

RESORT MUNICIPALITY OF WHISTLER

HOUSING AGREEMENT (1345 CLOUDBURST DRIVE) BYLAW NO. 2331, 2021

**A BYLAW TO AUTHORIZE THE MUNICIPALITY TO ENTER INTO A HOUSING AGREEMENT
UNDER S. 483 OF THE *LOCAL GOVERNMENT ACT***

WHEREAS the Resort Municipality of Whistler (Municipality) as the local government having jurisdiction and as the owner of land legally described as:

PID: 027-791-068

LOT B DISTRICT LOT 8073 NEW WESTMINSTER DISTRICT GROUP 1 PLAN EPP1290
(Land)

entered into a housing agreement under s. 483 of the *Local Government Act* in respect of the Land on February 24, 2020, securing the use of the Land and buildings located on the Land for employee and athlete housing, in perpetuity, the housing agreement having been authorized by the Municipality's Housing Agreement Bylaw (1345 Cloudburst Drive) No. 2263, 2019; and

AND WHEREAS the Municipality wishes to replace the housing agreement with an agreement having modified terms;

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

CITATION

1. This Bylaw may be cited for all purposes as "Housing Agreement (1345 Cloudburst Drive) Bylaw No. 2331, 2021".

AUTHORIZATION OF HOUSING AGREEMENT

2. Council hereby authorizes the Municipality, as the local government having jurisdiction and as the owner of the Land, to enter into a housing agreement in respect of the Land in the form attached to this Bylaw as Schedule A (Housing Agreement).
3. The Mayor and the 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 the *Local Government Act*.

GIVEN FIRST, SECOND and THIRD READINGS this ____ day of ____, 2021

ADOPTED this ____ day of ____, 2021.

Jack Crompton,
Mayor

Pauline Lysaght,
Corporate Officer

I HEREBY CERTIFY that this is a true copy of "Housing Agreement (1345 Cloudburst Drive) Bylaw No. 2331, 2021".

Schedule A

PART 2 - TERMS OF INSTRUMENT

LOT B HOUSING AGREEMENT, 219 COVENANT AND INDEMNITY

This Agreement, dated for reference the ___ day of _____, 2021 is

BETWEEN:

Resort Municipality of Whistler
4325 Blackcomb Way
Whistler, BC V8E 0X5

(the "Municipality")

AND:

Resort Municipality of Whistler
4325 Blackcomb Way
Whistler, BC V8E 0X5

(the "Owner")

WHEREAS:

- A. Section 483 of the *Local Government Act* permits the Municipality to enter into housing agreements including conditions respecting form of tenure and the availability of housing units to classes of persons;
- 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 in respect of the use of land or construction on land;
- C. The Owner is the registered owner of the Land (hereinafter defined), upon which approximately 20 Dwelling Units (hereinafter defined) are currently constructed; and
- D. The Owner and the Municipality wish to enter into this Agreement to provide for employee housing and athlete accommodation on the terms and conditions set out in this Agreement, and this Agreement is 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 mutual promises contained in it and in consideration of the payment of \$2.00 by the Municipality to the Owner, the receipt and sufficiency of which is hereby acknowledged by the Owner, the parties agree pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

PART I – DEFINITIONS

1. In this Agreement the following words have the following meanings:

- (a) "2010 Legacy Society" means an incorporated British Columbia society having among its objects the management and operation of winter sports facilities constructed in the Municipality or within the Squamish Lillooet Regional District for use during and after the 2010 Olympic and Paralympic Winter Games;
- (b) "Agreement" means this Agreement together with the General Instrument, being the Form C under the Land Title (Transfer Forms) Regulations, as amended, and all schedules and addenda to the Form C charging the Land;
- (c) "Athlete" means and includes athletes, coaches, trainers, volunteers, other support staff, and the families of any of the aforementioned, using the Whistler Athletes' Centre, other sports and recreation amenities and facilities located within the Municipality, or the Whistler Olympic Park, and those involved in the delivery of educational or cultural programs within the Municipality and students and volunteers associated with such programs;
- (d) "Dwelling Unit" means a residential dwelling unit located or to be located on the Land;
- (e) "Employee" means an individual either employed by a Qualified Business or self-employed, in each case for an average of not less than 30 hours per week over the most recent 12 months, and includes a Retiree;
- (f) "Employee Unit" means a Dwelling Unit used and occupied
 - i. pursuant to a Tenancy Agreement (hereinafter defined) and only by a person who is:
 - 1. an Employee,
 - 2. living with an Employee and related to such Employee by blood, marriage, adoption, marriage, or
 - 3. cohabitating with an Employee in spousal relationship; or
 - ii. as accommodation by an Athlete;
- (g) "Essential Service Employee" means the following Employees:
 - i. medical workers, including paramedics and ambulance workers;
 - ii. employees of the Whistler RCMP;
 - iii. employees of the Whistler Fire Rescue Service;
 - iv. utility works and road maintenance staff; and
 - v. teachers and daycare workers.

- (h) "Land" means the land described in Item 2 of the General Instrument to which the Agreement is attached and which forms part of this agreement, and any part into which said land is Subdivided (hereinafter defined);
- (i) "LTO" means the New Westminster/Vancouver Land Title Office or its successor;
- (j) "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 an Employee Unit from time to time;
- (k) "Permitted Rent" means, with respect to an Employee Unit, a monthly rent including all utilities of no greater than:
 - i. for a one-bedroom Employee Unit: \$1200/month;
 - ii. for a two-bedroom Employee Unit: \$2600/month;
 - iii. for a three-bedroom Employee Unit: \$3000/month; and
 - iv. for a four-bedroom Employee Unit: \$3300/month.
- (l) "Qualified Business" means a 2010 Legacy Society or an individual, partnership or corporate body, with one or more employees, which:
 - i. operates a business within the Municipality;
 - ii. if it requires one to carry on business, holds a valid business license with the Municipality;
 - iii. primarily and directly serves the Municipality's residents, homeowners, businesses or tourists; and
 - iv. if the business is not home-based or mobile, provides its services within the Municipality; or, if the business is home-based or mobile, receives not less than 75% of its business income from the Municipality's residents, homeowners, businesses or tourists;
- (m) "Retiree" means an individual who is at least 55 years of age and has ceased full-time employment but who was an Employee as defined in this Agreement for at least ten of the twelve years prior to the date they ceased full-time employment;
- (n) "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 Act*;
- (o) "Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting

rights to occupy an Employee Unit; and

- (p) "Tenant" means an occupant of an Employee Unit by way of a Tenancy Agreement.

PART II –LAND USE AND OCCUPANCY OF EMPLOYEE UNITS

2. The Owner covenants and agrees with the Municipality:

- (a) that neither the Land nor any building located thereon will be Subdivided;
- (b) that every Dwelling Unit located or constructed on the Land will, when not being used to accommodate an Athlete in accordance with this Agreement, be used or occupied only as an Employee Unit; and
- (c) to do everything necessary, at the Owner's expense, to ensure that this Agreement is registered against title to the Land in priority to all financial charges and encumbrances which may have been registered or are pending registration against title to the Land.

3. Within 30 days after receiving notice from the Municipality, the Owner will in respect of each Employee Unit occupied pursuant to a Tenancy Agreement, 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 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, including, but not limited to the provincial issuing authority for driver's licenses, of the request for information from the Municipality to provide such information to the Municipality.

4. If the Owner cannot comply with the occupancy requirements for any Employee Unit for reasons of hardship, the Owner may request that the Municipality alter the Owner's obligations with respect to that Employee 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 written notice of breach of this Agreement. The request must set out the circumstances of the hardship involved and the reasons why the Owner cannot comply with the occupancy requirements, 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 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.

PART III - TENANCY OF EMPLOYEE UNITS

5. The monthly rent payable for each Employee Unit will not exceed the Permitted Rent applicable to the Employee Unit.

6. The Owner may only increase the Permitted Rent payable for an Employee Unit:

- (a) once every 12 months, beginning with the first anniversary of the day on which this Agreement is fully executed by the Owner and the Municipality and thereafter on each

successive anniversary date of such execution, and

- (b) by an amount equal to the annual rent increase allowable under the *Residential Tenancy Act* (British Columbia).

For clarity, the Owner will not in any circumstance, including if an occupant or Tenant of an Employee Unit changes, increase the Permitted Rent by more than the annual rent increase allowable under the *Residential Tenancy Act* (British Columbia) or do so more often than once every 12 months in accordance with this section.

7. The Owner must not rent or lease any Employee Unit except to an Employee or an Athlete in accordance with the terms of this Agreement.
8. The Owner will give prior written notice of this Agreement to any person to whom it proposes to dispose of an Employee Unit.
9. The Owner must not rent or lease an Employee Unit to an Employee except in accordance with the following additional conditions:
 - (a) the Employee Unit will be used or occupied only pursuant to a Tenancy Agreement;
 - (b) the Owner will attach a copy of this Agreement to the Tenancy Agreement;
 - (c) the Owner will include in the Tenancy Agreement a clause requiring the Tenant to comply with the use and occupancy restrictions in this Agreement;
 - (d) the Owner will 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 Employee Unit in breach of the use or occupancy restrictions contained in this Agreement;
 - (e) the Tenancy Agreement will identify all occupants of the Employee Unit, and will 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;
 - (f) the Tenancy Agreement will provide for termination of the Tenancy Agreement by the Owner in situations where the Employee Unit is occupied by more than the number of people the Municipality's building inspector determines can reside in the Employee Unit given the number and size of bedrooms in the Employee Unit and in light of any relevant standards set by the Municipality in any bylaws of the Municipality;
 - (g) the Tenancy Agreement will 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 Employee Unit for three consecutive months or longer, notwithstanding the timely payment of rent; and
 - (h) the Owner will deliver a copy of the Tenancy Agreement to the Municipality upon demand.

10. The Owner will terminate any Tenancy Agreement where the Tenant uses, occupies or allows use or occupation of an Employee Unit in breach of this Agreement, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act* (British Columbia).
11. The Municipality may, in its sole discretion, provide written consent to the Owner from time to time to do something that is otherwise not permitted under this Agreement, on such terms and conditions as the Municipality considers desirable.
12. The Owner will be solely responsible for screening a Tenant to determine whether or not they qualify to occupy the Employee Unit in accordance with this Agreement.
13. Notwithstanding any other term of this Agreement, the Owner may permit an Athlete to use an Employee Unit for accommodation and the provisions of this Agreement in respect of Permitted Rent do not apply.
14. If an Athlete's use of an Employee Unit under this Agreement constitutes a tenancy under the *Residential Tenancy Act* (British Columbia), the Owner will require the Athlete to occupy the unit in accordance with the conditions outlined in section 9 of this Agreement as if the Athlete was an Employee.

PART V - PRIORITIES FOR OCCUPANCY OF EMPLOYEE UNITS

15. When selecting Tenants for Employee Units that are not occupied by Athletes, the Owner may give priority to Employees of a 2010 Legacy Society and in respect of Employee Units that are not occupied by Athletes or Employees of a 2010 Legacy Society shall give priority to Tenants who are, in order:
 - (a) Essential Service Employees;
 - (b) Employees of Qualified Businesses other than a 2010 Legacy Society who have been referred to the Owner by the Whistler Housing Authority from the Authority's waitlist for Employee Housing; or
 - (c) Other Employees of Qualified Businesses.

PART VI - DEMOLITION OF EMPLOYEE UNIT

16. The Owner will not demolish an 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 the 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 Building has, or the Dwelling Units have been destroyed by an accident, act of God, or sudden and unanticipated force) and the Employee Unit has been demolished under that permit.

Following demolition, and a reconstruction of a replacement Dwelling Unit, the Owner will use and occupy the replacement Dwelling Unit as an Employee Unit in compliance with this Agreement.

PART VIII - INTERPRETATION

17. 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) the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (g) time is of the essence;
- (h) all provisions are to be interpreted as always speaking;
- (i) reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes employees, agents, officers and invitees of the party;
- (j) 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
- (k) 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".

