

RESORT MUNICIPALITY OF WHISTLER

HOUSING AGREEMENT BYLAW (5298 ALTA LAKE ROAD) NO. 2329, 2022

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

WHEREAS the owner of land located at 5298 Alta Lake Road legally described as:

PID: 015-912-281

LOT B (REFERENCE PLAN 2643) EXCEPT PART DEDICATED ROAD ON PLAN BCP7865 DISTRICT LOT 2246 GROUP 1 NEW WESTMINSTER DISTRICT (the "Land")

wishes to develop employee and market housing on the Land;

AND WHEREAS the Resort Municipality of Whistler (Municipality) wishes to enter into a housing agreement in order to secure use of twenty-one (21) of the forty-three (43) dwelling units to be located on the Land for employee housing, in perpetuity.

NOW THEREFORE the Council of the Resort Municipality of Whistler, in open meeting assembled, **ENACTS AS FOLLOWS:**

CITATION

1. This Bylaw may be cited for all purposes as "Housing Agreement Bylaw (5298 Alta Lake Road) No. 2329, 2022".

AUTHORIZATION OF HOUSING AGREEMENT

2. Council hereby authorizes the Municipality to enter into a housing agreement with the owner of the Land in the form attached to this Bylaw as Schedule A (Housing Agreement).
3. The Mayor and Corporate Officer are authorized to execute the Housing Agreement and the Corporate Officer is authorized to sign and file in the Land Title Office a notice of the Housing Agreement as required by section 483 of the *Local Government Act*.

GIVEN FIRST, SECOND and THIRD READINGS this ___ day of _____, 2022.

ADOPTED this ___ day of _____, 2022.

Jack Crompton,
Mayor

Pauline Lysaght,
Corporate Officer

I HEREBY CERTIFY that this is a true copy of "Housing Agreement Bylaw (5298 Alta Lake Road) No. 2329, 2022".

**SCHEDULE A TO HOUSING AGREEMENT BYLAW (5298 ALTA
LAKE ROAD) NO. 2329, 2022**

HOUSING AGREEMENT

TERMS OF INSTRUMENT – PART 2

HOUSING AGREEMENT AND SECTION 219 COVENANT (WITH RENT CHARGE AND INDEMNITY)

This Agreement dated for reference June 21, 2022 is

BETWEEN:

RESORT MUNICIPALITY OF WHISTLER,

4325 Blackcomb Way, Whistler BC V8E 0X5

(the “**Municipality**”)

AND:

EMPIRE CLUB DEVELOPMENT CORPORATION, (INC.NO. C1141513),

401 - 37989 Cleveland Avenue, PO Box 1068, Squamish BC V8B 0A7

(the “**Owner**”)

WHEREAS:

- A. Section 483 of the *Local Government Act* permits the Municipality to, by bylaw, enter into a housing agreement that may include terms and conditions regarding the occupancy of housing units identified in the agreement, including terms and conditions respecting form of tenure, the availability of housing units to classes of persons, rents and lease, sale or share prices that may be charged and the rates at which these may be increased over time.
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Municipality that may include, among other things, provisions respecting the use of land or a building on land, that land is to be constructed in accordance with the covenant and that land is not be subdivided or may only be subdivided in accordance with the covenant.
- C. The Owner is the registered owner of the Land.
- D. The Owner and the Municipality wish to enter into this Agreement to provide for affordable employee housing on the Land, as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*.

THIS AGREEMENT is evidence that in consideration of the payment of \$1.00 by the Municipality to the Owner, and other good and valuable consideration, the receipt and sufficiency of which the Owner hereby

acknowledges, the Municipality and the Owner covenant and agree pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

