

PART 2 - TERMS OF INSTRUMENT

**EMPLOYEE HOUSING
RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE**

THIS AGREEMENT dated for reference September 1, 1996 is

BETWEEN:

S.J. BAYLY PROPERTIES LTD., a British Columbia company incorporated under number 216381, with a registered and records office at 2576 Snowridge Crescent, P.O. Box 1095, Whistler, B.C. V0N 1B0

WHISTLER CONTRACT MANAGEMENT LTD., a British Columbia company incorporated under number 354297, with a registered and records office at 202 - 1080 Millar Creek Road, Whistler, B.C. V0N 1B0

(collectively, the "Owner")

AND:

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

("Purchaser")

GIVEN THAT:

A. The Owner is the registered owner of the land in the Resort Municipality of Whistler legally described in Schedule E of the Land Title Act Form C to which this Agreement is attached;

B. The Owner and the Purchaser wish to enter into this Agreement to ensure that the Strata Lot (as hereinafter defined) is sold only to qualified individuals and for a price that reflects the non-profit nature; and

C. The Owner has agreed to grant to the Purchaser a right of first refusal to purchase the Strata Lot (as hereinafter defined),

This Agreement is evidence that, in consideration of the payment of \$2.00 by the Purchaser 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 Purchaser" means the person to whom the Strata Lot is first transferred after Substantial Completion of the Strata Lot;
- (c) "First Sale Price" means the amount received for transfer of the Strata Lot to the First Purchaser, plus net goods and services tax;
- (d) "Housing Covenant" means the housing agreement under s. 963.2 of the *Municipal Act* between the Owner and the Municipality dated for reference September 1, 1996 and deposited for registration as a s. 215 *Land Title Act* covenant in the LTO under the instrument number one less than that for this Agreement;
- (e) "Interest" means the interest of the Owner in the Strata Lot;
- (f) "LTO" means the New Westminster/Vancouver Land Title Office;
- (g) "Municipality" means the Resort Municipality of Whistler;
- (h) "Offer" means a *bona fide* offer to purchase the Interest made by a Third Party;
- (i) "Prime Rate" means the annual rate of interest, expressed as a percentage, published from time to time by the Royal Bank of Canada's Main Branch in Vancouver, British Columbia, as its prime rate and used as a reference rate by that Bank for determining interest rates on Canadian dollar loans, and which was 5.75 percent on September 4, 1996;
- (j) "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;
- (k) "Strata Lot" means each of the bare land strata lots legally defined in Schedule E of the Land Title Act Form C to which this Agreement is attached, the intent being that this Agreement shall apply separately to each strata lot in the strata plan of which it is a part; and
- (l) "Third Party" means any person, other than the Purchaser, 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 "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year unless otherwise expressly provided.

RFR Grant

3. The Owner grants to the Purchaser a right of first refusal to purchase the Interest on the terms of this Agreement. The Owner agrees that it must not sell, assign or in any way transfer, or agree to sell, assign or in any way transfer, (collectively, "Sell", "Sale" and "Sold") any of its Interest to any person other than the Purchaser unless the Interest is first offered for Sale to the Purchaser in accordance with section 4. Subject to sections 5 and 6, the Purchaser has 10 business days from the date on which it receives the notice and Offer 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 is to be on the terms set out in sections 10 through 31.

Offer Notice

4. If the Owner receives an Offer, the Owner must at once give notice of the Offer to the Purchaser and must deliver a copy of the Offer along with that notice.

Option to Purchase

5. Despite section 3, the Purchaser may elect, as an option to purchase hereby granted to the Purchaser, to acquire 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 purchase price calculated in accordance with the Housing Covenant; and
- (b) on the terms set out in sections 10 through 31.

Waiver

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

- (a) the Owner delivers to the Purchaser, within 2 days after notice of waiver is given by the Purchaser 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 ("APS");
- (b) subject to section 7, at least 5 business days before completion of the sale to the Third Party the Owner delivers to the Purchaser written proof, satisfactory to the Purchaser, in its sole discretion, that:
 - (i) the Third Party is:
 - (A) an Employee; or
 - (B) a Retiree; and
 - (ii) the APS 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 Purchaser written proof, satisfactory to the Purchaser, in its sole discretion, that the purchase price payable by the Third Party under the APS does not exceed the purchase price calculated in accordance with section 5.

If the Owner does not comply with sections 6(a) through (c), the Purchaser's rights under sections 3 and 5 are deemed not to be waived and the Purchaser is instead deemed to have made an election under section 5. The Owner agrees that every APS 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 Purchaser's rights are deemed to be waived in accordance with sections 6(a) through (c).

Exception to RFR and Option

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

- (a) if the Owner is a mortgagee that is a bank or other financial institution established or regulated under any enactment of British Columbia or Canada ("Lender") and the Lender has for at least 45 days used reasonable best efforts to enter into an APS, including by listing the Interest for Sale with the Purchaser or with a licensed real estate agent ("Agent"), or both, but has been unable to enter into an APS within the 45 days:
 - (i) the Lender may, despite section 3.1(a) of the Housing Covenant, 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 purchase price calculated in accordance with section 5; and
 - (ii) the Strata Lot may only be used and occupied in accordance with the Housing Covenant, but section 3.1(a) of the Housing Covenant does not apply;
- (b) if the Owner is a Lender and the Lender has for at least 90 days used reasonable best efforts to enter into an APS, including by listing the Interest for Sale with the Purchaser or with an Agent, or both, but has been unable to enter into an APS within the 90 days:
 - (i) the Lender may, despite section 3.1(a) of the Housing Covenant, 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 5; and
 - (ii) the Strata Lot may only be used and occupied in accordance with the Housing Covenant, but section 3.1(a) of the Housing Covenant does not apply;
- (c) if the Owner is a Lender and the Lender has for at least 120 days used reasonable best efforts to enter into an APS, including by listing the Interest for Sale with the Purchaser or with an Agent, or both, but has been unable to enter into an APS 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 purchase price calculated in accordance with section 5; and
 - (ii) the Strata Lot may be used and occupied subject only to all enactments applicable to the use of land and the Housing Covenant does 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 APS, including by listing the Interest for Sale with the Purchaser or with an Agent, or both, but has been unable to enter into an APS within the 45 days:
 - (i) the Owner may, despite section 3.1 (a) of the Housing Covenant, 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 purchase price calculated in accordance with section 5; and
 - (ii) the Strata Lot may only be used and occupied in accordance with the Housing Covenant, but section 3.1(a) of the Housing Covenant does not apply.

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 Purchaser written proof satisfactory to the Purchaser, 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 Purchaser under sections 3 and 5 do not apply.

Interest Disposal

8. Subject to section 6, if the Purchaser does not make an election under sections 3 or 5, the Owner may dispose of the Interest upon substantially the same terms as those of the Offer, but not otherwise, and if the Owner does not dispose of the Interest this Agreement and the rights it grants to the Purchaser continue in force at all times. For clarity, even if the Purchaser does not elect to Purchase the Strata Lot under sections 3 or 5, or does not under section 6 waive its right to make that election this Agreement and the rights it grants to the Purchaser continue in force at all times.

Runs With Strata Lot

9. This Agreement and the rights it grants to the Purchaser 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). For clarity, this Agreement and the rights it grants to the Purchaser burden and bind each Project Unit.

Completion Date

10. The agreement arising from election under sections 3 or 5 shall be completed on the date ("Completion Date") to be chosen by the Purchaser, 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

11. The purchase price determined under section 3 or 5 shall be paid by the Purchaser 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

12. On the Completion Date, the Owner shall convey the Strata Lot to the Purchaser free and clear of all liens, charges and encumbrances except for the Permitted Encumbrances.

Possession

13. The Owner shall give vacant possession of the Strata Lot to the Purchaser, subject only to the Permitted Encumbrances and existing tenancies, following payment of the adjusted Purchase Price to the Owner on the Completion Date.

Adjustments

14. 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

15. 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 Purchaser 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.

16. The Owner hereby represents and warrants to, and covenants and agrees with, the Purchaser 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, other

than the Permitted Encumbrances;

- (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

17. The Owner covenants and agrees with the Purchaser, 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 Purchaser, 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 Purchaser, 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

18. Not less than 14 days before the Completion Date, the Purchaser 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 Purchaser ("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 any authorized officer of the Owner that the Owner is a resident of Canada within the meaning of the *Income Tax Act* (Canada).

Closing Procedure

19. On or before the Completion Date, the Owner shall deliver to the Purchaser'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 Purchaser 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 Purchaser'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 Purchaser shall become the registered owner of the Strata Lot free and clear of all liens, charges and encumbrances other than the Permitted Encumbrances, the Purchaser shall pay the Owner at once the adjusted Purchase Price by solicitor's trust cheque delivered to the Owner's solicitors.

Risk

20. The Strata Lot shall be at the Owner's risk until the Completion Date and shall thereafter be at the risk of the Purchaser. 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 Purchaser, at the Purchaser's option, may cancel this Agreement.

Access

21. The Purchaser, 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 Purchaser's sole risk and expense, for the purpose of making reasonable inspections, surveys, tests and studies of the Strata Lot.

Fees and Taxes

22. The Purchaser 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 Purchaser;
- (c) the Purchaser'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 Purchaser under the *Excise Tax Act* (Canada).

Interpretation

30. 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.