

MARCH 1, 2014

**SUPPLEMENTAL AGREEMENT NO. VII TO  
AGREEMENT BETWEEN  
WINTER PARK RECREATIONAL ASSOCIATION  
AND THE CITY AND COUNTY OF DENVER  
(AS AMENDED)**

**EXECUTIVE SUMMARY**

**Agreement Overview**

Supplemental Agreement No. VII (“Supplemental VII”) completely amends and restates the Agency Agreement and prior 6 supplements. WPRA agrees to serve as agent for the City and County of Denver (“City”) with respect to Winter Park Resort in accordance with its Articles of Incorporation, Bylaws and Supplemental VII. WPRA’s responsibilities include:

- Entering into the Lease, Option Agreement, Additional Consideration Agreement and Guaranty with the Intrawest entities;
- Holding title to the resort assets that are leased pursuant to the Lease;
- Borrowing the Agreed-Upon Indebtedness (as defined in the Lease) and executing appropriate loan documents;
- Executing any and all documents referenced in, attached to or relating to the Lease and Option Agreement and implementing those agreements;
- Taking all actions required to be taken by the Landlord pursuant to the Lease in accordance with the terms of the Lease and related documents;
- Taking all actions required to be taken by WPRA pursuant to the Option Agreement in accordance with the terms of the Option Agreement and related documents; and
- Taking no action that is inconsistent with or results in a breach of the terms of Supplemental VII.

**Transition of WPRA Board and New Board Structure**

Upon execution of Supplemental VII by the City (after it is approved by ordinance) and simultaneously with a closing between WPRA and Intrawest, the following changes will occur with respect to the governance and structure of WPRA:

- Supplemental VII, and the amended and restated Articles of Incorporation and Bylaws of WPRA which are attached to Supplemental VII as exhibits, will become effective;

- The “Board of Trustees” will become a five-member “Board of Directors” with staggered terms, such that one will serve for three years (the First Citizen Director), one will serve for four years (the First Appointee), one will serve for five years (the Second Appointee), one will serve for six years (the Second Citizen Director), and one will serve for seven years (the Third Citizen Director); and
- The Mayor will appoint the initial Directors. Once their terms expire, the Citizen Directors will be self-perpetuating positions in that the remaining Directors will elect their replacements for terms of 5 years. The Mayor appoints and removes the Appointees.

### **Decision-making**

- WPRA makes all decisions under the Lease and Option Agreement except that it will act in accordance with directions given by the City regarding certain specified matters that
  - may impact the City’s residual interest in the resort property, and
  - affect payments due to the City under the Lease or the Option Agreement.
- City decisions regarding the sale of Winter Park assets (except the Development Parcels under the Option Agreement), the mortgaging of it (except mortgaging the Development Parcels to the Agreed-Upon Indebtedness lender), and the termination or major modification of the Lease or the Option Agreement, require the approval of City Council.

### **Records and Budget**

- WPRA must maintain its books and records in the City at a place known at all times to the City, other than records for the period prior to December 23, 2002, which may be stored at Winter Park Resort. Files may be maintained electronically.
- The City and its representatives, including the City’s Auditor, have the right to inspect and copy the books and records. The City has the right to cause a complete audit to be made of all records for any fiscal period within the preceding ten years.
- WPRA is subject to the Colorado Open Public Records Law.
- WPRA will deliver to the City a copy of its budget each year and a reconciliation statement of its revenues and expenses at the end of each year.
- The City may request that a representative of WPRA appear before City Council to answer any questions.

### **Termination**

- The City has the right to terminate Supplemental VII with or without cause.
- Upon termination, WPRA will return all Winter Park assets to the City or its designee subject to their debt, and will then dissolve itself.

