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**Subject:** Request...

*I am a partner in 1120732 BC Ltd., which owns 22 rental pool units in the Cascade Lodge. As you are aware, we challenged the RMOW's Phase 2 covenants and tourist accommodation bylaws in court. We believe our challenge was based on legitimate grounds and we accept the well reasoned decisions of the Court of Appeal. In fact, while the court dismissed our application to declare the covenant and bylaws invalid, the reasoning of the court supported our position on the interpretation of the covenant and bylaws that they do not mandate or impose on owners any particular rental pool manager or rental pool agreement.*

*We ask that you recognize that we were entitled to make the challenge to the court and are now entitled to be treated fairly as you would treat any taxpayer in the municipality.*

*We further ask that you consider meeting with us (by video conference or phone call) and allow us to explain how we are trying to come into compliance with the tourist accommodation bylaws while at the same time not being subjected to the non-market terms, and highly questionable legal and ethical practices of ResortQuest, the current holder of the tourist accommodation license holder at the Cascade Lodge. Of particular note, ResortQuest is obligated, under its rental management agreement with the Cascade owners, to produce to the owners an annual audit of the rental pool revenues and expenses. This is a fundamental obligation under the rental management agreement. Despite owners requesting that this audit be produced since the inception of the Cascade Lodge in the early 20090's, ResortQuest has produced only one audit in 2016. That audit showed that ResortQuest had wrongfully be keeping certain monies which were owed to the owners. Even though ResortQuest acknowledged that they had wrongfully be holding these monies, they only returned a portion of the monies to the owners without providing any sensible rationale for not returning all of the monies. We believe ResortQuest's actions are a direct result of ResortQuest having a complete unchecked monopoly at the Cascade Lodge since the inception of the lodge. This situation is further explained in the attached memo.*

*In summary, we are attempting to commence a process whereby the rental pool license holder at the Cascade Lodge is approved by the strata owners as contemplated in your tourist accommodation bylaws (ResortQuest has never been approved by the owners as contemplated by the bylaws). We believe such a process will necessarily involve the oversight required in order to have a normal business relationship between a service provider, such as ResortQuest, and property owner i.e. a relationship where the service provide has to answer to owners.*

*When the new tourist accommodation bylaws were passed, council instructed RMOW staff to work with the owners in the Alpenglow to help them come into compliance with the bylaws. A long time frame was given for this.*

*We welcome the opportunity to explain to you why council should, as they did with the Alpenglow, instruct RMOW staff to work with us to come into compliance with the bylaws.*

*I have attached a memo to the Cascade strata council which provides background for consideration to meet with us and accommodate our request.*

*I look forward to hearing from you.*

Best Regards,  
Marlene

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**CASCADE LODGE**  
**BUSINESS LICENSE AND RENTAL MANAGEMENT**

**A. Introduction**

The purpose of this memo is to start a discussion with the Cascade strata council, and then the Cascade owners, to improve the rental management and overall building management at the Cascade Lodge, and ultimately the value of the individual strata units.

The facts set out in this memo have been accepted by the courts through the course of litigation in which 1120732 BC Ltd. (owner of 22 units in the Cascade Lodge) has been involved regarding the Phase 2 regime in Whistler. The positions of ResortQuest indicated in this memo have been put forth by ResortQuest in that litigation or have been told to Cascade Lodge owners by ResortQuest and its new owner, Vacasa.

The referenced litigation was commenced by 1120732 BC only as a means to defend itself in another lawsuit in which ResortQuest claimed that 1120732 BC was required to sign a rental management agreement with ResortQuest (in the form presented by ResortQuest) at the Cascade Lodge. In that action, ResortQuest relied on the RMOW Phase 2 covenant and the RMOW tourist accommodation bylaws as the basis for its claim. The only means by which 1120732 BC could defend these claims was to seek declarations, or decisions, from the court that the covenant and bylaws, were invalid or were not to be interpreted in the manner claimed by ResortQuest.

The covenant and the bylaw were not declared invalid by the court. However, the B.C. Court of Appeal, confirmed 1120732 BC's understanding that the covenant and bylaws do not impose any particular rental pool manager or rental management agreement at the Cascade Lodge.

The purpose of engaging strata owners at the Cascade Lodge as further set out in this memo, is to establish a new arrangement with a rental manager which includes:

1. Approval of the arrangement by the strata owners currently managed by ResortQuest through a voting process that mimics voting approval under the *Strata Property Act* and which is required by the RMOW's tourist accommodation bylaws.
2. Provision for oversight of the rental manager through an elected committee of the applicable strata owners (i.e. the non-timeshare unit owners).
3. Provision for a rental management structure that affords the best opportunity to improve revenues, returns to strata owners and the integration of the operation of the whole of the building with all of the strata units (i.e. the timeshare and WHA units).

