

PART 2 – TERMS OF INSTRUMENT
COVENANT MODIFICATION AGREEMENT

THIS AGREEMENT dated for reference _____, 2023

BETWEEN:

RESORT MUNICIPALITY OF WHISTLER

4325 Blackcomb Way
Whistler, B.C. V8E 0X5

(the “Owner”)

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

as represented by the Minister of Forests
PO Box 9352 Stn Prov Govt
Victoria, BC V8W 9M1

(the “Province”)

WHEREAS:

- A. The Owner is the registered owner in fee simple of those lands and premises in Whistler, British Columbia which are legally described in Item 2 of the Form C attached hereto (the “Land”);
- B. The Lands are subject to Covenant BA474023 which was granted to the Province under section 219 of the *Land Title Act* on March 5, 2007 (the “Original Covenant”); and
- C. Pursuant to section 219(9) of the *Land Title Act*, the parties have agreed to further modify the Original Covenant in the manner set out below.

NOW THEREFORE this Agreement witnesses that pursuant to Section 219 of the *Land Title Act* of British Columbia, and in consideration of the premises and the sum of One Dollar (\$1.00) now paid by the Owner to the Province and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree as follows:

1. The Original Covenant is modified in respect of the Land by
 - (a) replacing the definition of “Employee” in Section 1 with the following:

“Employee” means a person who resides in the housing on a full-time basis and is either self-employed or employed for an average of at least 20 hours per week over the twelve-month period immediately prior to their occupancy of the housing, in a business that

- a. is operated at premises located within the boundaries of the Resort Municipality of Whistler or at the Whistler Olympic Park in the Squamish-Lillooet Regional District;
 - b. holds a valid business license from the Resort Municipality other than a non-resident business license, or is exempt from business licensing requirements;
 - c. is a permitted use of the business premises under the Resort Municipality’s zoning bylaw; and
 - d. primarily serves Whistler residents, homeowners, businesses or tourists;
- and provides services within the boundaries of the Resort Municipality or at the Whistler Olympic Park in the Squamish-Lillooet Regional District; or in the case of a home-based or mobile business, derives more than 75% of its business income from Whistler residents, homeowners, businesses or tourists;

- (b) replacing the definition of “Retiree” in Section 1 with the following:

“Retiree” means a person at least 55 years of age who has ceased active employment as described in the definition of “Employee” but who was eligible to occupy the housing by virtue of being so employed for a period of at least 10 of the 12 years immediately prior to ceasing active employment;

- (c) replacing the phrase “an opposite sex or same sex spousal relationship” in Sections 3(b) and 5(c) with “a spousal relationship”;

- (d) replacing the first paragraph in Section 9 with the following:

The Owner covenants and agrees that it will enter into and comply with the terms of an agreement with the Resort Municipality of Whistler under Section 483 of the Local Government Act under which agreement the Owner agrees that the Owner must not permit the Land or any Dwelling Unit on the Land to be used for any purpose other than affordable employee housing, and for this purpose affordable employee housing means housing that is

- a. subject to a housing agreement with the Resort Municipality under s. 483 of the *Local Government Act* that restricts the rent that may be charged to occupy the housing or the price at which the housing may be sold; and
- b. occupied only as a residence by an Employee, a Retiree, or a member of the household of an Employee or Retiree.;

- (e) adding the following to Section 9:

The Resort Municipality of Whistler agrees as first owner of the Land and Dwelling Unit constructed upon the Land and as transferee under such agreement, that:

- a. the agreement will not be discharged without the Province’s consent; and,

- b. the agreement may be amended without the consent of the Province provided the amendment continues to ensure that the Land and Dwelling Unit are used only as affordable employee housing.
2. Except as expressly modified herein, the Original Covenant will remain in full force and effect.
3. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
4. This Agreement shall enure to the benefit of and be binding upon the parties to it and their respective successors, heirs, executors, administrators, successors and assigns.
5. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Office Form C which is attached hereto and forms part of this Agreement.

END OF DOCUMENT