

TERMS OF INSTRUMENT – PART 2

HOUSING AGREEMENT, 219 COVENANT, RENT CHARGE, SALE RESTRICTION AND INDEMNITY

This Agreement, dated for reference the 14 day of April, 2020 is

BETWEEN:

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

(the "Municipality")

AND:

████████████████████
████████████████████
████████████████████

(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, the availability of housing units to classes of persons, rents and leases, sale or share prices that may be charged, and the rates at which these may be increased over time;
- 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);
- D. 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 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) "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;
- (b) "CCPI" means the Consumer Price Index , all-items excluding eight of the most volatile components, as defined by the Bank of Canada or its successor in function, and excluding the effect of changes in indirect taxes;
- (c) "Daily Amount" means \$500.00 per day as of December 31, 2019, adjusted in accordance with section 27;
- (d) "Dispose" means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, rent or sublet, divest, release, and agree to do any of those things;
- (e) "Employee" means a person who is employed or self-employed for an average of not less than 30 hours per week on an annual basis, by a Qualified Business;
- (f) "Employee Housing Lot" means the portion of the Land labelled Lot A on the plan attached to this Agreement as Schedule "A", including any improvements, and for clarity, if this Agreement is discharged from a portion of the Land in accordance with section 3, then all of the land to which this Agreement applies following the discharge shall be the "Employee Housing Lot";
- (g) "Employee Unit" means and includes any residential dwelling unit constructed or located on the Employee Housing Lot;
- (h) "Gross Floor Area" means the habitable gross floor area of an Employee Unit and includes enclosed sunrooms but does not include crawl spaces, open patios, open balconies or parking areas. If the Employee Unit is a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be based on the gross floor area shown corresponding to the Employee Unit on the Strata Plan filed in the LTO (hereinafter defined) in respect of the Land. If the Employee Unit is not a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be made in accordance with the procedure for determining gross floor area set out in the *Strata Property Act* as if the Employee Unit were a strata lot;
- (i) "Land" means the land described in Item 2 of the General Instrument to which this Agreement is attached and which forms part of this Agreement;
- (j) "LTO" means the New Westminister/Vancouver Land Title Office or its successor;
- (k) "Qualified Business" means a business having an office or other business premises physically located within the boundaries of the Municipality, or at the Whistler Olympic Park, and that:
 - i. holds a valid business license issued by the Municipality, where such licence is required by bylaw; and,

- ii. primarily and directly serves the Municipality’s residents, homeowners, businesses or tourists, and either:
 - A. for commercial (non-residential) premises, provides services within the Municipality’s boundary; or
 - B. for a home based or mobile business, generates more than 75% of business income from the Municipality’s local residents, tourists or the Municipality’s local businesses.

- (l) “Qualified Person” means an Employee or Retiree who does not own, either directly or indirectly through a trust, business asset, or otherwise, any interest in real property anywhere in the world, unless:
 - i. The person is “underhoused” whereby:
 - A. A single individual or couple owns a dwelling, which they reside in as their primary residence, and it is less than 400 sq. ft.
 - B. A couple/single parent with one or more children owns a dwelling, which they reside in as their primary residence, and it is less than 850 sq. ft.
 - ii. the real estate he or she owns is located in Squamish or Pemberton and is occupied as their primary residence; 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 Employee Housing Lot on terms acceptable to the Municipality in its sole discretion;

- (m) “RFR/Option” means a right of first refusal and option to purchase the Employee Housing Lot granted to the Municipality in the form attached to this Agreement as Schedule D, with such modifications as may be approved by the Municipality’s General Manager of Resort Experience to ensure consistency with the terms and definitions used in this Agreement;

- (n) “Retiree” means an individual who is at least 55 years old, and has ceased active full-time employment in the Municipality but who was an Employee for at least ten of the twelve years prior to ceasing employment;

- (o) “Subdivide” means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land into one 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;

- (p) "Tenancy Agreement" means a written tenancy agreement, lease, license or other agreement granting rights to occupy an Employee Unit;
- (q) "Tenant" means an occupant of an Employee Unit by way of a Tenancy Agreement; and
- (r) "WHA" means Whistler Housing Authority or its successor.

PART II – SUBDIVISION, USE OF LAND AND CONSTRUCTION OF EMPLOYEE UNITS

2. The Owner covenants and agrees with the Municipality that:
 - (a) the Employee Housing Lot, including any Employee Housing Unit, will not be used or occupied except in accordance with section 4 of this Agreement;
 - (b) the Owner will not Subdivide the Land except to create the Employee Housing Lot, in accordance with the plan attached to this Agreement as Schedule "A", and thereafter, the Owner will not in any circumstance subdivide the Employee Housing Lot or any part thereof;
 - (c) the Owner will not subdivide the Land unless together with the subdivision the RFR/Option is registered against the title the Employee Housing Lot in priority over all charges and encumbrances which may have been registered or are pending registration against title to the Employee Housing Lot save and except those specifically approved in writing by the Municipality or in favour of the Municipality;
 - (d) the Owner will 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. If the Owner Subdivides the Land in accordance with this Agreement, then the Owner may, at its sole expense, deliver to the Municipality a registrable discharge of this Agreement from any part of the Land other than the Employee Housing Lot, and the Municipality shall execute and return the discharge to the Owner, provided that the Municipality shall have no obligation to provide such discharge under this section if the Owner is in breach of any part of this Agreement.