4. Provision for rental management fees that are based on market rates and a competitive bidding process.
5. Provision for a term of no more than five years with options to renew based on the approval of the owners.
6. Potential rebranding and new marketing of the Cascade Lodge.

## 2. **Background on the Cascade Lodge**

The Cascade Lodge was constructed in the late 1990's. The Cascade Lodge is a strata ownership building governed by the *Strata Property Act*.

The Cascade Lodge consists of three types of ownership groups:

- a. 112 strata units owned and operated as nightly rentals (the "Rental Pool Units").
- b. 50 strata units owned and operated as timeshares.
- c. 3 strata units owned under the WHA employee housing program.
- d. 2 commercial units owned by all of the Cascade strata owners and currently leased to Avis and WorldMark (the "Commercial Units").

## 3. **Regulatory Scheme of the Cascade Lodge**

The majority of tourist accommodation buildings in Whistler, which includes the Cascade Lodge, are subject to restrictive covenants registered in favour of the RMOW. These covenants are known in Whistler as "Phase 2 Covenants".

Covenants are a legal term for contracts which "run with the land", meaning they are registered on the legal title to a property (i.e. could be land or a strata unit), in favour of the non-owner of the property and binding on all successive owners of the property. Covenants are different from zoning which is the principal manner in which a municipality controls land use pursuant to a municipality's statutory authority (i.e. in British Columbia, zoning is pursuant to the *Local Government Act* and then specific bylaws passed by a municipality under that act). Covenants are used by a municipality to supplement its zoning bylaws as they can provide more flexibility for a municipality to control use of land.

There are a few different types of RMOW zoning bylaws to which Phase 2 Covenant buildings are subject. In general, these zoning bylaws restrict the units within the buildings to use for nightly tourist accommodation (and employee housing where applicable).

Most tourist accommodation buildings in Whistler were financed through the creation of stratas instead of traditional hotels (i.e. hotel brands such as Hilton or Holiday Inn were not coming to Whistler and buying land and building hotels – the trend away from brand name hotels owning their property started some time ago and hotel construction has since been financed through many different means such as REITs or private investor groups).

A strata ownership building is a building with living units that are each individual legal properties and where all of the owners of those units govern their common property (i.e. hallways, parking, building envelope) through the *Strata Property Act* and a strata council that operates pursuant to that act.

Because tourist accommodation buildings in Whistler became strata owned buildings, the RMOW imposed Phase 2 Covenants, when the buildings were being developed, as a tool to ensure that strata units within buildings zoned for tourist accommodation would operate with the “look and feel” of a hotel. This was done further to the RMOW’s policy of providing (i) an adequate supply of tourist accommodation within Whistler; and (ii) a positive visitor experience.

The Phase 2 Covenants used throughout Whistler are not all the same but have the same basic provisions: (i) all units in a building are to be placed in “a” rental pool; (ii) the term rental pool is defined in the covenant as a “rental pool or rental pool management facility or arrangement”; (iii) the RMOW is to provide its approval for “a” rental pool, such approval not to be unreasonably withheld; and (iv) owners are restricted in the use of their units to 56 days a year with such usage being managed from within the rental pool.

Note the following about Phase 2 Covenants, and specifically the Phase 2 Covenant registered against the title to the Cascade Lodge:

- a. The covenant **does not** restrict the number of rental pools which can operate at the Cascade (i.e. it does not provide that only 1 rental pool can operate at the Cascade).
- b. The covenant **does not** impose any particular rental pool agreement or the terms of an agreement (i.e. it makes no reference to any agreement or any terms of any agreement).
- c. The covenant **does not** impose how the “rental pool” is to operate (i.e. it makes no reference to any type of revenue sharing, etc.).

- d. The covenant **does not** grant any rights of management to any particular rental manager.
- e. The RMOW **has never** approved any rental pool in any Phase 2 Covenant building in Whistler, including the Cascade Lodge.

In July 2017, the RMOW passed a new zoning bylaw and a new business license bylaw (the “New Bylaws”) for the stated purpose of ensuring the continued operation of Phase 2 Covenant buildings. The New Bylaws are referenced above as the tourist accommodation bylaws. The purpose of the New Bylaws was to shore up the rental pool scheme put in place by the Phase 2 Covenants.