## EXCERPT-SUPPLEMENT VII

### WPRA AND CITY RESPONSIBILITIES

#### Responsibilities of WPRA

WPRA shall:

- a) Enter into the Lease, the Option Agreement, the Additional Consideration Agreement and the Guaranty;
- b) Hold the title as agent for the City to the assets that are leased pursuant to the Lease;
- c) Execute any and all documents referenced in, attached to or now or hereafter relating to the Lease and the Option Agreement and implement the actions contemplated thereby;
- d) Be the borrower of the Agreed-Upon Indebtedness (as defined in the Lease) and execute all documents necessary or appropriate in connection therewith;
- e) Take all actions required to be taken by the landlord pursuant to the Lease in accordance with the terms of Lease and related documents, including without limitation, providing from available closing funds for the payment or reimbursement of Reimbursable Transaction Costs as defined in the Lease;
- f) Take all actions required to be taken by WPRA pursuant to the Option Agreement and related documents; and
- g) Take no action that is inconsistent with or results in a breach of the terms of Supplemental VII.

#### City Decisions

As the residual owner of the Resort property and as a third party beneficiary to the Lease and Option Agreement and related documents, the City retains the ability to protect its interests by reserving the right to make certain decisions. All other decisions required to be made under the Lease and Operating Agreement will be made by WPRA using its reasonable best efforts. WPRA shall act in accordance with directions given by the City with respect to the following matters and shall not:

- a) Sell, transfer, exchange or lease the Leased Assets except with the approval of the Mayor and City Council, provided, however, that this restriction shall not apply to (i) the property that is subject to conveyance (including without limitation, transfers of title, granting of easements and issuance of licenses) pursuant to the Option Agreement or the Lease, or (ii) non-exclusive utility easements, rights-of-way and licenses over, across, through and under its property for utility facilities that benefit the Winter Park Resort;
- b) Pledge, mortgage, or grant a deed of trust or security interest or other lien with respect to any interest in the Leased Assets except with the approval of the Mayor and the City Council, provided, however, that this restriction shall not apply to such actions with respect to the Development Parcels as collateral under the Agreed-Upon Indebtedness as provided in the Lease;
- c) Terminate the Lease, Option Agreement, the Additional Consideration Agreement, or the Guaranty, or amend or modify such documents in any way that has a materially adverse

financial effect on the interests of the City, except with the approval of the Mayor and City Council;

- d) Agree or consent to expansion, contraction or other modification to the boundaries covered by the Forest Service Permits or the Forest Service Master Plan except with the approval of the Mayor;
- e) Grant permission for the tenant under the Lease to acquire USFS Real Property that is not for Resort Operations except with the approval of the Mayor;
- f) Approve a waiver of any sublease limitations contained in the existing lease from The Colorado Arlberg Club or enter into a new lease with The Colorado Arlberg Club except with the approval of the Mayor;
- g) Exercise the rights upon default by the applicable Intrawest entity under the Lease, Option Agreement, Additional Consideration Agreement, the Guaranty, or related documents except with the approval of the Mayor;
- h) Consent to assignments, encumbrances and other transfers under the Lease or Option Agreement that require such consent, except with the approval of the Mayor;
- i) Amend or modify or consent with respect to any aspect of the Resort Operations Core Master Plan, Resort Operations Space identified on any Master Plan, and the deviations from permitted and prohibited uses with respect to any of the Core Areas in the Option Agreement except with the approval of the Mayor.

The provisions of this Section govern the relationship between the City and WPRA, and shall not constitute notice to any third party. Unless and until a person receives a specific prior written notice from the City to the contrary, any person dealing with WPRA may, without further inquiry, rely upon actions taken by the Association as being duly authorized and not in contravention of this Supplement.

**LEASE AND OPERATING AGREEMENT BETWEEN  
WPRA AND INTRAWEST /WINTERPARK OPERATIONS  
CORPORATION**

**EXECUTIVE SUMMARY**

**Lease Overview**

WPRA leases to Intrawest/Winter Park Operations Corporation (“Intrawest Operations”) all of its assets (which include real property, water rights, and personal property) at the Winter Park Resort (the “Resort”) for 50 years expiring on June 30, 2052, (with extensions for another 26 years). It also gives Intrawest Operations operating control of the resort and will apply to add Intrawest Operations as the operator of the Resort on the Forest Service Permit for the Resort. Intrawest Operations is charged with operating the Resort on a multi-seasonal basis, bringing to bear its resources and expertise. Certain development land is removed from the Lease as it is purchased by an Intrawest Operations affiliate (Intrawest/Winter Park Development Corporation (“Intrawest Development”)) under the Option Agreement.