PART III - USE AND OCCUPANCY OF THE LAND

4. The Owner agrees that no Employee Unit shall be used or occupied:
 - (a) except as a permanent residence;
 - (b) except by at least one Qualified Person;
 - (c) by any person who is not a Qualified Person, unless that person is related by blood, adoption or foster parenthood to, or is living in a spousal relationship with, a Qualified Person who is also occupying the Employee Unit.
5. The Owner further agrees that:

- (a) if an Employee Unit is an “auxiliary residential dwelling unit” for the purpose of the Municipality’s Zoning and Parking Bylaw No. 303, 2015, then that Employee Unit shall have a maximum of two bedrooms;
 - (b) the maximum number of bedrooms in an Employee Unit other than an Employee Unit described in 5(a), is four; and,
 - (c) the Municipality’s building inspector may determine the number of persons who can reside in an 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.
6. Within thirty days after receiving notice from the Municipality, the Owner will in respect of any Employee Unit, deliver, or cause to be delivered, to the Municipality a statutory declaration, substantially in the form attached as Schedule "B", sworn by the Owner, containing all of the information required to complete the statutory declaration. 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. The Owner agrees to pay the Daily Amount to the Municipality for each day the Owner is in breach of the requirement to deliver a statutory declaration under this section.
7. If the Owner cannot comply with the occupancy restrictions 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 IV - DISPOSITION AND ACQUISITION OF EMPLOYEE HOUSING LOT AND EMPLOYEE UNITS

8. In this Part, the following words have the following meanings:
- (a) “Change in CCPI” means the percentage change from the monthly CCPI published immediately prior to the date of Previous Sale to the monthly CCPI published immediately prior to the date of contracting for next transfer. Where the CCPI has increased since the date of Previous Sale, the Change in CCPI is positive. Where the CCPI has decreased since the date of Previous Sale, the Change in CCPI is negative.
 - (b) “Maximum Price, Resale” means the Previous Sale Price plus the Previous Sale Price multiplied by the Change in CCPI, plus the Value of Improvements, if any. Where the Change in CCPI is negative or cannot be determined, the Maximum Price, Resale shall be the Previous Sale Price plus the Value of Improvements, if any;

- (c) “Previous Sale” means the most recent transfer of the Employee Housing Lot;
 - (d) “Previous Sale Price” means the sale price of the Previous Sale in accordance with this Agreement;
 - (e) “Value of Improvements” means the value of any improvements made to construct or continue the construction of an Employee Unit on the Employee Housing Lot since the date of the Previous Sale, determined in accordance with Schedule C, but does not include improvements constructed after the issuance of an occupancy permit for the Employee Unit;
 - (f) “Permitted Rent” means \$2.90 per square foot of Gross Floor Area for rental of an entire Employee Unit or \$1000 per bedroom per month in the case of a shared living arrangement.
9. The Owner will not sell or otherwise transfer the Employee Housing Lot or an Employee Housing Unit except to a Qualified Person or a Qualified Business and except in accordance with the terms and conditions set out in this Agreement, the RFR/Option and the resale policies of the WHA.
 10. Except in the case of the first sale of the Employee Housing Lot following subdivision of the Land, the Owner will not accept any offer to purchase the Employee Housing Lot for a purchase price that exceeds the Maximum Price, Resale.
 11. The Owner will not permit an Employee Unit to be Disposed of by sublease or assignment of a Tenancy Agreement except in compliance with this Agreement.
 12. The Owner will give prior written notice of this Agreement to any person to whom it proposes to Dispose of an interest in the Employee Housing Lot or an Employee Unit.
 13. The monthly rent payable for an Employee Unit will not exceed the Permitted Rent, which may be increased once every 12 months, beginning 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, but only by an amount no greater than the annual rent increase allowed under the *Residential Tenancy Act* (British Columbia).

The Owner will not in any circumstance, including on termination of a Tenancy Agreement, increase the monthly rent payable for an Employee Unit by an amount that exceeds the annual rent increase allowable under the *Residential Tenancy Act*.
 14. The Owner must not rent or lease an Employee Unit 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 not require a Tenant to pay any extra charges or fees for use of any common property, limited common property, parking areas, storage or other common area, or for sanitary sewer, storm sewer, water utilities, or 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 Employee Unit is fully furnished and an additional \$25.00 per month if the Employee Unit contains a fully functioning washer and dryer;

- (c) the Owner will attach a copy of this Agreement to the Tenancy Agreement;
 - (d) the Owner will include in the Tenancy Agreement a clause requiring the Tenant to comply with the use and occupancy restrictions contained in Part III of this Agreement;
 - (e) 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;
 - (f) 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;
 - (g) 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;
 - (h) 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;
 - (i) the Tenancy Agreement will provide that the Tenant will not sublease the Employee Unit or assign the Tenancy Agreement; and
 - (j) the Owner will deliver a copy of the Tenancy Agreement to the Municipality upon demand.
15. 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*.
16. 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.
17. If the Owner is leasing or renting an Employee Unit, the Owner will, forthwith upon request by the Municipality, and from time to time as the Employee Unit becomes vacant, notify the Municipality and make best efforts to lease or rent the vacant Employee Unit to qualified applicants on WHA's tenancy application list.

18. The Owner will be solely responsible for screening Tenants to determine whether or not they qualify to occupy the Employee Unit in accordance with this Agreement.
19. Upon notice from the executor of the Owner's estate, WHA or the Municipality may, in its sole discretion, waive the RFR/Option and consent to a transfer of the Employee Housing Lot Unit to the children of the deceased Owner, provided that the children of the deceased Owner are at least 19 years old, employed in the Municipality, and plan to reside in the unit as their primary residence. If the children of the deceased Owner own market real estate, they must agree to sell the market real estate within 6 months of taking ownership of the Employee Unit.

An Employee Unit cannot be transferred to an Owner's beneficiary under the age of 19. If the Owner's child or children are not yet of legal age, another family member or legal guardian could reside in the Employee Unit with the child or children until the child or children reach legal age.

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

PART VI – CAPITAL IMPROVEMENTS

21. If the Owner has made capital improvements to an Employee Unit that required the issuance of a building permit by the Municipality but have not been included in calculating the "Value of Improvements", then the Municipality may, in its sole discretion, permit the Owner to increase the sale price for the Employee Unit at the time of resale up to an amount commensurate with the value of capital improvements. 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.

PART VII – DEMOLITION OF EMPLOYEE UNIT

22. 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 residential dwelling unit, the replacement dwelling unit shall be used and occupied only in compliance with this Agreement.

PART VIII - DEFAULT AND REMEDIES

23. 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 an Employee Unit is used or occupied in breach of this Agreement, the Owner will pay to the Municipality, as a rent charge under section 24, the Daily Amount 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.
24. The Owner hereby grants to the Municipality a rent charge under s. 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.
25. If the Employee Housing Lot 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 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. The Owner further acknowledges and agrees that the Excess Amount is fair and reasonable and is not to be construed as a penalty or forfeiture but as liquidated damages.

PART IX - INTERPRETATION

26. 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 s. 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 X - MISCELLANEOUS

27. **Housing Agreement.** The Owner acknowledges and agrees that this Agreement constitutes a covenant under s.219 of the *Land Title Act* and a housing agreement entered into under s. 483 of the *Local Government Act*, and the Municipality may file a notice of housing agreement under s.483 of the *Local Government Act* in the LTO against title to the Land.
28. **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.

29. **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.
30. **Survival.** The obligations of the Owner set out in sections 21, 22, 23, and 28 will survive termination of this Agreement.
31. **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.
32. **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 Property, 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.
33. **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.
25. **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 V8E 0M3

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.

26. **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.
27. **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.
28. **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.
29. **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.
30. **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.
31. **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.
32. **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.

33. **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.
34. **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.