The New Bylaws provide, in summary:

- a. All units in a Phase 2 Covenant building are to be managed through a “rental pool arrangement” operated by a “single, professional rental pool manager” providing integrated booking, reception, cleaning, laundry, and other hotel services.
- b. The bylaws are not applicable to those units, which at the time the bylaws were adopted, were operated as timeshares, or used for Whistler Housing Authority employee housing.
- c. The bylaws allow for the 56 day owner usage provided in the Phase 2 Covenant.
- d. Only one business license will be issued to each group of units subject to the bylaws.
- e. The applicant for the business license has to be approved by a vote of strata owners (threshold is 3/4 approval of those owners who vote at the meeting).
- f. A strata corporation (i.e. all of the owners in a strata) may hold the business license and operate the rental pool arrangement itself or through an intermediary.
- g. The sharing of revenues in the rental pool arrangement may occur in any manner.

Note the following about the New Bylaws, in particular with respect to the Cascade Lodge:

- a. Unlike the Phase 2 Covenants, the bylaws **do** restrict the number of rental pools which can be operated at the Cascade Lodge to 1 rental pool.
- b. Similar to the Phase 2 Covenants, the bylaws **do not** impose any particular rental pool agreement or the terms of an agreement.
- c. Similar to the Phase 2 Covenants, the bylaws **do not** impose how the “rental pool” is to operate (i.e. it makes no reference to any type of revenue sharing, etc.).

- d. The bylaws **do** provide for a means by which the strata ownership (through strata council) can hold the business license and operate the rental pool.

***Summary of Phase 2 Scheme:***

Prior to 2017, nightly rentals at the Cascade Lodge were governed by a Phase 2 Covenant. The covenant provided very few guidelines as to how rental pools were to be created by multiple owners in a building and how they were to be managed/overseen by multiple owners in a building (i.e. in comparison, the *Strata Property Act* sets out very clear guidelines/rules as to how a strata building is to be managed through a strata council and voting by owners, or the *Business Corporations Act* sets out very clear guidelines/rules as to how a company is to be managed through a board of directors and voting by shareholders).

The only such guideline under Phase 2 Covenants was that the RMOW was to approve any proposed rental pool (with such approval not to be unreasonably withheld). As it turned out, the RMOW never approved any rental pool in any Phase 2 Covenant buildings. Consequently, the rental pools evolved somewhat by happenstance in a manner all similar to as described below in the section on the history of the Cascade Lodge operations. In the Court of Appeal's decision on the Phase 2 Covenant, the court noted the RMOW's failure to approve any rental pool but said the consequences of such failure were not before the court.

Since 2017, the New Bylaws effectively replace the Phase 2 Covenants. It appears the remaining use of the Phase 2 Covenants is a reference for how the 56 owner usage days are to operate (in that the covenants provide certain details on such operation).

Similar to the Phase 2 Covenants, the New Bylaws do not grant rights to any particular rental manager and do not impose any particular terms of how a rental pool is to be commercially operated.

However, the New Bylaws do provide a guideline as to how rental pools are to be created by multiple owners in a building and how they are to be managed/overseen by multiple owners in a building. That guideline being that a requirement for a business license to operate a rental pool has to be approved by a vote of the strata owners. As will be further outlined below, the strata owners can/should use that vote as a springboard to pass strata bylaws that enable the strata owners to manage/oversee the rental pool.

#### 4. **History of Operations at the Cascade Lodge**

It is ResortQuest's position that the Rental Pool Units at the Cascade Lodge are essentially a ResortQuest managed hotel with such management being supported by rights granted to ResortQuest under the Phase 2 Covenant and the New Bylaws.

The Court of Appeal provided no support for ResortQuest's position, confirming what the Phase 2 Covenants and the New Bylaws **do** and **do not do**, as set out above.

The evolution of ResortQuest's management of the Rental Pool Units is as follows:

- a. When the Cascade Lodge was built, the developer entered into an arrangement with the predecessor company to ResortQuest (ResortQuest and its predecessor are referred to as "ResortQuest") to manage the Cascade Lodge strata units through a rental pool.
- b. This arrangement was disclosed to prospective purchasers in a Disclosure Statement which the developer was required to file under provincial regulations for new strata buildings. The Disclosure Statement is a document only relevant as a benefit of information to "first purchasers" in a strata building (our courts having confirmed that subsequent purchaser cannot rely on a disclosure statement to sue a developer). A disclosure statement does not create any binding obligation on any purchasers.
- c. There is no overarching rental management agreement amongst the owners of the Rental Pool Units. Instead, the first purchasers of the Rental Pool Units entered into individual rental management agreements with ResortQuest (the "Cascade RMAs"). ResortQuest has managed the rental pool essentially through these initial Cascade RMAs.
- d. The developer of the Cascade Lodge set up ResortQuest with a front desk in the common area lobby of the Cascade Lodge. When ResortQuest came to be owned by Paul Sanderson, who was on the Cascade strata council, a 30-year lease was established for that common area commencing in 2014 (the "RQ Lease"). The RQ Lease was never approved by the Cascade strata owners as required under the *Strata Property Act*.
- e. With no authority from the Cascade strata council or owners, as required under the *Strata Property Act*, ResortQuest came to use all limited common property in the Cascade Lodge (i.e. the laundry and storage rooms on each floor).
- f. With no authority from the Cascade strata council or owners, as required under the *Strata Property Act*, ResortQuest came to charge guests for use of the common area parking in the Cascade Lodge (in 2019, the Cascade strata council ended this practice).



- g. Although the Cascade RMAs are not registered on title to any strata units in the Cascade Lodge (i.e. they do not “run with the land”) and there is no legal obligation to do so, all purchasers (other than 1120732 BC) of strata units in the Cascade Lodge, subsequent to the first purchasers from the developer, have signed a Cascade RMA.

The practice of new purchasers signing a Cascade RMA appears to have been taking place because all parties (i.e. purchasers, ResortQuest, conveyance lawyers) have assumed that this is “just the way it is”. That being said, it is also likely that purchasers have been satisfied to enter into a Cascade RMA as they would have been aware of past returns through the ResortQuest management prior to making their purchase decision, and aware of the owners usage allowances and restrictions, and have been satisfied to join the rental pool.

*It is likely that if purchasers, and current owners, were fully informed about the Cascade RMA and the operations of the current rental pool at the Cascade Lodge, they may make different decisions about being part of this arrangement.*

#### 5. **Issues with Cascade RMA’s and Cascade Lodge Rental Pool**

The Cascade RMA is an agreement between an owner of property, being an owner of a strata unit in the Cascade Lodge, and a service provider, being ResortQuest. It is no different than a contract to provide any number of services to a property, such as landscaping or security.

It is also an agreement whose terms were never negotiated between strata owners and ResortQuest. This is not unusual for many service-related agreements that are standard form. However, most consumers enter into a standard form agreement after surveying the competitive market and having knowledge of the basic terms of that agreement (i.e. most importantly, the ability to terminate an agreement). For the reasons outlined below, it is likely that a fully informed strata owner would not enter into the Cascade RMA.

There are a few versions of the Cascade RMA, which essentially have the same terms. The terms of the agreement, along with the arrangements of the rental pool, which, in our opinion, have both legal and ethical issues are as follows:

- a. *The term of the agreement is effectively 25 years ending in 2024* (an initial term commencing in and around 2001 and ending in 2009 and three successive 5-year renewal terms which ResortQuest has interpreted to be at its sole discretion\*).

*It is highly unusual, if not unheard of, for any business contract, whether it is related to property or not, to have this length of term with no provision for both parties to consent to*

*renewals. However, this is more so where the service provider does not, like the case with this agreement, commit to make any particular investment that requires time to repay.*

*(\*although ResortQuest has interpreted the Cascade RMA to be renewable at its discretion, the wording of the agreement is vague in that it does not refer to which party to the agreement has the right to renew. And even if ResortQuest's interpretation is correct, the renewal provision is that it has to be renewed in writing. ResortQuest has admitted under oath that it cannot locate any signed renewals prior to it doing so in and around 2018 for the last renewal term. It appears that when ResortQuest was owned by Paul Sanderson, the Cascade RMAs were never properly renewed for the first two renewal terms. This could have the effect of there being no valid Cascade RMAs in existence and that ResortQuest's current management of the Rental Pool Units is on an "at will" basis i.e. it could be terminated at any time.)*

- b. The management fees payable to ResortQuest under the agreement are fixed with no provision for adjustment to market rates.***

*It is highly unusual, if not unheard of, for any long-term contract, especially where there are renewal terms, to not have adjustment for change in market rates. For example, a long-term lease of property with renewal terms, will have lease rates adjusted to market rates at the time of renewal. The fees established in the Cascade RMA may have been market rate in the late 1990's and early 2000's but they do not reflect the current competitive landscape which has changed dramatically with the advent of online booking.*

- c. There is effectively no ability to terminate the agreement for non-performance which means a strata owner effectively has no oversight over ResortQuest.***

*It is highly unusual, if not unheard of, for any contract to not have termination provisions where the party obligated to perform a service does not perform (i.e. simply chooses not to perform or loses its business license). In the case of ResortQuest's breach of the agreement, it is required that a strata owner obtain the consent of 75% (in total) of the other strata owners of Rental Pool Units in order to terminate not just that owner's agreement but all of the Cascade RMAs. This would be a workable clause if there was a mechanism to call a normal vote (i.e. the agreement could provide the addresses for owners and a protocol for how to give notice for a vote and that a vote would, like in any other group situation, be based on those owners who attend the vote). But no such mechanism exists in the agreement.*

- d. There is no transparency in the agreement on what amounts to gross revenues.***

*There is no provision restricting any affiliates of ResortQuest from dipping into gross revenue (i.e. a separate company charging non-market rates for bookings; resort tax?). As a result, it is likely that the true fees charged by ResortQuest are higher than reported to*

*strata owners. In fact, an audit of ResortQuest’s operations at the Cascade Lodge (which is required under the Cascade RMA but never done by ResortQuest until 2016 when some owners demanded it) show that a party related to ResortQuest charges substantial booking fees that are not disclosed in the Cascade RMA, a practice that is likely in breach of the Cascade RMA. An agreement derived from a competitive bidding process would be able to provide for such restrictions or reveal such “affiliate” transactions. These transactions may work and be competitive, but a strata owner should be informed of them.*

- e. The agreement effectively attempts to create a legal interest in land where none can be created at law.***

*The Cascade RMA provides that if the strata owner wishes to sell their strata unit, they must have the purchaser sign the Cascade RMA. This is a run-around from having a contract “run with the land”. At common law, a contract may only “run with the land” where the party not owning the property has an interest in the land (i.e. an adjoining landowner with an easement over the property owner). The only situation that strays from this principle relates to certain statutory rights granted to municipalities (i.e. the Phase 2 Covenant was registered on title under these statutory rights).*

*This run-around is likely not a valid contractual term at law. If it is valid, it is highly unusual, if not unheard of, for any property service contract to have such a term (it would be similar to granting your landscaper the right to control future sales of your property).*

*If this provision of the agreement is a valid contractual term at law, it only creates a legal obligation from a current strata owner who has signed a Cascade RMA to ResortQuest. It does not give rise to any legal obligation of a purchaser of a strata unit to ResortQuest. The legal obligation of a purchaser would only arise if the purchase and sale contract created for the sale of a strata unit had a clause that said the purchaser must sign the Cascade RMA (i.e. the seller insists on that clause being part of the purchaser and sale contract).*

*The historical practice of sales of strata units at the Cascade Lodge has been that no such clause has been inserted into the purchase and sale contract. As referenced above, all parties just assumed that the purchaser had to sign the Cascade RMA because that’s “just the way it is”. 1120732 BC did not follow this “just the way it is” practice and chose not to sign a Cascade RMA because it was never legally obligated to do so (i.e. the contracts of purchase and sale in which it was involved did not have a clause requiring it to sign the Cascade RMA).*

- f. *Because ResortQuest has never obtained approval from the strata owners by way of a 3/4 vote under the Strata Property Act, the current rental pool arrangement does not adhere to the New Bylaws, either at law or in principle.***

*Since the New Bylaws were adopted in 2017, ResortQuest has not sought approval for its business license by the Cascade strata owners as contemplated by the New Bylaws.*

*The RMOW has also not required it of ResortQuest, arguing that the New Bylaws refer to an “applicant” for a business license to operate a rental pool and the RMOW has said that ResortQuest is not an “applicant” because they are simply renewing their business license. In our opinion, this decision by the RMOW was likely based on practical reasons in that no other applications have been made to the RMOW for a business license to operate a rental pool at the Cascade Lodge. Absence any such applications, it is fair to see that the RMOW took appropriate actions to ensure continuation of the ongoing operations at the Cascade Lodge.*

*However, if the RMOW were to receive an application for a business license to operate a rental pool at the Cascade Lodge, which had the approval of the strata owners by way of a 3/4 vote, and which otherwise followed the criteria to receive a business license as set out in the New Bylaws, it is difficult (particularly based on new law set down by the Supreme Court of Canada in December 2019 regarding how municipalities must justify their decisions) to see how the RMOW would have any basis to not grant that business license and instead continue to issue a business license to ResortQuest (i.e. where ResortQuest did not have approval of the strata owners).*

