

# CANEEL BAY

ST JOHN U.S. VIRGIN ISLANDS

April 30, 2019

## **BY CERTIFIED MAIL**

The Honorable David Bernhardt  
United States Secretary of the Interior  
United States Department of the Interior  
1849 C Street, NW  
Washington DC 20240

### **RE: Notice of Termination of September 30, 1983 Indenture**

Dear Secretary Bernhardt:

I write in my capacity as President and Authorized Representative of EHI Acquisitions, LLC (“EHI”) and the Authorized Representative of CBI Acquisitions, LLC (“CBIA”). As you are aware, EHI possesses a Retained Use Estate (the “RUE”) memorialized in an indenture entered into on September 30, 1983 between the U.S. Department of the Interior (“DOI”) and Jackson Hole Preserve Incorporated (“JHPI”) (the “Indenture”). In 2004, EHI assumed the RUE.<sup>1</sup> Also in 2004, EHI leased the RUE to its affiliate, CBIA. Thus, EHI owns and CBIA operates the Caneel Bay Resort (the “Eco Resort”), located on Caneel Bay in St. John.

#### ***Caneel Bay’s Eco Resort***

It has been EHI and CBIA’s privilege to serve as a steward of the land on Caneel Bay, preserving it by running the Eco Resort in an environmentally friendly manner with the lowest possible impact. Before Hurricanes Irma and Maria devastated St. John in 2017, the Eco Resort was St. John’s largest employer, providing more than 400 jobs to the people of St. John and St. Thomas. Historically, the Eco Resort has been a fundamental part of St. John’s economy, creating \$65 million in direct annual spending on the island, generating more than \$160 million in annual economic activity, and causing additional job creation in related industries.

Since assuming ownership and management of the Eco Resort in 2004, EHI and CBIA have

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<sup>1</sup> In 1986, JHPI assigned the RUE to RockResorts, Inc. who then assigned the RUE to Estate Holdings, Inc. in 1991. In 2004, Estate Holdings, Inc. assigned the RUE to EHI.

added tremendous value to the land, constructing and maintaining the Improvements<sup>2</sup> on the Eco Resort. These Improvements include but are not limited to: (a) the buildings and structures comprising the Eco Resort, itself, including but not limited to, the cottages, hotel rooms, beachfront properties, common areas, and the back-of-house operations; (b) the catchment basin which provides potable water to all of the Eco Resort; (c) the buried technological infrastructure, including but not limited to broadband and telephone; (e) electric service; (f) the water distribution systems; (g) a sewer system and waste processing plant; and (h) a storm water system.

### ***EHI's Strong Desire to Rebuild Caneel Bay***

Given the current economic and environmental challenges facing the United States Virgin Islands, St. John, and the local community, it is important to determine a path forward for the Eco Resort. EHI and CBIA would like to start rebuilding the Eco Resort immediately. Rebuilding the Eco Resort will require an investment of at least \$100 million. EHI's desire to rebuild the Eco Resort is fortified by its understanding that if EHI does not make this investment, there will not be an operating resort on Caneel Bay until 2028 at the earliest and possibly not until 2030. This ten-plus-year delay—during which time St. John will be unnecessarily deprived of 400 jobs through direct employment, \$160 million in annual economic activity, and additional jobs in related industries—is the result of the time required for the DOI to: (a) administer the required competitive bidding processes for constructing and running the resort; (b) negotiate a contract; and (c) start the process of designing, developing, permitting, and constructing the resort.

The Indenture provides that the RUE will continue for at least forty years, beginning in 1983 with a possible conclusion in 2023. It is within the DOI's power to extend the RUE, either through a leasehold or through legislation, but prior negotiations on both fronts have not proven productive despite EHI and CBIA's good faith efforts to reach an agreement. Given this situation, EHI cannot risk a \$100 million investment to rebuild a property that it may not have the right to use beyond 2023.

Despite its strong preference to rebuild, EHI cannot do so when its future status in Caneel Bay is uncertain. In order to avoid further economic and reputational harm caused by this stagnation, EHI and CBIA require certainty from the DOI and intend to achieve that certainty through the procedure provided for in the Indenture which vests in them the right to present to the DOI the option that EHI and CBIA either: (a) exit from the land and terminate the RUE on commercially reasonable terms or (b) repossess the Premises<sup>3</sup> and rebuild the Eco Resort—depending on the DOI's preference.

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<sup>2</sup> "Improvements" and "improvements" are both defined terms in Paragraphs A and B, respectively, of the Indenture. The term "Improvements" as used in this Termination Notice incorporates both defined terms in the Indenture. In 2004, Estate Holdings, Inc. and Caneel Bay, Inc. jointly conveyed their entire interest in the Improvements to CBIA.

<sup>3</sup> "Premises" is a defined term in the Indenture which is incorporated in this Termination Notice.

## **EHI'S TERMINATION NOTICE**

EHI hereby provides Notice of Termination pursuant to paragraph 8 of the Indenture. If the DOI accepts the Offer set forth below, EHI will terminate and extinguish the RUE one year from the date of receipt of this Termination Notice.

### **EHI'S OFFER<sup>4</sup>:**

EHI and CBIA hereby offer to provide the full conveyance and transfer of fee title in and to all Improvements<sup>5</sup> to the DOI subject to the DOI satisfying each of the following two conditions set forth below (and the Offer is explicitly contingent on the DOI satisfying each of the following two conditions):

**Condition One:** The payment of the sum certain of \$70 million (\$70,000,000) by wire transfer to the bank account identified in the wiring instructions attached as Exhibit A to this Termination Notice. This sum certain reflects the value of the Improvements.

**Condition Two:** The DOI will release and indemnify EHI and CBIA from all environmental liabilities related to the RUE and related to the Canel Bay land and Improvements. The DOI must execute the environmental indemnification attached as Exhibit B to this Termination Notice and return it to EHI with the DOI's acceptance of the Offer.

Pursuant to paragraph 8 of the Indenture, attached as Exhibit C is the Conveyance Instrument which effectuates the transfer to the DOI of fee title to the Improvements. EHI and CBIA will execute and deliver this Conveyance Instrument upon receipt of the DOI's acceptance of the Offer and receipt of payment.

Pursuant to the Indenture, if the DOI does not accept this Offer, fee title to the Premises will immediately and automatically revert to EHI and EHI will have all rights of ownership over the Premises (the "Reversion").<sup>6</sup> Immediately upon Reversion, EHI will have the right to reenter and repossess the Premises. If the DOI does not accept the Offer, EHI hereby demands that the DOI immediately execute the Reversion Documents attached as Exhibit D to this Termination Notice. Upon receipt of the Reversion Documents, CBIA will promptly record this document with the Office of the Recorder of Deeds for St. Thomas and St. John. EHI and CBIA reserve all rights in the event that the DOI does not accept the Offer.

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<sup>4</sup> This Offer and claim is made in good faith. The supporting data are accurate and complete and the amount requested accurately reflects the amount owed to EHI and CBIA in the case that the Offer is accepted. I am authorized to certify this claim on behalf of both EHI and CBIA.

<sup>5</sup> See n.2 *supra* for definition of Improvements for the purposes of this Offer.

<sup>6</sup> The DOI's failure to respond to the Offer within 180 days serves as the failure to accept the Offer by the DOI for purposes of the Indenture.

***Request for an Expedited and Final Decision from the Secretary***

While the Indenture provides the Secretary 180 days to respond to the Offer, because this increasing uncertainty has become untenable for EHI and CBIA, **EHI requests a final decision and response to this Offer on an expedited basis and within 30 days of receipt of this Termination Notice.** Each day that the DOI does not provide a response to EHI and CBIA, St. John and its residents face additional economic and environmental hardships and EHI and CBIA suffer increasing harm, including but not limited to: (a) monetary loss; (b) opportunity cost; (c) loss of goodwill; (d) reputational harm; and (e) the time value of the \$100 million investment. While EHI and CBIA will be satisfied with either decision rendered by the DOI, EHI and CBIA can no longer permit the DOI's uncertainty and delay to cause further harm to EHI and CBIA nor can it permit any further collateral harm to the people of St. John.

***EHI's Sole Ownership of the Caneel Bay Marina***

While not included in or related to any part of this Offer, EHI reminds the DOI that CBIA and its affiliates own the marina on Caneel Bay. It is EHI and CBIA's experience that operating a resort on Caneel Bay requires access to the marina. Should the DOI accept the Offer and thus require access to the marina, EHI and CBIA may be willing to negotiate terms and conditions of use with the DOI and the potential future resort operator to access the marina but EHI and CBIA cannot guarantee access to the marina. Because this may be a relevant factor in the evaluation of the Offer, EHI thought it prudent to provide that information now.

EHI and CBIA thank you in advance for your prompt consideration and response to the Offer provided in this Termination Notice.

Sincerely,



Gary D. Engle

Encls.: Exhibits A-D

cc: P. Daniel Smith, Acting Director of the National Park Service;  
Damien Marshall, Boies Schiller Flexner LLP