attached for the payments made from the Resort and Developments over the past two weeks.

Thanks

DAVID
CLARKE
Chief Financial Officer

ECOASIS
2050 Country Club Way, Victoria BC, V9B 6R3 Canada
T 250.391-3752 M 250.213.3356

www.ecoasis.ca www.bearmountain.ca

This is Exhibit "S" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

Ecoasis Developments LLP - Chq's released May 14 to June 3, 2016

Date	C#		Description		Payments	
5/20/2016	001632	P1061	1061606 BC Ltd	$	5,670.00	
5/20/2016	001633	PBONA	Devin Bonar	$	1,952.41	
5/20/2016	001634	PCITY	City of Langford	$	9,500.00	
5/20/2016	001635	PCPSC	CPS Canada Inc	$	2,034.94	
5/20/2016	001636	PDAVI-04	DLA Piper (Canada) LLP	$	2,389.48	
5/20/2016	001637	PECLI	Eclipse Creative	$	10,708.86	
5/20/2016	001638	PENKO	ENKON Environmental	$	4,977.00	
5/20/2016	001639	PFEDE	Federal Express Canada Ltd.	$	49.85	
5/20/2016	001640	PFLEM	Fleming & Company	$	588.00	
5/20/2016	001641	PFOCU-01	WSP Surveys (BC) LP	$	7,034.57	
5/20/2016	001642	PGHLC	GHL Consultants	$	8,102.75	
5/20/2016	001643	PHARR-03	Steve Harrington	$	2,736.74	
5/20/2016	001644	PISLA-21	Island View Nursery	$	11,348.98	
5/20/2016	001645	PJARM	W. Jan Jarmula	$	1,063.13	
5/20/2016	001646	PLIST	Listco Development Corp	$	1,575.00	
5/20/2016	001647	PNOVU	Novus Plants	$	3,253.05	
5/20/2016	001648	PQUIN-02	Bill Quinn	$	525.00	
5/20/2016	001649	PSPIL	Ashley Spilsbury	$	321.44	
5/24/2016	DPP		Ecoasis Innovative - Fee	$	15,750.00	
5/24/2016	DPP		Dan Matthews - Expenses	$	1,807.14	See Attached
5/27/2016	001650	PATTW	Erin Attwell	$	5,000.00	
5/27/2016	001651	PHODS	Melissa Hodson	$	254.47	
5/27/2016	001652	PSMUS	St Michaels University School	$	1,000.00	
5/27/2016	001653	PVANC-01	Vanchen Sports	$	2,100.00	
6/3/2016	001654	PBONA	Devin Bonar	$	875.00	
6/3/2016	001655	PBREM	Rachael Bremner	$	450.00	
6/3/2016	001656	PCITY	City of Langford	$	5,800.00	
6/3/2016	001657	PHARR-03	Steve Harrington	$	2,374.12	
				$	**109,241.93**	

This is Exhibit "T" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

WESTERN INVESTOR

Bear Mountain golf resort owners ponder sale

Wi Staff
Jun 7, 2017 7:00 AM

1 / 2 Dan Matthews, managing partner and founder of Ecoasis Developments LLP, is pondering the sale of Bear Mountain resort near Victoria. | Darren Stone/Victoria Times Colonist

Ecoasis Developments LLP bought Bear Mountain Resort Community out of receivership five years ago and is now considering a sale of the landmark golf resort near Victoria.

Last month Ecoasis hired commercial broker **Jones Lang LaSalle** to conduct a review of the resort that could result in the sale of the property or new investors.

The residential resort covers 772 acres of land with an existing community of more than 3,000 residents located about 15 minutes from Victoria.

A master plan would boost the area population by about 7,000 over the next 15 years with a mix of new houses, townhomes and condos.

The community also includes two **Nicklaus Design** golf courses, a Westin hotel, a fitness centre and health spa. "The principals of Ecoasis are primarily investors; they're not developers," said **David Clarke**, Ecoasis chief financial officer. "There's a lot of the community still to build out here at Bear

Mountain and we just felt that this was the right time now to engage JLL to review all of the options here."

