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VIA E-MAIL

March 1, 2021

British Columbia Utilities Commission
Suite 410 – 900 Howe Street
Vancouver, BC V6Z 2N3

ATTENTION: COMMISSION SECRETARY

Dear Sirs/Mesdames:

Re: The Lake Okanagan Resort – Potential Non-compliance of the Utilities Commission Act – Project Number 1588118

We write to request a short adjournment of the proceedings in order to allow for additional stakeholder consultation and feedback both from stakeholders and BCUC staff on the enclosed draft application for an exemption under the *Utilities Commission Act*.

The reason for the adjournment is as follows:

1. Our client's Facilities Manager has been away from work and is required to supply certain documents for the application (i.e. the single line electrical diagrams of the Resort and Strata Corporations indicated in the application); and
2. Our client wishes to hold consultation sessions with affected stakeholders, with the benefit of the full application, prior to submitting the final application to the BCUC.



Our client therefore requests an adjournment of 10 days in order to get the full application together, circulate it to affected stakeholders, and obtain feedback (if any) from BCUC staff.

Yours truly,

GAIL LEGGE GRANT ZWACK LLP

David Penner

Encl.



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March 1, 2021

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

ATTENTION: COMMISSION SECRETARY

Dear Ms Tresoglavic:

**Re: APPLICATION FOR AN ORDER PURSUANT TO SECTION 88(3) OF THE
UTILITIES COMMISSION ACT (BRITISH COLUMBIA) (the “UCA”)**

Introduction

We are counsel for the applicant Lake Okanagan Resort (2013) Ltd. (“the **Resort**”). This is an application to the British Columbia Utilities Commission (the “**Commission**”) on behalf of the Resort pursuant to section 88(3) of the UCA for an exemption from the application of parts of the UCA in respect of the ownership and operation of the Resort. Specifically, an exemption is sought in relation to the Resort’s practice of purchasing electricity from BC Hydro and reselling it to the various Strata Corporations (as defined below in Part 1) that operate on the grounds of the Resort.

As the Resort currently operates, it meets the test for, and is thus defined as, a “public utility” under the UCA. The Resort understands that a primary responsibility of the Commission is to ensure that public utilities do not abuse their powers by charging unjust, unreasonable, or unduly discriminatory rates to their customers. The Resort therefore makes its application on the basis that the structure of the Resort’s practice of supplying electricity to the Strata Corporations addresses the primary regulatory goals of the Commission, that requiring full compliance with the regulatory scheme would undermine those goals, and that an exemption from certain aspects of the UCA is thus appropriate.



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1. The Applicant

The Resort is a corporation incorporated under the laws of British Columbia. Incorporated in October 2012, the Resort operates a large property on the shores of Lake Okanagan. The property serves as a destination resort hotel and timeshare as well as supplying strata services, as it has for decades under previous ownership and under different corporate structures. The current owners took ownership of the Resort in 2014.

There are five Strata Corporations that operate on the grounds of the Resort. These Strata Corporations are:

- a) Strata Corporation KAS 3858
- b) Strata Corporation KAS 287
- c) Strata Corporation KAS 322
- d) Strata Corporation KAS 316
- e) Strata Corporation KAS 520

(collectively, the “**Strata Corporations**”).

The Strata Corporations bill the Resort for units used by the Resort, while the Resort provides, and bills the Strata Corporations for, services such as snow removal, garbage pickup, landscaping and groundskeeping, cleaning, water and sewage, and electricity.

2. Details and History of the Resale Practice

The former owners of the Resort had been buying electricity from BC Hydro and reselling it to the Strata Corporations before the current owners took ownership. The former owners did not register as a public utility, nor did they follow the regulatory requirements under the UCA. At the time the current owners of the Resort took ownership of the property in 2014, they were unaware of the existing arrangement between the previous owners of the Resort and the Strata Corporations regarding the resale of electricity. Upon becoming aware of this shortly after taking ownership, the Resort chose to continue it on the basis that it was the simplest and most convenient option. Until June of 2020, the Resort was unaware that this practice resulted in the Resort being classified as a “public utility” under the UCA, that the Resort was violating any regulatory framework, or indeed that any regulatory framework applied to their activities in this regard. When the Resort became aware of the relevant regulatory requirements, it began looking into potential solutions with the assistance of Commission staff and the Strata Corporations.



The Resort's consultation with the Strata Corporations and residents took the form of Zoom calls. As a result, and based on further dialogue between the parties, the Resort determined that it was most practical and cost-effective to pursue the option of obtaining a partial exemption to the UCA. The Resort considered the options of:

- a) fully complying with the requirements of the UCA;
- b) applying for an exemption from certain sections of the UCA pursuant to section 88(3); and
- c) the Resort ceasing operation as a public utility and transferring all customers to BC Hydro.

