

AGREEMENT OF PURCHASE AND SALE

RE: Sale of Unit #_____ Buyer(s):_____

PROPOSED VICTORIA COUNTY CONDOMINIUM CORPORATION NO. 3

“INGONISH BY THE SEA”

BETWEEN:

MACAULAY RESORTS LIMITED

(hereinafter called the "VENDOR")

OF THE FIRST PART

- and -

(hereinafter called the "PURCHASER")

OF THE SECOND PART

The Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor, Unit _____ of a proposed Condominium Project Complex, at Ingonish, Victoria County, Nova Scotia, together with the undivided interest in the common elements appurtenant thereto and the limited common elements, all in accordance with both the Description, the Declaration and any Amendments to the Declaration which are to be submitted for acceptance for registration with the Registrar of Condominiums for the Province of Nova Scotia, and the said Unit being more particularly shown outlined on the Sketch Plan attached hereto as Schedule "A", in accordance with the terms and conditions contained herein.

Purchaser's Initials _____

Vendor's Initials _____

PRICE AND AMOUNT

1. The purchase price shall be _____, subject to the terms of this Agreement, and shall be payable as follows:

a. the sum of Five Thousand Dollars (\$5,000.00) as a deposit, payable to Cassidy Nearing Berryman in trust, upon the execution of this Agreement (the receipt whereof is hereby acknowledged) to be held in an interest bearing trust account at the offices of **Cassidy Nearing Berryman**, Suite 401, 1741 Brunswick Street, Halifax, Nova Scotia, B3J 3X8, pending completion or other termination of this Agreement, which sum, shall be credited on account of the purchase price, on closing, to the Purchaser's benefit;

b. a further sum to increase the deposit, to a total of fifteen percent (15%) of the purchase price, payable to Cassidy Nearing Berryman in trust, as an addition to the deposit in Section 1(a) above, within ten (10) business days following receipt of the proposed Declaration, By-laws, Common Element Rules and Regulations of the Condominium Corporation, pursuant to Clause 8, unless this Agreement is terminated under Clause 9; to be held in trust pending completion or other termination of this Agreement, which sum, shall be credited on account of the purchase price, on closing, to the Purchaser's benefit;

c. on closing, the Purchaser shall pay an amount equal to three times the monthly assessment relating to each owner's unit. Such amount shall be held, together with the amounts similarly deposited by other unit owners, as a Contingency Fund for common expenses and shall be used and applied from time to time towards meeting the deficits and such other common expenses as the Corporation may deem necessary;

d. the balance in cash or by certified cheque;

e. the purchase price shall not include the **Harmonized Sales Tax (HST)** and the **HST** amount (currently 14%) shall be in addition to the purchase price and paid by the Purchaser to the Vendor at the time of closing as an addition to the purchase price. Rebates, if applicable, are the responsibility of the Purchaser and the Vendor has not directly or indirectly confirmed to the Purchaser they may qualify for any rebate.

Purchaser's Initials _____

Vendor's Initials _____

FINANCING

2. This Agreement shall be subject to the Purchaser being able to obtain approval for a first mortgage in a principal amount of approximately \$ _____ or _____% of the purchase price. This financing shall be deemed to be arranged unless the Vendor or Vendor's agent is notified to the contrary, in writing, on or before _____(date). If notice to the contrary is received, either party shall be at liberty to terminate this contract and deposit to be returned to Purchaser without interest or penalty.

CLOSING DATE

3. Subject to the provisions of this Agreement and the extensions arising therefrom, this Agreement of Purchase and Sale shall be completed on or before the ____ day of _____, 200__.

4. The Purchaser agrees to complete the Agreement of Purchase and Sale notwithstanding that the common elements and other Units in the Condominium Project may not have been completed on the Closing Date.

5. If the Declaration and Description have not been accepted for registration on or before the Closing Date, the day for completion of this Agreement of Purchase and Sale shall be extended ten (10) days after the Purchaser has been so notified by the Vendor that such documents are so accepted for registration by the Registrar of Condominiums, but in no event shall the completion of this transaction be extended, for registration delays beyond 180 days following the Closing Date defined in Section 3 of this Agreement. This extension is in addition to the extension period contained in Section 8, Schedule C of this Agreement. **The Vendor shall in no way be responsible for any expenses incurred by the Purchaser due to any extensions of the Closing Date.**

6. Subject to the Vendor obtaining all necessary government permits and authorizations to construct the Condominium Project, failing which this Agreement shall be void and the Purchaser's deposit returned together with any applicable interest.

ADJUSTMENTS

7. All necessary and proper adjustments shall be as at the Closing Date and without limiting the generality of the foregoing shall include the following:

Purchaser's Initials _____

Vendor's Initials _____

- a. assessments prepaid or owing for contribution towards the common expenses; and
- b. the Purchaser agrees to pay to the Corporation monthly one-twelfth (1/12th) of the estimated annual common expenses assessed against the Purchaser's unit, commencing on the Closing Date;
- c. real property taxes (including local improvement rates) which shall be estimated by the Vendor for the calendar year in which this transaction is completed and shall be adjusted to the Occupation Date; **SUBJECT HOWEVER**, to readjustment upon the actual amount of said real property taxes being ascertained, and the Purchaser will forthwith pay to the Vendor any balance owing to the Vendor upon receiving notice in writing thereof and the Vendor shall forthwith return to the Purchaser any balance owing to the Purchaser;
- d. all such other charges or expenses on closing as are proper and necessary and pursuant to the terms of this Agreement.

If any of the aforesaid adjustments cannot be accurately determined on the Closing Date, the Purchaser agrees that the Vendor shall estimate the same and this transaction of Purchase and Sale shall be completed in accordance with such estimates subject to a later adjustment when all of the adjustable items can be accurately determined.

DRAFT DECLARATION BY-LAWS AND COMMON ELEMENT RULES

- 8. The Vendor shall deliver to the Purchaser prior to the Closing Date:
 - a. a copy of the proposed Declaration, By-laws and Common Element Rules and Regulations of the Condominium Corporation;
 - b. details concerning subsequent phases of the development under Clause 11 of this Agreement.

Purchaser's Initials _____

Vendor's Initials _____

9. Upon receipt of the aforementioned documentation in Clause 8, the Purchaser shall have ten (10) business days to review the documentation to determine whether there is anything contained in the documents which materially affects the Purchaser's enjoyment of the property. If the Purchaser makes an objection in writing to the Vendor, subject to Section 10 of this Agreement, which the Vendor is unable or unwilling to remove and which the Purchaser does not waive, this Agreement shall be null and void and the deposit shall be returned to the Purchaser without interest or without liability by the Vendor for any expenses incurred or damages sustained by the Purchaser. After the expiry of the said ten (10) business days, the Purchaser shall be conclusively deemed to have accepted the said documentation.

10. The Purchaser shall not be entitled to demand any alterations, changes or amendments to the documentation in Clause 8 as are prepared by the Vendor acting reasonably.

PHASED DEVELOPMENT

11. This condominium project is a phased development and the Vendor intends to develop additional phases consisting of approximately 47 additional units after the completion of the building in which the Unit is contained. The Vendor is not required to create these additional phases. The additional buildings will be located on adjacent lands at Ingonish, Victoria County, Nova Scotia. The proportion of the common interests and the common expenses that will be attributable to the units after the creation of the subsequent phases and the estimated registration date of the amendments to the Declaration and Description will be provided to the Purchaser at the same time as the information under Clause 8.

PROPERTY TO REMAIN AT RISK OF VENDOR UNTIL CLOSING

12. The Condominium Project and the property being sold as aforesaid shall be and remain at the Vendor's risk entirely until the Closing Date and the Vendor will hold all insurance policies and proceeds thereof in trust for the parties as their respective interests may appear until the Closing Date and in the event of substantial damage to the buildings and equipment by fire or other casualty, the Vendor may either (a) use the proceeds of such insurance to complete the Unit, or (b) cancel this Agreement and return to the Purchaser all deposit monies and without liability to the Vendor for any expenses or damage incurred or sustained by the Purchaser.

Purchaser's Initials _____

Vendor's Initials _____

SCHEDULES TO FORM PART OF AGREEMENT

13. The following Schedules shall form part of this Agreement:

- Schedule "A" - Floor Plan
- Schedule "B" - Use and Occupancy
- Schedule "C" - General Conditions

MISCELLANEOUS

14. The Purchaser agrees that it will not register this Agreement or a notice of this Agreement against title to the property.

15. All of the covenants and obligations in this Agreement to be observed or performed by either of the Parties thereto respectively shall survive the Closing Date and shall not merge with the Deed to the Purchaser.

16. Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser or any party acting for them and the money may be tendered by negotiable cheque certified by a chartered bank or a trust company.

17. This Agreement is non-assignable by the Purchaser hereto.

18. This Agreement is to be read with all changes to gender or number required of the context.

19. Time shall be of the essence.

20. This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia, Canada.

Purchaser's Initials _____

Vendor's Initials _____

21. Each of the provisions of this Agreement shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity or enforceability of the remainder of this Agreement.