PART IX - MISCELLANEOUS

18. **Housing Agreement.** The Owner acknowledges and agrees that this:

- (a) 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*;
- (b) where an Employee Unit is a separate legal parcel the Municipality may file a notice of housing agreement under section 483 of the *Local Government Act* in the LTO against title

to the Employee Unit; and

- (c) where Employee Units are not separate legal parcels, or have not yet been constructed, or where the Land has not yet been Subdivided to create the Employee Units, the Municipality may file a notice of housing agreement under section 483 of the *Local Government Act* in the LTO against title to the Land.

19. **Replacement of Housing Agreement, 219 Covenant, Rent Charge and Indemnity.** This Agreement replaces in its entirety the Housing Agreement, 219 Covenant, Rent Charge and Indemnity entered into between the parties on February 24, 2020 as authorized by Resort Municipality of Whistler Housing Agreement Bylaw (1345 Cloudburst Drive) No. 2263, 2019.
20. **Management.** The Owner covenants and agrees that it will furnish good and efficient management of the Employee Units and will permit representatives of the Municipality to inspect the Employee Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act* and any other applicable legislation. The Owner further covenants and agrees that it will maintain the Employee Units 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. 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 Employee Units.
21. **Indemnity.** The Owner will indemnify and save harmless the Municipality and each of its 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 of the Owner, or its officers, directors, employees, agents, contractors or other persons for whom at law the Owner is responsible;
 - (b) the Owner's ownership, lease, operation, management or financing of the Land or any 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.
22. **Release.** The Owner by this Agreement releases and forever discharges the Municipality and each of its elected officials, officers, directors, employees and agents, and its 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 advice or direction respecting the ownership, lease, operation or management of the Land or any 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.
23. **Survival.** The obligations of the Owner set out in sections 22 and 23 will survive termination of this Agreement.
24. **Municipality's Powers Unaffected.** 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.

25. **Agreement for Benefit of Municipality only.** 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 building or any portion thereof, including any Employee Unit; and
- (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.

26. **No Public Law Duty.** 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.

27. **Notice.** Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or 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: Clerk, Resort Municipality of Whistler
4325 Blackcomb Way, Whistler, BC V8E 0X5

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

or to the most recent postal address provided in a written notice given each of the parties 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.

28. **Enuring Effect.** This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

29. **Severability.** 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.

30. **Waiver.** 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.
31. **Sole Agreement.** This Agreement, and any documents signed by the Owners contemplated by this Agreement, represent the whole agreement between the Municipality and the Owner respecting the use and occupation of the Employee Units, and there are no warranties, representations, conditions or collateral agreements made by the Municipality except as set forth in this Agreement.
32. **Further Assurance.** 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.
33. **Covenant Runs with the Land.** 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 itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Land. Notwithstanding anything contained herein, neither the Owner named herein nor any future owner of the Land or any portion thereof shall be liable under any of the covenants and agreement contained herein where such liability arises by reason of an act or omission occurring after the Owner named herein or any future owner ceases to have a further interest in the Land.
34. **Equitable Remedies.** 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, as the only adequate remedy for a default under this Agreement.
35. **No Joint Venture.** 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.
36. **Applicable Law.** Unless the context otherwise requires, 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.

SCHEDULE A STATUTORY DECLARATION

IN THE MATTER OF A HOUSING AGREEMENT WITH THE RESORT MUNICIPALITY OF WHISTLER
TO WIT:

I, _____ of _____, British Columbia, do solemnly declare that:

1. I am the owner of _____ (the "Employee 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 Employee Unit.
3. For the period from _____ to _____ the Employee Unit was occupied only by the Employee(s) or Athlete(s) (as defined in the Housing Agreement) whose names and current addresses and, if applicable, whose employer's names and current addresses appear below, and in the case of Employee(s) at the monthly rent indicated below:

Names, addresses and phone numbers of Employee(s)/Athlete(s):

Names, addresses and phone numbers of Employer(s):

Monthly rent: \$ _____.

4. 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 Employee Unit is situated and confirm that the Owner has complied with the Owner's obligations under these Agreements.
5. 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 _____)

_____, British Columbia)

this ____ day of _____,)

20____)

)

_____)

A commissioner for taking Affidavits)

British Columbia)

Name:

Name: