

STANDARD CHARGE TERMS

**FILED BY: RESORT MUNICIPALITY OF WHISTLER**

**STANDARD RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE  
(WHISTLER ATHLETES VILLAGE)**

The following standard charge terms are deemed to be included in every right of first refusal and option to purchase in which the set is referred to by its filing number as provided by section 235 of the *Land Title Act*.

WHEREAS:

- A. The Owner is the registered owner of the Land (hereinafter defined);
- B. The Owner has entered into a Housing Agreement with the Resort Municipality of Whistler (the "Municipality") under section 905 of the *Local Government Act* and has granted to the Municipality and to the Province of British Columbia covenants under section 219 of the *Land Title Act* relating to certain restrictions on the use of the Land (collectively, the "Housing Agreement");
- C. The purpose of the Housing Agreement and this Agreement is to ensure that the Land is used solely for the provision of affordable housing for Employees or Retirees (as those terms are defined in the Housing Agreement);
- D. In order to ensure that the Dwelling Unit (as later defined) 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 Dwelling Unit 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 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Owner, the parties covenant and agree as follows:

**PART I – DEFINITIONS**

1. In this Agreement the following words have the following meanings:
  - a. “Agreement” means these standard charge terms together with the General Instrument (hereinafter defined);
  - b. “Bona Fide Offer” means an offer to purchase the Owner’s Interest in the Dwelling Unit:
    - i. in writing;
    - ii. signed by an Outside Offeror (hereinafter defined);
    - iii. in a form legally enforceable against the Outside Offeror and subject to no conditions except subject to financing (if required by the Outside Offeror) and except for the Municipality’s Subject (as hereinafter defined);
    - 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 Resale Price but may be less than the Maximum Resale Price;
    - vi. providing that if the Municipality does not exercise its RFR as set forth in this Agreement, the Outside Offeror will grant to the Municipality a right of first refusal and option to purchase the Land upon the same terms and conditions as are set forth in this Agreement;
    - vii. providing that the Outside Offeror will not assign or transfer the contract for the purchase of the Dwelling Unit; and
    - viii. confirming that the Outside Offeror has read and understood the terms of this Agreement, the Housing Agreement and all other charges in favour of the Municipality that are registered in the LTO against the Land and that the Outside Offeror agrees to be bound by the owner’s obligations pursuant to such charges;
  - c. “Business Day” means Monday to Friday inclusive except for those excluded days declared by lawful authority as statutory holidays, and excluding any day that the LTO is not open for business;
  - d. “CCPI” means the Core Consumer Price Index for Canada, published from time to time by the Bank of Canada, or its successor in function;

- e. “Change in CCPI” means the change (positive or negative) between:
- i. the CCPI applicable on the date of registration of the Previous Sale; and
  - ii. the CCPI applicable on the date of execution by the Owner and the purchaser of a contract of purchase and sale relating to the next transfer of the Dwelling Unit following the Previous Sale;

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

- f. “Dispose” means to transfer by any method, and includes assign, give, sell, grant, convey, bequeath, devise, divest, and agree to do any of those things;
- g. “Dwelling Unit” means the residential dwelling unit located on or comprising the Land, whether that dwelling unit is an entire building or part of a building, and whether or not it is a strata lot;
- h. “Efforts to Sell” means the best efforts of the Lender, as Owner, to sell the Dwelling Unit using all reasonable means, including listing the Dwelling Unit for sale with a licensed real estate agent, advertising the Dwelling Unit for sale in the local newspapers, and offering to sell the Dwelling Unit to the Municipality on the following terms:
- i. specifying in a written notice that it is offering to sell the Dwelling Unit to the Municipality in accordance with section 23 of this Agreement;
  - ii. giving the Municipality the exclusive right, for 15 Business Days from the date on which the Municipality receives the notice from the Lender, as Owner, pursuant to section 23 of this Agreement, to give a written notice to the Lender, as Owner, agreeing to purchase the Dwelling Unit for the purchase price which does not exceed the Maximum Price, and otherwise on the terms that are set out in Part V of this Agreement;
- i. “General Instrument” means the Form C under the Land Title (Transfer Forms) Regulations, as amended, and all schedules and addenda to the Form C charging the Land and citing these Standard Charge Terms;
- j. “Interest” means the property interest of the Owner in the Dwelling Unit;
- k. “Land” means the land described in Item 2 of the General Instrument and any part into which said Land is Subdivided, and includes the Dwelling Unit;

- l. “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;
  - m. “LTO” means the New Westminster/Vancouver Land Title Office or its successor;
  - n. “Maximum Price, Resale” means the Previous Sale Price plus the product of the Previous Sale Price multiplied by the Change in CCPI. Where the Change in CCPI is negative or cannot be determined, the Maximum Price, Resale shall be the Previous Sale Price. The sample calculations set out in Schedule “B” attached hereto shall be used for the purposes of interpreting this definition of “Maximum Price, Resale”;
  - o. “Municipality’s Subject” mean the following clauses:
    - “The obligation of the seller to complete the transaction contemplated herein is subject to the following (the “Seller’s Conditions”):
      - i. the seller notifying the buyer in writing not later than \_\_\_\_\_ that the Resort Municipality of Whistler (the “Municipality”) has approved the terms of the sale of the Land to the buyer and that the Municipality has decided not to exercise its Option to Purchase the Land or its right to purchase the Land under its Right of First Refusal with respect to this transaction only; and
      - ii. the seller notifying the buyer in writing not later than \_\_\_\_\_ that the Municipality has confirmed the buyer’s eligibility to own the Land.
- 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 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.”;
- p. “Option” means the option to purchase granted in Part IV;
  - q. “Outside Offeror” means a purchaser or prospective purchaser of the Dwelling Unit who deals at arm’s-length with the Owner of the Dwelling Unit and who is eligible to purchase the Dwelling Unit under the Housing Agreement;
  - r. “Owner” means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of the Dwelling Unit from time to time;
  - s. “Previous Sale” means the most recent transfer of the Dwelling Unit;

- t. “Previous Sale Price” means the sale price of the Previous Sale;
- u. “RFR” means the right of first refusal granted in Part III;
- v. “Subdivide” means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of “cooperative units” or “shared interests in land” as defined in the *Real Estate Development Marketing Act*.

## **PART II - DISPOSITION OF DWELLING UNIT**

### **Limits on Disposition**

- 2. The Owner covenants and agrees that the Owner will not Dispose of the Dwelling Unit except in accordance with this Agreement, the Housing Agreement, and the resale policies of Whistler Housing Authority Ltd. (formally W.V. Housing Corporation) or its successor.

### **Disposition only to Outside Offeror**

- 3. Without limiting the preceding section, the Owner may not Dispose of the Dwelling Unit other than to the Municipality or to an Outside Offeror pursuant to a Bona Fide Offer.

## **PART III - RIGHT OF FIRST REFUSAL**

### **Right of First Refusal**

- 4. The Owner covenants and agrees as follows:
  - a. The Owner will not Dispose of the Dwelling Unit for any consideration not consisting entirely of lawful money of Canada;
  - b. If the Owner receives an offer to purchase the Dwelling Unit (the “Offer”) which the Owner is willing to accept, then the Owner must offer to sell the Dwelling Unit 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 Offer. The Municipality will have the exclusive right for 15 Business Days (the “Election Period”) from the date on which the Municipality receives from the Owner the Notice and a copy of the Offer within which to notify the Owner that the Municipality is exercising the RFR and the Municipality has elected to purchase the Dwelling Unit on the terms set out in Part V of this Agreement. The Owner agrees that the Municipality’s Election Period will not start to run until the Owner gives to the Municipality notice of the Offer;

- 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;
- d. If the Municipality does not exercise this RFR with respect to a specific Offer, the Municipality's rights under this RFR with respect to the particular Offer will be waived, but only if the Offer 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 Dwelling Unit;
  - 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;
    - (2) a 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 Dwelling Unit (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 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 Dwelling Unit 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 Title Certificate for the Land confirming registration of the New Form C; and
- (5) a copy of the vendor's statement of adjustments for the Dwelling Unit 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 Dwelling Unit, 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 Dwelling Unit.

#### **PART IV - GRANT OF OPTION**

##### **Grant of Option**

- 5. The Owner hereby grants to the Municipality the sole and exclusive irrevocable option to purchase the Dwelling Unit on the terms of this Agreement.

##### **Exercise of Option**

- 6. Subject to the following section, 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.

##### **Triggering Event**

- 7. 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 Dwelling Unit.

##### **Binding Agreement**

- 8. If the Municipality exercises the Option, this Agreement will become a binding agreement for the purchase and sale of the Dwelling Unit, which shall be completed upon the terms and conditions contained in this Agreement.

## **PART V - TERMS OF PURCHASE AND SALE**

### **Purchase Price**

9. Subject to adjustments as provided in this Agreement, the purchase price of the Dwelling Unit (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.

### **Completion Date**

10. The purchase of the Dwelling Unit by the Municipality will be completed on the date ("Completion Date") to be chosen by the Municipality, such date to be not later than thirty 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.

### **Permitted Encumbrances**

11. On the Completion Date, the Owner will convey the Dwelling Unit to the Municipality subject to the registered charges on title to the Dwelling Unit at the time of registration of this Agreement, and free and clear of all mortgages and other financial liens, charges and encumbrances (the "Permitted Encumbrances"), provided that the Owner is entitled to use the Purchase Price to discharge any mortgage registered against title to the Dwelling Unit, in accordance with section 19.

### **Vacant Possession**

12. The Owner will give vacant possession of the Dwelling Unit to the Municipality, subject only to existing tenancies in favour of Employees or Retirees permitted by the Housing Agreement, as those terms are defined in the Housing Agreement, following payment of the adjusted Purchase Price to the Owner on the Completion Date.

### **Adjustments**

13. All adjustments, both incoming and outgoing, in connection with the purchase and sale of the Dwelling Unit, 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.

### **Other Steps**

14. 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 Dwelling Unit 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 Dwelling Unit and to execute and deliver this Agreement as valid and binding obligations of the Owner.

### **Owner's Immediate Representations, Warranties and Covenants**

15. The Owner hereby represents and warrants to 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. the Owner has the legal capacity, power and authority to grant the Option and the RFR and perform all of the Owner's obligations under this Agreement;
  - b. 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;
  - c. 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;
  - d. 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;
  - e. the Owner has a good, safe holding and marketable title to the Land; and
  - f. 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 so provide the Statutory Declaration, the Municipality may choose to complete the purchase of the Dwelling Unit and withhold 50% of the Purchase Price until the residency of the Owner is resolved to the Municipality's satisfaction.

### **Owner's Completion Date Representations and Warranties**

16. The Owner hereby represents and warrants to, and covenants and agrees with the Municipality as at the Completion Date that:
- a. 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 Dwelling Unit;

- b. the Owner has not used the Dwelling Unit or permitted any use of the Dwelling Unit, 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 Dwelling Unit (“Contaminant”);
- c. 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 Dwelling Unit; and
- d. the Owner has at all times used the Dwelling Unit in compliance with all laws relating to Contaminants and to the environment.

### **Indemnity**

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

This obligation to indemnify and save harmless will survive the transfer of the Dwelling Unit or any termination of this Agreement.

### **Closing Documents**

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

- (1) Form A Transfer transferring the fee simple title to the Dwelling Unit to the Municipality ("Transfer"),
- (2) Vendor's Statement of Adjustments, and
- (3) the Statutory Declaration; and

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

### **Closing Procedure**

19.

- (1) On the Completion Date, after the adjusted Purchase Price (less any proceeds of a new mortgage (the "Mortgage") to be granted by the Municipality) has first been deposited in the trust account of the Municipality's solicitors, the Municipality will apply to register the Transfer in the LTO; and
- (2) after application has been made to register the Transfer and if applicable, the Mortgage, in the LTO, and upon receipt of a satisfactory post-index search of the title to the Dwelling Unit indicating that in the normal course of LTO procedure the Municipality will become the registered owner of the Dwelling Unit 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 pay to 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 undertakings of the Owner's solicitor or notary public to discharge any mortgage or other financial charge from title to the Dwelling Unit forthwith following completion.

### **Risk**

20. The Dwelling Unit 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 Dwelling Unit 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.

### **Investigations**

21. 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 Dwelling Unit 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 Dwelling Unit.

### **Associated Costs**

22. The Municipality will pay:
- (1) any property transfer tax payable by it under the *Property Transfer Tax Act* (British Columbia);
  - (2) LTO registration fees in connection with the transfer of the Dwelling Unit to the Municipality;
  - (3) the Municipality's legal fees and disbursements but not the Owner's; and
  - (4) all goods and services tax, if any, payable in respect of transfer of the Dwelling Unit under the *Excise Tax Act* (Canada) and if the Municipality is registered for the purposes of GST, instead of paying GST to the Owner, the Municipality will provide the Owner with its certificate that it will account directly for any and all GST.

### **PART VI - EXCEPTION TO RIGHT OF FIRST REFUSAL AND OPTION**

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

### **PART VII - INTERPRETATION**

24. 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. all provisions are to be interpreted as always speaking;
- h. reference to a “day”, “month”, “quarter” or “year” is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- i. where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”;
- j. all references in this Agreement to “Dispose of the Dwelling Unit” include “Dispose of the Owner’s Interest in the Dwelling Unit”.

## **PART VIII - MISCELLANEOUS**

### **Municipality not Obligated to Exercise Right of First Refusal or Option**

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

### **Duration of Option and Right Of First Refusal**

26. The option to purchase hereby granted and the right of first right of refusal granted by this Agreement 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.

### **Modification**

27. 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 Land. 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.

### **Assignability**

28. 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 Dwelling Unit, or the Municipality has the contractual right to buy the Dwelling Unit under the RFR, the Municipality may assign its contractual right to any person qualified to purchase the Dwelling Unit under the Housing Agreement, and in any case, upon such assignment the Municipality will have no further obligations under this Agreement with respect to the rights or interests assigned by the Municipality. Upon any such assignment, references in this Agreement to obligations of the Municipality refer to the assignee.

### **Municipalities Powers Unaffected**

29. 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.

### **Agreement for Benefit of Municipality Only**

30. The Owner and the Municipality agree that:
- a. this Agreement is entered into only for the benefit of the Municipality;
  - b. this Agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Land or the Dwelling Unit;

- c. the Municipality may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

### **No Public Law Duty**

31. 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.

### **Costs**

32. 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.

### **Notice**

33. Any notice to be given to a party pursuant to this Agreement will be sufficiently given if delivered, to the postal address of Owner set out in the records of the LTO, and in the case of the Municipality addressed:

To: Corporate Officer, Resort Municipality of Whistler,  
4325 Blackcomb Way, Whistler, B.C. V0N 1B4

And to: Whistler Housing Authority,  
#325 - 2400 Dave Murray Place, Whistler, B.C. V0N 1B2

or to the most recent postal address provided in a written notice given by one party to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery, if delivered by hand, or on the third day after it is dispatched for delivery, if delivered by mail.

### **Enuring Effect**

34. This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors, assigns, heirs, executors, administrators and personal representatives.

### **Severability**

35. 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.

**Waiver**

36. 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.

**Sole Agreement**

37. This Agreement, the Housing Agreement, and any other 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 Dwelling Unit, and there are no warranties, representations, conditions or collateral agreements made by the Municipality except as set forth in this Agreement.

**Further Assurances**

38. Upon request by the Municipality the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the Municipality to give effect to this Agreement.

**Runs with the Land**

39. This Agreement burdens and runs with the Land 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 himself, his heirs, executors, administrators, personal representatives, and successors.

**Limitation on Owner's Obligations**

40. The Owner is liable only for breaches of this Agreement that occur while the Owner is the registered owner of the Land.

**Equitable Remedies**

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

**No Joint Venture**

42. 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.

**Applicable Law**

43. 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.

**Deed and Contract**

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

## Schedule "A"

### Sample Calculations for Maximum Price, Resale.

#### Example 1

A first resale

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

Change in CCPI =

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

Maximum Price, Resale = \$200,000 plus (\$200,000 x .0098 = \$1,960) = \$201,960.00

#### Example 2

A fourth resale.

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

Change in CCPI =

$$\frac{\text{CCPI at date of contract for sale } 116.1 - \text{CCPI at Previous Sale (third sale in this example) } 115.2}{115.2} \times 100 = .0078$$

Maximum Price, Resale = \$213,647 plus (\$213,647 x .0078 = \$1,666.45) = \$215,313.45

#### Example 3

A resale where CCPI has declined

Previous Sale Price \$213,647.00

Change in CCPI

$$\frac{\text{CCPI at date of contract for sale } 113.9 - \text{CCPI at Previous Sale } 114.2}{114.2} \times 100 = \text{negative } .0026$$

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

**END OF SET**