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

23. This execution of this Agreement shall be irrevocable by the Purchaser until ___p.m. on the _____ day of _____, 200__, after which time if not executed by the Vendor, this Agreement shall be void and the deposit returned to the Purchaser without interest.

DATED at _____, in the County of _____, Province of Nova Scotia, this _____ day of _____, A.D.,200__.

SIGNED, SEALED AND DELIVERED)
 in the presence of:)
)
) _____
) Purchaser
)
)
) _____
) Purchaser
)
 _____)
 Witness)

Purchaser's Initials _____

Vendor's Initials _____

DATED at _____, in the County of _____, Province of Nova Scotia, this _____ day of _____, A.D.,200__.

SIGNED, SEALED AND DELIVERED
in the presence of:

)
) **MACAULAY RESORTS LIMITED**
)
)
)
)
) PER: _____
) **Scott MacAulay**
)
)
)

Witness

Vendor's Solicitor

Purchaser's Solicitor:

Patrick I. Cassidy, Q.C.

Cassidy Nearing Berryman

Phone: (902) 492-1770

Fax: (902) 423-2485

email: cassidy@cnb.ca

Purchaser's Initials _____

Vendor's Initials _____

Schedule "B"

Use and Occupation of Units

Parking

1. Parking shall be part of the Limited Use Common Elements and each unit owner is entitled to the exclusive use and possession of two parking spaces, said spaces to be designated and assigned to the owner by the Corporation.

Occupation Prior to Closing

2. If the Unit forming part of the property is complete before the Closing Date, and is ready for occupancy by the Purchaser and the registration of the Condominium has not been completed, the Purchaser may take occupancy of the Unit subject to the following:

- a. the Purchaser may pay to the Vendor a use and occupancy charge in the amount of .75% of the purchase price payable to the Vendor on the first day of each and every month during the use and occupancy of the premises until the actual closing. **Failure to pay this amount shall be a breach of this agreement by the Purchaser and the Purchaser's deposit shall be forfeited to the Vendor and the Purchaser shall immediately vacate the unit upon receipt of notice by the Vendor with no liability by the Vendor for any damages or costs incurred in any way by the Purchaser;**
- b. such use and occupation shall be governed by the draft Declaration, By-laws and Common Element Rules of the Condominium Corporation;
- c. until the Declaration and Description have been accepted for registration the Purchaser while in use and occupancy of the Unit covenants not to permit the Unit to be rented, or converted to rental property.

Acceptance of possession by the Purchaser shall not operate as a waiver of any of the Purchaser's or the Vendor's rights under this Agreement.

Purchaser's Initials _____

Vendor's Initials _____

Schedule "B" (Continued)

3. The Purchaser acknowledges that the Vendor and its successors and assigns may construct or will continue to construct Condominium Units immediately adjacent to the Unit subject to this Agreement. The Purchaser acknowledges and agrees that such construction, if any, shall not be regarded by the Purchaser as an inconvenience or nuisance and the Purchaser shall not object to such construction or make any claim for damages or injuries as a result of any such inconvenience or otherwise.

4. The Purchaser is responsible for having Nova Scotia Power, cable, and telephone accounts transferred or established in the Purchaser's name as of the earlier of the Closing Date or Date of Occupancy. Failure to establish said accounts can result in a disruption of service.

5. The Vendor shall provide to the Purchaser an occupancy certificate for the Unit, on or before the Closing Date.

Purchaser's Initials _____

Vendor's Initials _____

Schedule "C"

General Conditions

Title Searches

1. The Vendor shall complete the conversion of the property to the Land Registration System prior to the Closing Date.

Transfer of Title

2. The conveyance of the property shall be by **WARRANTY DEED** drawn at the expense of the Vendor, subject only to the easements and encumbrances to be set out in the Declaration, Description, By-laws and the Common Element Rules, any easements created by the Act and any other restrictions or covenants that run with the land including Public Utility and Municipal Easements; and also subject to any easements that may be required prior to closing by the agency authorized to provide electric energy or telephone services to the area in which the Unit is located and to any adjacent subdivision; provided nevertheless that if any easement shall be required by such agency at any time prior to closing, the Purchaser will execute any grant or grants necessary to perfect such easements.

Final Inspection and Deficiencies

3. i. The Purchaser shall within five (5) days prior to the time herein fixed for closing or the date of commencement of use and occupation arrange to inspect the Unit with the Vendor's representative and during such inspection all uncompleted work, if any, with respect to the Unit shall be listed in writing and such list shall be signed by the Purchaser and the Vendor's representative. At the option of the Vendor, the Purchaser shall not be entitled to possession unless and until such certificate has been executed. The Vendor and Purchaser shall agree to the allocation of an amount to be held back for each deficiency. As each item is completed, the Purchaser agrees to release the amount held back for that deficiency immediately. The Vendor's solicitor is to hold the deficiency holdback. **The Vendor shall not be responsible for any reason whatsoever for any work not listed as aforesaid;**

Purchaser's Initials _____

Vendor's Initials _____

Schedule "C" (Continued)

ii. If the Vendor's representative and the Purchaser shall not agree as to the work that is uncompleted or if the Purchaser does not arrange inspection of the Unit aforesaid, the Vendor's only obligations after closing, if the Unit is not then completed, shall be to complete the Unit in accordance with the within Agreement. The registration of the transfer to the Purchaser, or the taking of possession of the Unit by the Purchaser, whichever shall first occur, shall constitute acceptance by the Purchaser of the Unit and shall be deemed to be a complete release by the Purchaser of the Vendor under the within Agreement and from any and all liability of any kind whatsoever under this within Agreement, save only for the completion of the work, if any, listed as aforesaid. If the Purchaser is more than one person, only one Purchaser need sign and each Purchaser hereby irrevocably appoints the other Purchaser or Purchasers as agent for the purpose of signing the list aforesaid;

iii. The Vendor covenants and warrants to complete the said Unit substantially in accordance with the plans and specifications as expediently as is reasonably possible and in the case of seasonal work, the Vendor covenants and warrants to complete the same as soon as weather conditions reasonably permit and further covenants and warrants that the Unit will not be subject to any Mechanics' Liens relating to its construction;

iv. If a dispute arises over the completion of a deficiency item, or warranty item (as defined in Schedule "C" Section 16) the parties agree that a third party acceptable to both parties shall arbitrate. The cost of the arbitration will be shared equally between the parties; the arbitrator's decision will be final and will be honoured by both parties.

Builders' Lien Act

4. This contract shall be governed by the provisions of the Builders' Lien Act. The Builders' Lien holdback shall be held by the Vendor's solicitor. The holdback shall be released on the 62nd day following substantial completion of the unit upon receipt of written confirmation from the solicitor for the Purchaser that there are no builder's liens registered on title relating to work of the Vendor.

Purchaser's Initials _____

Vendor's Initials _____

Schedule "C" (Continued)

Extras or Additions

5. The Purchaser shall not be entitled to demand any alterations, changes, additions or amendments to the plans and specifications or the plot plan. In the event the Vendor agrees to change or add extras to the Unit, then the price for such extras shall be agreed to by the parties and shall be added to the purchase price on closing or as decided by the Vendor. **In no situation will the Purchaser be allowed to have their own contractors or trades enter upon and perform work on any aspect of the Condominium project. All construction, additions and extras shall only be conducted by the Vendor and its agents.**

Completion of Unsold Units and Common Elements

6. Notwithstanding the transfer of title to the Purchaser or occupancy of the property or the Unit by the Purchaser, the Vendor, its servants and agents, shall have free access at all reasonable times to the property in order to make inspections or do any work or repairs which may be necessary in the Vendor's sole discretion to complete the construction or servicing of any installations in the Condominium Project and this right shall be in addition to any other rights and easements in favour of the Vendor under the Condominium Property Act.

7. The Purchaser will not interfere with the completion by the Vendor of the other Units and the common elements in accordance with the plans and specifications and until all of the Units are completed and sold, the Vendor may make such use of the unsold units and the common elements as may facilitate such completion and sale including, but not so as to limit the generality of the foregoing, maintenance of a sale office, the showing of the Units and the display of signs.

Delays and Extensions to Closing

8. If the completion of the Unit or the Condominium Project is delayed by reason of strikes, walkouts, lockouts, or other labour dispute in the construction industry of allied trades, unexpected contingencies such as inclement weather, delays resulting from the lawful requirement in the Municipality or other paramount authority, delays incidental to the installation of public utilities or public utility easements or municipal easements, Acts of God, fire, or other causes reasonably beyond the ability of the Vendor to foresee or control, then the **Vendor shall be allowed a further period**

Purchaser's Initials _____

Vendor's Initials _____

Schedule "C" (Continued)

of grace of one hundred and eighty (180) days in addition to the extension period contained in Section 5 of the Agreement, to substantially complete the Unit; but if in the sole discretion of the Vendor, completion of the Unit is not possible within such period of grace arising from labour disputes, the Vendor may cancel this Agreement and all deposit money shall be returned to the Purchaser without interest or penalty and without liability to the Vendor for any expenses incurred or damages sustained by the Purchaser. Notwithstanding the foregoing, the Vendor covenants to use all reasonable exertion and skill to meet the aforesaid completion date. If the Vendor should decide to make use of the aforesaid period of grace, the Closing Date shall be delayed accordingly.

