

SCHEDULE B TO HOUSING AGREEMENT
STATUTORY DECLARATION
CANADA
PROVINCE OF BRITISH COLUMBIA
IN THE MATTER OF A HOUSING AGREEMENT WITH
THE RESORT MUNICIPALITY OF WHISTLER (“Housing
Agreement”)

TO WIT:

I, _____ of _____, British Columbia, do

solemnly declare that:

1. I am the owner of _____ (the “Dwelling Unit”), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement in respect of the Dwelling Unit.
3. For the period from _____ to _____ the Dwelling Unit was occupied only by the Employees and Retirees (as defined in the Housing Agreement) whose names and current addresses and whose employer’s names and current addresses appear below:

Names, addresses and phone numbers of Employees and Retirees:

Names, addresses and phone numbers of Employers:

4. The rent charged each month for the Dwelling Unit is as follows:
 - (a) the monthly rent on the date 365 days before this date of this statutory declaration: \$ _____ per month;
 - (b) the rent on this date of this statutory declaration: \$ _____; and
 - (c) the proposed or actual rent that will be payable on the date that is 90 days after the date of this statutory declaration: \$ _____.
5. I acknowledge and agree to comply with the Owner’s obligations under this Agreement, and other charges in favour of the Municipality registered in the land title office against the land on which the Dwelling Unit is situated and confirm that the Owner has complied with the Owner’s obligations under these Agreements.

6. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at the)
_____, British Columbia this)
_____ day of _____)
)
)

A Commissioner for taking Affidavits
for British Columbia

SCHEDULE C TO HOUSING AGREEMENT
SAMPLE CALCULATIONS FOR MAXIMUM PRICE

Example 1

A first sale after initial sale

Previous Sale Price (from initial sale) \$200,000

Change in CPI =

$$\frac{\text{CPI at date of contract for resale } 113.4 - \text{CPI at date of execution of contract for first sale } 112.3}{112.3} = .0098$$

$$\text{Maximum Price} = \$200,000 \text{ plus } (\$200,000 \times .0098 = \$1,960) = \$201,960$$

Example 2

A third resale.

Previous Sale Price (from second sale) \$201,960

Change in CPI=

$$\frac{\text{CPI at date of contract for sale } 116.1 - \text{CPI at Previous Sale (second sale in this example) } 113.4}{113.4} = .0238$$

$$\text{Maximum Price} = \$201,960 \text{ plus } (\$201,960 \times 0.0238 = \$4,806.65) = \$206,767$$

Example 3

A resale where CPI has declined

Previous Sale Price \$213,647

Change in CPI

$$\frac{\text{CPI at date of contract for sale } 113.9 - \text{CPI at Previous Sale } 114.2}{114.2} = \text{negative } .0026$$

$$\text{Maximum Price} = \text{Previous Sale Price of } \$213,647 \text{ (because percentage change is negative)}$$

SCHEDULE D TO HOUSING AGREEMENT
RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE

TERMS OF INSTRUMENT – PART 2

This Agreement dated for reference _____ is

BETWEEN:

RESORT MUNICIPALITY OF WHISTLER, 4325 Blackcomb Way Whistler, BC V8E 0X5

(the “**Municipality**”)

AND:

**[INSERT NAME AND ADDRESS OF REGISTERED OWNER AT TIME OF REGISTRATION OF
OPTION/RFR]**

(the “**Owner**”)

WHEREAS:

- A. The Owner is the registered owner of the land legally described in the *Land Title Act* Form C attached to and forming part of this Agreement (the “**Land**”);
- B. The Owner and the Municipality have entered into an agreement for the provision of affordable employee housing, as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*, registered in the LTO against title to the Land under number _____ (the “**Housing Agreement**”);
- C. The purpose of the Housing Agreement and this Agreement is to ensure that the Land is used solely for the provision of affordable housing for Employees or Retirees (as those terms are defined in the Housing Agreement); and
- D. In order to ensure that the Employee Unit (as defined below) is occupied and disposed of in accordance with the Housing Agreement, the Owner wishes to grant to the Municipality a right of first refusal to purchase and an option to purchase the Employee Unit on the terms and conditions set out in this Agreement;

THIS AGREEMENT is evidence that in consideration of the mutual promises contained in it and inconsideration 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 Owner and the Municipality covenant and agree as follows:

PART I – DEFINITIONS

1. In this Agreement, in addition to the terms defined above and elsewhere 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) “Bona Fide Offer” means an offer to purchase the Owner’s Interest in the Employee Unit:
 - (i) in writing;
 - (ii) signed by an Outside Offeror;
 - (iii) in a form legally enforceable against the Outside Offeror and subject to no conditions except subject to financing (if required by the Outside Offeror) and except for the Municipality’s Subject;
 - (iv) providing for a deposit of not less than 5% of the proposed purchase price within 72 hours of the removal or waiver of the Municipality’s Subject;
 - (v) for a purchase price that does not exceed the Maximum Price but may be less than the Maximum Price;
 - (vi) providing that if the Municipality does not exercise its RFR, the Outside Offeror will grant to the Municipality a right of first refusal and option to purchase the Land upon the same terms and conditions as are set forth in this Agreement;
 - (vii) providing that the Outside Offeror will not assign or transfer the contract for the purchase of the Employee Unit; and
 - (viii) confirming that the Outside Offeror has read and understood the terms of this Agreement, the Housing Agreement and all other charges in favour of the Municipality that are registered in the LTO against the Land and that the Outside Offeror agrees to be bound by the Owner’s obligations pursuant to such charges.
 - (c) “Business Day” means Monday to Friday inclusive except for those excluded days declared by lawful authority as statutory holidays, and excluding any day that the LTO is not open

for business.

(d) “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.

(e) “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.

(f) “Dispose” means to transfer by any method, and includes assign, give, sell, grant, convey, bequeath, devise, divest, and agree to do any of those things.

(g) “Employee Unit” means the residential dwelling unit located on or comprising the Land, whether that dwelling unit is an entire building or part of a building, and whether or not it is a strata lot.

(h) “Efforts to Sell” means the best efforts of the Lender, as Owner, to sell the Employee Unit using all reasonable means, including listing the Employee Unit for sale with a licensed real estate agent, advertising the Employee Unit for sale in the local newspapers, and offering to sell the Employee Unit to the Municipality on the following terms:

(i) specifying in a written notice that it is offering to sell the Employee Unit to the Municipality in accordance with section 23 of this Agreement; and

(ii) giving the Municipality the exclusive right, for 15 Business Days from the date on which the Municipality receives the notice from the Lender, as Owner, pursuant to section 23 of this Agreement, to give a written notice to the Lender, as Owner, agreeing to purchase the Employee Unit for the purchase price which does not exceed the Maximum Price, and otherwise on the terms set out in Part V of this Agreement.

(i) “Gross Floor Area” shall have the meaning as defined in the Municipality’s Zoning and Parking Bylaw No. 303, 2015 as amended from time to time.

- (j) "Interest" means the property interest of the Owner in the Employee Unit.
- (k) "Lender" means a mortgagee that is a bank or other financial institution established or regulated under any enactment of British Columbia or Canada, or a receiver or receiver-manager acting on behalf of such mortgagee.
- (l) "LTO" means the New Westminster/Vancouver Land Title Office or its successor.
- (m) "Maximum Price" means:
 - (i) in respect of the sale of the 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 A attached hereto shall be used for the purposes of interpreting this definition of "Maximum Price".
- (n) "Municipality's Subject" mean the following clauses:

"The obligation of the seller to complete the transaction contemplated herein is subject to the following (the "Seller's Conditions"):

 - (i) the seller notifying the buyer in writing not later than ___ that the Resort Municipality of Whistler (the "Municipality") has approved the terms of the sale of the Land to the buyer and that the Municipality has decided not to exercise its Option to Purchase the Land or its right to purchase the Land under its Right of First Refusal with respect to this transaction only; and
 - (ii) the seller notifying the buyer in writing not later than _____ that the Municipality has confirmed the buyer's eligibility to acquire the Land.

The Seller's Conditions are for the sole benefit of the seller and may be satisfied by the seller by notice in writing to the buyer. If the Seller's Conditions are not satisfied on or before the date specified for their removal, this agreement will be automatically terminated, the deposit will be returned to the buyer, and neither party will have any further obligation to the other under this agreement."
- (o) "Option" means the option to purchase granted in Part IV.