The Resort determined that the existing resale arrangement between the Resort and the Strata Corporations was most desirable, if the Resort could obtain an exemption to certain parts of the UCA. The other options would be far more expensive. During consultation with the Strata Corporations, the Resort learned of some preliminary work which was done to explore the possibility of BC Hydro providing electricity to the Strata Corporations directly. This preliminary work indicated that it would be very capital intensive. Hence, the Resort now applies for this exemption.

Currently, the Resort purchases electricity from BC Hydro. It then resells the electricity to the Strata Corporations that operate on the property of the Resort. The Strata Corporations each pay the Resort for the total amount of electricity used. Each strata building has its own meter/s, allowing the Resort to track how much electricity is used by each Strata Corporation. The Strata Corporations in turn charge their residents individually for their usage as part of their strata fees. Staff of the Resort regularly check the Strata buildings' meters, and bill the Strata Corporations on a monthly basis for their electricity usage. The Resort owns all of the electrical utility assets on Resort property. The Strata Corporations own the electrical utility assets within their respective strata buildings.

The rate schedule number under which the Resort purchases energy from BC Hydro is 1611. A typical invoice from BC Hydro to the Resort is attached as Appendix "A." The Resort does not have a long-term energy contract with BC Hydro, instead purchasing electricity on a month to month basis.

The Resort has, in the past, billed the Strata Corporations a flat monthly rate for electricity, but currently bills the Strata Corporations for actual usage at the residential rates determined by BC Hydro's tariff. In other words, the Resort is not charging the Strata Corporations anything more than BC Hydro would be charging were BC Hydro servicing the Strata Corporations or the strata residents directly. See a sample contract between the Resort and a Strata Corporation for electrical services, attached as Appendix "B."



Note that the Resort and the Strata Corporations are currently negotiating new electrical billing contracts to begin in March 2021. It is anticipated that the terms of these contracts will stipulate that the Resort will continue to charge the Strata Corporations for actual usage based on the BC residential tariff rates.

An example of a typical monthly bill from the Resort to a Strata Corporation is attached as Appendix “C.”

The single-line electrical plans for the Resort and the various Strata Corporations have currently been requested from the Resort’s Facilities Manager and will be provided to the Commission as soon as they are obtained.

3. Proposed Scope of Exemption

The UCA classifies a “public utility” in section 1 as, in part:

... a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

- (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation

As the Resort owns and operates equipment or facilities for the transmission, sale, delivery, and provision of electricity to the public or a corporation for compensation, and does not fall under any of the listed exceptions stated in the definition of “public utility” subsections (c) through (g), it understands that it qualifies as a “public utility” under the UCA.

Section 88(3) of the UCA contemplates the granting of exemptions to all or some provisions of the UCA when an entity technically meets the definition of a “public utility” but regulation as a public utility is not warranted. Section 88(3) provides:

88 (3) The commission may, on conditions it considers advisable, with the advance approval of the minister responsible for the administration of the *Hydro and Power Authority Act*, exempt a person, class of persons, equipment or facilities from the application of all or any of the provisions of this Act or may limit or vary the application of this Act.

In the Commission's final report dated December 27, 2012 titled *Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives* (the “AES



Inquiry Report"), the Commission recommended the use of section 88(3) exemptions where regulation is not warranted. The Commission stated:

The definition of public utility is set out in the UCA but, given the discussion on the economic purposes of regulation, applying the legal definition of public utility does not always lead to an outcome that makes the most economic sense. ... Given the current lack of clarity in the UCA the Commission Panel recommends the use of exemptions, which are contemplated under the UCA, where the Commission finds regulation is not warranted.¹

The Resort applies for an exemption from Part 3 of the UCA, except sections 25, 38, 41, and 42, as well as an exemption to section 71, as it believes that regulation of its activities is largely not warranted in this instance and would not make economic sense. Such a partial exemption would eliminate unnecessary regulatory hurdles and costs to the Resort, its customers, and the Commission, but would not limit the oversight power of the Commission. The Resort does not seek exemption to the provisions that would allow its customers to contact the Commission with concerns, trigger an investigation, seek a remedy, and ask the Commission to order compliance.

We attach a proposed draft order for the exemption as Appendix “D.”

4. Reasons for the Exemption

In its Reasons for Decision attached to Order No. G-41-06, the Commission described the test for granting an exemption as follows:

[The] Commission is of the view that a section 88(3) exemption order should be issued, with the advance approval of the [Lieutenant Governor in Council], when such exemption serves the objects and purposes of the Act and it is in the public interest to do so.²

The object and purposes of the UCA were described in the AES Inquiry Report:

Regulation exists to protect the public from potential monopolistic behaviour on the part of a public utility while ensuring the continued quality of an essential service. It is the regulator’s function to prevent the abuse of monopoly power, so that customers have access to the utility product or service at a fair price, but at the same time allow the utility the opportunity to earn a fair return on its investment so that it can continue to operate and attract the capital required to sustain and/or grow its business. The Utilities Commission Act is an example of public utility regulation that balances the public interest between monopoly, where monopoly is accepted as necessary, and the consumer protection provided by competition.³

¹ AES Inquiry Report, pg 15-16.