**Payments to the City**

- Intrawest Operations pays the City \$3,000,000 at closing.
- Beginning on October 1, 2012, rent in an amount equal to \$2 million will be paid quarterly. Beginning on September 30, 2013, yearly payments equal to 3% of the Resort’s gross revenue over \$33 million will be paid in addition to the \$2 million based on gross revenue from the previous fiscal year (from July 1 to June 30). (See the summary of the Additional Consideration Agreement for non-contingent payments of \$2 million per year during the first 10 years.)
- Payments by Intrawest Operations for rent are superior to payments by Intrawest Operations to itself for return on investment.

**Operating Obligations and Investments by Intrawest Operations**

- Intrawest Operations pays or is financially responsible for:
  - Guaranteed amount of \$50 million for capital expenditures (including the 6% below) in intervals over 10 years, and all future capital expenditures.
  - 6% of the Resort’s gross revenue each year for maintenance and replacement capital.
  - All infrastructures for roads, utilities, parking, etc.
  - All operating cash shortfalls.
  - All payments of principal and interest on the agreed-upon indebtedness and any other debt incurred by Intrawest (except 90% of WPRA’s net sales proceeds for land under the Option Agreement which pays down principal of agreed-upon indebtedness).

- A \$150,000 operating fund to cover WPRA’s expenses for a couple of years.
- All ordinary and necessary operating and maintenance expenses of the Resort.
- Intrawest Operations is responsible for certain continued employee benefits:
  - Employees carry over their seniority on a variety of fringe benefit plans, including insurance, vacation and sick days and the 401(k) plan.
  - The existing 401(k) plan will be terminated but all employees will be permitted to rollover tax free into Intrawest Operations’ plan.
  - Health insurance benefits will be continued, and will be extended for at least one year to last year’s seasonal employees who come back.
- Intrawest Operations must operate the Winter Park Resort as a multi-season operation for both day and overnight guests and based on high quality standards of the industry.

**Assumption/Payment of Existing Obligations**

- Intrawest Operations pays or reimburses WPRA’s and the City’s expenses of the transaction in the amount of \$1,100,000.
- Intrawest Operations assumes all of WPRA’s existing liabilities, subject to certain agreements about debt (described below).
- The current WPRA pension plan is frozen and current employees are 100% vested.
- SERP benefits for certain retirees and management will vest and cash out at the closing.

**Debt**

WPRA may borrow up to \$33 million to replace the Resort’s existing debt and to fund transition and transaction costs and \$8 million of deferred capital maintenance (referred to as the Agreed Upon Indebtedness). This amount is the maximum amount of indebtedness that can be incurred during the Lease term. WPRA’s current lender is Wells Fargo. Wells Fargo has a mortgage on the developable land (except for most Resort Operations facilities), a leasehold deed of trust, and a deed of trust on Intrawest’s interest in the option property.

- Except for sales price payments for development land mentioned above, Intrawest Operations must pay the interest and principal of the debt.
- The amount of the debt permanently decreases as WPRA (not Intrawest Operations) pays down principal.
- Principal payments by Intrawest Operations do not increase the maximum amount of the debt. When Intrawest Operations makes a principal payment, it, or an affiliate, can become a lender under the Lease, and WPRA will enter into loan documents with Intrawest Operations or its affiliate. This debt is subordinate to the debt to Wells Fargo and is payable immediately on

the ordinary expiration of the Option Agreement or one year after an early termination of the Option Agreement.

- The lender has certain rights in the event of a Lease default by Intrawest Operations.
- Intrawest Operations will not otherwise pledge, loan or mortgage any interest of WPRA without WPRA's written consent or dispose of the Leased Assets.
- WPRA will not otherwise pledge, mortgage, grant a security interest or deed of trust in the Leased Assets without Intrawest Operations' written consent.

### **Negative Covenants of WPRA**

- WPRA is limited in disposing of the Resort assets for 20 years by giving a right of first refusal for 15 business days to Intrawest Operations.
- Both WPRA and Intrawest Operations recognize that if gaming were to become a permitted activity at the Resort, it will have an unpredictable effect. Therefore they are prohibited from conducting gaming activities until they get together and negotiate appropriate provisions.

### **Audits and Reports**

- WPRA receives quarterly and year end reports, and has full access to Resort books and records.
- WPRA and the City can audit Intrawest Operations' Winter Park books at any time.

### **Parent Guaranty**

Intrawest Operations Group LLC and Intrawest U.S. Holdings Inc. guarantee all financial obligations of Intrawest Operations under the Lease, the Option and the Additional Consideration Agreement.

### **Acquisition Rights**

- During the last five years of the Term, WPRA has the right to buy any assets, businesses or property then owned by Intrawest Operations.
- The purchase price depends on Intrawest Operations' return on equity for the asset, but can be as low as \$1 and may not be higher than fair market value.

### **Default and Remedies**

- Intrawest Operations defaults if it:
  - fails to make required payments or investments
  - fails to perform its obligations
  - Intrawest Development is in default under the Option Agreement

- becomes insolvent, is adjudged a debtor or bankrupt, is in liquidation, etc.
  - permits any person to use any portion of the Leased Assets for an illegal purpose
  - ceases to occupy the Leased Assets or operate the Resort
  - breaches a representation or warranty, which has a material adverse effect on WPRA
- If Intrawest Operations defaults and does not cure, WPRA:
    - can terminate the Lease
    - has a right to damages
    - may re-enter and take possession of the Leased Assets
    - may perform Intrawest Operations' obligations
    - may take all actions at law or in equity

### **Early Termination**

- In limited circumstances, Intrawest Operations can terminate the Lease early without being in default:
  - if WPRA defaults and does not cure
  - if the Resort closes for lack of snow at least 60 days during the ski season for 3 consecutive years or 5 out of 7 consecutive years
  - if there is massive destruction of the Resort making continued operation unfeasible if the government condemns so much of the Resort as to make the balance of it not functional



**AMENDED AND RESTATED OPTION AGREEMENT BETWEEN  
WPRA AND INTRAWEST /WINTER PARK DEVELOPMENT  
CORPORATION (AS FURTHER AMENDED)**

**EXECUTIVE SUMMARY**

**Option Overview**

WPRA grants Intrawest/Winter Park Development Corporation (“Intrawest Development”) the option to acquire all or portions of the Developable Land, which is identified on Exhibit A to the Option Agreement. The “Developable Land” excludes certain parcels referred to as Resort Parcels that are used in the operation of Winter Park Resort, such as parcels for lift bases or other ski area functions. Before December 23, 2012, Intrawest Development shall purchase Development Parcels on which the Master Plan for Winter Park Resort (to be developed by Intrawest Development under the Option Agreement) provides for at least 570 residential units. Intrawest Development may satisfy this obligation by paying the estimated sales price for the full number of Development Parcels with the subsequent right to close on them. The term of the option runs from the Effective Date until an uncured default by Intrawest Development or the expiration of the Lease Agreement (at least until June 30, 2052).

**Exercise of Option**

Intrawest Development can exercise its option to purchase a Development Parcel by delivering an option exercise notice to WPRA. The notice will specify a closing date that is not less than 30 nor more than 90 days away. It must also include the estimated sales price for the Development Parcel(s) to be purchased along with supporting documentation for the purchase price. Intrawest Development cannot be in default under the Option Agreement (and Intrawest Operations cannot be in default under the Lease), there can be no suit or action pending challenging the conveyance of the Development Parcel, and the proposed subdivision of the Development Parcel must be consistent with the Master Plan.

**Payments for Development Parcels**

The purchase price of the Development Parcels is 3.5% of the aggregate Sales Price of the units (based on the gross sales price paid by a third party purchaser or the fair market value of an unsold unit) as determined by an appraiser or by mutual agreement between Intrawest and WPRA.

- An initial payment equal to 3.5% of the estimated sales price is made when Intrawest Development buys a particular Development Parcel. It is based on the contracted gross sales prices for units to be built on the Development Parcel or the estimated gross sales prices of units to be built on the Development Parcel certified by a qualified appraiser or by mutual agreement between Intrawest and WPRA.
- A second payment equal to 3.5% of the actual sales price is determined when all units in a Development Parcel are sold but not later than the earliest to occur of (1) one year after a

certificate of occupancy is issued for the entire building or a unit in the building (if the building is devoted entirely to either residential or commercial uses), or (2) at least one certificate of occupancy is issued for a commercial unit and a residential unit if the building is devoted to both residential and commercial uses. It is based on the actual sales prices of the units and commercial space (or fair market value in the case of unsold units or space kept by Intrawest Development or an affiliate). If the initial payment to WPRA was too large, Intrawest Development has a credit against the next Development Parcel sale. If it was too small, Intrawest Development must make an additional payment to WPRA.

- Under certain circumstances, prepayments for a Development Parcel can have a credit required under the Lease. In those cases, Intrawest Development receives a credit for the prepayments.
- WPRA commits 90% of the purchase price it receives from Intrawest Development to pay down Agreed-Upon Indebtedness as provided for in the Lease.

### **Master Plan, Association and Master Declaration**

Intrawest Development must prepare the Master Plan for the Developable Land. It must identify all Resort Operations Space and Lift Parcels. There are three different types of property identified in the Master Plan: Resort Operations Core Area, Village Core Area and Additional Developable Land. The Master Plan must comply with the permitted and prohibited uses for each of these three areas. WPRA has a right to comment on and approve portions of the Master Plan, as described below. Intrawest Development must subdivide the Developable Land prior to purchasing Development Parcels.

Intrawest Development must also prepare a Declaration, concurrently with the Master Plan, to govern the Association. The Declaration has been completed and recorded against a portion of the Developable Land. WPRA has certain protections related to the Resort Operations under the Declaration.

### **Resort Operations and Resort Operations Space**

Intrawest Development is required by the Lease to maintain a certain amount of space for Resort Operations. Resort Operations Space means the buildings, facilities and improvements for the four-season operation of the Winter Park Resort. It is allowed only in the Resort Operations Core Area unless WPRA agrees to approve it in the other development areas.

- The Master Plan shall provide for Resort Operations Space having a minimum floor area equal to what WPRA has as of the effective date of the Option Agreement and equivalent day-skier parking spaces.
- WPRA has approval of the Resort Operations Core Area in the Master Plan and any amendments for the Resort Operations Core Area and other factors such as access, circulation which directly affect the Resort Operations Core Area.

- WPRA has approval over any Resort Operations Space located in any other development area
- WPRA has approval over prohibited and permitted uses
- WPRA has approval over any aspects of the master plan directly affecting Resort Parcels or Lift Parcels
- Each time WPRA conveys a Development Parcel to Intrawest Development that is designated to have Resort Operations Space, Intrawest Development and WPRA will record an Agreement and Covenant to Convey and Lease the Resort Operations Space after construction.
- Intrawest Development is required to build the Resort Operations Space with good and workmanlike quality, and after completion, convey it to WPRA for no additional consideration, free of monetary liens. WPRA then leases the Resort Operations Space to Intrawest Operations under the Lease.

### **Transfer Fees**

Prior to the sale of each Development Parcel to Intrawest Development, WPRA will record a Declaration of Transfer and Rental Fee requiring payment to WPRA of a 0.25% transfer fee.

- The transfer fee is on all future sales of property and on all rentals of residential units or commercial space under leases with a term of 30 years or more or with a purchase option at the end of the term at less than fair market value.
- WPRA will use the transfer fees for expenditures related to the Resort, such as public art and children's programs, and/or for WPRA's administrative expenses.

### **Parent Guaranty**

Intrawest Operations Group LLC and Intrawest U.S. Holdings, will guarantee all financial obligations of Intrawest Development under the Option Agreement.

### **Default**

Intrawest Development is in default under the Option Agreement if:

- It fails to make any payment required under the Option Agreement.
- It fails to perform any of its other covenants under the Option Agreement.
- It is adjudged insolvent, bankrupt or a debtor, fails to pay its debts when they come, makes an assignment for the benefit of creditors, has a receiver appointed, etc.
- A default occurs under the Lease.

If WPRA defaults (failure to perform covenants or failure to convey a Development Parcel), Intrawest Development has the right of specific performance first, and only if specific performance is not available, then for damages (excluding consequential or punitive damages).

### **Remedies**

If Intrawest Development defaults under the Option Agreement:

- WPRA has all rights in law and equity.
- WPRA has the right to repurchase any Development Parcels where Intrawest has not completed foundations within four years of purchase.
- WPRA has the right of specific performance if Intrawest has not purchased Development Parcels within ten years for 570 Residential Units, although the time is extended and the number of parcels required are reduced if WPRA prevents Intrawest Development from accomplishing this goal.

**ADDITIONAL CONSIDERATION AGREEMENT BETWEEN  
WPRA AND INTRAWEST /WINTER PARK HOLDINGS CORPORATION  
(NOW EXPIRED)**

**EXECUTIVE SUMMARY**

***Overview***

As consideration to WPRA for entering into the Lease and Option Agreements, and for foregoing rent for the first 10 years, Inrawest/Winter Park Holdings Corporation (“Inrawest Holdings”) will pay \$500,000 to WPRA at the beginning of each quarter for 10 years. Payments begin as of October 1, 2002, and end on July 1, 2012.

***Payments to the City***

Payment is unconditional. On a fiscal year basis, if the calculated cash flow for annual payment for the City payment from the Resort is less than \$2 million, then any shortfall is credited against future land sale payments.

***Default***

Inrawest Holdings is in default if:

- it fails to make a payment
- Inrawest Operations defaults under the Lease and WPRA has elected to accelerate rent payments
- it becomes insolvent, is adjudged a debtor or bankrupt, files a petition for bankruptcy, has a receiver appointed, etc.

***Remedies***

If a default has occurred WPRA can accelerate the entire remaining amount of payments under the agreement without discounting to present value.

**GUARANTY BY  
INTRAWEST HOLDINGS S.ÀR.L AND  
INTRAWEST U.S. HOLDINGS TO WPRA  
(AS AMENDED)**

**EXECUTIVE SUMMARY**

***Guaranty Overview***

The Lease, Option Agreement and Additional Consideration Agreement all originally contained financial promises by subsidiaries of Intrawest Holding S.a.r.l. and Intrawest U.S. Holdings (the “Parent Corporations”) to WPRA. This Guaranty puts the Parent Corporation at risk for those promises. The Parent Corporations are jointly and severally liable under the guaranty. The Guaranty was amended to change guarantors after the expiration of the Additional Consideration Agreement. Therefore the current Guaranty by Intrawest Operations Group LLC and Intrawest U.S. Holdings covers the Lease and the Option Agreements.

***Liability***

The Parent Corporations’ liability is typically broad for a guaranty, and covers:

- Payments made for years 1-10 in lieu of rent under the Additional Consideration Agreement (which Agreement has now expired)
- Rent payments that start in the 11<sup>th</sup> year under the Lease
- The capital expenditures commitment (\$50 million) under the Lease
- Funding the 6% capital maintenance and repair fund annually under the Lease
- Accelerated rent upon a default under the Lease
- Damages for breach of the Lease
- Indemnification payments under the Lease
- The purchase of land from WPRA in the first 10 years suitable to develop 570 residential units under the Option Agreement
- Payment of the deferred contingent purchase price for land parcels under the Option Agreement