Definitions

1. In this Agreement:

- a. "Agreement" means these Terms of Instrument - Part 2, the *Land Title Act* General Instrument – Part 1 to which these Terms of Instrument are attached and all Schedules attached to these Terms of Instrument.
- b. "CPI" means the Consumer Price Index for Canada, all-items, excluding eight of the most volatile components and the effect of changes in indirect taxes (CPIX), as determined by the Bank of Canada (or its successor in function), or, if that index is no longer published or available, a comparable index selected by the Municipality.
- c. "Change in CPI" means the percentage change (positive or negative) between:
 - (i) the CPI on the date of registration in the LTO of the transfer for the most recent sale of the Employee Unit; and
 - (ii) the CPI on the date of execution by the Owner and the purchaser of the contract of purchase and sale for the next sale of the Employee Unit;except that for first sale following the first transfer of the Employee Unit after issuance of an occupancy permit for the Employee Unit, the CPI applicable under paragraph (i) of this definition will be the CPI in effect on the date the purchaser pursuant to such first transfer entered into the contract under which they purchased the Employee Unit.
- d. "Daily Amount" means \$700.00 per day as of December 31, 2020, increased thereafter by the same percentage as the percentage increase, if any, in CPI from December 31, 2020 to January 1 of the calendar year of the applicable breach of this Agreement.
- e. "Development Plans" means the plans (including floor plans) attached as Schedule A.
- f. "Dwelling Unit" means a residential dwelling unit located on the Land.
- g. "Employee" means an individual who is either employed or self-employed for an average of at least 30 hours per week on an annual basis by a Qualified Whistler Business and is a Canadian citizen or has Canadian permanent resident status.
- h. "Employee Unit" means a Dwelling Unit that is designated as an Employee Unit pursuant to this Agreement.
- i. "Employee Unit (Rental Permitted)" means the Employee Unit designated on the Development Plans as Rental Permitted.

- j. "Gross Floor Area" shall have the meaning as defined in Zoning and Parking Bylaw No. 303, 2015 as may be amended from time to time.
- k. "Land" means the land described in Item 2 of the General Instrument – Part 1 forming part of this Agreement.
- l. "LTO" means the New Westminster Land Title Office, or its successor in function.
- m. "Maximum Price" means:
 - i. in respect of the sale of an Employee Unit to the person to whom the Employee Unit is first transferred following separate indefeasible title being raised in the LTO for the Employee Unit, either as a parcel or strata lot, the Original Maximum Price;
 - ii. in respect of any sale of the Employee Unit after the initial transfer referred to in paragraph (i) of this definition: the sale price for the then most recent sale of the Employee Unit plus that most recent sale price multiplied by the Change in CPI. Where the Change in CPI is negative or cannot be determined, the Maximum Price under this paragraph (ii) shall be the most recent sale price. The sample calculations set out in Schedule C attached hereto shall be used for the purposes of interpreting this definition of "Maximum Price".
- n. "Maximum Rent" means:
 - i. for an Employee Unit shown on the Development Plans as Unit Types A and C, the amount determined by multiplying the Original Maximum Rent by the Gross Floor Area of the Employee Unit; and
 - ii. for an Employee Unit shown on the Development Plans as Unit Type B, \$3,695.00;

in each case increased by the same percentage as the percentage increase, if any, in CPI since the date of registration of this Agreement.
- o. "Maximum Room Rental Rate" means \$800.00 per month, increased by the same percentage as the percentage increase, if any, in CPI since the date of registration of this Agreement.
- p. "Option/RFR" means the right of first refusal and option to purchase granted or to be granted by the Owner to the Municipality in respect of each Employee Unit as contemplated by this Agreement, in the form attached as Schedule D.
- q. "Original Maximum Price" means \$425.00 per square foot multiplied by the Gross Floor Area of the Employee Unit, increased by the same percentage as the percentage increase, if any, in CPI since the date of registration of this Agreement.
- r. "Original Maximum Rent" means \$2.75 per square foot.