- (p) “Original Maximum Price” means \$495.28 per square foot multiplied by the Gross Floor Area of the Employee Unit.
- (q) “Outside Offeror” means a purchaser or prospective purchaser of the Employee Unit who deals at arm’s-length with the Owner of the Employee Unit and who is eligible to purchase the Employee Unit under the Housing Agreement.
- (r) “Owner” includes the “Owner” as defined above and any person who is a registered owner in fee simple of the Employee Unit from time to time.
- (s) “RFR” means the right of first refusal granted in Part III.
- (t) “Whistler Housing Authority” means Whistler Housing Authority Ltd., or its successor in function as the Municipality may designate from time to time.

PART II - DISPOSITION OF EMPLOYEE UNIT

Limits on Disposition

2. The Owner covenants and agrees that the Owner will not Dispose of the Employee Unit except in accordance with this Agreement, the Housing Agreement and the resale policies of Whistler Housing Authority Ltd.

Disposition only to Outside Offeror

3. Without limiting the preceding section, the Owner may not Dispose of the Employee Unit other than to the Municipality or to an Outside Offeror pursuant to a Bona Fide Offer.

PART III - RIGHT OF FIRST REFUSAL

Right of First Refusal

4. The Owner covenants and agrees as follows:
 - (a) The Owner will not Dispose of the Employee Unit for any consideration not consisting entirely of lawful money of Canada.
 - (b) If the Owner receives an offer to purchase the Employee Unit (the “Offer”) that the Owner is willing to accept, then the Owner must offer to sell the Employee Unit to the Municipality on the terms that are set out in Part V of this Agreement, by giving to the Municipality a notice in writing (the “Notice”) attached to a copy of the Offer. The Municipality will have the exclusive right for 15 Business Days (the “Election Period”) from the date on which the Municipality receives from the Owner the Notice and a copy of the Offer within which to

notify the Owner that the Municipality is exercising the RFR and the Municipality has elected to purchase the Employee Unit on the terms set out in Part V of this Agreement. The Owner agrees that the Election Period will not start to run until the Owner gives to the Municipality notice of, and a copy of, the Offer.

- (c) If the Municipality wishes to exercise this RFR, the Municipality will give the Owner written notice of such exercise on or before the end of the Election Period.

- (d) If the Municipality does not exercise this RFR with respect to a specific Offer, the Municipality's rights under this RFR with respect to the particular Offer will be waived, but only if the Offer is a Bona Fide Offer and only if the terms of sale between the Outside Offeror and the Owner are in strict compliance with the terms stated in the Bona Fide Offer, and only if the Owner complies with the following requirements:
 - (i) the Owner delivers to the Municipality, within 5 Business Days after the expiry of the Election Period, written proof, satisfactory to the Municipality, in its sole discretion, that the purchaser is an Outside Offeror;

 - (ii) the Owner does not remove the second part of the Municipality's Subject until such time as the Municipality informs the Owner that it is satisfied with the information provided pursuant to paragraph (d)(i) of this section;

 - (iii) at least 5 Business Days before completion of the sale pursuant to the Bona Fide Offer the Owner delivers to the Municipality the following:
 - (A) written proof, satisfactory to the Municipality, in its sole discretion, that the purchase price payable under the Bona Fide Offer does not exceed the Maximum Price;

 - (B) a Form C duly executed by the Outside Offeror granting to the Municipality an option to purchase and a right of first refusal to purchase the Employee Unit (the "New Form C") on the same terms as set out in this Agreement, with such amendments as the Municipality may reasonably require;

 - (C) a discharge of the RFR and Option in this Agreement (the "Discharge") for execution by the Municipality;

 - (D) undertakings from the solicitor or notary for the Outside Offeror (the "Legal Representative") on terms satisfactory to the Municipality, including that:
 - (a) the Legal Representative will register the Discharge only if it is done concurrently with the registration of the New Form C;

- (b) the Legal Representative will ensure that the New Form C is registered against title to the Employee Unit in priority to all mortgages and other financial liens, charges and encumbrances, except for those in favour of the Municipality or approved in writing by the Municipality;
 - (c) forthwith after registration of the New Form C, provide to the Municipality copies of the Discharge and the New Form C with registration particulars endorsed thereon, and a copy of the State of Title Certificate for the Land confirming registration of the New Form C; and
- (E) a copy of the vendor's statement of adjustments for the Employee Unit certified to be true by the Legal Representative; and
- (iv) upon request by the Municipality, the Owner delivers to the Municipality such further evidence as the Municipality may reasonably require to confirm the purchase price of the Employee Unit, and to confirm that the Outside Offeror has granted to the Municipality an option to purchase and a right of first refusal to purchase the Employee Unit as required by this section.

PART IV - GRANT OF OPTION

Grant of Option

5. The Owner hereby grants to the Municipality the sole and exclusive irrevocable option to purchase the Employee Unit on the terms of this Agreement.

Exercise of Option

6. Subject to the following section, the Municipality may exercise the Option at any time by the Municipality giving written notice to the Owner in the manner set out in this Agreement for the giving of notices.

Triggering Event

7. The Municipality may only exercise the Option in the event the Owner has breached any of the Owner's obligations contained in the Housing Agreement or this Agreement, or upon the Owner advising the Municipality in writing of its intention to Dispose of the Employee Unit.

Binding Agreement

8. If the Municipality exercises the Option, this Agreement will become a binding agreement for the purchase and sale of the Employee Unit, which shall be completed upon the terms and conditions contained in this Agreement.

PART V - TERMS OF PURCHASE AND SALE

Purchase Price

9. Subject to adjustments as provided in this Agreement, the purchase price of the Employee Unit (the "Purchase Price") is the lesser of:
- (a) the purchase price set out in the Bona Fide Offer (if any); and
 - (b) the Maximum Price.

Completion Date

10. The purchase of the Employee Unit by the Municipality will be completed on the date ("Completion Date") to be chosen by the Municipality, such date to be not later than thirty Business Days after the Municipality gives to the Owner its notice of intention to exercise the Option or after the Municipality gives to the Owner its notice of exercise of the RFR.

Permitted Encumbrances

11. On the Completion Date, the Owner will convey the Employee Unit to the Municipality subject to the registered charges on title to the Employee Unit at the time of registration of this Agreement, and free and clear of all mortgages and other financial liens, charges and encumbrances (the "Permitted Encumbrances").

Vacant Possession

12. On the Completion Date, the Owner will give vacant possession of the Employee Unit to the Municipality, subject only to existing tenancies in favour of Employees or Retirees permitted by the Housing Agreement, as those terms are defined in the Housing Agreement.

Adjustments

13. All adjustments, both incoming and outgoing, in connection with the purchase and sale of the Employee Unit, including adjustments of taxes, rates, rents, security deposits, strata fees and other matters usually the subject of adjustment between vendor and purchaser, as well as adjustments for any amounts payable by the Owner to the Municipality pursuant to the terms of this Agreement or the Housing Agreement, will be made as at the Completion Date.

Other Steps

14. The Owner covenants and agrees that it will take or cause to be taken all proper steps and actions and proceedings to enable the Owner to vest a good and marketable title to the Employee Unit in the Municipality on the Completion Date, free and clear of all liens, encumbrances, defects in title, equities or claims of every nature and kind except for Permitted Encumbrances and to enable the Owner to carry out the sale of the Employee Unit.

Owner's Immediate Representations, Warranties and Covenants

15. The Owner hereby represents and warrants to the Municipality that the following are true and accurate on the date the Owner executes this Agreement and will be true on the Completion Date:
- (a) the Owner has the legal capacity, power and authority to grant the Option and the RFR and perform all of the Owner's obligations under this Agreement;
 - (b) if the Owner is a corporation, the Owner has taken all necessary or desirable actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement;
 - (c) if the Owner is a corporation, the Owner is in good standing with the Registrar of Companies for British Columbia and has made all necessary filings with the Registrar as required by the applicable legislation;
 - (d) if the Owner is a corporation, the Owner is duly incorporated and validly existing under the laws of British Columbia and has the power and capacity to enter into and carry out the transaction provided for in this Agreement;
 - (e) the Owner has a good, safe holding and marketable title to the Land; and
 - (f) the Owner is a resident of Canada within the meaning of the *Income Tax Act* (Canada) and will provide the Municipality with a statutory declaration of this, in the Municipality's form, at least 10 days before the Completion Date (the "Statutory Declaration"). If the Owner should breach this Agreement by failing to so provide the Statutory Declaration, the Municipality may choose to complete the purchase of the Employee Unit and withhold 50% of the Purchase Price until the residency of the Owner is resolved to the Municipality's satisfaction.

