

TERMS OF INSTRUMENT - PART 2
SECTION 219 COVENANT – Development Conditions

This AGREEMENT dated for reference the __ day of _____, 2021 is

BETWEEN:

(the "Owner")

AND: **RESORT MUNICIPALITY OF WHISTLER,**
4325 Blackcomb Way, Whistler, B.C. V8E 0X5 1B4

(the "Municipality")

GIVEN THAT:

- A. The Owner is the registered owner of the land located at 1340 Mt Fee Road, Whistler, British Columbia and more particularly described as:

Lot 4 District Lot 8073 Group 1 New Westminster District Plan EPP111931

PID: 031-508-537

(the "Land");
- B. Section 219 of the *Land Title Act* (British Columbia) permits the registration of a covenant of a negative or positive nature in favour of a municipality and including provisions respecting the use of land and the manner in which land may or may not be developed; and
- C. The Owner wishes to grant to the Municipality a covenant under section 219 of the *Land Title Act* (British Columbia) with respect to the Land, to allocate density as required by the Municipality's zoning bylaw and to ensure development of the Land is consistent with the Municipality's wildfire hazard management objectives

THIS AGREEMENT is evidence that in consideration of \$10.00 paid by the Municipality to the Owner, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Owner, and in consideration of the promises exchanged below, the Owner covenants and agrees with the Municipality as follows pursuant to section 219 of the *Land Title Act* (British Columbia):

Definitions

1. In this Agreement:

- (a) **"General Manager"** means the Municipality's General Manager of Planning and Development Services.

- (b) **“Gross floor area”** has the meaning given to it in the Municipality’s Zoning Bylaw 303, 2015.
- (c) **“Lot”** means any one of the areas of the Land marked “SL” and followed by a number from 1-23, in the subdivision plan attached to this Agreement as Schedule A.

Density Allocation

- 2. The total maximum gross floor area for all buildings on the Land is 5,250 square metres, and the total maximum gross floor area for each Lot is set out in the table attached to this Agreement as Schedule B.

Building Type

- 3. The type of building permitted on each lot is set out in the table attached to this Agreement as Schedule B.

Fire Protection

- 4. The Owner shall not alter the Land, or start any construction or other land development works or activities on the Land, until the Owner has delivered to the General Manager, and received the General Manager’s approval of, a written report (“the Firesmart Report”) certified by a professional having qualifications acceptable to the General Manager (the “QP”), which report includes the following:
 - (a) A general overview or description of all land alteration, construction or other land development works proposed for the Land (the “Proposed Development”);
 - (b) A list, and an explanation, of all measures the QP recommends to ensure the Proposed Development is consistent with the Municipality’s most current development permit guidelines for Moderate fire risk areas (the “Guidelines”);
 - (c) A list, and an explanation, of all measures the QP recommends to ensure the Land continues to comply with the Guidelines.
- 5. The Owner shall not use, alter, construct on or develop the Land except in accordance with the Firesmart Report, and the Owner shall at all times ensure the Land and any buildings or structures on the Land continue to comply with the Firesmart Report.

General

- 6. **Owner Protection of Municipality** – As between the Owner and the Municipality, the Owner confirms to and agrees with the Municipality that the Owner shall be solely responsible for all costs of complying with and performing the obligations of the Owner under this Agreement and the Owner hereby releases, and shall indemnify and save harmless, the Municipality and its elected and appointed officials, officers and employees from and against any and all actions, causes of action, liabilities, demands, losses, damages, expenses (including legal fees and disbursements), fines and penalties suffered or incurred by the Municipality or any of its elected and appointed officials, officers, employees contractors and agents in any way arising or resulting from, or related to, the existence of this agreement, the restrictions contained in this Agreement or any breach by the

Owner of any obligations under this Agreement except to the extent caused by the fault, negligence or breach of the Municipality.

7. **Specific Relief** – Because of the public interest in ensuring that all of the matters described in this Agreement are complied with, the public interest strongly favors the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the Municipality, in the event of an actual breach of this Agreement.
8. **Inspection** – The Municipality may, by its officers, employees, contractors and agents, enter upon the Land and all buildings thereon at all reasonable times for the purpose of ascertaining compliance with this Agreement.
9. **No Effect on Powers** – 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) affect or limit any enactment relating to the use or subdivision of the Land; or
 - (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
10. **Runs With the Land** – This Agreement burdens and runs with, and binds the successors in title to, the Land and each and every part into which the Land may be subdivided by any means (including by deposit of a plan of any kind under the *Strata Property Act*).
11. **No Public Law Duty** – Where the Municipality or any representative of the Municipality, including the General Manager, is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Municipality or its representative is under no public law duty of fairness or natural justice in that regard and the Municipality or its representative may do any of those things in the same manner as if it were a private party and not a public body or a representative thereof.
12. **No Obligation to Enforce** – The rights given the Municipality under this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind of the Municipality to any one, or obliges the Municipality to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
13. **Waiver** – An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach or continuing breach of this Agreement.
14. **Priority** – The Owner will, at its expense, do or cause to be done all acts necessary to register this Agreement in the land title office against title to the Land with priority over all financial charges, liens and encumbrances registration, or pending registration at the time of application for registration of this Agreement against the title to the Land.

15. **Notice** – Any notice to be given pursuant to this Agreement must be in writing and delivered personally or sent by registered mail. The addresses of the parties for the purpose of notice are the addresses on the first page of this Agreement and in the case of any subsequent owner, the address will be the address shown on the title to the Land in the Land Title Office. If notice is delivered personally, it may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed given when delivered. If notice is sent by mail, it will be considered given five (5) days after mailing. In the case of any strike or other event causing disruption of ordinary Canada Post operations, a party giving notice for the purposes of this Agreement must do so by delivery as provided in this section. A party may change its address for the purposes of this section by giving notice in accordance with this section.
16. **Enurement** – This Agreement and each and every provision hereof shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assign, as the case may be.

As evidence of their agreement to be bound by this Agreement, the parties each have executed the *Land Title Act* (British Columbia) Form C attached to and forming part of this Agreement.

INSERT PRIORITY AGREEMENTS (if applicable)

The site plan for Lot 3 is divided into several sub-lots and common property areas. The sub-lots are labeled as follows:

- SL 1, SL 2, SL 3, SL 4, SL 5, SL 6, SL 7, SL 8, SL 9, SL 10, SL 11, SL 12, SL 13, SL 14, SL 15, SL 16, SL 17, SL 18, SL 19, SL 20, SL 21, SL 22, SL 23

The plan also shows a central area labeled "COMMON PROPERTY" and a "LOT 3 EIFFEL LOT B073" area. The surrounding areas include "MOUNT FEE ROAD" to the west, "UNSURVEYED CROWN LAND" to the north and south, and "LOT 5" to the west. The plan includes dimensions, bearings, and a north arrow.

Schedule B – Density Allocation Table

Lot Number	Type of Building	Gross Floor Area (square metres)
1	Detached Dwelling Unit	286.8
2	Detached Dwelling Unit	234.7
3	Duplex Dwelling Unit	175.0
4	Duplex Dwelling Unit	175.0
5	Detached Dwelling Unit	302.1
6	Detached Dwelling Unit	280.9
7	Detached Dwelling Unit	285.0
8	Detached Dwelling Unit	306.0
9	Detached Dwelling Unit	325.0
10	Detached Dwelling Unit	231.8
11	Duplex Dwelling Unit	175.0
12	Duplex Dwelling Unit	175.0
13	Detached Dwelling Unit	325.0
14	Detached Dwelling Unit	245.4
15	Duplex Dwelling Unit	139.0
16	Duplex Dwelling Unit	141.7
17	Detached Dwelling Unit	222.7
18	Detached dwelling Unit	180.0
19	Detached Dwelling Unit	179.8
20	Duplex Dwelling Unit	144.4
21	Duplex Dwelling Unit	139.8
22	Duplex Dwelling Unit	140.9
23	Duplex Dwelling Unit	175.0