

## MEMORANDUM

Re: Analysis of Purchase & Sale Agreement for Great St. James

Date: January 3, 2016

We understand from Sellers' counsel that they have presented their final draft of the Purchase and Sale Agreement (the "PSA") for the island known as Great St. James, as more particularly described therein (the "Property"). In order to assist you in your decision on whether to purchase the Property under the terms and conditions set forth in the PSA, we are providing you with this summary/analysis of key terms and conditions within the PSA. This summary/analysis may also guide our discussion of various remedies that are available to you as Purchaser under the PSA in the event of a breach of the PSA by Sellers.

### SUMMARY DISCUSSION OF CONTRACT PROVISIONS:

#### 1. RECITALS

- a. Section A: Sellers (CK & GSJ Corp) own the property as described in Exhibit A – which includes:
  - Parcels A, B-1, B-2, C-1 and C-2 Great St. James Island, No. 6-A Red Hook Quarter, St. Thomas, Virgin Islands, As shown on P.W.D. Drawing No. D9-2825-T84, Consisting of 80.7 acres, 32.7 acres, 8.25 acres, 32.7 acres and 8.25 acres.

The legal description is the same property that CK attempted to convey to Jason Taylor in 2004 and references the same map – so it presumably includes all outlying rocks and cays except for Current Rock, which is owned separately by CK. I have a copy of the title policy that was issued on the first proposed sale and have attached it to this memorandum for you review. We are combing through 3003 pages of court documents to determine if we have a copy of the survey as well as contacting local surveyors.

CK has represented that he has an unrecorded deed for C-1 and C-2. It is a condition of closing that this deed be recorded prior to closing. The complete picture of everyone who has an interest in the Property should become clear after the title search is completed by the title company. As noted below, we have ten business days from the date of execution of the PSA to complete the title search and notify the Sellers of any problems with title. Our title company has a long history of examining the Property and is already conducting the preliminary research necessary to complete the title search. The title company will give us the findings of the title search well in advance of the ten day notice period to Sellers.

- b. Submerged land permit: we are awaiting confirmation that the submerged land permit payments are current from DPNR. I have also requested a copy of the permit from DPNR.
- c. The recital indicates that CK is the sole shareholder of GSJ and that he wishes to sell his stock interest. In connection with the concern regarding potential stock options that may exist – section 4.2 (b) has been amended to reflect there are no options or other rights. The language now reads:

“No Other Party Rights. The Sellers are not aware of any agreements currently in effect which restrict the sale of the Property or the Stock Interests or grant any other party any rights to acquire any portion of the Property or the Stock Interests or any other interest in GSJ, including without limitation, any right of first offer, right of first refusal or purchase option.”

2. ARTICLE 3:

a. Two most time sensitive matters are included in Article 3.

i. Ten (10) business days from effective date of contract to get title commitment. Ten (10) business days after receipt of title commitment to lodge any objections. Sellers will then have ten (10) business days to cure or attempt to cure – but Sellers shall have no obligation to cure any of Purchaser’s objections.

1. If Sellers do not cure: Purchaser has two (2) business days after Title Cure Period (as its sole and exclusive remedy) to either:

- a. Terminate by giving written notice to Sellers in which case, all escrow funds will be returned; or
- b. Waive uncured objections by proceeding to closing.

ii. Twenty (20) day inspection period – two (2) days from close of inspection period to terminate for any reason.

3. ARTICLE 4: REPS, WARRANTIES & COVENANTS

a. R/W/C OF PURCHASER:

- i. Purchaser is relying upon its own investigation of the property and not any other information or rep provided by or to be provided by the Seller.
- ii. All docs from Sellers provided as a courtesy and buying property AS IS WHERE IS AND WITH ALL FAULTS.
- iii. Sellers make no rep or warranty as to accuracy or completeness of information provided by Sellers.
- iv. Purchaser expressly waives any claims against Sellers relating to the use, characteristics or conditions of the property beyond any rights repped within agreement.

b. R/W/C OF SELLERS:

- i. No other party rights. See discussion above with respect to additional language in 4.2(b).
- ii. Stock interests represent all issued and outstanding ownership.
- iii. CK has good title to stock interests.
- iv. Sellers are not aware of any presently existing lawsuits against GSJ. Sellers have not been notified of any claim for compensation for damage by any third party that is currently pending against GSJ. We attempted to get language ensuring the Corp has no debts exceeding 10k and no claims exceeding 10k. This language was rejected and we were only given the above. Purchasing a corporation without knowing whether it has any debts is not advised. Stronger language regarding any claims would be preferable

c. SELLERS’ PRE-CLOSING COVENANTS:

- i. Sellers will use reasonable efforts to make sure property maintained and operated as it presently exists;
- ii. Sellers will notify P if material damage
- iii. Sellers will deliver deed to entirety of Parcel C prior to closing. (What about B?)
- iv. Sellers will disconnect intake pipe on RO plant prior to closing.

- d. LIMITATIONS ON REPS & WARRANTIES: To the extent that Purchaser actually knows prior to the Closing Date that Sellers' representations and warranties are inaccurate, untrue or incorrect in any way and Purchaser does not terminate this Agreement in accordance with the terms of this Agreement, such representations and warranties shall be deemed modified to reflect Purchasers' knowledge.
4. ARTICLE 5: CLOSING
- a. Closing date is on or before January 31, 2015.
  - b. Purchaser shall pay for title insurance. (This is standard.)
  - c. Stamp tax shall be split between CK and Purchaser.
  - d. CK shall pay all commissions.
  - e. Purchaser shall pay all other costs and fees associated with closing.
  - f. Parties shall bear own attorneys fees.
5. ARTICLE 6 TAXES: Property taxes for the current year shall be prorated as of 12/31/2015 – thereby Purchaser shall be responsible for all 2016 property taxes.
6. ARTICLE 7 TERMINATION AND REMEDIES:
- a. If Sellers do not terminate and default: Purchaser's remedies include specific performance or termination of contract by written notice within 5 days of Seller's closing default at which point Earnest Money Deposit will be returned to Purchaser.
  - b. If Purchaser does not terminate and fails to perform, Sellers can terminate and receive the earnest money deposit as Sellers' sole and exclusive remedy, however Sellers are not limited from claiming attorneys fee and is not waiving Purchaser's indemnity obligations.
  - c. Survival. The provisions of Sections 4, 9.1-9.19 of this Article 8 shall survive the Closing or any earlier termination of this Agreement.
7. ARTICLE 9 MISCELLANEOUS:
- a. The Effective Date of this Agreement is the later of the 2 dates upon which Sellers and Purchaser sign the agreement.
  - b. Dispute Resolution: arbitration in Switzerland.
  - c. Risk of Loss: Sellers' bear risk of loss until Closing
  - d. Casualty:
    - i. If the Property or any part thereof is materially damaged, Purchaser shall have the right by giving written notice to Seller within 5 business days of receiving written notice of such damage or destruction (but in any event at least 5 days prior to closing) to
      1. Terminate and EMD will be returned; or
      2. Accept property without abatement or reduction in purchase price and receive an assignment of all of Seller's and GSJ's right to any insurance proceeds for repairs plus a credit against purchase price equal to CK and GSJ's deductible.
    - ii. If Purchaser selects option 2 – Purchaser must consent to any settlement of adjustment of claims.
    - iii. If damage is non-material: Purchaser shall accept property in its then condition and be entitle to assignment of insurance proceeds with a credit for the applicable deductible up to \$100,000.00. If Sellers do not elect to credit to

Purchaser the entire cost of restoration, Purchaser shall have the same rights it has with respect to a material damage – i.e. termination of contract.

**OUTSTANDING DUE DILIGENCE ITEMS:**

1. Confirm CZM Permit up to date
2. Determine if TAP Corporation had Phase 1 completed and if so, determine if copies were submitted as part of litigation.
3. Confirm current ownership of parcels
4. Confirm ownership of Fish Cay.
5. Pull survey/topo
6. Review title exceptions with Cara Robinson at West Indies Title
7. Confirm good standing with Division of Corporations.