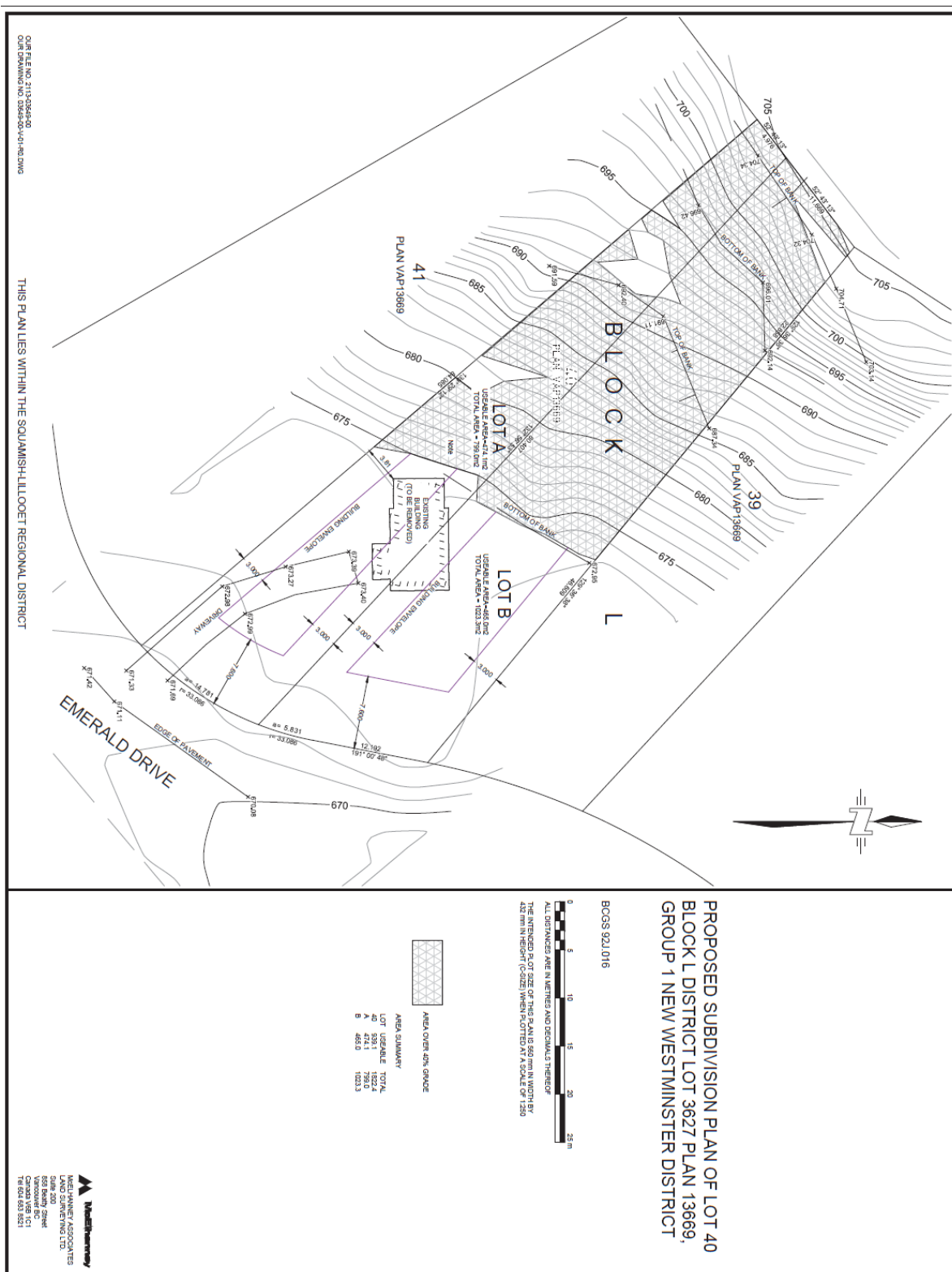
PRIORITY AGREEMENT

CANADIAN IMPERIAL BANK OF COMMERCE (the "Chargeholder") being the holder of Mortgage No. CA8192843 (the "Charge")

The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of, joins in and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on the Form D to which this Agreement is attached and which forms part of this Agreement.

SCHEDULE "A" PROPOSED SUBDIVISION PLAN



SCHEDULE "C" MAXIMUM PRICE, RESALE CALCULATION

- I. In this Schedule, the following terms shall have the following meanings:
 - a. "Appraisal" means a written appraisal obtained by a party at his cost, prepared to the standard that is typically required for insurance purposes by an independent appraiser who has experience in appraising single family homes, has a CRA or AAIC designation from the Appraisal Institute of Canada or its successor or an equivalent appraiser designation.
 - b. "Depreciation" means the amount as evidenced by observed condition in comparison with new units of like kind, with consideration of physical deterioration and functional and economic factors deemed relevant by the appraiser as of the effective date of the Appraisal.
 - c. "Replacement Cost" means the estimated cost to construct, at current prices as of the effective date of the Appraisal, a new building or part thereof, as applicable, with utility equivalent to the improvements, or the improvements being replaced, using modern materials and current standards, design and layout.

- II. For the purpose of determining the Value of Improvements since the Previous Sale, the following provisions shall apply:
 - a. in respect of improvements for which the Municipality has issued a final occupancy permit, within 60 days from the issuance of the occupancy permit the Owner must submit one Appraisal to the Municipality, which shall have been prepared within 60 days from the date of the Appraisal's delivery to the Municipality;
 - b. in respect of other improvements, the Owner may submit an Appraisal to the Municipality within 60 days of the date the Appraisal was prepared,
 - c. the appraiser will determine the Replacement Cost as of the date of the Appraisal of all improvements constructed since the Previous Sale and shown in building permits issued by the Municipality for the Employee Housing Lot, together with all landscaping and structures for which a building permit was not required to be issued by the Municipality (e.g. for sheds or other similar structures) and the Replacement Cost determined under this section will be adjusted for Depreciation as determined by the appraiser;

- d. if the Municipality concludes the Appraisal does not meet the requirements outlined in this Agreement and is dissatisfied with the value of improvements determined by the Appraisal, the Municipality may, at its expense, engage another appraiser to complete a second Appraisal. The parties agree that the Municipality will in no way be bound by the value established by the second Appraisal but that the average of the appraised values set forth in the two Appraisals may form the value of improvements at the Municipality's sole discretion;
- III. In the case of improvements for which the Municipality has issued an occupancy permit, the Value of Improvements may be increased by the percentage Change in CCPI since the date occupancy permit was issued.

