

PART 2 - TERMS OF INSTRUMENT

RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE

THIS AGREEMENT dated for reference January 28, 1998 is

BETWEEN:

INTRAWEST RESORT CORPORATION (Extra-provincial
registration No. A-46056) 800 - 200 Burrard Street,
Vancouver, B.C. V6C 3L6

("Owner")

AND:

RESORT MUNICIPALITY OF WHISTLER, 4325
Blackcomb Way, Whistler, B.C. V0N 1B4

("Municipality")

GIVEN THAT:

- A. The Owner is the registered owner of the Strata Lot (as hereinafter defined) in the Resort Municipality of Whistler;
- B. The Owner and the Municipality wish to enter into this Agreement to ensure that the Strata Lot is sold only to qualified individuals and for a price that reflects the public interest in employee housing; and
- C. The Owner has agreed to grant to the Municipality a right of first refusal to purchase and an option to purchase the Strata Lot,

This Agreement is evidence that, in consideration of the payment of \$2.00 by the Municipality to the Owner (the receipt of which is acknowledged), and in consideration of the promises exchanged below, the parties agree with each other as follows:

Definitions

1. In this Agreement:

- (a) "Employee" means an individual who is either employed or self-employed and whose principal place of employment or business is located within the boundaries of the Resort Municipality of Whistler;
- (b) "First Sale Price" means the price determined under section 6(a);
- (c) "Gross Floor Area" means the gross floor area of the Strata Lot, expressed in square feet, as determined by the Municipality from the plans and drawings approved by the Municipality with respect to the building permit issued in respect of the Strata Lot;
- (d) "Housing Agreement" means the housing agreement under s. 905 of the *Municipal Act* between the Owner and the Municipality dated for reference July 1, 1997 and deposited for registration as a s. 219 *Land Title Act* covenant in the LTO against title to Strata Lot;
- (e) "Interest" means the interest of the Owner in the Strata Lot;
- (f) "Lender" means a mortgagee that is a bank or other financial institution established or regulated under any enactment of British Columbia or Canada, or a receiver or receiver-manager acting on behalf of such a mortgagee;
- (g) "LTO" means the New Westminster/Vancouver Land Title Office;
- (h) "Maximum Price" means the purchase price for the Strata Lot determined under section 6(b) or (c), as the case may be;
- (i) "Municipality" means the Resort Municipality of Whistler;
- (j) "Offer" means a *bona fide* offer to purchase an interest in the Strata Lot made by a Third Party;
- (k) "Price Control Index" means the percentage multiplier determined under section 6(a) with respect to any period;
- (l) "Prime Rate" means the annual percentage rate of interest published from time to time by the Royal Bank of Canada, Main Branch, Vancouver, as its prime rate and used by it as a reference rate for determining interest rates on Canadian dollar loans and published by that Bank as its prime rate;
- (m) "Retiree" means an individual who has ceased employment and who was an Employee for 5 of the 6 years immediately preceding the date on which the individual ceased employment;

- (n) "Strata Lot" means the strata lot legally described in item 2 of Part 1 of the Form C to which this Agreement is attached and forms part of this Agreement; and
- (o) "Third Party" means any person, other than the Municipality, who makes an Offer.

Interpretation

2. In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement.
- (d) the word "enactment" has the meaning given to it in the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (f) reference to a "party" or the "parties" is a reference to a party, or the parties, to this Agreement and their respective successors, assigns, trustees, administrators and receivers; and
- (g) reference to a purchase price, including the First Sale Price, does not include any goods and services tax under the *Excise Tax Act* (Canada), property transfer tax under the *Property Transfer Tax Act* (British Columbia) or any other tax, levy or charge payable on or in respect of the transfer of fee simple title to the Strata Lot.

RFR Grant

3. The Owner grants to the Municipality a right of first refusal to purchase the fee simple title to the Strata Lot on the terms of this Agreement. The Owner agrees that it must not sell, assign or in any way transfer (collectively, "Sell", "Sale" and "Sold") any of its Interest to any person other than the Municipality unless that Interest is first offered for Sale to the Municipality in accordance with section 4. Subject to sections 5 and 7, the Municipality has 15 business days from the date on which it receives the notice under section 4 to elect to acquire the Strata Lot on the same terms as those of the Offer (including

purchase price) except that the agreement of purchase and sale created by that election to purchase is to be on the terms set out in sections 11 through 31.