- s. "Owner" means the person identified as "Owner" above and any subsequent person registered in the LTO as entitled to the fee simple of the Land or an Employee Unit, as the context may require.
- t. "Qualified Person" means an Employee or Retiree who does not own, either directly or indirectly through a trust, business asset or otherwise, any interest in real property anywhere in the world from the time that such person applies to WHA for an Employee Unit, or enters into contract to purchase an Employee Unit if not through WHA, until such person completes the purchase of an Employee Unit, unless:
 - i. the real property they own is:
 - A. less than 400 square feet in area,
 - B. less than 650 square feet in area and it is the principal residence of that person and one other individual, or
 - C. less than 850 square feet in area and it is the principal residence of that person and at least one child;or
 - ii. the real estate they own is located in Squamish or Pemberton; andthat person enters into an agreement with the Municipality to sell their interest in the real property within the time period specified by the Municipality, or that person enters into an agreement with the Municipality with respect to the real property and the Employee Unit on terms acceptable to the Municipality in its sole discretion.
- u. "Qualified Whistler Business" means an individual, partnership or incorporated body, with one or more employees, which operates a business that:
 - A. is operated at premises located either within the boundaries of the Resort Municipality of Whistler or at the Whistler Olympic Park;
 - B. holds a valid business license from the Municipality that is not a "non-resident business license" or is exempt from business licensing requirements;
 - C. is a permitted use of the business premises under the Municipality's zoning bylaw;
 - D. primarily serves Resort Municipality of Whistler residents, homeowners, businesses or tourists; and

- E. in the case of a home-based or mobile business, derives more than 75% of its business income from Resort Municipality of Whistler residents, homeowners, businesses or tourists.
- v. “Retiree” means an individual who (i) is at least 55 years of age; (ii) has ceased full-time employment (such that they work less than 30 hours per week) and was an Employee for at least 10 of the 12 years immediately preceding the date on which the individual ceased full-time employment; and (iii) is a Canadian citizen or has Canadian permanent resident status.
- w. “Sale Price” means the gross sale price for an Employee Unit, plus any goods and services tax and including any fee paid to obtain home warranty insurance under the *Homeowner Protection Act*, but without customary vendor-purchaser adjustments such as for rent, strata fees, property taxes, utilities and real estate commission.
- x. “Tenancy Agreement” means a written agreement between the Owner and an individual providing the individual with a right to occupy and possession of an Employee Unit.
- y. “Tenant” means a tenant under a Tenancy Agreement.
- z. “Whistler Housing Authority” or “WHA” means Whistler Housing Authority Ltd., or its successor in function as the Municipality may designate from time to time.

Development Restrictions, Designation of Employee Units & Registration of Option/RFR

2. Development Restrictions:

- a. **Development Requirements** – The Land shall not be built-upon except in accordance with the Development Plans, except as otherwise may be approved by the General Manager of Resort Experience.
- b. **Employee Units Designation** – The 21 Dwelling Units shown on the Development Plans as the Employee Housing are hereby designated, and shall be, Employee Units for the purposes of this Agreement.
- c. **Completion and Subdivision of Employee Units & Registration of Option/RFR** - Except for 2 residential townhouse dwelling units and 2 tourist accommodation dwelling units, no Dwelling Unit on the Land may be occupied or used for any purpose until:
 - i. the 21 Employee Units have been constructed to completion in accordance with the Development Plans and the Municipality has issued occupancy permits for all such Employee Units;
 - ii. the Land has been subdivided such that separate indefeasible titles have been raised in the LTO for each Employee Unit on the Land, as individual parcels or strata lots; and

- iii. the Owner has granted the Option/RFR to the Municipality in relation to each Employee Unit and caused the Option/RFR to be registered in the LTO against title to each Employee Unit, with priority over all mortgages and other financial liens, charges and encumbrances, except those in favour of the Municipality or approved in writing by the Municipality.
- d. **Concurrent Construction of Employee Units and Additional Townhouse and Tourist Accommodation Dwellings** - Except for 2 residential townhouse dwelling units and 2 tourist accommodation dwelling units and the 21 Employee Units:
 - i. No Dwelling Unit shall be constructed on the Land unless the Municipality has issued building permits for the construction of all 21 Employee Units on the Land in accordance with the Development Plans.
 - ii. No Dwelling Unit shall be constructed on the Land unless the construction of all 21 Employee Units on the Land in accordance with the Development Plans has begun to the satisfaction of the Municipality.
 - iii. No Dwelling Unit units shall be constructed on the Land unless constructed after or concurrently with the construction on the Land of the 21 Employee Units in accordance with the Development Plans.
- e. **Employee Unit Occupation** – With the exception of the Employee Unit (Rental Permitted), an Employee Unit shall not be occupied or otherwise used for any purpose until the Employee Unit has been sold or transferred to a Qualified Person in accordance with this Agreement.
- f. **Subdivision Restriction** – The Land shall not be subdivided, including by deposit of a strata plan of any kind under the *Strata Property Act* (British Columbia) unless:
 - i. the subdivision will result in separate indefeasible titles being raised in the LTO for each Employee Unit on the Land, as individual parcels or strata lots; and
 - ii. concurrently with the deposit in the LTO of the plan to give effect to such subdivision, prior to application being made to the LTO to transfer any of the Employee Units, the Owner causes the Option/RFR to be registered in the LTO against title to each Employee Unit, with priority over all mortgages and other financial liens, charges and encumbrances, except those in favour of the Municipality or approved in writing by the Municipality
- g. **Withholding Municipal Permits & Issuance of Stop Work Orders** – The Owner agrees that the Municipality may refuse to issue building permits and occupancy permits, and may issue ‘stop work orders’, as the Municipality considers necessary, acting reasonably, in order to ensure compliance with this section and the Owner shall comply with any such stop work order. Without limiting the foregoing, the Municipality may issue a stop work order to the