Schedule D – Form of RFR / Option to Purchase

Schedule D to Housing Agreement

FORM OF RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE

RECITALS:

- A. The Owner is the registered owner of the land more particularly described as
[insert legal description, not known until subdivision plan prepared]
the “Property”;
- B. The Property was created by the subdivision of a parcel of land that was, before subdivision, more particularly described as Lot 40, Block L, District Lot 3627, Plan 13669 PID: 008-515-964 (the “Land”);
- C. The Property is subject to a Housing Agreement between the Owner and the Municipality under section 483 of the *Local Government Act*, notice of which is registered under number _____, and a covenant registered under number _____, relating to certain restrictions on the use, subdivision and occupancy of the Property (and together the Housing Agreement and the covenant are referred to in this Agreement as the “Housing Agreement”);
- D. The purpose of the Housing Agreement and this Agreement is to ensure the Property is used solely for the provision of affordable housing for qualified local Employees or Retirees;
- E. The Owner has built or may build one or two residential dwelling units on the Property; and
- F. In order to ensure that the Property is occupied and Disposed of in accordance with the Housing Agreement the Owner agrees to grant to the Municipality a right of first refusal to purchase and an option to purchase the Property 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 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 as follows:

PART I – DEFINITIONS

1.1 Definitions

Capitalized terms used in this Agreement and in the Recitals above shall have the following meanings:

- a. "Agreement" means these Terms of Instrument together with the General Instrument;
- b. “Arm’s length” means a market transaction between unrelated parties, each acting in his or her own self-interest;

- c. "Base Maximum Price" means the purchase price of the Property which is the price paid by the First Purchaser as set out in the copy of the Bona Fide Offer for the sale to the First Purchaser that is delivered to the Municipality by the Owner in connection with the Owner's obligation to give notice to the Municipality of a Bona Fide Offer pursuant to the terms of this Agreement;
- d. "Bona Fide Offer" means an offer to purchase the Property from the Owner:
- 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 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, Resale but may be less than the Maximum Price, Resale;
 - vi. providing that if the Municipality does not exercise the RFR, the Outside Offeror will grant to the Municipality a right of first refusal and option to purchase the Property upon the same terms and conditions as set forth in this Agreement;
 - vii. providing that the Outside Offeror will not assign or transfer the contract for the purchase of the Property; and
 - viii. confirming that the Outside Offeror has read and understood the terms of this Agreement, all other charges in favour of the Municipality that are registered in the LTO against the Property and that the Outside Offeror agrees to be bound by the owner's obligations pursuant to such charges.
- e. "Business Day" means Monday to Friday inclusive except for those excluded days declared by lawful authority as holidays, excluding any day that the LTO is not open for business;
- f. "CCPI" means the Consumer Price Index, all items excluding eight of the most volatile components, as defined by the Bank of Canada, or its successor in function, and excluding the effect of changes in direct taxes;
- g. "Change in CCPI" means the percentage change from the monthly CCPI published immediately prior to the date of Previous Sale to the monthly CCPI published immediately prior to the date of contracting for next transfer. Where the CCPI has increased since the date of Previous Sale, the Change in CCPI is positive. Where the CCPI has decreased since the date of Previous Sale, the Change in CCPI is negative.
- h. "Contaminant" has the meaning given to it in Section 5.7(g);

- i. "Completion Date" has the meaning given to it in Section 5.2;
- j. "Discharge" has the meaning given to it in Section 3.1(d)(iii)(3);
- k. "Dispose" means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, rent or sublet, divest, release, and agree to do any of those things;
- l. "Efforts to Sell" means the best efforts of the Owner to sell the Property using all reasonable means including, listing the Property for sale with a licensed real estate agent, advertising the Property for sale in the local newspapers, posting "for sale" signs on any bulletin boards or websites maintained by or on behalf of the Municipality for sale of employee housing, and offering to sell the Property to the Municipality on the following terms:
 - i. specifying in a written notice that it is offering to sell the Property to the Municipality in accordance with Part III of this Agreement;
 - ii. giving the Municipality the exclusive right for 14 Business Days from the date on which the Municipality receives the notice from the Owner pursuant to Part III of this Agreement, to give a written notice to the Owner agreeing to purchase the Property for the purchase price which does not exceed the Maximum Price, Resale and on the terms that are set out in Part V of this Agreement.
- m. "Election Period" has the meaning given to it in Section 3.1(b)
- n. "Employee" means a person who is either employed or self-employed for an average of not less than 30 hours per week on an annual basis, by a Qualified Business;
- o. "First Purchaser" means the person to whom the Property is first transferred following the subdivision of the Land that created the Property;;
- p. "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 Property;
- q. "Housing Agreement" has the meaning given to it in Recital C to this Agreement, and includes any replacements of that agreement registered in the LTO from time to time;
- r. "Legal Representative" has the meaning given to it in Section 3.1(d)(iii)(4);
- s. "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;
- t. "LTO" means the New Westminster/Vancouver Land Title Office or its successor;

- u. "Maximum Price, Resale" means the Previous Sale Price plus the product of the Previous Sale Price multiplied by the Change in CCPI, plus the Value of Improvements, if any. Where the Change in CCPI is negative or cannot be determined, the Maximum Price, Resale shall be the Previous Sale Price plus the Value of Improvements, if any;
- v. "Municipality" means the Resort Municipality of Whistler;
- w. "Municipality's Subject" means the following clauses:

The obligation of the seller to complete the sale of the Property is subject to the following (the "Seller's Conditions"):

- i. the seller notifying the buyer in writing not later than 14 Business Days that the Municipality has approved the terms of the sale of the Property to the buyer and that the Municipality has decided not to exercise its Option or the RFR with respect to this transaction only; and
- ii. the seller notifying the buyer in writing not later than 14 Business Days that the Municipality has confirmed the buyer's eligibility to own the Property.

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 [the purchase 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.

- x. "New Form C" has the meaning given to it in Section 3.1(d)(iii)(3);
- y. "Notice has the meaning given to it in Section 3.1(b);
- z. "Option" means the option to purchase the Property granted by the Owner to the Municipality pursuant to Part IV of this Agreement;
- aa. "Outside Offeror" means a purchaser or prospective purchaser of the Property who deals at Arm's length with the Owner of the Property and who is eligible to purchase the Property under this Agreement;
- bb. "Owner" means the Transferor described in the General Instrument and any subsequent owner of the Property who must be a Qualified Person and includes any person who is a registered owner in fee simple of the Property from time to time;
- cc. "Permitted Encumbrance" has the meaning given to it in Section 5.3;
- dd. "Previous Sale" means the most recent transfer of the Property;
- ee. "Previous Sale Price" means the sale price of the previous sale of the Property;

- ff. "Property" means the Employee Lot and all buildings and other structures and improvements from time to time thereon and thereto, including any residential dwelling unit or units;
- gg. "Purchase Price" has the meaning given to it in Section 5.1;
- hh. "Qualified Business" means a business having an office or other business premises physically located within the boundaries of the Municipality, or at the Whistler Olympic Park, and that:
- i. Holds a valid business license issued by the Municipality, where such licence is required by bylaw, and,
 - ii. Primarily and directly services the Municipality's residents, homeowners, businesses or tourists, and either:
 - A. For commercial (non-residential) premises, provides services within the Municipality's boundary; or,
 - B. For a home-based or mobile business, generates ore than 75% of business income from the Municipality's local residents, tourists or the Municipality's local businesses.
- ii. "Qualified Person" means an Employee or Retiree who does not own, either directly or indirectly through a trust, business asset, or otherwise, any interest in real property anywhere in the world, unless:
- i. The person is "underhoused" whereby:
 - A. A single individual or couple owns a dwelling, which they reside in as their primary residence, and it is less than 400 sq. ft.
 - B. A couple/single parent with one or more children owns a dwelling, which they reside in as their primary residence, and it is less than 850 sq. ft.
 - ii. the real estate he or she owns is located in Squamish or Pemberton and is occupied as their primary residence; 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 Property on terms acceptable to the Municipality in its sole discretion;
- jj. "Retiree" means an individual who is at least 55 years old, and has ceased active full-time employment but who was an Employee for at least ten of the twelve years prior to ceasing employment;
- kk. "Statutory Declaration" has the meaning given to it in Section 5.7(e);

- ll. "Value of Improvements" shall be given the meaning provided in, and calculated in accordance with, the Housing Agreement.
- mm. "RFR" means the right of first refusal granted in Part III of this Agreement; and
- nn. "Transfer" has the meaning given to it in Section 5.9(a).

PART II – DISPOSITION OF PROPERTY

2.1 Limits on Disposition

The Owner covenants and agrees that the Owner will not Dispose of the Property except in accordance with this Agreement, the Housing Agreement, and the resale policies of Whistler Housing Authority Ltd. or its successor.

2.2 Disposition only to Outside Offeror

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

PART III - RIGHT OF FIRST REFUSAL

3.1 Right of First Refusal

The Owner covenants and agrees as follows:

- a. The Owner will not Dispose of the Property for any consideration not consisting entirely of lawful money of Canada;
- b. If the Owner receives a Bona Fide Offer to purchase the Property which the Owner is willing to accept, then the Owner must offer to sell the Property 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 Bona Fide Offer. The Municipality will have the exclusive right for 14 Business Days (the "**Election Period**") from the date on which the Municipality receives from the Owner the Notice and a copy of the Bona Fide Offer within which to notify the Owner that the Municipality is exercising the RFR and the Municipality has elected to purchase the Property on the terms set out in Part V of this Agreement. The Owner agrees that the Municipality's Election Period to purchase the Property will not start to run until the Owner gives to the Municipality the Notice of the Bona Fide Offer with the only condition precedent or subject in the Bona Fide Offer being the Municipality's Subject;
- 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. If the Municipality exercises this RFR, the Municipality shall have the right to assign the Bona Fide Offer to a third party designee of its choice;
- d. If the Municipality does not exercise this RFR with respect to a specific Bona Fide Offer, the Municipality's rights under this RFR with respect to the particular Bona Fide Offer will be waived, but only if it 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, and that the Outside Offeror agrees to be bound by all the agreements in favour of the Municipality which affect the Property;
- 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 sub-section (i) herein;
- 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:
 - (1) 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, Resale, except where the subject sale is to the First Purchaser;
 - (2) signed 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 Property (the "**New Form C**") on substantially the same terms as set out in this Agreement, with such amendments as the Municipality may reasonably require;
 - (3) a discharge of the RFR and Option in this Agreement (the "**Discharge**") for execution by the Municipality;
 - (4) 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 only 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 Property 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 the Title Certificate for the Property confirming registration of the New Form C; and
 - (5) a copy of the vendor's statement of adjustments for the Property 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 Property, 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 Property.