Owner's Completion Date Representations and Warranties

16. The Owner hereby represents and warrants to, and covenants and agrees with the Municipality as at the Completion Date that:
- (a) the Owner has no indebtedness or obligation to any person which might at the Completion Date or afterwards constitute a lien, charge or encumbrance on the Employee Unit;
 - (b) the Owner has not used the Employee Unit or permitted any use of the Employee Unit, to store, manufacture, dispose of, emit, spill, leak, generate, transport, produce, process, release, discharge, landfill, treat or remediate any explosive, radioactive material, asbestos, urea formaldehyde, chlorobiphenyl, hydrocarbon, underground tank, pollution, contamination, hazardous substance, corrosive substance, toxic substance, special waste, waste, or matter of any kind which is or may be harmful to human safety or health or to the

environment, including anything the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, remediation or release into the environment of which is now or at any time after the execution of this Agreement is prohibited, controlled, regulated or licensed under any laws applicable to the Employee Unit (“Contaminant”);

- (c) the Owner has not caused or permitted the storage, manufacture, disposal, emission, spilling, leakage, treatment, generation, transportation, production, processing, release, discharge, landfilling, treatment or remediation of any Contaminant in, on, under or from the Employee Unit; and
- (d) the Owner has at all times used the Employee Unit in compliance with all laws relating to Contaminants and to the environment.

Indemnity

17. The Owner shall indemnify and save harmless the Municipality and Whistler Housing Authority Ltd., and each of their elected and appointed officials, officers, directors, employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against any and all actions, causes of action, liabilities, demands, losses, damages, costs (including remediation costs and costs of compliance with any law, and fees and disbursements of professional advisors), expenses, fines and penalties, suffered or incurred by the Municipality, Whistler Housing Authority Ltd. or any other listed above by reason of or related to or connected with:
- (a) a breach of any representation or warranty, covenant or agreement of the Owner set forth in this Agreement;
 - (b) any Contaminants on the Land or Employee Unit arising during the ownership of the Owner;
 - (c) any wrongful act, omission or negligence of the Owner or a person for whom he is responsible in law.

This obligation to indemnify and save harmless will survive the transfer of the Employee Unit or any termination of this Agreement.

Closing Documents

18. Before the Completion Date, the Municipality will deliver to the Owner’s solicitors for execution by the Owner:
- (a) Form A Transfer transferring the fee simple title to the Employee Unit to the Municipality (“Transfer”),
 - (b) Vendor’s Statement of Adjustments, and

- (c) the Statutory Declaration; and

at least 3 days before the Completion Date, the Owner must deliver to the Municipality's solicitors the above documents duly executed on behalf of the Owner, in registrable form, on undertakings consistent with this Agreement.

Closing Procedure

19.

- (a) On the Completion Date, after the adjusted Purchase Price (less any proceeds of a new mortgage (the "Mortgage") to be granted by the Municipality) has first been deposited in the trust account of the Municipality's solicitors, the Municipality will apply to register the Transfer in the LTO; and
- (b) after application has been made to register the Transfer and if applicable, the Mortgage, in the LTO, and upon receipt of a satisfactory post-index search of the title to the Employee Unit indicating that in the normal course of LTO procedure the Municipality will become the registered owner of the Employee Unit free and clear of all mortgages and other financial liens, charges and encumbrances, other than any mortgage to be discharged as provided herein, the Municipality will pay to the Owner's solicitor or notary public the adjusted Purchase Price by solicitor's trust cheque made available for pick up by the Owner's solicitor or notary public, on the Canadian Bar Association, BC Branch standard undertakings of the Owner's solicitor or notary public to discharge any mortgage from title to the Employee Unit forthwith following completion.

Risk

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

Investigations

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

Associated Costs

22. The Municipality will pay:

- (a) any property transfer tax payable by it under the *Property Transfer Tax Act* (British Columbia);
- (b) LTO registration fees in connection with the transfer of the Employee Unit to the Municipality;
- (c) the Municipality's legal fees and disbursements but not the Owner's; and
- (d) all goods and services tax, if any, payable in respect of transfer of the Employee Unit under the *Excise Tax Act* (Canada) and if the Municipality is registered for the purposes of GST, instead of paying GST to the Owner, the Municipality will provide the Owner with its certificate that it will account directly for any and all GST.

PART VI - EXCEPTION TO RIGHT OF FIRST REFUSAL AND OPTION

23. 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 the Employee Unit subject to the Housing Agreement and subject to this Agreement, 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 the Housing Agreement and this Agreement, in registrable form.

PART VII - INTERPRETATION

24. In this Agreement:
- (a) reference to the singular includes a reference to the plural, 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; and
- (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”;
- (j) all references in this Agreement to “Dispose of the Employee Unit” include “Dispose of the Owner’s Interest in the Employee Unit”.

PART VIII - MISCELLANEOUS

Municipality not Obligated to Exercise Right of First Refusal or Option

25. The Owner acknowledges and agrees that the Municipality is under no obligation to exercise the Option or the RFR.

Duration of Option and Right Of First Refusal

26. The option to purchase hereby granted and the right of first right of refusal granted by this Agreement are effective until the date that is 80 years less a day after the date on which the Form C referring to this Agreement is deposited for registration in the LTO.

Assignability

27. If the Municipality exercises the Option or RFR, the Municipality may assign the Municipality’s resulting right to purchase the Employee Unit under this Agreement to any person qualified to purchase the Employee Unit under the Housing Agreement, and in such case, upon such assignment the Municipality will have no further obligation to purchase the Employee Unit under this Agreement.

Municipalities Powers Unaffected

28. 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;
 - (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
 - (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

Agreement for Benefit of Municipality Only

29. 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 the 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 Duty

30. 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.

Costs

31. The Owner will comply with all the requirements of this Agreement at its own cost and expense and will pay to the Municipality, on request, all reasonable costs or expenses it incurs in connection with this Agreement.

Notice

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 of 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,
#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.

Enuring Effect

33. This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors, assigns, heirs, executors, administrators and personal representatives.

Remedies Cumulative Waiver

34. 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 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

35. This Agreement, the Housing Agreement, and any other documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the Municipality and the Owner respecting the use, occupation and Disposition of the Employee Unit, and there are no warranties, representations, conditions or collateral agreements made by the Municipality except as set forth in this Agreement.

Further Assurances

36. 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 the Land

37. This Agreement burdens and runs, and binds the successors in title to, the Land and every parcel into which it is subdivided by any means, including by subdivision under the *Land Title Act* (British Columbia) or by strata plan under the *Strata Property Act* (British Columbia).

Equitable Remedies

38. The Owner acknowledges and agrees that damages would be an inadequate remedy for the Municipality for breach of this Agreement or the RFR and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief.

No Joint Venture

39. 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.

Applicable Law

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

Deed and Contract

41. 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

Name:

Authorized Signatory

Authorized Signatory:

Authorized Signatory

Authorized Signatory:

SCHEDULE A TO RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE
SAMPLE CALCULATIONS FOR MAXIMUM PRICE

Example 1

A first sale after initial sale

Previous Sale Price (from initial sale) \$200,000

Change in CPI =

$$\frac{\text{CPI at date of contract for resale } 113.4 - \text{CPI at date of execution of contract for first sale } 112.3}{112.3} = .0098$$

Maximum Price = \$200,000 plus (\$200,000 x .0098 = \$1,960) = \$201,960

Example 2

A third resale.

Previous Sale Price (from second sale) \$201,960

Change in CPI =

$$\frac{\text{CPI at date of contract for sale } 116.1 - \text{CPI at Previous Sale (second sale in this example) } 113.4}{113.4} = .0238$$

Maximum Price = \$201,960 plus (\$201,960 x 0.0238 = \$4,806.65) = \$206,767

Example 3

A resale where CPI has declined

Previous Sale Price \$213,647

Change in CPI

$$\frac{\text{CPI at date of contract for sale } 113.9 - \text{CPI at Previous Sale } 114.2}{114.2} = \text{negative } .0026$$

Maximum Price = Previous Sale Price of \$213,647 (because percentage change is negative)