



Court File No. **NAN-S-S-60133**

No.:
Nanaimo Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CITY OF NANAIMO

PLAINTIFF

AND:

MILLENNIUM NANAIMO PROPERTIES LTD. and
SURO DEVELOPMENT COMPANY

DEFENDANTS

STATEMENT OF CLAIM

1. The Plaintiff City of Nanaimo is a local government continued under the provisions of the *Local Government Act*, RSBC 1996, Chapter 323 ("the City")
2. The Defendant Millennium Nanaimo Properties Ltd. is a real estate development company incorporated under the *Business Corporations Act*, SBC 2002, Chapter 57 with its registered office at 1500 – 1040 West Georgia Street, Vancouver, B.C. V6E 4H8 ("Millennium").

3. The Defendant Suro Development Company is a real estate development company extra provincially registered in the Province of British Columbia with its attorney within the Province at Brian J. Senini Law Corporation, 30 Front Street, P.O. Box 190, Nanaimo, B.C. V9R 5K9 ("Suro").
4. The City, Millennium and Suro entered into various agreements (Amended Partnering Agreement) whereby Millennium and Suro were to develop the Port of Nanaimo Centre, a full service hotel, a residential complex, and develop other lands referred to in the Amended Partnering Agreement as the Foundry Lands.
5. The Amended Partnering Agreement provided that the City would pay to Millennium and Suro a monthly development fee in the amount of \$71,500.00 and a monthly project management fee in the amount of \$20,000.00 plus costs, charges and expenses incurred by Millennium and Suro associated with the development; which between September 15, 2004 and August 2008 amounted to the following:
- | | | |
|----|--------------------------|----------------------|
| a) | Development Fees | \$2,037,750.00 |
| b) | Project Management Fees | \$ 810,000.00 |
| c) | Costs Charges & Expenses | <u>\$ 197,308.02</u> |
| d) | Total | \$3,045,058.02 |
6. The Amended Partnering Agreement further provided that if Millennium and Suro

did not proceed with the hotel; including their failure to provide the City with proof of financing for the hotel no later than March 31, 2010 that Millennium and Suro were to repay to the City all of the development fees, project management fees, costs charges and expenses paid by the City to Millennium and Suro.

7. As of March 31, 2010, Millennium and Suro failed to provide the City with proof of financing for the hotel as required by the Amended Partnering Agreement; nor did they by that date proceed with the construction of the hotel.

8. Pursuant to the terms of the Amended Partnering Agreement on April 15, 2010 the City demanded repayment from Millennium and Suro of the \$3,045,058.02 in development fees, project management fees, costs charges and expenses paid by the City to them.

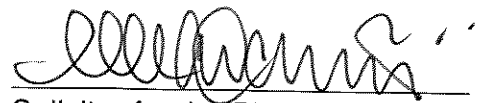
9. Millennium and Suro have failed to comply with the City's demand for repayment of the development fees, project management fees, and the other costs charges and expenses; and in breach of the Amended Partnering Agreement have failed to repay those funds to the City as provided by the Amended Partnering Agreement.

WHEREFORE the Plaintiff claims against the Defendants as follows:

- (a) An order for repayment of the development fees, property management fees, costs charges and expenses in the amount of \$3,045,058.02;
- (b) Alternatively, damages for breach of contract in the amount of \$3,045,058.02;
- (c) Costs;
- (d) Interest;
- (e) Such further and other relief as to this Honourable Court appears just and appropriate in the circumstances.

PLACE OF TRIAL: Nanaimo, B.C.

DATED at the City of Victoria, in the Province of British Columbia, this 15th day of June, 2010.


Solicitor for the Plaintiff

This Statement of Claim is filed and delivered by Guy McDannold, of the firm of Staples McDannold Stewart, solicitors for the Plaintiff, whose place of business and address for delivery is 2nd Floor - 837 Burdett Avenue, Victoria, BC, V8W 1B3 Telephone: (250) 380-7744 Fax: (250) 380-3008

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