Ecoasis specializes in buying and developing residential and resort real estate and has properties in Victoria, Whistler and Hawaii.

The group bought Bear Mountain in 2013 from **HSBC Bank Canada** after the bank took control from the previous owners when they failed to meet loan payments, according to the *Victoria Times Colonist.*

JLL senior vice-president **Jon Ramscar** said the community is about one-third built out and has potential for more homes.

"Without a doubt, [Bear Mountain] is the largest development offering in Victoria. I would go so far as to say it's likely one of the largest development offerings in Canada in 2017," he said. "Some of the best land remains available for development."

Ramscar said the property is essentially ready for an investor and developer to take over, given that much of the development rights and zoning are already in place.

The review process will continue through the rest of the year before any decisions to partner or sell are made, Ramscar said.

BC Registry Services

Mailing Address:
PO Box 9431 Stn Prov Govt
Victoria BC V8W 9V3
www.corporateonline.gov.bc.ca

Location:
2nd Floor - 940 Blanshard Street
Victoria BC
1 877 526-1526

Notification

BM MOUNTAIN GOLF COURSE LTD.

Confirmation of Service

Request Type:	Delay of Dissolution or Cancellation
Date and Time of Request:	April 16, 2024 10:05 AM Pacific Time
Name of Company:	BM MOUNTAIN GOLF COURSE LTD.
Incorporation Number:	**BC0891422**

Please be advised that a request to delay the dissolution or cancellation of BM MOUNTAIN GOLF COURSE LTD. has been granted. Dissolution or cancellation has been delayed until OCT 16, 2024. Annual reports must be filed prior to OCT 16, 2024 to stop the dissolution or cancellation process.

Please contact the BC Registry Services, Corporations Unit at 1 877 526-1526, if you require assistance.

Please keep this notification for your records.

This is Exhibit "U" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

BC Registry Services

Mailing Address:
PO Box 9431 Stn Prov Govt
Victoria BC V8W 9V3
www.corporateonline.gov.bc.ca

Location:
2nd Floor - 940 Blanshard Street
Victoria BC
1 877 526-1526

Notification

BM 81/82 LANDS LTD.

Confirmation of Service

Request Type:	Delay of Dissolution or Cancellation
Date and Time of Request:	April 16, 2024 10:08 AM Pacific Time
Name of Company:	BM 81/82 LANDS LTD.
Incorporation Number:	**BC0891423**

Please be advised that a request to delay the dissolution or cancellation of BM 81/82 LANDS LTD. has been granted. Dissolution or cancellation has been delayed until OCT 16, 2024. Annual reports must be filed prior to OCT 16, 2024 to stop the dissolution or cancellation process.

Please contact the BC Registry Services, Corporations Unit at 1 877 526-1526, if you require assistance.

Please keep this notification for your records.

BC Registry Services

Mailing Address:
PO Box 9431 Stn Prov Govt
Victoria BC V8W 9V3
www.corporateonline.gov.bc.ca

Location:
2nd Floor - 940 Blanshard Street
Victoria BC
1 877 526-1526

Notification

BM 83 LANDS LTD.

Confirmation of Service

Request Type:	Delay of Dissolution or Cancellation
Date and Time of Request:	April 16, 2024 10:07 AM Pacific Time
Name of Company:	BM 83 LANDS LTD.
Incorporation Number:	**BC0891425**

Please be advised that a request to delay the dissolution or cancellation of BM 83 LANDS LTD. has been granted. Dissolution or cancellation has been delayed until OCT 16, 2024. Annual reports must be filed prior to OCT 16, 2024 to stop the dissolution or cancellation process.

Please contact the BC Registry Services, Corporations Unit at 1 877 526-1526, if you require assistance.

Please keep this notification for your records.

BRITISH COLUMBIA | BC Registry Services

Mailing Address:
PO Box 9431 Stn Prov Govt
Victoria BC V8W 9V3
www.corporateonline.gov.bc.ca

Location:
2nd Floor - 940 Blanshard Street
Victoria BC
1 877 526-1526

Notification

BM 84 LANDS LTD.

Confirmation of Service

Request Type:	Delay of Dissolution or Cancellation
Date and Time of Request:	April 16, 2024 10:00 AM Pacific Time
Name of Company:	BM 84 LANDS LTD.
Incorporation Number:	**BC0891426**

Please be advised that a request to delay the dissolution or cancellation of BM 84 LANDS LTD. has been granted. Dissolution or cancellation has been delayed until OCT 16, 2024. Annual reports must be filed prior to OCT 16, 2024 to stop the dissolution or cancellation process.

Please contact the BC Registry Services, Corporations Unit at 1 877 526-1526, if you require assistance.

Please keep this notification for your records.

BRITISH COLUMBIA | BC Registry Services

Mailing Address:
PO Box 9431 Stn Prov Govt
Victoria BC V8W 9V3
www.corporateonline.gov.bc.ca

Location:
2nd Floor - 940 Blanshard Street
Victoria BC
1 877 526-1526

Notification

BM CAPELLA LANDS LTD.

Confirmation of Service

Request Type:	Delay of Dissolution or Cancellation
Date and Time of Request:	April 16, 2024 10:18 AM Pacific Time
Name of Company:	BM CAPELLA LANDS LTD.
Incorporation Number:	**BC0891428**

Please be advised that a request to delay the dissolution or cancellation of BM CAPELLA LANDS LTD. has been granted. Dissolution or cancellation has been delayed until OCT 16, 2024. Annual reports must be filed prior to OCT 16, 2024 to stop the dissolution or cancellation process.

Please contact the BC Registry Services, Corporations Unit at 1 877 526-1526, if you require assistance.

Please keep this notification for your records.

BRITISH COLUMBIA | BC Registry Services

Mailing Address:
PO Box 9431 Stn Prov Govt
Victoria BC V8W 9V3
www.corporateonline.gov.bc.ca

Location:
2nd Floor - 940 Blanshard Street
Victoria BC
1 877 526-1526

Notification

BM HIGHLANDS LANDS LTD.

Confirmation of Service

Request Type:	Delay of Dissolution or Cancellation
Date and Time of Request:	April 16, 2024 10:15 AM Pacific Time
Name of Company:	BM HIGHLANDS LANDS LTD.
Incorporation Number:	**BC0891430**

Please be advised that a request to delay the dissolution or cancellation of BM HIGHLANDS LANDS LTD. has been granted. Dissolution or cancellation has been delayed until OCT 16, 2024. Annual reports must be filed prior to OCT 16, 2024 to stop the dissolution or cancellation process.

Please contact the BC Registry Services, Corporations Unit at 1 877 526-1526, if you require assistance.

Please keep this notification for your records.

BC Registry Services

Mailing Address:
PO Box 9431 Stn Prov Govt
Victoria BC V8W 9V3
www.corporateonline.gov.bc.ca

Location:
2nd Floor - 940 Blanshard Street
Victoria BC
1 877 526-1526

Notification

BM HIGHLANDS GOLF COURSE LTD.

Confirmation of Service

Request Type:	Delay of Dissolution or Cancellation
Date and Time of Request:	April 16, 2024 10:12 AM Pacific Time
Name of Company:	BM HIGHLANDS GOLF COURSE LTD.
Incorporation Number:	**BC0891431**

Please be advised that a request to delay the dissolution or cancellation of BM HIGHLANDS GOLF COURSE LTD. has been granted. Dissolution or cancellation has been delayed until OCT 16, 2024. Annual reports must be filed prior to OCT 16, 2024 to stop the dissolution or cancellation process.

Please contact the BC Registry Services, Corporations Unit at 1 877 526-1526, if you require assistance.

Please keep this notification for your records.

This is Exhibit "V" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

From: "Gragtmans, Ian" <Ian.Gragtmans@colliers.com>
Date: May 30, 2024 at 11:59:29 AM PDT
To: Dan Matthews <dan@saintsbury.ca>
Subject: FW: Media

From: TRK <trk@sanovest.com>
Sent: Wednesday, May 29, 2024 6:54 PM
To: Gragtmans, Ian <Ian.Gragtmans@colliers.com>
Subject: Media

Hi Ian,
Please feel free to contact me if you need anything.

Thanks

https://www.timescolonist.com/local-news/bear-mountain-court-filings-cloud-future-operations-8887963

Tian Kusumoto
Sanovest Holding Ltd.
PH: 604.685.9161
CL: 778.321.9161
EM: trk@sanovest.com

This is Exhibit "W" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

From: REDACTED
Date: May 29, 2024 at 2:40:29 PM PDT
To: "Dan Matthews (dmatthews@ecoasis.com)" <dmatthews@ecoasis.com>
Subject: FW: Bear Mountain / REDACTED

fyi

REDACTED

REDACTED

From: TRK <trk@sanovest.com>
Sent: Wednesday, May 29, 2024 5:00 PM
To: REDACTED
Cc: REDACTED
Subject: RE: Bear Mountain / REDACTED

Hi REDACTED,
Please feel free to contact me if you need anything.

Thanks

https://www.timescolonist.com/local-news/bear-mountain-court-filings-cloud-future-operations-8887963

Tian Kusumoto
Sanovest Holding Ltd.
PH: 604.685.9161
CL: 778.321.9161
EM: trk@sanovest.com

This is Exhibit "X" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

From: REDACTED
Date: June 12, 2024 at 5:42:33 PM PDT
To: Dan Matthews <dmatthews@ecoasis.ca>
Subject: Fwd: Bear Mountain / REDACTED

FYI

REDACTED

From: TRK <trk@sanovest.com>
Sent: Wednesday, June 12, 2024 8:11:28 PM
To: REDACTED
Cc:
Subject: RE: Bear Mountain / REDACTED

Hi REDACTED
Please let me know if you have any questions.

https://www.timescolonist.com/local-news/court-to-hear-bear-mountain-receivership-request-9020296

Tian Kusumoto
Sanovest Holding Ltd.
PH: 604.685.9161
CL: 778.321.9161
EM: trk@sanovest.com

From: TRK <trk@sanovest.com>
Sent: Wednesday, May 29, 2024 2:00 PM
To: REDACTED
Cc:
Subject: RE: Bear Mountain REDACTED

Hi REDACTED
Please feel free to contact me if you need anything.

Thanks

https://www.timescolonist.com/local-news/bear-mountain-court-filings-cloud-future-operations-8887963

Tian Kusumoto
Sanovest Holding Ltd.
PH: 604.685.9161
CL: 778.321.9161
EM: trk@sanovest.com

LAWSON LUNDELL LLP

Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC
Canada V6C 3L2
T: 604.685.3456

This is Exhibit "Y" referred to in the affidavit of Daniel Matthews sworn before me at Vancouver, British Columbia, this 13th day of June, 2024.

A Commissioner for taking Affidavits within British Columbia.

June 6, 2024

BY EMAIL

Gordon Brandt
D: 604.631.9167
F: 604.669.1620
gbrandt@lawsonlundell.com

Fasken Martineau DuMoulin LLP
2900 – 550 Burrard Street
Vancouver, B.C.
V6C 0A3

Attention: Andrew I. Nathanson K.C. /
Daniel Byma

Dear Counsel:

***Ecoasis Developments LLP et al v. Sanovest Holdings Ltd. et al*, S.C.B.C. Vancouver Registry No. S234047; *Ecoasis Development LLP v. Sanovest Holdings Ltd. et al*, S.C.B.C. Vancouver Registry No. S234047; *599315 B.C. Ltd. v. Ecoasis Bear Mountain Developments Ltd. et. al*, S.C.B.C Vancouver Registry No. S234048**

We write in response to your letter of May 31, 2024 asserting that Mr. Matthews has defamed your clients to the media. While your letter references a May 29, 2024 Times Colonist article as a "non-exhaustive example of the statements being made", we confirm that the Times Colonist is the only media source to which Mr. Matthews has provided a statement.

Your letter complains that:

(a) Mr. Matthews has defamed Tian Kusumoto and Sanovest by stating that Bear Mountain's current financial troubles are the result of misconduct on their behalf; and

(b) Mr. Matthews's statement to the effect that "Sanovest issued a formal demand for payment of the loan and then refused Matthews' cash offer to buy out Sanovest's 50% interest in the Bear Mountain partnership" is defamatory and a breach of Mr. Matthews' alleged obligation to maintain confidentiality over such negotiations.

Your letter further complains that Mr. Matthews' statements are gratuitous and an alleged "abuse of process" in view of the pending Court proceedings.

There is nothing defamatory or otherwise wrongful in Mr. Matthews' statements to the Times Colonist. Mr. Matthews provided a reasonable and measured media statement on a matter of interest to Bear Mountain residents and the public more broadly in light of newly-filed litigation by Sanovest. There is nothing objectionable, or even remotely unusual, about such a statement.

The statements attributed to Mr. Matthews regarding Sanovest's conduct say nothing more than the public information that is already set out in Court filings. Indeed, the Times Colonist article provides direct quotes from those filings, including that:

- Matthews claims Kusumoto, who took over a partnership role from his father, Tom, in 2021, has been "attempting to seize control" of the company's bank accounts and operation of the company, and has been deliberately blocking land sales "of unprecedented value" that would have easily paid off the loan. (Notice of Civil Claim, para. 20).

- "Kusumoto has sought to radically alter the business objectives by seeking to involve the partnership in vertical building partnerships with developers rather than pursue the established plan of bulk sales of multi-family sites and single-family residential lots" (Petition, para. 11).

The article as a whole, including the comments attributed to Mr. Matthews, provides a fair and accurate summary of Mr. Matthews' allegations in the proceedings. Sanovest's and Mr. Kusumoto's positions are also represented, including the incorrect statement that Mr. Matthews has "no viable strategy" to replace the golf course services under the hotel lease; and the misleading suggestion that the Partnership had failed to service the Sanovest loan since July 2023. Your letter does not state whether or not Mr. Kusumoto or Sanovest were offered the opportunity to respond or comment for the article, though journalistic practice would suggest this was the case and that Mr. Kusumoto and Sanovest declined to do so.

In the circumstances, the statements attributed to Mr. Matthews, which are based on filed materials subject to absolute privilege, assert facts that are justifiable as true and fall within well-recognized principles protecting reporting on court documents and Mr. Matthews' right to comment on matters of public interest. We note on this last point that the development at Bear Mountain is the subject of significant public attention and scrutiny, and has been widely reported on for this reason over the past 12 months of litigation and indeed well beforehand.

Mr. Matthews' statement that Sanovest refused his offer to buy out Sanovest's 50% interest is true, and is not defamatory in its ordinary meaning nor does it carry any defamatory innuendo. Mr. Matthews proposed, via our April 22, 2024 "with prejudice" letter (Matthews #2, Exhibit "F"), an enforceable buy-sell process that would result in one partner purchasing the other partner's interest. On May 10, 2024, 599315 B.C. Ltd also presented a letter of intent to Sanovest. While the amounts stated in that letter are (and remain) confidential, the fact of the offer being made was not. Sanovest subsequently sought a term that the ensuing negotiations be confidential, including as to the existence of such negotiations. However, such terms were never agreed upon.

Mr. Kusumoto and Sanovest's assertion that they have somehow suffered reputational harm from the Times Colonist article is belied by Mr. Kusumoto's own conduct in circulating that article, along with his affidavit, to others, in an attempt to harm Mr. Matthews' reputation and to interfere with his relationships with third parties. Please see two examples attached. As those communications represent an attempt to interfere with Mr. Matthews' and 599315 B.C. Ltd.'s economic interests, and appear directed at influencing the outcome and progress of a potential receivership or sale process, we ask that Sanovest and Mr. Kusumoto immediately produce and

provide copies of all similar communications with third parties. We also note that the name of one of the recipients was provided to you on the basis that your client not contact that individual.

In all the circumstances, the threat of a defamation lawsuit is evidently a bad-faith attempt to restrict Mr. Matthews' legitimate right to comment on a matter of public interest. Sanovest and Mr. Kusumoto have no real basis for complaint, let alone legal action, in relation to the Times Colonist article. Should Mr. Kusumoto or Sanovest initiate such proceeding, we will be instructed to defend vigorously.

Yours very truly,

LAWSON LUNDELL LLP

Gordon Brandt
GBB

Encl.