Offer Notice

4. If the Owner receives an Offer which the Owner is willing to accept, the Owner must at once give written notice of the Offer to the Municipality and must deliver a copy of the Offer along with that notice. If the Municipality wishes to exercise its right of first refusal pursuant to section 3 or its option to purchase pursuant to section 5, the Municipality will give the Owner written notice of such exercise on or before the date which is 15 days after the Municipality receives the written notice of the Offer pursuant to section 4 and if the Municipality fails to give such written notice within such 15 business day period, the Municipality's right of first refusal and option to purchase will be deemed to be waived for the Sale of the Strata Lot in accordance with the Offer if and only if the Owner complies with sections 7(a) to (c), but for greater certainty the Municipality's right of first refusal and option to purchase will continue to apply to any other Offer, whether made within the then existing Owner or any other Owner.

Option to Purchase

5. Despite section 3, the Municipality may elect, as an option to purchase hereby granted to the Municipality, to purchase the Strata Lot:

- (a) for the purchase price that is the lesser of:
 - (i) the purchase price set out in the Offer; and
 - (ii) the Maximum Price; and
- (b) on the terms set out in sections 11 through 31.

Price

6. For the purposes of section 5, the purchase price is to be determined in accordance with the following:

- (a) In this section, "First Sale Price" means the amount determined by multiplying the Gross Floor Area by \$155.00.
- (b) If the fee simple title to the Strata Lot is entered into at any time between the date on which the Strata Plan was deposited in the LTO and one year after that date ("First Year"), the purchase price must not exceed the amount (in this section "First Year Sale Price") that is the greater of:
 - (i) the First Sale Price; and

- (ii) the amount determined by multiplying the First Sale Price by 1.034 and then multiplying the result by the number determined by dividing the number of days in the period described above in this paragraph by 365.
- (c) If fee simple title to the Strata Lot is transferred at any time after expiry of the First Year, the purchase price of the Strata Lot must not exceed the amount determined in accordance with the following:
 - (i) with respect to each quarter, the Owner must establish the factor (in this section "Price Control Index") in respect of each quarter that is determined by subtracting 2.0% from the Prime Rate in effect on the first day of each quarter and multiplying the result by 0.1;
 - (ii) with respect to the first year beginning immediately after expiry of the First Year, the purchase price for the Strata Lot must not exceed the amount determined by adding to the First Year Sale Price the amount (in this section "Quarterly Adjustment") determined by multiplying the Price Control Index by the First Year Sale Price at the beginning of each quarter in that year and adding each Quarterly Adjustment to the First Year Sale Price and compounding with respect to each whole quarter within that period to the date of the sale, and if necessary adding an amount to prorate from the end of the last whole quarter to the date of the completion of the sale; and
 - (iii) with respect to each year after that described in section 6(c)(ii), the sale price for the Strata Lot must not exceed the amount determined by compounding and pro-rating the purchase price as at the end of the immediately preceding year in accordance with the method set out in section 6(c)(ii), which applies with the necessary changes.
- (d) If an appraiser who is a member in good standing of the Appraisal Institute of Canada who has been retained by the Owner at the expense of the Owner determines that the Owner has made capital improvements to the Strata Lot any Dwelling Unit located on the Strata Lot that materially increase the market value of the Strata Lot beyond the sale price otherwise permitted under this section, the Municipality may, in its sole discretion, permit the Owner to increase the sale price for the Strata Lot by an amount commensurate with the increase in market value as certified by the appraiser in his or her report to the Owner.
- (e) Following closing, the Owner must deliver to the Municipality a certified copy of the vendor's statement of adjustments with respect to Sale of the Strata Lot by the Owner, and must deliver to the Municipality upon request such further evidence as the Municipality may reasonably require to confirm the purchase price of the Strata Lot. If the Owner sells the Strata Lot for a purchase price exceeding that permitted under this section, the Owner must pay the excess to the Municipality within 30 days after written demand is made by the

Municipality, with any amount remaining unpaid after those 30 days bearing interest at the Prime Rate in effect from time to time, calculated from the date due until the date paid and compounded annually not in advance.

Notice of Election or of Waiver

7. As an alternative to election under sections 3 or 5, the Municipality is entitled to give notice to the Owner that the Municipality agrees to waive its rights thereunder with respect to a specific Offer. The Municipality must give notice under this section within 3 business days from the date on which it receives the notice under section 4. If the Municipality gives notice under this section, the Municipality's rights are deemed to be waived only if:

- (a) the Owner delivers to the Municipality, within 5 days after notice of waiver is given by the Municipality under this section, a valid and binding written agreement of purchase and sale between the Owner and the Third Party in respect of the Interest and substantially on the terms and conditions of the Offer ("Eligible Contract");
- (b) subject to section 8, at least 5 business days before completion of the sale to the Third Party the Owner delivers to the Municipality written proof, satisfactory to the Municipality, in its sole discretion, that:
 - (i) the Third Party is:
 - (A) an Employee; or
 - (B) a Retiree; and
 - (ii) the Eligible Contract cannot be assigned or transferred by the Third Party; and
- (c) at least 5 business days before completion of the sale to the Third Party the Owner delivers to the Municipality written proof, satisfactory to the Municipality, in its sole discretion, that the purchase price payable by the Third Party under the Eligible Contract does not exceed the Maximum Price.

If the Owner does not comply with sections 7(a) through (c), the Municipality's rights under sections 3 and 5 are deemed not to be waived and the Municipality is instead deemed to have made an election under section 5 to purchase the Strata Lot. The Owner agrees that every Eligible Contract entered into by the Owner must contain a provision by which the Owner and the Third Party with whom the agreement is entered into agree that the agreement is subject to a condition precedent for the benefit of both, that may not be waived by either of them, such that the agreement becomes void and unenforceable unless the Municipality's rights are deemed to be waived in accordance with sections 7(a) through (c).

Exception to RFR and Option

8. The Municipality agrees that its rights under sections 3 and 5 do not apply in any of the following cases:

- (a) if the Owner is a Lender and the Lender has for at least 45 days used reasonable best efforts to enter into an Eligible Contract, including by listing the Interest for Sale with the Municipality or with a licensed real estate agent ("Agent"), or both, but has been unable to enter into an Eligible Contract within the 45 days:
 - (i) the Lender may after that time Sell the Interest to a Third Party who is not an Employee or Retiree, but the purchase price for the Interest must not exceed the Maximum Price; and
 - (ii) the Strata Lot may only be used and occupied in accordance with the Housing Agreement;
- (b) if the Owner is a Lender and the Lender has for at least 90 days used reasonable best efforts to enter into an Eligible Contract, including by listing the Interest for Sale with the Municipality or with an Agent, or both, but has been unable to enter into an Eligible Contract within the 90 days:
 - (i) the Lender may after that time Sell the Interest to a Third Party who is not an Employee or Retiree and the purchase price for the Interest may be different from the purchase price calculated in accordance with section 6; and
 - (ii) the Strata Lot may only be used and occupied in accordance with the Housing Agreement;
- (c) if the Owner is a Lender and the Lender has for at least 120 days used reasonable best efforts to enter into an Eligible Contract, including by listing the Interest for Sale with the Municipality or with an Agent, or both, but has been unable to enter into an Eligible Contract within the 120 days:
 - (i) the Lender may after that time Sell the Interest to a Third Party who is not an Employee or Retiree and the purchase price for the Interest may be different from the Maximum Price; and
 - (ii) the Strata Lot may be used and occupied subject only to all enactments applicable to the use of the Strata Lot and the Housing Agreement will not apply; and
- (d) if the Owner is not a Lender and the Owner has for at least 45 days used reasonable best efforts to enter into an Eligible Contract, including by listing

the Interest for Sale with the Municipality or with an Agent, or both, but has been unable to enter into an Eligible Contract within the 45 days:

- (i) the Owner may after that time Sell the Interest to a Third Party who is not an Employee or Retiree, but the purchase price for the Interest must not exceed the Maximum Price; and
- (ii) the Strata Lot may only be used and occupied in accordance with the Housing Agreement.

The Owner agrees that:

- (e) for clarity, this section applies each time an Offer is received by the Owner and each time the Interest is Sold;
- (f) it must deliver to the Municipality written proof satisfactory to the Municipality, in its sole discretion, to establish the existence of any of the cases set out in this section before this section operates such that the rights of the Municipality under sections 3 and 5 do not apply.

Interest Disposal

9. Subject to section 7, if the Municipality does not make an election under sections 3 or 5 within the period set out in section 4 waives its rights in accordance with section 7, the Owner may dispose of the Interest upon substantially the same terms as those of the Eligible Contract, but not otherwise, and if the Owner does not so dispose of the Interest, this Agreement and the rights it grants to the Municipality continue in force at all times. For clarity, even if the Municipality does not elect to Purchase the Strata Lot under sections 3 or 5, or does not under section 7 waive its right to make that election, this Agreement and the rights it grants to the Municipality continue in force at all times with respect to all other Offers to Sales.

Runs With Strata Lot

10. This Agreement and the rights it grants to the Municipality run with the Strata Lot and burden and bind every parcel into which the Strata Lot is subdivided by any means (including any strata lot or bare land strata lot created by deposit of a strata plan under the *Condominium Act* (British Columbia), but not any common property created upon deposit of a strata plan).

Completion Date

11. The agreement arising from election under section 3 or 5 shall be completed on the date ("Completion Date") to be chosen by the Municipality, acting reasonably, such date not to be later than thirty (30) days after the date of the election notice being give to the Owner.

Payment of Purchase Price

12. The purchase price determined under section 3 or 5 shall be paid by the Municipality to the Owner, subject to adjustments as provided in this Agreement, on the Completion Date according to the closing procedure as provided in this Agreement.

Title

13. On the Completion Date, the Owner shall convey the Strata Lot to the Municipality free and clear of all mortgages and other financial liens, charges and encumbrances, provided that the Owner is entitled to use the Purchase Price paid by the Municipality to discharge any mortgage registered against title to the Strata Lot, in accordance with section 20.

Possession

14. The Owner shall give vacant possession of the Strata Lot to the Municipality, subject only to permitted encumbrances under section 13, and existing tenancies, following payment of the adjusted Purchase Price to the Owner on the Completion Date.

Adjustments

15. All adjustments, both incoming and outgoing, in connection with the purchase and sale of the Strata Lot, including adjustments of taxes, rates, rents and other matters usually the subject of adjustment between vendor and purchaser, shall be made as at the Completion Date.

Representations, Warranties and Covenants of the Owner

16. The Owner covenants and agrees that it shall, from and after the date of the application to register this Agreement in the LTO:

- (a) take all reasonable care to protect and safeguard the Strata Lot and operate and otherwise deal with the Strata Lot as a careful and prudent owner would do and in such a manner that, except as contemplated in this Agreement, the warranties, representations and covenants of the Owner as contained in this Agreement remain true and correct;
- (b) take or cause to be taken all proper steps and actions and corporate proceedings to enable the Owner to vest a good and marketable title to the Strata Lot in the Municipality at the Completion Date, free and clear of all liens, encumbrances, defects in title, equities or claims of every nature and kind except for Permitted Encumbrances and to enable the Owner to carry out the sale of the Strata Lot and to execute and deliver this Agreement as valid and binding obligations of the Owner.

17. The Owner hereby represents and warrants to, and covenants and agrees with, the Municipality as at the Completion Date that:

- (a) the Owner has no indebtedness or obligation to any person which might now or in future constitute a lien, charge or encumbrance on the Strata Lot;
- (b) the Owner has not used the Strata Lot or permitted any use of the Strata Lot, to store, manufacture, dispose of, emit, spill, leak, generate, transport, remediate, produce, process, release, discharge, landfill, treat or remediate any explosive, radioactive material, asbestos, urea formaldehyde, chlorobiphenyl, hydrocarbon, underground tank, pollution, contamination, hazardous substance, corrosive substance, toxic substance, special waste, waste, or matter of any kind which is or may be harmful to human safety or health or to the environment, including anything the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, remediation or release into the environment of which is now or at any time after the execution of this Agreement is prohibited, controlled, regulated or licensed under any laws applicable to the Strata Lot ("Contaminant");
- (c) the Owner has not caused or permitted, the storage, manufacture, disposal, emission, spilling, leakage, treatment, generation, transportation, remediation, production, processing, release, discharge, landfilling, treatment or remediation of any Contaminant in, on, under or from the Strata Lot; and
- (d) the Owner has at all times used the Strata Lot in compliance with all laws relating to Contaminants and to the environment.

Indemnity

18. The Owner covenants and agrees with the Municipality, which covenant shall survive the completion of any conveyance of the Strata Lot arising from the exercise of this Option, that the Owner must indemnify and save harmless the Municipality, and its elected and appointed officials, officers, employees and agents, from and against any and all actions, causes of action, liabilities, demands, losses, damages, costs (including remediation costs and costs of compliance with any law, and legal fees and disbursements), expenses, fines and penalties, suffered or incurred by the Municipality, whether brought against any one or more of them by the Owner or by any other person, or by any governmental authority, by reason of a breach of any representation or warranty, covenant or agreement of the Owner set forth in this Agreement.

Closing Documents

19. Not less than 5 days before the Completion Date, the Municipality shall deliver to the Owner's solicitors:

- (a) two copies of a Form A Transfer transferring the fee simple title to the Strata Lot to the Municipality ("Transfer") subject only to Permitted Encumbrances;
- (b) two copies of the Owner's Statement of Adjustments to be approved and executed by the Owner; and

- (c) a statutory declaration of the Owner that the Owner is a resident of Canada within the meaning of the *Income Tax Act* (Canada).

Closing Procedure

20. On or before the Completion Date, the Owner shall deliver to the Municipality's solicitors, in trust, the Transfer executed on behalf of the Owner and in registrable form, on the undertakings that:

- (a) on the Completion Date, the Municipality shall apply to register the Transfer in the LTO only if the adjusted Purchase Price has first been deposited in the trust account of the Municipality's solicitors; and
- (b) after application has been made to register the Transfer in the LTO, and upon receipt of a satisfactory post-index search of the title to the Strata Lot indicating that in the normal course of LTO procedure the Municipality shall become the registered owner of the Strata Lot free and clear of all mortgages and other financial liens, charges and encumbrances, other than any mortgage to be discharged as provided herein, the Municipality shall at once pay the Owner's solicitor or notary public the adjusted Purchase Price by solicitor's trust cheque delivered to the Owner's solicitor or notary public, on the undertaking of the Owner's solicitor or notary public to discharge any mortgage or other financial charge from title to the Strata Lot forthwith following Completion.

Risk

21. The Strata Lot shall be at the Owner's risk until the Completion Date and shall thereafter be at the risk of the Municipality. In the event of loss or damage to the Strata Lot occurring before the completion of the closing on the Completion Date by reason of fire, tempest, lightning, earthquake, flood or other acts of God, explosion, riot, civil commotion, insurrection or war, the Municipality, at the Municipality's option, may cancel this Agreement.

Access

22. The Municipality, its agents and employees, have the licence, conditional on providing 48 hours prior written notice to the Owner, to enter upon the Strata Lot from time to time prior to the Completion Date, at the Municipality's sole risk and expense, for the purpose of making reasonable inspections, surveys, tests and studies of the Strata Lot.

Fees and Taxes

23. The Municipality shall pay:

- (a) any property transfer tax under the *Property Transfer Tax Act* (British Columbia);

- (b) LTO registration fees in connection with the transfer of the Strata Lot to the Municipality;
- (c) the Municipality's legal fees and disbursements but not the Owner's; and
- (d) all goods and services tax, if any, payable in respect of transfer of the Strata Lot to the Municipality under the *Excise Tax Act* (Canada).

Further Assurances

24. Each of the parties shall at all times hereafter execute and deliver at the request of the other all such further documents, deeds and instruments and shall do and perform such acts as may be reasonably necessary to give full effect to the intent and meaning of this Agreement.

Notice

25. Where any notice, request, direction, or other communication is required to be given or made by either party under this Agreement, it shall be in writing and is effective if delivered in person, sent by registered mail, by telegram, by telex or by facsimile addressed to the party for whom it is intended at the address set out above and any notice, request, direction or other communication shall be deemed to have been given if by registered mail, when the postal receipt is acknowledged by the other party; by telegram, when transmitted by the carrier; and, by telex or facsimile when transmitted. The address of either party may be changed by notice in the manner set out in this provision.

Time of Essence

26. Time is of the essence of this Agreement.

Tender

27. Any tender of documents or money may be made upon the parties at their respective addresses set forth in this Agreement or upon their respective solicitors.

Entire Agreement and Its Survival

28. There are no representations, warranties, guaranties, promises or agreements other than those expressly contained in this Agreement, all of which shall survive the Completion Date, registration of documents and payment of the Purchase Price and shall not merge with any deeds or agreements delivered in connection with completion of this transaction and shall not merge with the Transfer or its registration. The provisions of this Agreement between the parties with respect to the Strata Lot constitute the entire agreement between the parties and terminate and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject of this Agreement.

Enurement

29. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

Modification

30. This Agreement may not be modified or amended except by an instrument in writing signed by the parties or by their successors or assigns.

Interpretation

31. Wherever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties so require.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

END OF DOCUMENT