*The RMOW has already been faced with this decision in connection with Blackcomb Springs, another Phase 2 Covenant building. As will be discussed below in more detail, the strata owners of Blackcomb Springs voted to approve having their strata apply for the business license. This application was approved by the RMOW and was part of the process of the Blackcomb Springs strata owners to move away from having ResortQuest manage their rental pool.*

- g. *There are inherent problems with trying to force a rental pool on strata owners in British Columbia.***

*It is highly unusual, if not unheard of, to force owners of strata or condo units into a rental pool as the only means to use their units. There appears to be no jurisdiction other than Whistler that has attempted this (our research being limited to North America). The normal course, where rental pools exists, is that an owner can choose to rent their unit through a*

*rental pool. Or, if forced to go through a rental pool, there is a choice not to rent their units at all.*

*The most relevant problem with the Whistler model is that it has not been set up to obligate successive purchasers to the rental pool (i.e. through a contract which “runs with the land”). 1120732 BC has exposed this defect.*

*The problem of obligating successive purchasers could have been solved when the Phase 2 Covenant was drafted. The covenant could have had a specific rental pool agreement attached to it and a specific mechanism to allow for the agreement to be modified over time and new rental managers to be changed over time. Another means to accomplish this would be a provision in the Strata Property Act to allow for a strata council to enter into one rental management agreement which would bind every strata owner (i.e. in the same way strata council can contract with a property manager and all owners are bound to pay the expense of that property owner). There is no such provision in the Strata Property Act and a strata council’s authority over common areas would unlikely, at law, extend to creating obligations related to the “inside” of an individual strata unit.*

*While it is impractical for the RMOW to revise the Phase 2 Covenants (it would have to register thousands of new covenants on property titles and obtain the agreement and signatures of thousands of owners), the New Bylaws attempt to address these inherent problems through the business license approval process. This is further discussed below in connection with potential solutions.*

***Summary of the Issues of the Cascade RMAs and the Cascade Lodge Rental Pool:***

The RMOW was well intentioned in its attempt to create rental pools in Phase 2 Covenant buildings. However, by not approving any rental pools as was contemplated in the covenants, the developers of these buildings were able to establish unchecked rental management monopolies.

In our opinion, these monopolies, such as the rental pool run by ResortQuest at the Cascade Lodge, are unethical from a business practice point of view. They are not based on any investment by the rental managers in the actual property nor based on any connection to how normal businesses operate in a competitive environment.

The stark contrast to how ResortQuest operates at the Cascade Lodge to how normal rental management businesses are operated can be seen by looking at the businesses of Vacasa, now one of the world’s largest rental management businesses, and since the fall

of 2019, the new owner of ResortQuest (Vacasa purchased ResortQuest from Wyndham Hotels as part of a much larger acquisition of Wyndham's rental management businesses).

Vacasa's business model is first and foremost about the customer. Their standard rental management contract has much lower fees than the Cascade RMA and can be terminated by an owner on 30 days notice. This model is clearly based on working to provide the best services possible for an owner rather than making an owner hostage to a 25-year contract which the manager obtained by pure happenstance.

Vacasa has seen exponential growth over the past few years, mainly based on acquisitions of legacy rental management businesses which required "updating" to modern online booking management. In speaking with Vacasa, it is apparent that they do not base their acquisitions on having long term contracts in place. They base them on being able to provide superior service such that an owner will want to stay with Vacasa.

Vacasa has indicated that they intend to start the integration of ResortQuest into the Vacasa model in the fall of 2020. However, they have provided no indication that they intend to switch the Cascade RMAs to the standard Vacasa rental management agreement or allow owners of the Rental Pool Units to obtain competitive bids for the rental management business at the Cascade Lodge.

Vacasa has further said that they cannot make any changes to the Cascade RMAs because ResortQuest has to fulfill its contractual obligations under those agreements. That argument may hold true if owners wished to retain ResortQuest under the current arrangements. However, it is non-sensical if owners wish to not do so as the agreements are, in all likelihood, invalid on their terms and invalid for having been substantially breached by ResortQuest. Further, ResortQuest can point to no reliance or investment it has made over the years when it has purported to renew the Cascade RMAs for further terms. And if it has made any investment to further the operations of the Cascade Lodge, it never went to the owners and said, "we are renewing this contract because we have made "x" investment and would like time to recoup that investment".

## 6. **Experience of Other Phase 2 Covenant Buildings**

There are approximately 25 Phase 2 Covenant buildings in Whistler, most of which are strata titled buildings. These buildings can be classified into "flagged" buildings, which have rental pools operated under well known hotel brand names such as Westin, Four Seasons or Pan Pacific and "non-flagged" buildings, which have rental pools operated under independent names, such as the Cascade Lodge, Blackcomb Lodge, Alpenglou or Blackcomb Springs.

The “flagged” buildings are somewhat unique in that while they may face similar issues to the Cascade Lodge surrounding their rental pool agreements and arrangements, they attract higher strata unit sale valuations, have superior amenities and service to the non-flagged buildings and generally (based on anecdotal evidence) have superior management and owner-relations than “non-flagged” buildings. The latter trait is not intended to be a criticism of rental managers of non-flagged” buildings but rather simply reflects the depth of those brand name organizations.

Almost all “non-flagged” buildings, other than the buildings managed by ResortQuest, have undergone, for various reasons, changes to their rental management since the inception of the buildings. These changes have resulted in strata owners approving the rental manager and rental management agreements and being involved in oversight of the rental pool arrangements. It should be noted that not all of these changes have resulted in “fair” arrangements for all of the owners. For example, Nita Lake Lodge and Executive Suites have had situations where the owners of the majority of strata units have used their position to mistreat the other strata owners for their own financial benefit.

The buildings managed by ResortQuest are Cascade Lodge, Whistler Peak Lodge and, until recently, Blackcomb Springs. The experience of Blackcomb Springs is instructive for any changes being contemplated at the Cascade Lodge.

Approximately two years ago, several strata owners at Blackcomb Springs who were dissatisfied, for the very same reasons as the issues set out in this memo, with their rental pool arrangement, began to lobby their strata council to act to effect change to the arrangement. The ResortQuest rental management agreements at Blackcomb Springs were actually ending (i.e. after all renewal terms had completed) in 2019 so this end point was used as a point of reference to make changes.

The Blackcomb Springs strata council became engaged in the process and established a strata owners’ association to hold owner meetings and to fully inform the owners of their choices.

The result of the efforts of the Blackcomb Springs strata council and owners’ association was the following:

- a. It was determined that the Blackcomb Springs strata council would apply for, and hold, the rental pool business license under the New Bylaws. As a result, their strata council engaged with the RMOW to prepare an application for a business license that addressed the criteria set out in the New Bylaws (and the RMOW did not entertain renewing the business license of ResortQuest for any longer than was necessary to have the new arrangements in place).
- b. It was determined that the strata council/owners’ association would establish a competitive bidding process for rental managers. A hotel consultant was retained to conduct this process.

This resulted in several quality bids, with various forms of fee structures, from established rental manager/hotel operators.

- c. The strata owners adopted an amendment to their strata bylaws, under the *Strata Property Act*, to restrict any owner from renting their unit other than through a rental manager approved by the strata council. This was an important step as it is the best tool available to have all strata owners, particularly successive purchasers who never engaged in the approval process, participate in the rental pool.
- d. The strata owners voted under the *Strata Property Act*, to approve having the strata council apply for a business license. The RMOW approved the application and indicated that the strata council (and the owners) had the power to sub-contract the rental management of the strata units under the business license. Further, the business license needs to be renewed each year but apparently the RMOW will not require a vote of the owners each year unless the applicant for the license changes.
- e. The strata owners chose the new rental manager, through a vote under the *Strata Property Act*. The vote was based on the competitive bids and having recommendations from the consultant and strata council as to the merits of each bid.
- f. The strata owners chose Clique, a Canmore based hotel company, to be their new rental manager and entered into two separate agreements. The first is a rental pool agreement that among all the owners that creates a joint venture among the owners to operate the property as a hotel consistent with the stipulations of the Phase 2 Covenant. The second agreement is a hotel rental pool management agreement, and is among the strata council, the owners (named individually but all party to the same agreement), the owners association and Clique. Ultimately, all of the owners agreed to sign the two agreements because based on the new strata bylaw adopted by Blackcomb Springs (which limited the rental managers which the owners could use), there would be not other means for owners to collect rental revenue. The same rationale should also compel (but not obligate) any new purchasers of strata units in the Blackcomb Springs to also enter into the agreements.
- g. The new arrangement with Clique also provides for a committee of the owners of Blackcomb Springs to be actively involved in overseeing Clique, or more importantly, working with Clique to achieve the best outcomes for the owners.
- h. The new arrangement with Clique commenced December 15, 2019. Due to the COVID lockdown, there data on the success to date has a limited timer period. However, the January and February revenue numbers were approximately 20% higher than the prior year revenues for Blackcomb Springs.