PART IV - GRANT OF OPTION

4.1 Grant of Option

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

4.2 Exercise of Option

Subject to Section 4.3, the Option may be exercised by or on behalf of the Municipality 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.

4.3 Triggering Event

The Option may only be exercised by the Municipality 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 transfer or sell the Property.

4.4 Binding Agreement

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

PART V – TERMS OF PURCHASE AND SALE

5.1 Purchase Price

Subject to adjustments as provided in this Agreement, the purchase price of the Property (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, Resale.

5.2 Completion Date

The purchase of the Property by the Municipality will be completed on the date ("**Completion Date**") to be chosen by the Municipality, acting reasonably, such date not to be later than 30 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.

5.3 Permitted Encumbrances

On the Completion Date, the Owner will convey the Property to the Municipality or to the Municipality's designee, subject only to the registered non-financial charges on title to the Property at the time of registration of this Agreement (the "**Permitted Encumbrances**"), and free and clear of all mortgages and other financial liens, charges and encumbrances, provided that the Owner is entitled to use the Purchase Price to discharge any mortgage registered against title to the Property, in accordance with Section 5.10.

5.4 Vacant Possession

The Owner will give vacant possession of the Property to the Municipality, subject only to existing tenancies in favour of Employees or Retirees permitted by the Housing Agreement, following payment of the adjusted Purchase Price to the Owner on the Completion Date.

5.5 Adjustments

All adjustments, both incoming and outgoing, in connection with the purchase and sale of the Property, 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.

5.6 Other Steps

The Owner covenants and agrees that it will, from and after the date of the application to register this Agreement in the LTO, take or cause to be taken all proper steps and actions and corporate proceedings to enable the Owner to vest a good and marketable title to the Property 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 Property and to execute and deliver this Agreement as valid and binding obligations of the Owner.

5.7 Owner's Representations, Warranties and Covenants

The Owner hereby represents and warrants to and covenants and agrees with 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. 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;
- b. 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;
- c. 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;

- d. The Owner has a good, safe holding and marketable title to the Property;
- e. 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 provide the Statutory Declaration, the Municipality may choose to complete the purchase of the Property and withhold 50% of the Purchase Price until the residency of the Owner is resolved to the Municipality's satisfaction;
- f. 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 Property;
- g. the Owner has not used the Property or permitted any use of the Property, 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 Property ("**Contaminant**");
- h. 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 Property; and
- i. the Owner has at all times used the Property in compliance with all laws relating to Contaminants and to the environment.

5.8 Indemnity

The Owner shall indemnify and save harmless the Municipality and Whistler Housing Authority Ltd., and each of their elected and appointed officials, officers, directors, board members, employees and agents, and their heirs, executors, administrator, 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 legal fees and disbursements), expenses, fines and penalties, suffered or incurred by the Municipality, the 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 Property arising during the ownership of the Owner; and
- c. any wrongful act, omission or negligence of the Owner or a person for whom he is responsible in law.

The obligation to indemnify and save harmless will survive the transfer of the Property or any termination of this Agreement.

5.9 Closing Documents

Before the Completion Date, the Municipality or Municipality's designee will deliver to the Owner's solicitors for execution by the Owner:

- a. Form A Transfer transferring the fee simple title to the Property to the Municipality, or Municipality's designee, ("**Transfer**");
- b. Vendor's Statement of Adjustments;
- c. the Statutory Declaration; and

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

5.10 Closing Procedures

- a. On the Completion Date, after the adjusted Purchase Price (less any proceeds of a new mortgage to be granted by the Municipality, or Municipality's designee) has first been deposited in the trust account of the Municipality, or Municipality's designee's, or 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 new mortgage, in the LTO, and upon receipt of a satisfactory post-index search of the title to the Property indicating that in the normal course of LTO procedure the Municipality, or its designee, will become the registered owner of the Property 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, or cause its designee, to pay 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 undertaking of the Owner's solicitor or notary public to discharge any mortgage or other financial charge from title to the Property forthwith following completion.

5.11 Risk

The Property 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 Property 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 Agreement.

5.12 Investigations

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 Property 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 Property.

5.13 Associated Costs

The Municipality will pay or cause its designee to pay:

- a. any property transfer tax payable by it under the *Property Transfer Tax Act* (British Columbia), if applicable;
- b. LTO registration fees in connection with the transfer of the Property to the Municipality, or the Municipality's designee;
- 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 Property to the Municipality, or Municipality's designee, under the *Excise Tax Act* (Canada).

PART VI - EXCEPTIONS TO RIGHT OF FIRST REFUSAL AND OPTION

6.1 Exceptions to Right of First Refusal and Option

Notwithstanding any other provision in this Agreement, if the Owner is a Lender and the Lender has for a period of at least 120 days made Efforts to Sell the Property 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 Property to the Municipality, the Municipality agrees that upon such Owner who is a Lender providing the Municipality with evidence of such Efforts to Sell satisfactory to the Municipality, acting reasonably, the Municipality may execute and deliver to such Owner who is a Lender a complete discharge of the Housing Agreement and this Agreement, in registrable form.

PART VII - INTERPRETATION

7.1 Interpretation

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. 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
- h. 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 VIII - MISCELLANEOUS

8.1 Municipality not Obligated to Exercise Right of First Refusal or Option

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

8.2 Duration of Option and Right of First Refusal

The Option and the RFR 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.

8.3 Modification

This Agreement may be modified or amended from time to time by the Municipality and the person who is the current registered Owner of the Property, if it is signed by the Municipality and the person who is the current registered owner of the Property. The Municipality may, in its absolute and unfettered 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.

8.4 Assignability

The Municipality may assign the Option or the RFR to any person and if the Municipality exercises the Option, thus creating a contract for the purchase and sale of the Property, or the Municipality has the contractual right to buy the Property under the RFR, the Municipality may assign its contractual right to any person qualified to purchase the Property under the Housing Agreement, and in any case, upon such assignment the Municipality will have no further

obligation under this Agreement with respect to the rights or interests assigned by the Municipality. Upon such assignment, with respect to the assigned contractual rights referenced in this Agreement to obligations of the Municipality refer to the assignee.

8.5 Municipalities Powers Unaffected

This Agreement does not:

- a. affect or limit the discretion, rights, duties or powers of the Municipality or Whistler Housing Authority Ltd. under any enactment or at common law, including in relation to the use or subdivision of the Property;
- b. impose on the Municipality or Whistler Housing Authority Ltd. 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 Property; or
- d. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Property.

8.6 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 Property;
- 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.

8.7 No Public Law Duty

Where the Municipality or the Whistler Housing Authority Ltd. 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 and the Whistler Housing Authority are under no public law duty of fairness or natural justice in that regard and agrees that the Municipality and the Whistler Housing Authority may do any of those things in the same manner as if they were a private party and not a public body.

8.8 Costs

Unless otherwise specified in this Agreement, 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.

8.9 Notice

Any notice required or permitted to be given hereunder or for the purposes hereof to any party shall be given or made in writing and either delivered personally or sent by facsimile, sent by electronic courier (email) at the respective address and/or fax number or registered mail, postage prepaid, addressed as follows:

In the case of a notice to the Municipality:	Resort Municipality of Whistler Attention: Corporate Officer 4325 Blackcomb Way Whistler, BC V8E 0X5
With a copy to:	Whistler Housing Authority Ltd. 325-2400 Dave Murray Place Whistler, BC V8E 0M3 Facsimile No. 604.932.4461
In the case of a notice to the Owner:	to the postal address of Owner set out in the records at the LTO or delivered to the Owner by delivery to the Property or sent by electronic courier (email) or facsimile to the email address on record for the Owner with the Whistler Housing Authority Ltd.

The time of giving or making such notice, demand, request, consent, or objection shall be, if delivered, on the day of delivery thereof, if sent by facsimile or by electronic courier (email), on the next Business Day and if mailed, then on the fourth (4th) Business Day after the day of the mailing thereof; provided that, if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slowdown, or other labour dispute which might affect delivery of such notice, then such notice shall only be effective if actually delivered. Either Party may by similar notice given change the address to which future notices or other communications shall be sent.

8.10 Enurement

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, heirs, executors, administrators and personal representatives, notwithstanding any rule of law or equity to the contrary.

8.11 Severance

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.

8.12 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 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.

8.13 Entire Agreement

This Agreement, the Housing 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, occupation, and Disposition of the Property, and there are no warranties, representations, conditions or collateral agreements made by the Municipality except as expressly set forth in this Agreement.

8.14 Further Assurances

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.

8.15 Runs with the Property

This Agreement burdens and runs with the Property and every parcel into which it is consolidated or 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). 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 Property.

8.16 Equitable Remedies

The Owner acknowledges and agrees that damages would be an inadequate remedy for the Municipality for breach of this Agreement or the Option and RFR 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 or the Option and RFR.

8.17 No Agency

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.

8.18 Governing Law

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.

8.19 Contract and Deed

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

END OF DOCUMENT