Owner if, under paragraph d. iii. of this section, construction of a Dwelling Unit with respect to which that paragraph applies is, in the opinion of the Municipality, acting reasonably, proceeding at a materially faster pace than construction of any of the 21 Employee Units on the Land.

Sales of Employee Units

3. **Purchasers** - An Employee Unit may not be sold or transferred except to a Qualified Person and except in accordance with the terms and conditions of the Housing Agreement, the Option/RFR and the resale policies of Whistler Housing Authority (WHA). Without limiting the foregoing, the Owner must first make the Employee Unit available for sale to Qualified Persons on the WHA waitlist in accordance with waitlist priority and shall not otherwise be permitted to sell the Employee Unit to any other Qualified Person unless they have been unable to enter into a contract for the sale of the Employee Unit with a Qualified Person on the waitlist for the Maximum Price for a period of 60 days.
4. **Sale Price Limits** – An Employee Unit may not be sold or otherwise transferred for a sale price that exceeds the Maximum Price for the Employee Unit.

Employee Unit Occupancy

5. **Employee or Retiree** - Each Employee Unit may only be used and occupied as a permanent primary residence, occupied by an Employee or Retiree. For clarity, no person may occupy an Employee Unit except for an Employee or a Retiree and that individual's relations and spouse as permitted under the next following section.
6. **Relatives and Spouses, Room Rental** - In addition to the Employee or Retiree who occupies an Employee Unit:
 - a. one or more additional individuals may also occupy an Employee Unit with such Employee or Retiree, if such additional individual or individuals occupy the Employee Unit as a single domestic unit with the Employee or Retiree and each such additional individual is either related by blood, marriage, adoption, common law marriage or foster parenthood to such Employee or Retiree or cohabites with them in a spousal relationship; and
 - b. an Employee or Retiree may rent one or more rooms in the Employee Unit (but, for clarity, only to an Employee or Retiree) pursuant to a Tenancy Agreement at a rent not to exceed the Maximum Room Rental Rate and the provisions of this Agreement applicable to the rental of an Employee Unit shall apply to such room rental.
7. **Occupancy Limit** - The number of individuals occupying an Employee Unit shall not exceed the number of individuals the Municipality's Building Inspector determines may reside in the Employee Unit given the number and size of bedrooms in the Employee Unit and any applicable standards and requirements contained in any bylaws of the Municipality.

8. **Owner Occupancy Requirement** - At least one Employee or Retiree who occupies the Employee Unit must be the Owner of the Employee Unit and the Owner must occupy the Employee Unit for at least 6 months plus one day in each calendar year as their permanent primary residence, except that:
- a. the Owner may rent the Employee Unit in accordance with the requirements of this Agreement for up to six months less one day in each calendar year and shall rent the Employee Unit in accordance with the requirements of this Agreement during those periods when the Owner is not occupying the Employee Unit; or
 - b. if the Owner is unable, despite using documented best efforts, to rent the Employee Unit in accordance with the requirements of this Agreement for a period required by paragraph (a) of this section, the Owner may, with Whistler Housing Authority's prior written approval, leave the Employee Unit vacant for up to six months less one day in each calendar year rather than renting it during that period as permitted by paragraph (a) of this section.