The response of ResortQuest to the changes at Blackcomb Springs is also instructive as to how an unchecked monopoly reacts to potentially losing its position (based on my discussions with ResortQuest, it appears this response was directed by the prior upper management, being Wyndam). ResortQuest was aware that the strata owners wished to engage in a market and democratic based process to choose a new rental manager. Instead of initially wanting to participate in that process, ResortQuest went to each owner and offered a \$5,000 cash payment to sign a new rental management agreement with ResortQuest to replace the agreements which were expiring in 2019.

In addition, ResortQuest took steps to control the front lobby area of the Blackcomb Springs building. Most of the front lobby area in the building is not common area owned by the strata owners but is instead a strata unit. It had been owned by the developer since the inception of the building and leased to ResortQuest. For reasons unknown, the developer listed the strata unit for sale in and around 2018. The Blackcomb Springs strata council knew that if it did not control that strata unit, it would make a new rental management arrangement difficult, but not impossible. To deal with this situation, they made plans for a front lobby desk in the minimal common area space available and was determined to allow the ResortQuest leased strata unit be “redundant”.

During the process undertaken by Blackcomb Springs to change its rental pool arrangement, ResortQuest purchased the front lobby strata unit for millions of dollars. This investment would make no financial sense without ResortQuest’s belief that by controlling that strata unit, it would be able to continue its monopoly position as the rental manager at Blackcomb Springs. Ultimately, ResortQuest participated in the new rental manager bidding process and was not chosen.

***Summary of the Experience of Other Phase 2 Covenant Buildings:***

ResortQuest currently manages the only Phase 2 Covenant Buildings (Cascade Lodge and Whistler Peak Lodge) that are not run by well known brand hotel managers and that do not have (i) real strata owner oversight of the rental management; and (ii) that do not have rental managers chosen in a democratic manner by the strata owners.

The annual cash returns to the owners of the ResortQuest managed buildings are less than the return to owners of other Phase 2 Covenant Buildings. A sample comparative analysis is attached.

As a result, the strata units in the ResortQuest managed buildings sell for less value than other Phase 2 Covenant Buildings. A sample comparative analysis is attached.

Blackcomb Springs is a Phase 2 Covenant Building that, until 2019, was managed by ResortQuest. The process through which the strata owners at Blackcomb Springs changed

their rental pool arrangement is a useful model to follow if the owners of the Rental Pool Units in the Cascade Lodge wish to change their rental pool arrangement.

7. **Proposed Plan of Action to Change Rental Pool Arrangement at the Cascade Lodge**

A plan of action almost identical to the one set out above that was completed at Blackcomb Springs is proposed for the Cascade Lodge.

The complicating factor with following the Blackcomb Springs model is that the term of the Cascade RMAs has several more years until the agreements expire (absence any prior legal challenge to the validity of the agreements). However, if the strata owners of the Rental Pool Units were well informed on the matters set out in this memo, they may wish to engage ResortQuest to have ResortQuest voluntarily terminate the Cascade RMAs (or they may wish to commence litigation against ResortQuest to terminate the Cascade RMAs) and then commence a process to establish a new rental pool arrangement at the Cascade Lodge.

The following summarizes the proposed steps to be taken to change the rental pool arrangement at the Cascade Lodge:

- a. An owners' association (i.e. an incorporate society) be formed to represent the interest of the strata owners of the Rental Pool Units.
- b. An engagement process be commenced to involve all, or as many as possible, of the strata owners of the Rental Pool Units in the owners' association.
- c. The Cascade strata owners hold a vote to approve the owners' association applying for, and holding, the business license under the New Bylaws to operate the rental pool at the Cascade Lodge (the reason for the license being held by this owners' association rather than by the strata corporation is that not all strata owners in the Cascade Lodge are required to participate in the rental pool as they are in timeshare arrangements, so the owners' association will represent the interests only of the strata owners of the Rental Pool Units)
- d. The owners' association determines the arrangement by which the rental pool will be operated at the Cascade Lodge.

**SOLD PHASE 2 COMPS (since Jan 1, 2020)**

Location	Size	Sale \$	Sale\$/ft
209 Adara	402	200,000	497
513 Blackcomb Springs	420	223,000	530
136 Blackcomb Lodge	366	220,000	601
304 Adara	506	265,000	523
629 Blackcomb Springs	316	299,000	946
486 Westin	407	340,000	835
307 Alpenglöw	405	423,000	1044
527 Westin	568	500,000	880
5502 Pan Pacific	601	513,000	853
202/204 Blackcomb Lg	775	420,000	541
457 Four Seasons	580	390,000	672
330/331 Four Seasons	1445	1,050,000	726
430 Cascade (Nov. 2019)	293	146,000	498

Avg/Sq ft  
704