

## **ST080100 STANDARD CHARGE TERMS**

**FILED BY: RESORT MUNICIPALITY OF WHISTLER**

### **STANDARD HOUSING AGREEMENT, 219 COVENANT AND RENT CHARGE AND INDEMNITY and PROVINCIAL 219 COVENANT (WHISTLER ATHLETES VILLAGE)**

The following standard charge terms will be incorporated by reference in every Section 219 covenant and housing agreement in which the set is referred to by its filing number as provided by Section 235 of the *Land Title Act*.

WHEREAS:

- A. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Resort Municipality of Whistler (the "**Municipality**") and Her Majesty the Crown in Right of the Province of British Columbia (the "**Province**") in respect of the use of land or construction on land;
- B. The Owner (hereinafter defined) is the registered owner of the Land (hereinafter defined);
- C. The Owner and the Municipality wish to enter into this Agreement to provide for affordable employee housing on the terms and conditions set out in the applicable provisions of this Agreement, and Part I of this Agreement is both a covenant under Section 219 of the *Land Title Act* and a housing agreement under Section 905 of the *Local Government Act*; and
- D. The Owner also wishes to grant a covenant under Section 219 of the *Land Title Act* in favour of the Province to provide for affordable employee housing on the terms and conditions set out in Part II of this Agreement.

THIS AGREEMENT is evidence that in consideration of the mutual promises contained in it and in consideration of the payment of \$2.00 by each of the Municipality and the Province to the Owner, the receipt and sufficiency of which is hereby acknowledged by the Owner, the parties covenant and agree as follows:

#### **PART I- MUNICIPAL COVENANT AND HOUSING AGREEMENT**

##### **Definitions**

- 1. In this Agreement the following words have the following meanings:
  - a. "Assessed Value" means the most recent assessed value of the real property as determined by the assessment authority in which the real property is situated. If such value is not available, then the Assessed Value means the highest price in terms of money that the real property will fetch under all conditions requisite to a fair sale with the buyer and seller each acting prudently, knowledgeably and

assuming the price is not affected by undue stimulus as estimated by a real estate appraiser accredited in the jurisdiction in which the real property is located;

- b. "CCPI" means the Core Consumer Price Index for Canada published from time to time by the Bank of Canada, or its successor in function;
- c. "Change in CCPI" means the percentage change (positive or negative) between:
  - (i) the CCPI applicable on the date of registration of the Previous Sale; and
  - (ii) the CCPI applicable on the date of execution by the Owner and the purchaser of a contract of purchase and sale relating to the next transfer of the Dwelling Unit following the Previous Sale;

Except that for the first resale of the Dwelling Unit, by the first purchaser to the second purchaser, the CCPI applicable under clause (i) above will be the CCPI in effect on the date the first purchaser signed a contract of purchase and sale in respect of the Dwelling Unit;

- d. "Daily Amount" means \$500.00 per day as of December 31, 2005 adjusted thereafter by an amount determined by multiplying \$500.00 by the percentage change in the CCPI since December 31, 2005 to January 1 of the year that Section 22 first applies;
- e. "Dwelling 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;
- f. "Employee" means a Qualified Person who is either employed or self-employed for an average of not less than 20 hours per week on an annual basis at a business which is located either within the boundaries of the Resort Municipality of Whistler or at the Whistler Olympic Park and which holds a business license from the Municipality or equivalent acceptable to the Municipality;
- g. [deleted]
- h. "General Instrument" means the Form C under the Land Title (Transfer Forms) Regulations, as amended, and all schedules and addenda to the Form C charging the Land and citing these Standard Charge Terms;
- i. "Gross Floor Area" means the habitable gross floor area of the Dwelling Unit and includes enclosed sunrooms but does not include crawl spaces, open patios, open balconies or parking spaces. If the Dwelling Unit is a strata lot as defined by the *Strata Property Act*, the gross floor area will be the surveyed area of the Dwelling Unit shown on the strata plan filed in the LTO in respect of the Land excluding crawl spaces, open patios, open balconies or parking spaces if they are included in the area of the Dwelling Unit as shown on the strata plan;

- j. "Housing Agreement" means the *Local Government Act*, Section 905 housing agreement and *Land Title Act*, Section 219 covenant in favour of the Municipality contained in Part I of these standard charge terms together with the General Instrument;
- k. "Interest" means the property interest of the Owner in the Dwelling Unit;
- l. "Land" means the land described in Item 2 of the General Instrument and any part into which said land is Subdivided, and includes the Dwelling Unit;
- m. "LTO" means the New Westminster/Vancouver Land Title Office or its successor;
- n. [deleted];
- o. "Maximum Price, Resale" means the Previous Sale Price plus the product of the Previous Sale Price multiplied by the Change in CCPI. Where the Change in CCPI is negative or cannot be determined, the Maximum Price, Resale shall be the Previous Sale Price. The sample calculations set out in Schedule "B" attached hereto shall be used for the purposes of interpreting this definition of "Maximum Price, Resale";
- p. "Occupancy Permit Year" means the calendar year in which the Municipality issues an occupancy permit for the Dwelling Unit;
- q. "Option/RFR" means a right of first refusal and option to purchase the Land granted or to be granted by the Owner to the Municipality;
- r. "Original Rent" means \$1.35 per square foot of Gross Floor Area per month;
- s. "Owner" means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of the Dwelling Unit from time to time;
- t. "Previous Sale" means the most recent transfer of the Dwelling Unit;
- u. "Previous Sale Price" means the sale price of the Previous Sale;
- v. "Qualified Business" means an individual, partnership or incorporated body, with one or more employees, which operates a business either within the boundaries of the Resort Municipality of Whistler or at the Whistler Olympic Park and which holds a business license from the Municipality or equivalent acceptable to the Municipality;
- w. "Qualified Person" means an individual 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 for a



Dwelling Unit until such person completes the purchase of a Dwelling Unit, unless:

- i. the Assessed Value of all the real property he or she owns does not exceed 70% of the Assessed Value of the Dwelling Unit; or
- ii. the real property he or she owns 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,
  - C. less than 850 square feet in area and it is the principal residence of that person and at least one child, or
  - D. less than 1200 square feet in area and it is the principal residence of that person and at least two children; or
- iii. the real estate he or she owns is located in Squamish or Pemberton; and that person enters into an agreement with the Municipality to sell his or her interest in the real property within the time period specified by the Municipality, acting reasonably, or that person enters into an agreement with the Municipality with respect to the real property and the Dwelling Unit on terms acceptable to the Municipality in its sole discretion;
- x. "Retiree" means a Qualified Person who has ceased employment and who was an Employee for 5 of the 6 years immediately preceding the date on which the individual ceased employment;
- y. "sale price" or "purchase price" means the gross sale price of an Interest sold, plus any goods and services tax, and including any fee paid to obtain home warranty insurance under the *Homeowner Protection Act*, but without adjustment for rent, strata fees, property taxes, utilities, real estate commission and other usual adjustments between vendors and purchasers;
- z. "Subdivide" means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative units" or "shared interests in land" as defined in the *Real Estate Development Marketing Act*;
- aa. "Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting rights to occupy the Dwelling Unit; and

- bb. "Tenant" means an occupant of the Dwelling Unit by way of a Tenancy Agreement.

### **Restrictions on Use of Land**

2. The Owner covenants and agrees with the Municipality that:
- a. the Land shall be used only for the Dwelling Unit;
  - b. in respect of the initial construction of the Dwelling Unit and any later capital improvements to the Dwelling Unit, the Owner must meet or exceed the construction standards for the Dwelling Unit as specified by the Municipality in a building permit issued by the Municipality in respect of development on the Land and as set out in the Construction Standards of Whistler Housing Authority Ltd.;
  - c. the Owner must at all times ensure that the Land is used and occupied in compliance with all statutes, laws, regulations, and orders of any authority having jurisdiction and without limiting the generality of the foregoing, all bylaws of the Municipality and all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws; and
  - d. the Owner must do everything necessary, at the Owner's expense, to ensure that this Agreement and the Option/RFR, if required by the Municipality in its sole discretion, will be registered against title to the Land in priority to all charges and encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in writing by the Municipality or in favour of the Municipality.

### **Restrictions On Occupancy**

3. Subject to Sections 4 and 6, the Owner agrees that the Dwelling Unit may only be used as a permanent residence occupied by one or more Employees and/or Retirees, and the Dwelling Unit may also be used as a permanent residence occupied by one or more additional persons who are not Employees or Retirees, but who are residing with the Employee(s) and/or Retiree(s) in a single domestic unit and related by blood, marriage, adoption, common law marriage or foster parenthood, or cohabiting with them in an opposite sex or same sex spousal relationship, and that the Municipality's Building Inspector shall determine the number of such persons who can reside in the Dwelling Unit given the number and size of bedrooms in the Dwelling Unit and in light of any relevant standards set by the Municipality in any bylaws of the Municipality.

### **Occupancy Only by Owner**

4. Except where the Owner is a Qualified Business (in which case the Dwelling Unit need not be owner-occupied and may be leased or rented under Section 11 for unlimited durations), the Owner agrees that the Dwelling Unit may be occupied only by the Owner (together with, if applicable, those other persons permitted in Section 3), except:
  - a. the Owner may rent or lease the Dwelling Unit in compliance with Section 11 for up to six months less one day in each calendar year; or
  - b. if the Owner is unable, using best efforts, to rent or lease the Dwelling Unit in compliance with Section 11, the Owner may leave the Dwelling Unit vacant for up to six months less one day in each calendar year;

PROVIDED that the Owner may rent or lease the Dwelling Unit or leave it vacant for longer time periods only if the Owner applies for and is issued an extension from the Whistler Housing Authority Ltd. or its successor in function or if the Municipality grants the Owner relief from hardship pursuant to Section 6.

### **Statutory Declaration**

5. Within three days after receiving notice from the Municipality, the Owner will in respect of the Dwelling Unit, deliver, or cause to be delivered, to the Municipality a statutory declaration, substantially in the form attached as Schedule "A", sworn by the Owner, containing all of the information required to complete the statutory declaration. The Municipality may request such a statutory declaration in respect of the Dwelling 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, including, but not limited to the provincial issuing authority for drivers licences, of the request for information from the Municipality to provide such information to the Municipality.

### **Relief from Hardship**

6. If the Owner cannot comply with the occupancy requirements for the Dwelling Unit for reasons of hardship, the Owner may request that the Municipality alter the Owner's obligations with respect to the Dwelling Unit on terms acceptable to the Municipality, 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 Owner must deliver the request in writing in accordance with Section 35 of this Agreement. The request must set out the circumstances of the hardship involved. The request must set out the reasons why the Owner cannot comply with the occupancy restrictions, and must describe the hardship to the Owner that compliance would cause. The Owner agrees that the Municipality is under no obligation to grant any relief, and may proceed with its remedies under this Agreement, and under the Option/RFR, and at law and in equity, despite the Owner's



request or the hardship involved, and the Owner agrees that the relief, if any, is to be determined by the Municipality in its sole discretion.

### **Restriction on Purchasers**

7. The Owner may not sell or transfer the Dwelling Unit or his interest in the Dwelling Unit except to an Employee or Retiree or Qualified Business and except in accordance with the terms and conditions set out in this Agreement, the Option/RFR, and the resale policies of Whistler Housing Authority Ltd., or its successor.

### **Limit on Sale Prices**

8. The Owner must not accept any offer to purchase the Dwelling Unit for a purchase price exceeding the Maximum Price, Resale.

### **Subleases, Assignments**

9. The Owner must not permit the Dwelling Unit to be disposed of by sublease or assignment of a Tenancy Agreement unless such subletting or assignment is done in compliance with this Agreement.

### **Notice of This Agreement**

10. The Owner must give prior written notice of this Agreement to any person to whom it proposes to sell, transfer, lease, rent, mortgage or otherwise dispose of the Dwelling Unit.

### **Restrictions on Rentals and Leases**

11. In the circumstances outlined in Section 4, including where the Owner is a Qualified Business, the Owner may rent or lease the Dwelling Unit, but only to Employees and/or Retirees (together with, if applicable, those other persons permitted in Section 3), and only in accordance with the following additional conditions:
  - a. **Tenancy Agreement** - the Dwelling Unit must be used or occupied only pursuant to a Tenancy Agreement;
  - b. **Rent Restriction** - the monthly rent payable for the Dwelling Unit must not exceed the rent, rounded to the nearest dollar, determined by multiplying the Gross Floor Area by the Original Rent. Subject always to the provisions of the *Residential Tenancy Act* (British Columbia), the Owner may increase the rent payable for the Dwelling Unit annually, beginning with the first anniversary of the day on which the occupancy permit was issued by the Municipality for the Dwelling Unit, and thereafter only on each successive anniversary date, by an amount determined by multiplying the rent payable for the Dwelling Unit at the time of the proposed rent increase by the percentage change in the CCPI since the last anniversary date;

- c. **Extra Charges** - the Owner may not require the Tenant to pay any extra charges or fees for use of any common property, limited common property, or other common area, or for sanitary sewer, storm sewer, water utilities, property taxes. For clarity, this Section does not apply to cablevision, telephone, other telecommunications, gas utility or electricity utility fees or charges; provided however, that the Owner may charge a maximum of an additional \$75.00 per month if the Dwelling Unit is fully furnished and an additional \$25.00 per month if the Dwelling Unit contains a fully functioning washer and dryer.
- d. **Attach this Agreement** - the Owner will attach a copy of this Agreement to the Tenancy Agreement;
- e. **Tenant to Comply** - the Owner must include in the Tenancy Agreement a clause requiring the Tenant to comply with the use and occupancy restrictions contained in this Agreement;
- f. **Termination** - the Owner must include in the Tenancy Agreement 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 Dwelling Unit in breach of the use or occupancy restrictions contained in this Agreement;
- g. **Identified Occupants** - the Tenancy Agreement must identify all occupants of the Dwelling Unit, and must stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Dwelling Unit for more than 30 consecutive days in any calendar year;
- h. **Number of Occupants** - the Tenancy Agreement must provide for termination of the Tenancy Agreement by the Owner in situations where the Dwelling Unit is occupied by more than the number of people the Municipality's building inspector determines can reside in the Dwelling Unit given the number and size of bedrooms in the Dwelling Unit and in light of any relevant standards set by the Municipality in any bylaws of the Municipality;
- i. **Absentee Tenants** - the Tenancy Agreement must provide that the Owner will have the right, at the Owner's option, to terminate the Tenancy Agreement should the Tenant remain absent from the Dwelling Unit for three consecutive months or longer, notwithstanding the timely payment of rent;
- j. **No Sublease** - the Tenancy Agreement must provide that the Tenant will not sublease the Dwelling Unit or assign the Tenancy Agreement; and
- k. **Copy to Municipality** - the Owner must deliver a copy of the Tenancy Agreement to the Municipality upon demand.

#### **Owner Will Terminate**



12. The Owner must terminate any Tenancy Agreement where the Tenant uses or occupies, or allows use or occupation of the Dwelling Unit in breach 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).

### **Notice of Vacancy**

13. If the Owner is leasing or renting the Dwelling Unit, as permitted by Section 4, the Owner will, forthwith upon request by the Municipality, and from time to time as the Dwelling Unit becomes vacant, identify to the Municipality that the Dwelling Unit is vacant and available for occupancy and the Owner must make best efforts to lease or rent the vacant Dwelling Unit to qualified applicants on the Whistler Housing Authority tenancy application list.

### **Screening Tenants**

14. The Owner will be solely responsible for screening Tenants to determine whether or not they qualify to occupy the Dwelling Unit in accordance with this Agreement notwithstanding that the Dwelling Unit may be leased or rented to someone from the Whistler Housing Authority tenancy list. For greater certainty, the Owner agrees that 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.

### **Children of Deceased Owner**

15. Despite anything to the contrary in this Agreement or the Option/RFR, upon notice from the executor of the Owner's estate, the Municipality, at its sole discretion, will waive the Option/RFR and consent to a transfer of the Dwelling Unit to the children of the deceased Owner, provided that the children of the deceased Owner are at least 19 years of age, employed in Whistler, and plan to reside in the Dwelling Unit as their primary residence. If the children of the deceased Owner own real estate that is not price-restricted, they must agree with the Municipality to sell that real estate within 6 months of taking ownership of the Dwelling Unit.

### **Children Below Legal Age**

16. The Dwelling Unit cannot be transferred to an Owner's child who is under the age of 19 years. Despite anything to the contrary in this Agreement, if the Owner's child or children are under the age of 19 years, another family member or legal guardian, even though not an Employee or Retiree, may reside in the Dwelling Unit with the child or children until the child or children reach the age of 19 years.

### **Rental Until Children of Legal Age**

17. Where an executor is holding title to the Dwelling Unit in trust, not living or intending to live in the Dwelling Unit with the child or children, and waiting for the Owner's child or children to come of age to inherit the Dwelling Unit, the occupancy by Employee or

Retiree requirements set out in Section 3 will be waived until the Owner's child or children is 19 years of age, provided the Dwelling Unit is rented by Employees or Retirees at Whistler Housing Authority Ltd.'s or its successor's rental rates.

#### **Transfer to Child as Co-Owner**

18. If an Owner's child is of legal age, employed in Whistler, does not own other real estate and plans to occupy the Dwelling Unit as a primary residence, the Owner can add the name of the child on to title of the Dwelling Unit. Title cannot be transferred to a trust.

#### **Lender as Owner**

19. For the purposes of this Section 19, 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 the Dwelling Unit subject to this Agreement and subject to the Option/RFR, but, despite such Efforts to Sell, has been unable to enter into a Bona Fide Offer or to sell the Dwelling 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 registrable form.

#### **Capital Improvements**

20. If the Owner has made capital improvements to the Dwelling 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 Dwelling 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**

21. The Owner will not demolish the Dwelling 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 Dwelling Unit, and the Owner has delivered to the Municipality a copy of the engineer's or architect's report; or

- b. the Dwelling 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 Dwelling Unit has been issued by the Municipality (unless the Dwelling Unit has already been destroyed by an accident, act of God, or sudden and unanticipated force) and the Dwelling Unit has been demolished under that permit.

Following demolition, the Owner will use and occupy the replacement Dwelling Unit in compliance with this Housing Agreement, and Sections 2(a), (b) and (c) herein will apply to the construction of the replacement Dwelling Unit to the same extent and in the same manner as those Sections apply to the construction of the original Dwelling Unit.

### **Calculation of Rent Charge**

- 22. 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 Dwelling 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 Section 23, the Daily Amount to the Municipality for each day of the breach of this Agreement. The Daily Amount is increased on January 1 of each year by an amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase in the CCPI between that previous January 1 and the immediately preceding December 31. The Daily Amount is due and payable immediately upon receipt by the Owner of an invoice from the Municipality for the same.

### **Imposition of Rent Charge**

- 23. 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.

### **Payment of Excess Amount**

- 24. If the Dwelling Unit is sold for a purchase price exceeding the Maximum Price, Resale in contravention of this Agreement, the Owner will pay the excess (the "Excess Amount") to the Municipality, as a rent charge under Section 23, 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.

### **Interpretation**

25. 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**

26. 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 905 of the *Local Government Act* (British Columbia); and
- b. the Municipality will file a notice of housing agreement under Section 905 of the *Local Government Act* in the LTO against title to the Land.

## **Modification**

27. Subject to section 46, this Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the Municipality, if it is signed by the Municipality and a person who is the current registered owner of the Land.

## **Management and Repair**

28. The Owner covenants and agrees that it will furnish good and efficient management of the Dwelling Unit and will permit representatives of the Municipality to inspect the Dwelling Unit at any reasonable time, subject, if applicable, to the Owner giving notice to the Tenant (if any) pursuant to the provisions for landlord entry in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Dwelling 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 Dwelling Unit. Notwithstanding the forgoing, the Owner acknowledges and agrees that the Municipality, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Dwelling Unit.

## **Indemnity**

29. The Owner will indemnify and save harmless 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, 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 Dwelling 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**

30. 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

Dwelling Unit, including advice or direction respecting the ownership, lease, operation or management of the Land or the Dwelling 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.

### **Survival of Obligations**

31. The obligations of the Owner set out in Sections 22, 23, 24, 29 and 30 will survive termination of this Agreement.

### **Powers Unaffected**

32. 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 the Dwelling 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 the Dwelling Unit; or
  - d. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land or the Dwelling Unit.

### **Benefit to Municipality**

33. 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 Dwelling Unit;
  - c. subject to section 46, 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**

34. 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**

35. 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 V0N 1B4

And to: Whistler Housing Authority Ltd.,  
325-2400 Dave Murray Place, Whistler, BC V0N 1B2

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 on the third day after it is dispatched for delivery, if delivered by mail.

## **Enurement**

36. 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**

37. 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**

38. 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**

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

### **Further Assurances**

40. 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**

41. This Agreement burdens and runs with the Land and every parcel into which it is Subdivided. All of the covenants and agreements contained in this Agreement are made by the Owner for himself, his heirs, personal administrators, and successors.

### **Remedies**

42. 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 pursuant to section 23, as remedies for a default by the Owner under this Agreement.

### **No Agency**

43. 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**

44. The laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia. Without limiting the above, in the event of any conflict between any provision of this Agreement and the *Residential Tenancy Act*, this Agreement is without effect to the extent of the conflict.

### **Contract and Deed**

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

## **PART II – PROVINCIAL COVENANT**

46.

a. **Definitions** - In Section 46:

- i. the term "Province" refers to Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of

Agriculture and Lands, and other terms are as defined in the Housing Agreement;

- ii. the term "Housing Agreement" has the meaning given in Section 1(j) of these standard charge terms;
  - iii. the terms "Employee" and "Retiree" have the meanings given to them in the Housing Agreement;
  - iv. the term "the Land" has the meaning given in Section 1(l) of the Housing Agreement; and
  - v. the term "Owner" has the meaning given to it in Section 1(s) of the Housing Agreement.
- b. **Section 219 Covenant** - The Owner acknowledges and agrees that Section 219 of the *Land Title Act* authorizes the Province to accept a covenant in respect of the use of land, or the use of a building on or to be erected on land, and in respect of the building on the land.
- c. **Rationale for Covenant** - The Owner wishes to grant this Covenant under Section 219 of the *Land Title Act* to the Province over the Land since the Province transferred the Land to the Municipality, the first owner, for nominal consideration and on the strict condition and understanding that it would be used in perpetuity solely for the purpose of the 2010 Olympic and Paralympic Winter Games and afterwards for the purpose of providing affordable employee housing.
- d. **Grant of Covenant** - The Owner hereby covenants and agrees with the Province, in perpetuity, that the Land, and the Dwelling Unit constructed upon the Land, shall not be used except in accordance with the Housing Agreement.
- e. **Promise by Municipality** - The Municipality agrees with the Province that subsection 46f is a promise of the Municipality in its capacity as first Owner and in its capacity as transferee of the Housing Agreement.
- f. **No Discharge Without Consent of Province** - The Owner and the Municipality agree with the Province that except as specifically provided in Section 19 of the Housing Agreement, the Housing Agreement shall not be discharged without the prior written consent of the Province, in its sole and absolute discretion. The Province will execute a registrable discharge of the Covenant in this Section 46 upon request by the Owner or the Municipality if the Municipality is also concurrently discharging the Housing Agreement pursuant to Section 19.
- g. **Amendments of Housing Agreement** - The Province agrees with the Owner and the Municipality that the Housing Agreement may be amended or modified without the consent of the Province provided the amendment or modification continues to ensure that the Dwelling Unit is occupied by Employees and Retirees and persons residing with them in a single domestic unit and related by



blood, marriage, adoption, common law marriage or foster parenthood, or cohabiting with them in an opposite sex or same sex spousal relationship.

SCHEDULE "A"

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 the 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 for taking Affidavits for  
British Columbia



## SCHEDULE "B"

### Sample Calculations for Maximum Price, Resale.

#### Example 1

A first resale

Previous Sale Price (from first sale) \$200,000.00

Change in CCPI =

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

$$\text{Maximum Price, Resale} = \$200,000 \text{ plus } (\$200,000 \times .0098 = \$1,960) = \$201,960.00$$

#### Example 2

A fourth resale.

Previous Sale Price (from third sale) \$213,647.00

Change in CCPI =

$$\frac{\text{CCPI at date of contract for sale } 116.1 - \text{CCPI at Previous Sale (third sale in this example) } 115.2}{115.2} = .0078$$

$$\text{Maximum Price, Resale} = \$213,647 \text{ plus } (\$213,647 \times .0078 = \$1,666.45) = \$215,313.45$$

#### Example 3

A resale where CCPI has declined

Previous Sale Price \$213,647.00

Change in CCPI

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

$$\text{Maximum Price, Resale} = \text{Previous Sale Price of } \$213,647.00 \text{ (because percentage change is negative)}$$

END OF SET