² Order No. G-41-06 Reasons for Decision, pg 6, online:
<https://www.bcuc.com/Documents/Proceedings/2006/DOC_11706_G-41-06_BCH-FBC%20Canal%20Plant%20Agrmnt%20Reasons%20for%20Decision.pdf> accessed 23 Feb 2021.

³ AES Inquiry Report, pg. 8.



With respect to the circumstances where an exemption is in the public interest, the Commission made the following determinations in the AES Inquiry Report:

Regulation is costly, time-consuming, and limited by informational asymmetries. It is only in natural monopoly situations where consumer protection is needed that these limitations are outweighed by the benefits of regulation.

Based on the above, the Commission Panel finds as a fundamental principle that regulation is only appropriate where required and is driven by the inability of competitive forces to operate with greater efficiency and effectiveness than a sole service provider.⁴

The Commission has also acknowledged that light handed regulation may be an appropriate middle ground between full regulation and no regulation in certain circumstances. In particular, it has explained, in the context of newly regulated activities that have only limited monopoly characteristics, that sometimes only limited protection is needed:

... there may be opportunities to use lighter handed forms of regulation such as market based pricing or regulatory exemption. This would be the case where the Commission found that there were sufficient market forces at play to protect the interests of the ratepayer. Long term contracts setting out rates and terms and conditions of service may also provide sufficient consumer protection under light handed regulation.⁵

While written in the specific context of newly regulated activities, these are general comments with wide application.

We submit that the objects and purposes of the UCA, and the public interest, favour the granting of an exemption. Further, regulation would provide no public benefit. Reasons for this submission are set out below.

4.1 No Natural Monopoly

There is no natural monopoly, or any monopoly of any kind, at play in the circumstances of this application. BC Hydro could provide electrical service to the Strata Corporations. Indeed, the Resort has considered this possibility, in conjunction with the Strata Corporations, in a recent series of discussions. As noted above, in consultations, owners of units in the Strata Corporations indicated a desire to retain the current arrangement of the Resort reselling electricity to them, if possible, provided this is the most cost-effective solution. There is thus no party requiring regulatory protection from a monopoly by the Resort such that regulation is necessary. Imposing the full measure of regulatory restrictions on the Resort is an unnecessary burden for the Resort and the Commission to take on.

4.2 Light Handed Regulation Appropriate

⁴ *Ibid.* at pg 14.

⁵ *Ibid.* at pg 19.



The Strata Corporations sign long-term contracts for electricity setting out rates and terms and conditions of service, suggesting that light handed regulation such as regulatory exemption is more appropriate than enforcement of the full scope of the UCA in this instance. Note the contract example in Appendix B. It is anticipated that the Strata Corporations would sign long term contracts with the Resort effective March 2021 for electricity provision, indicating an agreement to the existing system of resale. There is no need for regulation in the face of agreement by all parties to the existing system. This is especially so when all parties have recently been fully informed of the other options available to them and have had the opportunity to obtain counsel on the best option moving forward.

4.3 Provision of Services at Fair Rates

A stated purpose of the Commission is to ensure that ratepayers receive energy services at fair rates,⁶ a fact reiterated in the AES Report.⁷ The Resort is currently able to supply electricity at rates equal to the BC Hydro tariff rates for residential customers; these are fair rates.

Either fully complying with the requirements of the UCA or ceasing operations as a public utility and attempting to transfer all the ratepayers to BC Hydro would create extensive additional costs to both the Resort and the Strata Corporations, in the former case for compliance costs and in the latter for capital costs.

The comprehensive regulation and disclosure requirements under Part 3 of the UCA would result in higher operating costs for the Resort. The UCA includes both mandatory and discretionary reporting requirements, all of which require considerable resources and funds to prepare. This would create a significant cost burden to the Resort, which would in turn be forced to pass much of this cost along to the Strata Corporations and then to the individual strata residents as end users. This is an undesirable outcome for all parties involved, and is contrary to the Commission's goal of ensuring the provision of services at a fair price.

Transferring the customers to BC Hydro was also rejected as an option by the Resort following consultation with the Strata Corporations. This is largely because doing so would require not only the replacement of existing electrical meters, but also the addition of meters for each individual strata unit in each of the strata buildings, where such individual meters do not currently exist. This would create a substantial capital cost that would need to be passed down to the end users of the electricity. Additionally, the Resort does not wish to take on the administrative burden of disentangling the electrical supply systems and getting new service set up with BC Hydro, especially considering that the net result of the work would be receiving service at the same rates as before.

⁶ British Columbia Utilities Commission website, *About the BCUC*, online <https://www.bcuc.com/about/> accessed February 23 2021.

⁷ See the above quote from pg. 8 of the AES Inquiry Report.



4.4 No Service to the Public at Large

The Resort is not supplying electricity to the public at large, but only to the Strata Corporations that are its customers. These Strata Corporations, and the residents of the stratas themselves, have been afforded the opportunity to give input on the Resort's decision to apply for this exemption. There is no question of the Resort unduly taking advantage of its customers, as they have been actively involved in choosing to retain the existing electrical supply system. Therefore the protection of regulation is unnecessary and would only represent an additional cost and administrative hurdle for the Resort and the Strata Corporations.

4.5 No Expansion of Service

The Resort has no intention of ever expanding its services beyond its current customer base. Other than the provision of services to the Strata Corporations, the Resort is not regularly engaged in the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas or steam for the public for compensation and only proposes to continue to distribute electricity in the same manner it has for years. The Resort does not intend to, and does not wish to, expand its services beyond current levels and as such is seeking to be exempt from all sections under Part 3 of the UCA that can result in a mandatory expansion of its services. The Resort does not believe it would be in its own interests or in the best interests of the public or its customers to have the Resort be compelled to expand its services. This would be permissible if the exemption were not granted. Additionally, in the absence of any future expansion many of the sections of Part 3 of the UCA would not apply to the Resort.

4.6 Section 71

As noted above, the Resort will not be supplying services to the public at large, and the parties involved have operated on the existing arrangement for years. Additionally, the requested exemptions to the UCA specifically do not include the provisions that allow customer complaint to the Commission and affirm the Commission's power to address any complaints. Therefore, there are no public interest reasons for the regulatory reporting requirement in section 71. Additional reporting requirements would simply add unnecessary regulatory hurdles and cost to the Resort and the Commission. For these reasons, the Resort requests to be exempt from section 71 of the UCA.

4.7 Precedent for Granting Such an Exemption



Commission Order No. G-108-20 was an order granting an exemption to the owner of a commercial strata park under almost the exact terms that we request herein.⁸ The applicant noted that the services were being supplied only to a small, closed public and that the parties involved were fully informed as to the nature of the electrical supply.⁹ The relevant minister and the Commission granted the exemption. Although the Resort services multiple strata corporations, the Resort submits that the situation in this application is similar enough that the same exemption should be granted.

5. Conclusion

In our view, regulation of the Resort as a public utility under the UCA is unnecessary to protect the public from monopolistic behavior or to ensure that ratepayers receive services at a fair price. In fact, regulation would increase prices and would run counter to the purposes of the Commission and the UCA by imposing a significant and expensive regulatory burden on both the Resort and the Commission itself. Additionally, much of Part 3 of the UCA is irrelevant to, and potentially damaging to, the Resort and its customers, without any corresponding benefit to any party. Therefore, it is appropriate for the Resort to be exempted from the UCA on the terms requested.

We would be pleased to answer any questions that the Commission might have regarding this application.

Yours truly,
GALL LEGGE GRANT ZWACK LLP

David Penner

⁸ Available online: https://www.bcuc.com/Documents/Proceedings/2020/DOC_58012_G-108-20-RLIP-UCA-Exemption-Final-Order.pdf accessed 23 Feb 2021.

⁹ Letter from Raven's Landing Industrial Park to the Commission, July 30 2019 at pg. 1, online: https://www.bcuc.com/Documents/Proceedings/2019/DOC_54795_B-2-RLIP-Response-to-BCUC-IRNo1.pdf accessed 23 Feb 2021.



APPENDIX A: Typical BC Hydro Invoice to Resort

Important bill highlights

Your bill for Jan 16, 2021 to Feb 16, 2021

- As a result of an additional 0.61% rate decrease effective retroactively to April 1, 2020, your bill includes a one-time rate adjustment credit, as shown in the bill details section.
- A rate decrease of 0.61% is reflected on bills as of January 1, 2021. For more information, visit bchydro.com/rates.
- ✓ Thank you for your payment of \$4,781.04 on Jan 26, 2021.
- ⚠ You have 1 total catch-up installment(s) due this period. This is in addition to your current charges.
- To track your electricity usage, visit bchydro.com/login.

Auto-pay amount

\$28,013.59

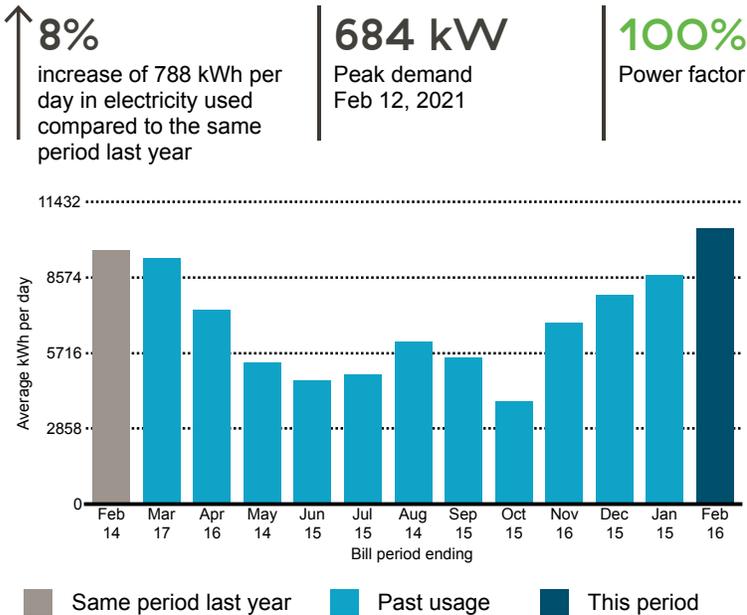
Withdrawn on or after Feb 25, 2021

Plus catch-up installments

\$4,781.04 Due by Feb 26, 2021

[Turn for bill details →](#)

Your electricity usage over time



Did you know?

You used a total of 332,400 kWh from Jan 16, 2021 to Feb 16, 2021.

Use our online tracking tools to view your detailed electricity use by the month, week, day or even hour – up to the previous day. Visit bchydro.com/login.

Your catch-up payment plan

\$28,686.29 total catch-up payment plan set up on Jan 22, 2021



- **\$4,781.04** paid to date
- **\$4,781.04** installment 2 of 6 due Feb 26, 2021
- **\$19,124.21** future installments

Catch-up installments are in addition to your current charges. Any catch-up installments not received by the due date will cancel the catch-up payment plan. The full amount will be due immediately and late payment charges will also apply. Failure to pay will result in further credit action including disconnection of service. Any amounts owing that are not included in this plan are due and payable as stated above. To view your list of your catch-up payments, log in to view your bill at bchydro.com/login.

Reduce your business' energy costs

Replace inefficient equipment with new energy-efficient technology and we'll provide funding to cover about 25% of the upfront cost.

Learn more at bchydro.com/businessincentives



Meter reading information

Energy

Meter number 6202061

Starting Jan 16, 2021..... 6786
 Ending Feb 16, 2021..... 7063
 Difference..... 277
 Multiplier..... x 1200

332,400 kWh used over 32 days

Demand

Meter number 6202061

Feb 16, 2021..... 570
 Multiplier..... x 1200

684 kW peak demand registered on Feb 12, 2021

Reactive energy

Meter number 6202061

Starting Jan 16, 2021..... 82
 Ending Feb 16, 2021..... 82
 Difference..... 0
 Multiplier..... x 1200

0 kVarh used over 32 days

Your next meter reading is on or around Mar 17, 2021.

Go paperless

Get access to your account online.
 To get started, visit bchydro.com/gopaperless.

Maintaining your account

If we receive your payment after the due date, you may be charged a late payment fee. To learn more about your account with BC Hydro, visit bchydro.com/customerservicerules.

Privacy

Protecting your personal information is an obligation we take seriously. For more information, visit bchydro.com/privacy.

GST Registration # R121454151

Have a question?

Visit bchydro.com/gethelp
 Call us at 1 800 BCHYDRO (1 800 224 9376).

Bill details

Jan 16, 2021 to Feb 16, 2021

PREVIOUS BILLING PERIOD

Previous bill..... \$28,686.29
 Catch-up payment plan set up Jan 22, 2021..... -\$28,686.29
 Catch-up installment 1 of 6 \$4,781.04
 Payment received Jan 26, 2021..... -\$4,781.04

BALANCE FORWARD \$0.00

ACCOUNT CHARGES

Electricity rate adjustment..... -\$837.66
 GST on rate adjustment..... -\$41.88
 Interest on rate adjustments..... -\$13.76

ACCOUNT CHARGES SUBTOTAL -\$893.30

ELECTRICITY CHARGES

Based on Large General Service Rate 1611
 Jan 16, 2021 to Feb 16, 2021

Basic Charge 32 days @ \$0.2630 /day..... \$8.42*

ENERGY CHARGES

332,400 kWh @ \$0.0596 /kWh..... \$19,811.04*

DEMAND CHARGES

684 kW @ \$12.1400 /kW..... \$8,303.76*
 Transformer Owner discount..... -\$171.00*
 Primary Potential discount..... -\$421.85*

POWER FACTOR

Power factor of 100%: Surcharge of 0% on
 electricity charges..... \$0.00

TAXES ON ELECTRICITY CHARGES

* GST 5% on \$27,530.37..... \$1,376.52

ELECTRICITY CHARGES SUBTOTAL \$28,906.89

TOTAL DUE \$28,013.59



APPENDIX B: Example Contract Between Resort and Strata Corporation

UTILITY SERVICES AGREEMENT
ELECTRICITY, WATER & SEWER

This Agreement is made effective as of "Commencement Date"

BETWEEN

1782 Holdings Ltd., a body corporate
existing under the laws of the Province of British Columbia ("LOR")

AND

STRATA CORPORATION KAS 316 a body corporate existing
Under the laws of the Province of British Columbia ("KAS 316")

NOW, THEREFORE, THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby acknowledge and agree to the preambles hereof and covenant and agree as follows:

ARTICLE 1
INTERPRETATION

(a) Definitions

Unless the context otherwise requires, the following terms shall have the following meanings:

- (a) "Agreement" means this agreement as the same may be amended from time to time; the words "herein", "hereof", "hereto", "above", "below" and similar words used in any Article, Section, subsection, paragraph or subparagraph of this Agreement refer and relate to the whole of this Agreement and not to that Article, Section, subsection, paragraph or subparagraph only, unless otherwise expressly provided;
- (b) "Commencement Date" means April 1, 2013;
- (c) "Default" means failure to fulfill an obligation or to perform a task;
- (d) "Expiration Date" means March 31, 2023

(b) Headings

Headings are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

(c) Number and Gender

Wherever the context so requires, any term used in this Agreement importing the singular number only shall include the plural and vice versa and words importing any gender shall include all other genders.

(d) Statutes and Regulations

Any reference in this Agreement to any statute shall be a reference to that statute as amended, substituted, replaced or re-enacted from time to time, and shall include the regulations pursuant to that statute.

(e) Invalidity of Provisions

If, for any reason, any provision of this Agreement or the application of any provision of this Agreement to any person or circumstance is to any extent held or rendered invalid, unenforceable or illegal, then such provision shall:

- (a) be deemed to be independent of the remainder of this Agreement and to be severable and divisible from this Agreement and its invalidity, unenforceability or illegality shall not affect, impair or invalidate the remainder of this Agreement or any other part of this Agreement; and
- (b) continue to be applicable to and enforceable to the fullest extent permitted by law against any person in any circumstances other than those in respect of which it has been held or rendered invalid, unenforceable or illegal.

(f) Time of the Essence

Time shall be of the essence of this Agreement.

(g) Governing Law

This Agreement shall be governed by and construed in accordance with the laws in force in the Province of British Columbia and the reference to such laws shall not, by the application of conflict of law rules, or otherwise, require the application of the laws in force in any jurisdiction other than the Province of British Columbia. The Parties hereby attorn to the exclusive jurisdiction of the Court of the Province of British Columbia and all Courts of appeal there from in respect of all matters hereunder.

(h) Monetary References

Whenever an amount of money is referred to in this Agreement, such amount shall be deemed to be Canadian dollars unless otherwise stated.

(i) Waiver

No waiver by a Party of any provision or the breach of any provision, of this Agreement shall be effective unless it is contained in a written instrument duly executed by the authorized officers or representatives of the Party granting the waiver. Such waiver shall affect only the matter specifically identified in the instrument granting the waiver and shall not extend to any other matter, provision or breach. The failure of a party to give notice to any other party or to take any other steps in exercising any right, or in respect of the breach or non-fulfillment of any provision of this Agreement, shall not operate as a waiver of that right, breach or provision nor shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or otherwise.

ARTICLE 2
TERM OF AGREEMENT

The term of this Agreement shall be ten (10) years commencing on the Commencement Date and ending on the Expiration Date, unless terminated earlier in accordance with this agreement.

ARTICLE 3
TERMINATION OF AGREEMENT

This Agreement can not be terminated earlier than the Term of the Agreement, unless there is a default by KAS 316 or by LOR (see article 13 and 14).

ARTICLE 4
DUTIES OF KAS 316 AFTER TERMINATION

For greater certainty, if this Agreement is terminated prior to the Expiration Date, KAS 316 shall be responsible for all expenses concerning the services LOR provided in this Agreement to the date of termination. If LOR has prepaid any such expenses and this agreement is terminated prior to the Expiry Date KAS 316 shall reimburse to LOR the amount of any unrecoverable prepaid expenses made by LOR in respect of the period following the effective date of the Termination Notice. LOR shall use best efforts to minimize any prepaid expenses.

ARTICLE 5
EXTENSION OF THE AGREEMENT

Extension of this Agreement is not possible. A new Agreement will need to be negotiated before the end of the Expiration Date.

ARTICLE 6
DESCRIPTION OF UTILITY SERVICES

The Utility Services will entail the following:

Water/Sewer Utility Services:

- (a) Providing water Utility services to all the units in KAS 316
- (b) Providing sewer Utility services to all the units in KAS 316

Water service is provided by 1782 Holdings Ltd., a duly constituted utility under the *Water Utility Act - BC* which holds the Certificate of Public Convenience and Necessity issued by the Province. 1782 Holdings Ltd. was required to conduct a tariff review based on unit configuration, size and historical consumption by the Ministry of Environment and has made application to amend the rate. The revised rate is provided below and is based on the strata corporation.

The total rate per year for KAS 316 for 18 units is \$3456.00 annually or \$288.00 monthly.