The Owner may apply to the Whistler Housing Authority to extend a period of rental or vacancy under paragraph (a) or (b) of this section and on such application Whistler Housing Authority may, in its sole discretion, authorize such an extension and any such authorization shall only be effective if it is express and made in writing.

This section shall not apply to the Employee Unit (Rental Permitted).

9. **Statutory Declarations** - Within three days following the Municipality's request from time to time, the Owner of an Employee Unit will deliver to the Municipality a statutory declaration in respect of the Employee Unit made by the Owner, substantially in the form attached as Schedule B and containing all of the information required to complete the statutory declaration, together with any evidence the Municipality may request under the next following section. The Municipality may request such a statutory declaration in respect of an Employee Unit no more than four times in any calendar year. The Owner hereby irrevocably authorizes the Municipality to make such inquiries as it considers necessary and reasonable in order to confirm that the Owner is complying with this Agreement, and irrevocably authorizes and directs the recipient of such a request for information from the Municipality to provide the requested information to the Municipality.
10. **Additional Evidence** - The Municipality may require upon request supporting evidence in support of in a statutory declaration under the preceding section, including copies or certified copies of any or all of the following:
- a. ICBC vehicle insurance and registration,
 - b. government-issued personal identification, including driver's license, BCID card, British Columbia Services Card, Home Owner's Grant,
 - c. income tax returns and notices of assessment,

- d. wills, grants of probate, or grants of administration,
 - e. pay statements or records of employment,
 - f. educational enrolment verification of,
 - g. separation agreements, and
 - h. insurance certificates for homeowners or tenants insurance.
11. **Hardship Relief from Occupancy Requirements** - If the Owner of an Employee Unit cannot comply with the occupancy requirements of this Agreement in relation to the Employee Unit for reasons of hardship, the Owner may request in writing that the Municipality alter the Owner's obligations under this Agreement with respect to the Employee Unit, but no such request may be made later than 30 days after the Municipality has delivered to the Owner a notice of breach of this Agreement. The request must set out the circumstances of the hardship and the reasons why the Owner cannot comply with the occupancy restrictions. For clarity, whether or not to grant relief to the Owner pursuant to a request under this section shall be in the Municipality's sole discretion, the Municipality is under no obligation to grant any relief under this section and nothing in this section shall affect the Municipality's rights and remedies in respect of this Agreement.

Employee Unit Rental

12. During such periods when the Owner of an Employee Unit is not required to occupy the Employee Unit pursuant this Agreement, the Owner may rent the Employee Unit but, for clarity, only to an Employee or Retiree (together with, if applicable, other persons as permitted under section 6), and only in accordance with the following requirements:
- a. **Tenancy Agreement** – the Employee Unit may only be occupied pursuant to a Tenancy Agreement;
 - b. **Monthly Rent** – rent for the Employee Unit must be payable on a monthly basis;
 - c. **Maximum Rent** – the monthly rent payable for the Employee Unit must not exceed the Maximum Rent for the Employee Unit;
 - d. **Tenancy Agreement Term & Termination Notice** – the Tenancy Agreement shall be a fixed term tenancy agreement ending so as to enable the Owner to occupy the Employee Unit when required by this Agreement and the Owner of the Employee Unit shall provide notice to the Tenant ending the tenancy sufficiently in advance of the date specified in the Tenancy Agreement for the end of the tenancy so as to enable the Owner to end the tenancy on that date in accordance with the requirements of the *Residential Tenancy Act* (British Columbia);
 - e. **Extra Charges** – the Owner may not require the occupants to pay any extra charges or fees for use of any common property, limited common property or other common area, including parking or storage areas, or for sanitary sewer, storm sewer, water utilities, strata fees or

- levies or property taxes, provided that, for clarity, this section does not apply to cablevision, telephone, other telecommunications, gas utility or electricity utility fees or charges and further that the Owner may charge a maximum of an additional \$75.00 per month if the Employee Unit is fully furnished and an additional \$25.00 per month if the Employee Unit contains a fully functioning washer and dryer;
- f. **Storage and Garage Not Habitable Space** – storage areas and garage space shall not be habitable space or rented as such;
 - g. **Attach this Agreement** – a copy of this Agreement must be attached to the Tenancy Agreement;
 - h. **Tenant to Comply** – the Tenancy Agreement must include a clause requiring the Tenant to comply with the use and occupancy restrictions contained in this Agreement;
 - i. **Termination for Agreement Contravention** – the Tenancy Agreement must include a clause entitling the Owner to terminate the Tenancy Agreement in accordance with the *Residential Tenancy Act* if the Tenant uses or occupies, or allows use or occupation of, the Employee Unit in contravention of this Agreement;
 - j. **Identified Occupants** – the Tenancy Agreement must identify all occupants of the Employee Unit, and must stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Employee Unit for more than 30 consecutive days in any calendar year;
 - k. **Absentee Tenants** – the Tenancy Agreement must provide that the Owner may terminate the Tenancy Agreement if the Tenant remain absent from the Employee Unit for three consecutive months or longer;
 - l. **No Sublease** – the Tenancy Agreement must provide that the Tenant will not sublease the Employee Unit or assign the Tenancy Agreement; and
 - m. **Copy to Municipality** – the Owner must deliver a copy of the Tenancy Agreement to the Municipality upon demand.
13. **Tenancy Agreement Termination for Tenant Contravention** - The Owner of an Employee Unit must terminate a Tenancy Agreement for the Employee Unit where the Tenant uses or occupies, or allows use or occupation of the Employee Unit in contravention of this Agreement or the Tenancy Agreement, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act* (British Columbia).
 14. **Tenancy Agreement Termination for Owner Occupancy** - The Owner of the Employee Unit shall provide notice to the Tenant ending a tenancy under a Tenancy Agreement for the Employee Unit sufficiently in advance of the date specified in the Tenancy Agreement for the end of the tenancy so as to enable the Owner to end the tenancy on that date in accordance with the requirements

of the *Residential Tenancy Act* (British Columbia) so as to enable the Owner to occupy the Employee Unit when required by this Agreement.

15. **Screening Tenants** - The Owner will be solely responsible for screening prospective tenants to determine whether or not they qualify to occupy an Employee Unit in accordance with this Agreement notwithstanding that the Employee Unit may be rented to someone from the Whistler Housing Authority rental waitlist. In addition, the Municipality and Whistler Housing Authority are not responsible for, and make no representation to the Owner regarding, the suitability of any prospective tenant on the Whistler Housing Authority's tenancy list.

Death of Owner

16. Despite anything to the contrary, in the event of the death of the Owner of an Employee Unit, the Employee Unit may be transferred from the Owner's estate to the Owner's spouse or a child of the Owner who is at least 19 years old, provided that such spouse or child is a Qualified Person, without having to first make efforts to sell the Employee Unit to a Qualified Person on the Whistler Housing Authority's Qualified Person list. In addition, if the Owner dies without a spouse, but has a child younger than 19 years old, the Municipality may, in its sole discretion, approve of a transfer to another family member or the child's legal guardian, even though not a Qualified Person, who may occupy the Employee Unit with the child, on such terms and conditions as the Municipality may consider necessary to achieve the intent of this Agreement. If, and for so long as, title in the LTO to the Employee Unit remains in the name of a deceased owner, the executor of the deceased owner's estate may request that the Municipality permit occupancy of the Employee Unit on a rental basis in accordance with the requirements of this Agreement and the Municipality may, in its sole discretion, approve of such an arrangement, on such terms and conditions as the Municipality may consider necessary to achieve the intent of this Agreement.

Transfer to Child as Co-Owner

17. If an Owner's child is at least 19 years old and a Qualified Person, the Owner may add the name of the child on to title of the Employee Unit in the LTO.

Lender as Owner

18. For the purposes of this section, the following terms have the following meanings:

"Lender", "Efforts to Sell" and "Bona Fide Offer" have the meanings given to them in the Option/RFR.

Notwithstanding any other provision of this Agreement, if the Owner is a Lender and has for a period of at least 120 days made Efforts to Sell an Employee Unit, but, despite such Efforts to Sell, has been unable to enter into a Bona Fide Offer or to sell the Employee Unit to the Municipality, the Municipality agrees that upon such Owner providing the Municipality with evidence of such Efforts to Sell satisfactory to the Municipality, acting reasonably, the Municipality will execute and

deliver to such Owner a complete discharge of this Agreement and the Option/RFR in respect of that Employee Unit, in registrable form.