9. The Purchaser acknowledges that the Declaration, By-laws, including the Common Element Rules made pursuant to the Condominium Property Act, Chapter 85, Revised Statutes of Nova Scotia, 1989 (hereinafter referred to as the "Act") and the regulations made pursuant to registration. This Agreement and all the terms hereof are conditional upon the Vendor obtaining acceptance for registration of the necessary documents to have the Condominium Project containing the property made subject to the Act on or before the closing Date or any extension thereof pursuant to this Agreement. The Vendor undertakes and agrees to proceed with all due diligence to have the necessary documents accepted for registration and fulfil all other requirements ordered to bring the Condominium Project under the Act as soon as possible. If the Vendor is unable to fulfil the requirements of the Act on or before the Closing Date, or any extension thereof, this Agreement shall be null and void and the deposit shall thereupon be returned to the Purchaser without penalty and the Vendor shall not be liable to the Purchaser for any costs or damages.

10. Due to delays in the closing date, the Purchaser may incur expenses or damages. The Purchaser acknowledges that the Vendor shall not be liable for any expenses or damages incurred by the Purchaser and the Purchaser shall not attempt to collect any such expenses or damages from the Vendor.

Management of Property After Closing

11. The Purchaser acknowledges that on the Closing Date, the Condominium Corporation will enter into a management Agreement with a Property Manager, who may not be at arm's length to the Vendor, for the management of the Condominium Project on behalf of the Condominium corporation for a term of up to three (3) years, and the Purchaser agrees to accept and abide by all reasonable terms and conditions which shall be contained in the said Management Agreement.

Purchaser's Initials _____

Vendor's Initials _____

Schedule "C" (Continued)

Amendments to Contract by Regulatory Authority

12. Any item of this contract may be altered or deleted or new items added if required by any regulatory agency which has legal jurisdiction over the development on the above land. The Vendor, in conforming with change of this contract required by a regulatory agency, will not be responsible for any added cost incurred or change required. As of the date of this contract, the Vendor has no notice of any regulatory concerns, nor is aware of any regulatory requirements that would affect the foregoing contract.

13. The Purchaser does hereby appoint the Vendor its attorney for purposes of amending the Declaration, By-laws and Common Element Rules as and from the Closing Date for a period of one (1) year, and shall give further assurances as may be necessary.

Construction

14. The Vendor warrants and covenants to the Purchaser that the Vendor shall construct and complete the Unit and common elements in a manner that meets or exceeds industry standards, substantially in accordance with the plans and specifications of the architects, subject to any variations of such plans and specifications as may from time to time be approved by the Vendor's Mortgagee or required by relevant governmental authorities, provided that where the Vendor's Mortgagee does not require formal approval, the Vendor may at its discretion vary or alter such plans and specifications as long as material substituted for those specified are approximately of equal quality as the replacement materials, and such alterations do not materially affect the size of the Unit. Plans may also be altered at the sole discretion of the Vendor provided such alterations meet or exceed building code requirements.

Vendor's Remedies for Breach

15. In addition to any other remedies available to the Vendor in law, the deposit, as defined in Section 1(a) and (b) of this Agreement, paid under this Agreement shall be forfeited to the Vendor if the Purchaser should default hereunder or fail to complete this transaction as set out in this Agreement. The Purchaser hereby authorizes immediate release of the deposit to the Vendor in the event of said breach.

Purchaser's Initials _____

Vendor's Initials _____

Schedule "C" (Continued)

Builder Warranty

16. The Vendor warrants that the Unit shall be constructed in a good and workmanlike manner and that the Unit shall be free from defects in workmanship and materials for a period of one (1) year from the Closing Date.

Sales Requirement

17. The Vendor shall have the unilateral right to not proceed with the initial phase and/or any subsequent phases until the Vendor is in receipt of unconditional Agreements of Purchase and Sale for eighty percent (80%) of the units comprising any particular phase.

Review by Purchaser's Solicitor

18. This Agreement is subject to approval by the Purchaser's solicitor within 48 hours from the time of execution of this Agreement. If no notice is received by **Cassidy Nearing Berryman** via fax, (902 423-2485), or delivery to **Cassidy Nearing Berryman** at Suite 401, 1741 Brunswick Street, Halifax, Nova Scotia, B3J 3X8, within 48 hours from the time of execution of this Agreement, the Purchaser shall be conclusively deemed to have accepted the terms of this Agreement.

Purchaser's Initials _____

Vendor's Initials _____