The price for Water/Sewer Utility Services will be dictated by the approved rate determined by the Ministry of Environment. The rate in the agreement will only be adjusted if LOR is given notice of a rate increase.

Electricity Utility Services:

The price for Electricity Service is based on the current BC Hydro residential rate charged to LOR at the Commencement Date and as periodically revised from time to time by BC Hydro during the term of this Agreement. The rate will only be adjusted if BC Hydro changes its rate.

LOR charges the current base rate of thirteen dollars forty one (13.41) cents per day. The current BC Hydro rate is six point two seven (6.27) cents per kWh up to 675 kWh and the current BC Hydro rate is eight point seventy eight (8.78) cents per kWh above 675 kWh.

LOR staff shall take the reading from the KAS 316 meter and shall bill the electricity usage monthly.

\$ 241.38 / DAY.

**ARTICLE 7
UTILITY SERVICES PRICE**

The prices may vary month to month due to the seasonal demand for Electricity Utility Services.

The prices shall be charged from the Commencement Date until the Expiration Date.

**ARTICLE 8
TERMS OF PAYMENT**

Payment shall be due and payable as outlined in the Invoices LOR will send to Strata Management of KAS 316 once a month.

All payments are subject to applicable legislation and shall be made in accordance with provisions of this Agreement and the provisions of any applicable legislation. All payments must be made to LOR. Any payment to a sub contractor is not deemed a payment to LOR.

**ARTICLE 9
CHANGES IN UTILITY SERVICES**

KAS 316 may make changes by altering, adding to, or deducting from the Utility Services, with the Agreement and Agreement price being adjusted accordingly. A written notice must be provided for all changes and accepted by both parties..

- (a) Additions will be calculated in the following manner: A lump sum to be agreed on in advance by both parties.
For the extras LOR will change the monthly payment in the month following the change.
- (b) Deductions will only be agreed on when a new Agreement is negotiated for a future year.

**ARTICLE 10
STANDARDS OF UTILITY SERVICES**

LOR agrees to supply all labour, materials and supervision to provide the Utility Services in accordance with the Agreement.

LOR agrees to undertake all Utility Services diligently in a good and workmanlike manner, in accordance with good quality residential standards and practices, and in compliance with any applicable Building Code and all other authorities having jurisdiction.

KAS 316 accepts that there may be inconveniences from time to time, and LOR agrees to keep such inconveniences to a reasonable minimum.

INDEMNITIES

LOR shall be responsible for and shall save, indemnify, defend and hold harmless KAS 316 from and against all claims, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) Loss of or damage to property of LOR, whether owned, hired, leased or otherwise provided by LOR arising from or relating to the performance of this Service Agreement;
- (b) Personal injury, including death or disease to any person employed by LOR arising from or relating to the performance of this Service Agreement;
- (c) Personal injury, including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by negligence or breach of duty (whether statutory or otherwise) of LOR.

ARTICLE 11 LIABILITY INSURANCE

Prior to commencing the Utility Services, LOR agrees to provide, maintain and pay for insurance during the time the Utility Services are being performed, including commercial general liability in the minimum amount of five million dollars (\$ 5,000,000.00) against claims for damages for personal injury or property damage by reason of anything done or not done by LOR, it's employees or agents, in connection with the performance of this Agreement. LOR is responsible for all materials on site provided by LOR for the Utility Services in this Agreement until installed.

LOR shall include KAS 316 as additional assureds and shall endorse to provide that the underwriters waive any right of subrogation against KAS 316 and the respective owners of KAS 316 in relation to this Agreement. Such insurance shall also provide that KAS 316 shall be given not less thirty (30) days notice of cancellation of or material change to cover, The provision of this Article shall in no way limit the liability of LOR under this Agreement.

LOR shall provide Worker's Compensation insurance covering personal injury to or death of the employees of LOR engaged in the performance of the Utility Services to the minimum value required by applicable legislation.

ARTICLE 12
DEFAULT BY KAS 316

In the event that (a) KAS 316 does not perform its obligations under this Agreement in accordance with the terms of this Agreement and has not corrected the default within thirty (30) days of written notice by LOR, or (b) KAS 316 becomes bankrupt or makes a general assignment for the benefit of its creditors, or if a receiver of KAS 316 is appointed, or (c) if the Utility Services is stopped as a result of a court order, then LOR may cease Utility Services and treat the Agreement as repudiated forthwith on the occurrence of such default. In such event, an accounting shall be made between KAS 316 and LOR, and LOR shall be entitled to payment for such parts of the Utility Services as are completed at the time of default.

ARTICLE 13
DEFAULT BY LAKE OKANAGAN RESORT

In the event that (a) LOR does not perform the Utility Services in accordance with the terms of this Agreement and has not corrected the default within seven (7) days of written notice by KAS 316, or (b) LOR becomes bankrupt or makes a general assignment for the benefit of its creditors, or if a receiver of LOR is appointed, then KAS 316 may finish the Utility Services in accordance with the plans and specifications as KAS 316 may deem expedient, but without undue delay or expense.

In such event, LOR shall not be entitled to any further payment under this Service Agreement, but upon completion of the Utility Services, an accounting shall be made between KAS 316 and LOR.

NOTICES

Notices, reports and other communications required or permitted by this Agreement to be given or sent by one party to the other shall be delivered by hand, mailed, telefax, or emailed as the case may be to:

LOR
Attention:
Address:
Facsimile:
Email address:

KAS 316
Attention:
Address:
Facsimile:
Email address:

ARTICLE 14
SIGNING OF THE AGREEMENT

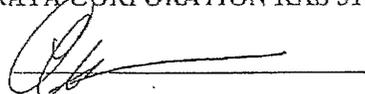
This Agreement shall be governed by and construed under the laws of the Province in which the project is situated, and supersedes all prior communications and agreements. There are no other terms outside of this Agreement.

LOR assures that there is not now any claim action, contract, rule or other circumstance which may interfere with LOR's ability to perform its obligations under this Agreement.

IN WITNESS WHEREOF this Agreement has been executed by the Parties as of the date first above written.

STRATA CORPORATION KAS 316

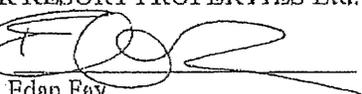
Per:



Authorized Signatory

LOR RESORT PROPERTIES Ltd.

Per:



Edan Fay
Authorized Signatory



APPENDIX C: Typical Monthly Bill to Strata Corporation



Lake Okanagan Resort

KAS 316 - Kingfisher Inn
 c/o Pacific Quorum (Okanagan) Properties Inc.
 1979 Bredin Road
 Kelowna, BC V1Y 8T2

Date: 4/14/2020
 Invoice # 202003to202004 K316E
 Billing Kingfisher Inn

ELECTRICAL POWER INVOICE FOR THE MONTH OF: Feb 20 2020 to Apr 14 2020

Meter Reading Information

Meter # 0399365	Ref #903605-0		Step 1	Step 2							
2/20/2020	5512	USAGE	KW @	KW @	Basic Charge	Rate Rider	Subtotal	GST	PST	CURRENT	
4/14/2020	5870	54 Days	0.0935	0.1403	0.2069 per day (one units)	0%		5%	7%	TOTAL	
	Mult: X80	28640.00	\$ 2,016.84	\$ 991.86	\$ 201.11	\$ -	\$ 3,209.80	\$ 160.49	\$ -	\$ 3,370.29	
54 Days	28640										

TOTAL BALANCE OWING	
\$	3,370.29

- ▶ Please make cheque payable to Lake Okanagan Resort
- ▶ 2% interest per month will be charged on overdue accounts

Please forward payment to:

Lake Okanagan Resort Hotel Inc.
 2751 Westside Road, Kelowna, British Columbia, V1Z 3T1
 Phone: (250)769-3511 Fax: (250) 769-6665
 www.lakeokanagan.com
 GST: 841520687 RT0001

APPENDIX D– DRAFT ORDER

Order number X-XXX-XX

IN THE MATTER OF

The Utilities Commission Act, RSBC 1996, Chapter 473

And

Lake Okanagan Resort

Application for Exemption pursuant to section 88(3) of The Utilities Commission Act

BEFORE

X.X. XXXX, Panel Chair
X.X. XXXX, Commissioner

On [DATE]

ORDER

A. On [DATE], Lake Okanagan Resort (2013) Ltd. (“the Resort”) filed an application with the British Columbia Utilities Commission (the “BCUC”) for a partial exemption from Part 3 and section 71 of the Utilities Commission Act (the “UCA”); in the application the Resort acknowledged that it meets the definition of public utility as defined in the UCA;

B. The Resort will continue to purchase the energy used by its customers (the “Strata Corporations”) at 2751 Westside Road, Kelowna, British Columbia V1Z 3T5, directly from BC Hydro and resell it to the Strata Corporations;

C. On [DATE] the BCUC established a regulatory timetable which included intervener registration for the proceeding;

D. On [DATE] the Resort submitted its responses to BCUC, XXXX and XXXX information requests;

NOW THEREFORE the BCUC orders as follows:

1. Pursuant to section 88(3) of the UCA, the BCUC, having been granted advance approval by the Minister responsible for the administration of the Hydro and Power Authority Act, effective as of the date of this order, exempts, in respect of the Resort’s provision of electricity to the Strata Corporations, the Resort from section 71 and Part 3 of the UCA except for sections 25, 38, 41, and 42.

2. The exemption referred to in Directive 1 of this order remains in effect until the BCUC, after conducting a hearing, orders that the exemption no longer applies.

DATED at the City of Vancouver, in the Province of British Columbia, this [DATE] day of [MONTH, YEAR].

BY ORDER