Capital Improvements

19. If the Owner of an Employee Unit has made capital improvements to an Employee Unit that required the issuance of a building permit by the Municipality, then the Municipality may, in its sole discretion, permit the Owner to increase the sale price for the Employee Unit at the time of resale up to an amount commensurate with the value of the capital improvements. To assist the Municipality in determining the value of the capital improvements, the Owner must provide receipts and invoices for the completed work to the Municipality. If the Owner is dissatisfied with the value of the improvements as determined by the Municipality, the Owner may, at its expense, engage a Quantity Surveyor to establish the value of such improvements, but the Municipality will in no way be bound by the value established by the Quantity Surveyor, and the Municipality will, in its sole discretion, determine the permitted increase, if any, in the sale price. For greater certainty, the Municipality will not permit any increase in the sale price for improvements that have been made without a building permit issued by the Municipality.

Demolition of Employee Unit

20. The Owner of an Employee Unit will not demolish the Employee Unit unless;
- a. the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Employee Unit, and the Owner has delivered to the Municipality a copy of the engineer's or architect's report; or
 - b. the Employee Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the Municipality in its sole discretion, acting reasonably, and
 - c. a demolition permit for the Employee Unit has been issued by the Municipality (unless the Employee Unit has already been destroyed by an accident, act of God, or sudden and unanticipated force) and the Employee Unit has been demolished under that permit.

For clarity, following any such demolition, this Agreement shall continue to apply to the Land and the Employee Units, except to the extent this Agreement is modified by execution of a written modification agreement authorized by bylaw of the Municipality in accordance with section 483 of the *Local Government Act*.

Rent Charge

21. **Rent Charge Calculation** - The Owner acknowledges that the Municipality requires employee housing to attract employees to work for local businesses and that these businesses generate tax and other revenue for the Municipality and economic growth for the community. The Owner therefore agrees that, in addition to any other remedies available to the Municipality under this

Agreement or at law or equity, if the Employee Unit is used or occupied in breach of this Agreement or rented at a rate in excess of that permitted under this Agreement, the Owner will pay, as a rent charge under the next following section, the Daily Amount to the Municipality for each day of the breach of this Agreement. The Daily Amount is due and payable immediately upon receipt by the Owner of an invoice from the Municipality for the same.

22. **Rent Charge for Amounts Owing to Municipality** - The Owner hereby grants to the Municipality a rent charge under Section 219 of the *Land Title Act* (British Columbia), and at common law, securing payment by the Owner to the Municipality of any amount payable by the Owner pursuant to this Agreement. The Owner agrees that the Municipality, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the Municipality in law or in equity.
23. **Rent Charge for Excess Sale Price** - If an Employee Unit is sold for a sale price exceeding the Maximum Price, the Owner of the Employee Unit will pay the excess amount to the Municipality, as a rent charge under the preceding section, within 30 days after written demand is made by the Municipality. The amount remaining unpaid after the 30 days will bear interest at 10 percent calculated from the due date until the date paid, compounded annually not in advance.

General

24. **Interpretation** - In this Agreement:
- a. reference to the singular and masculine includes a reference to the plural, feminine and body corporate, and vice versa, unless the context requires otherwise;
 - b. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - c. if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
 - d. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - e. reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
 - f. time is of the essence;
 - g. all provisions are to be interpreted as always speaking;
 - h. reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;

- i. where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

Notice of Housing Agreement

25. The Owner acknowledges and agrees that:
 - a. this Agreement constitutes a covenant under Section 219 of the *Land Title Act* and a housing agreement entered into under section 483 of the *Local Government Act* (British Columbia); and
 - b. the Municipality will file a notice of housing agreement under section 483 of the *Local Government Act* in the LTO against title to the Land.

Management and Repair

26. The Owner of an Employee Unit shall:
 - a. furnish good and efficient management of the Employee Unit or, if required by the Municipality, in its sole discretion, hire a person with the skill and expertise to provide good and efficient management of the Employee Unit;
 - b. maintain the Employee Unit in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land and the Employee Unit;
 - c. permit representatives of the Municipality to inspect the Employee Unit at any reasonable time, subject, if applicable, to the Owner giving notice to any Tenant pursuant to the provisions for landlord entry in the *Residential Tenancy Act*.

Indemnity

27. The Owner will indemnify and save harmless the Municipality and Whistler Housing Authority Ltd. and each of their elected officials, officers, directors, and employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:
 - a. any act or omission or negligence of the Owner, or its officers, directors, employees, agents, contractors, tenants, invitees or other persons for whom at law the Owner is responsible;
 - b. the Owner’s ownership, occupation, lease, operation, management or financing of the Land or the Employee Unit; or
 - c. any act or omission of the Municipality or any of its elected officials, board members, officers, directors, employees, agents or contractors in carrying out or enforcing this Agreement,

except where such act or omission constitutes a breach of this Agreement by the Municipality or by any other person for whom at law the Municipality is responsible.

Release

28. The Owner by this Agreement releases and forever discharges the Municipality and Whistler Housing Authority Ltd. and each of their elected officials, officers, directors, employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or connected to the Land or the Employee Unit, including advice or direction respecting the ownership, lease, operation or management of the Land or the Employee Unit which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them.

Powers Unaffected

29. This Agreement does not:
- a. affect or limit the discretion, rights, duties or powers of the Municipality under any enactment or at common law, including in relation to the use or subdivision of the Land or an Employee Unit;
 - b. impose on the Municipality any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - c. affect or limit any enactment relating to the use or subdivision of the Land or an Employee Unit; or
 - d. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land or an Employee Unit.

Benefit to Municipality

30. The Owner and the Municipality agree that:
- a. this Agreement is entered into only for the benefit of the Municipality;
 - b. this Agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Land or an Employee Unit;
 - c. the Municipality may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

No Public Law Duties

31. Where the Municipality is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that

the Municipality is under no public law duty of fairness or natural justice in that regard and agrees that the Municipality may do any of those things in the same manner as if it were a private party and not a public body.

Notices

32. Any notice to be given to a party pursuant to this Agreement will be sufficiently given if delivered to the postal address of Owner set out in the records at the LTO, and in the case of the Municipality addressed:

To: Corporate Officer, Resort Municipality of Whistler
4325 Blackcomb Way, Whistler, BC V8E 0X5
Email: corporate@whistler.ca

And to: Whistler Housing Authority Ltd.,
#325 - 2400 Dave Murray Place, Whistler, BC V8E 0M3
Email: mail@whistlerhousing.ca

or to the most recent postal address provided in a written notice given by one party to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery, if delivered by hand or email, or on the third day after it is dispatched for delivery, if delivered by mail.

Enurement

33. This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto, notwithstanding any rule of law or equity to the contrary.

Severance

34. If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

Remedies Cumulative, Waivers

35. All remedies of the Municipality will be cumulative and may be exercised by the Municipality in any order or concurrently in case of any breach by the Owner and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the Municipality exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

Entire Agreement

36. This Agreement constitutes the entire Agreement between the Owner and the Municipality respecting the subject matter of this Agreement.

Further Assurances

37. Upon request by the Municipality the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the Municipality to give effect to this Agreement

Runs With Land

38. This Agreement burdens and runs with, and binds the successors in title to, the Land and every parcel (including strata lots) into which it is subdivided, including each and every Employee Unit.

Remedies

39. The Owner acknowledges and agrees that damages would be an inadequate remedy for the Municipality for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, and/or the exercise by the Municipality of the Option/RFR, and/or enforcement of the rent charge under this Agreement, as remedies for a default by the Owner under this Agreement.

No Agency

40. Nothing in this Agreement will constitute the Owner as the agent, joint venturer or partner of the Municipality or give the Owner any authority to bind the Municipality in any way.

Governing Law

41. The laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

Contract and Deed

42. By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

Executed by the parties with effect from the date first written above.

Resort Municipality of Whistler

**EMPIRE CLUB DEVELOPMENT
CORPORATION**

Mayor: Jack Crompton

Authorized Signatory:

Corporate Officer: Pauline Lysaght

Authorized Signatory: