ST980009

STANDARD CHARGE TERMS

FILED BY: RESORT MUNICIPALITY OF WHISTLER

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 Resort Municipality of Whistler (the "Municipality") wishes to facilitate the provision of affordable housing for people working within the Municipality.

B. The Owner is the registered owner of the Land (hereinafter defined).

C. Pursuant to the terms of the Housing Agreement (hereinafter defined) the Owner has or will agree to build Employee Units (hereinafter defined).

D. The Owner and the Municipality wish to enter into this Agreement (hereinafter defined) to ensure that the Employee Units are occupied only by qualified individuals and available for purchase by those qualified individuals for a price that reflects the public interest in employee housing.

E. The Owner has agreed with the Municipality to provide to the Municipality a right of first refusal to purchase and an option to purchase the Employee Units, on the terms and conditions set out in this Agreement.

THEREFORE in consideration of the mutual covenants of the parties and in consideration of the sum of $2.00 and other good and valuable consideration paid by each of the parties to the other, the receipt and sufficiency of which is hereby acknowledged by each party, the parties hereto agree as follows:

DEFINITIONS

1. The following words have the following meanings:

   a. "Agreement" means these standard charge terms together with the General Instrument.

   b. "Assessed Value" means the most recent actual value of the real property as determined by the assessment authority in which the real property is situated. If such value is not available, then the Assessed Value means the fair market value assigned to the real property by an appraiser who is a member in good standing of the Appraisal Institute of Canada or the equivalent body in any other country in the world, who is retained by the Owner.

   c. "Dwelling Unit" means a room or suite of rooms in the residential dwelling located on the Land (hereinafter defined) as described in the zoning bylaws.

   d. "Employee" means a Qualified Person (hereinafter defined) who is either employed or self-

employed for an average of not less than 20 hours per week over the most recent twelve months and whose principal place of employment or business is located within the boundaries of the Resort Municipality of Whistler.

e. "Employee Unit" means a Dwelling Unit to be used and occupied by Employees and Retirees (hereinafter defined) in accordance with this Agreement.

f. "Fair Market Value" means the current market value of the Employee Unit determined by an appraiser who is a member in good standing of the Appraisal Institute of Canada who has been retained by the Owner at the expense of the Owner to determine the market value of the Employee Unit, subject to the restrictions placed on that Employee Unit by this Agreement.

g. "First Purchaser" means the person to whom the estate in fee simple in the Employee Unit is first transferred after issuance of the interim occupancy permit for the Employee Unit by the Municipality.

h. "First Sale Price" means the price described in the General Instrument, plus any applicable goods and services tax and any material increase in the market value determined in accordance with section 9 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 Lands and citing these Standard Charge Terms.

j. "Gross Floor Area" means the habitable gross floor area of the Employee Unit including enclosed sunrooms, but not including areas such as crawl spaces, patios, balconies, parking spaces, or storage spaces, even if they are within the Employee Unit. If the Employee Unit is a strata lot as defined by the *Condominium Act*, the gross floor area measurements will be made from the centre line of the building and not the exterior face of the building. If the Employee Unit is not a strata lot as defined by the *Condominium Act*, the gross floor area measurements will be made from the exterior face of the building.

k. "Housing Agreement" means the housing agreement under *s.905* of the *Municipal Act* and the covenant under section 219 of the *Land Title Act* between the Owner and the Municipality which has or will be granted by the Owner in connection with the Employee Units.

l. "Housing Price Index" means the appropriate (Detached, Attached, or Apartment) twelve month average MLS housing price index for Greater Vancouver, BC as published by the Real Estate Board of Greater Vancouver, or its successor in function, where the index at the Occupancy Date equals 100.

m. "Interest" means the property interest of the Owner in the Employee Unit.

n. "Land" means the land described in the General Instrument including every incidental right, benefit or privilege attaching to that land or running with it and all buildings and improvements that are now or later constructed or made to that land.

o. "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 a mortgagee.

p. "LTO" means the New Westminster/Vancouver Land Title Office or its successor.

q. "Maximum Price" means the First Sale Price multiplied by the Housing Price Index for the month two months previous to the date on which the transfer of the title to the Employee Unit is to be submitted to the LTO as set out in the agreement providing for that transfer.

r. "Municipality's Subject" mean the following clauses:

The obligation of the Vendor to complete the transaction contemplated herein is subject to (the "Vendor's Conditions"):

i. the Vendor notifying the Purchaser in writing not later than _____ that the Resort Municipality of Whistler (the "Municipality") has approved the terms of the sale of the Property to the Purchaser and that the Municipality has decided not to exercise its option to purchase the Property with respect to this transaction only; and

ii. the Vendor notifying the Purchaser in writing not later than _____ that the Municipality has confirmed the Purchaser's eligibility to own the Property.

The Vendor's Conditions are for the sole benefit of the Vendor and may be satisfied by the Vendor by notice in writing to the Purchaser. If the Vendor'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 Purchaser, and neither party will have any further obligation to the other under this Agreement.

s. "Occupancy Date" means the date on which the interim occupancy permit for the Employee Unit is issued by the Municipality.

t. "Offer" means a *bona fide* offer to purchase or sell an Interest in the Employee Unit.

u. "Option" means the option to purchase the Employee Unit granted by the Owner to the Municipality pursuant to this Agreement.

v. "Owner" means the Transferor described in the General Instrument.

w. "Prime Rate" means the annual rate of interest, expressed as a percentage, used as a reference rate by the Royal Bank of Canada at its main branch in Vancouver, British Columbia for Canadian dollar loans and designated by the Royal Bank of Canada from time to time as its prime rate.

x. "Qualified Person" means a Canadian citizen or landed immigrant who does not personally, jointly, or indirectly through a trust, business asset, or otherwise, own any real property anywhere in the world unless, at the time that such person applies for an Employee Unit:

i. the Assessed Value of all the real property he or she owns does not exceed 60% of the price of the completed Employee Unit; or

ii. the real property he or she only owns is:

(1) less than 400 square feet in area,

(2) less than 650 square feet in area and it is the principal residence of two individuals,

(3) less than 850 square feet in area and it is the principal residence of that

person and at least one child, or

(4) less than 1200 square feet in area and it is the principal residence of that person and at least two children; and

that person enters into an agreement with the Municipality to sell his or her interest in the real property within the reasonable time period specified by the Municipality.

y. "Retiree" means a Qualified Person who has ceased employment and who was an Employee for 5 of the 6 years immediately preceding the date on which the individual ceased employment.

z. "RFR" means the right of first refusal to purchase the Employee Unit granted by the Owner pursuant to this Agreement.

PURPOSE

2. The Municipality and the Owner agree that the primary purpose of this Agreement is to provide affordable housing to Employees and Retirees in accordance with the objectives of the Municipality and to protect the public interest.

3. The Owner covenants and agrees that, unless otherwise specified in this Agreement, the Owner will not sell, assign or transfer its Interest in the Employee Unit unless it is done in accordance with this Agreement, and such Interest is sold, assigned or transferred to an Employee, a Retiree, an employer for occupancy by an Employee or Retiree, or the Municipality.

RIGHT OF FIRST REFUSAL

4. The Owner grants to the Municipality the RFR and covenants with the Municipality as follows:

a. The Owner will not sell or offer to sell the Employee Unit for any consideration not consisting entirely of lawful money of Canada.

b. Any Offer the Owner accepts will contain the following clauses:

i. the Municipality's Subject;

ii. a clause stating that the contract cannot be transferred or assigned by the purchaser;

iii. a clause stating that the purchaser has read and understood the terms of this Agreement and agrees to be bound by them; and

iv. a clause stating that the Municipality's RFR and Option as set out in this Agreement will continue to apply to other Offers, whether made to the then existing Owner or any other Owner for the fee simple interest to the Employee Unit.

c. If the Owner receives an Offer which the Owner is willing to accept or if the Owner intends to offer to sell the Employee Unit, then the Owner will give to the Municipality notice in writing of the Offer verified by a statutory declaration and attaching a copy of the Offer, and the Municipality will have the exclusive right for 15 business days (the "Election Period") from the date on which it receives the Notice from the Owner to agree to purchase the Employee Unit on the terms that are set out in section 5 of this Agreement. The Owner agrees that the Owner will not give to the Municipality notice of the Offer until the only condition precedent or subject in the Offer is the Municipality's Subject.

d. If the Municipality wishes to exercise its RFR, the Municipality must give the Owner written notice of such exercise on or before the end of the Election Period.

e. If the Municipality does not exercise its RFR with respect to a specific Offer, the Municipality's rights under the RFR with respect to the particular Offer will be waived, but 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 under the Eligible Contract is an Employee or a Retiree and that the purchaser agrees to be bound by all the agreements in favour of the Municipality which affect the Employee Unit;

ii. the Owner will 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 section 4.e.i. of this Agreement;

iii. at least 5 business days before completion of the sale pursuant to the Eligible Contract the Owner delivers to the Municipality written proof, satisfactory to the Municipality, in its sole discretion, that the purchase price payable under the Eligible Contract does not exceed the Maximum Price;

iv. within 5 business days following closing, the Owner delivers to the Municipality a copy of the vendor's statement of adjustments certified to be true by the Owner's solicitors or notary with respect to sale of the Interest by the Owner; and

v. 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 Employee Unit; and

f. if contrary to this Agreement the Employee Unit has been sold for a purchase price exceeding the Maximum Price, in addition to any other remedies of the Municipality, the Municipality may at its sole discretion require the Owner to pay the excess to the Municipality within 30 days after written demand is made by the Municipality, with any amount remaining unpaid after the 30 days bearing interest at the Prime Rate in effect from time to time, calculated from the due date until the date paid and compounded annually not in advance.

GRANT OF OPTION

5. The Owner hereby grants to the Municipality the sole and exclusive irrevocable Option to purchase the Employee Units effective immediately upon breach of 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 Employee Unit. The Option will be exercised by or on behalf of the Municipality by a written notice delivered to the Owner in accordance with the following terms:

a. Subject to adjustments as provided in this Agreement and subject to sections 6 to 8 of this Agreement, for the purchase price (the "Purchase Price") that is the lesser of:

i. the purchase price set out in the Eligible Offer (if any); and

ii. the Maximum Price.

b. The agreement will be completed on the date ("Completion Date") to be chosen by the Municipality, acting reasonably, such date not to be later than thirty days after the Municipality gives to the Owner its notice of intention to exercise the Option.

c. On the Completion Date, the Owner will convey the Employee Unit to the Municipality 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 Employee Unit, in accordance with section 5.g.vii.

d. The Owner will give vacant possession of the Employee Unit to the Municipality, subject only to existing tenancies in favour of Employees or Retirees, following payment of the adjusted Purchase Price to the Owner on the Completion Date.

e. All adjustments, both incoming and outgoing, in connection with the purchase and sale of the Employee Unit, including adjustments of taxes, rates, rents 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, will be made as at the Completion Date.

f. 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 Employee Unit in the Municipality at 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 (if any, as described in the General Instrument) and to enable the Owner to carry out the sale of the Employee Unit and to execute and deliver this Agreement as valid and binding obligations of the Owner.

g. The Owner hereby represents and warrants to, and covenants and agrees with the Municipality as at the Completion Date that:

i. the Owner has no indebtedness or obligation to any person which might now or in future constitute a lien, charge or encumbrance on the Employee Unit;

ii. the Owner has not used the Employee Unit or permitted any use of the Employee Unit, to store, manufacture, dispose of, emit, spill, leak, generate, transport, remediate, 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 Employee Unit ("Contaminant");

iii. the Owner has not caused or permitted, the storage, manufacture, disposal, emission, spilling, leakage, treatment, generation, transportation, remediation, production, processing, release, discharge, landfilling, treatment or remediation of any

Contaminant in, on, under or from the Employee Unit;

iv. the Owner has at all times used the Employee Unit in compliance with all laws relating to Contaminants and to the environment;

v. the Owner will indemnify and save harmless the Municipality, and its elected and appointed officials, officers, employees and agents, 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 by reason of a breach of any representation or warranty, covenant or agreement of the Owner set forth in this Agreement;

vi. not less than 5 days before the Completion Date, the Municipality will deliver to the Owner's solicitors:

(1) two copies of a Form A Transfer transferring the fee simple title to the Employee Unit to the Municipality ("Transfer") subject only to Permitted Encumbrances,

(2) two copies of the Owner's Statement of Adjustments to be approved and executed by the Owner, and

(3) a statutory declaration of the Owner that the Owner is a resident of Canada within the meaning of the *Income Tax Act* (Canada);

vii. on or before the Completion Date, the Owner will deliver to the Municipality's solicitors, in trust, the Transfer executed on behalf of the Owner, in registrable form, on the undertakings that:

(1) on the Completion Date, the Municipality will apply to register the Transfer in the LTO only if the adjusted Purchase Price (less any proceeds of a new mortgage to be granted by the Municipality) has first been deposited in the trust account of the Municipality's solicitors; and

(2) after application has been made to register the Transfer in the LTO, and upon receipt of a satisfactory post-index search of the title to the Employee Unit indicating that in the normal course of LTO procedure the Municipality will become the registered owner of the Employee 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 at once 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 undertaking of the Owner's solicitor or notary public to discharge any mortgage or other financial charge from title to the Employee Unit forthwith following completion.

viii. the Employee 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 Employee 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;

ix. the Municipality, its agents and employees, have the licence, conditional on providing 48 hours prior written notice to the Owner, to enter upon the Employee 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 Employee Unit; and

x. 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 Employee 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 Employee Unit to the Municipality under the *Excise Tax Act* (Canada).

Exception to RFR and Option

6. If the Owner is a Lender and the Lender has for between 90 days and 119 days used its reasonable best efforts to enter into an Eligible Contract including by listing the Employee Unit for sale with a licensed real estate sales agent and by giving the Municipality a right of first refusal to purchase the Employee Unit in accordance with section 4 of this Agreement (except for the Purchase Price which will be the lesser of the Fair Market Value and the Maximum Price), and if the Lender has been unable to enter into an Eligible Contract, the Lender may after that time sell the Interest to a purchaser who is not an Employee or Retiree, but the purchase price for the Interest must not exceed the Maximum Price and the Employee Unit may only be used, occupied, re-sold or leased by that new owner in accordance with the Housing Agreement and this Agreement.

7. If the Owner is a Lender and the Lender has for at least 120 days used reasonable best efforts to enter into an Eligible Contract (as described in section 6 of this Agreement), and if the Lender has been unable to enter into an Eligible Contract, the Lender may after that time sell the Interest to a purchaser who is not an Employee or Retiree for any price and the Employee Unit may be used and occupied subject only to all enactments applicable to the use of the Employee Unit and the Housing Agreement and this Agreement will not apply.

8. If the Owner is not a Lender and the Owner has for at least 120 days used reasonable best efforts to enter into an Eligible Contract (as described in section 6 of this Agreement), and if the Owner has been unable to enter into an Eligible Contract, the Owner may after that time sell the Interest to a purchaser who is not an Employee or Retiree, but the purchase price for the Interest must not exceed the Maximum Price and the Employee Unit may be used and occupied subject only to all enactments applicable to the use of the Employee Unit and the Housing Agreement and this Agreement will not apply.

APPRAISAL

9. If an appraiser who is a member in good standing of the Appraisal Institute of Canada who is retained by the Owner at the expense of the Owner determines that the Owner has made capital improvements to the Employee Unit that materially increase the market value of the Employee Unit beyond the sale price otherwise permitted under this Agreement or that the Owner has included in the sale of the Employee Unit appliances or other items that materially increase the market value of the Employee Unit, the Municipality may, in its absolute unfettered discretion, permit the Owner to increase the sale price for the Employee Unit up to an amount commensurate with the increase in market value as certified by the appraiser in his or her report to the Owner. At the absolute unfettered discretion of the Municipality, upon receipt of evidence of the increase in the market value satisfactory to the Municipality, the Municipality may waive the requirement for the appraisal and allow the Owner to sell the Employee Unit for a higher price.

MUNICIPALITY NOT OBLIGATED TO EXERCISE OPTION OR RFR

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

NOTICE

11. 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 General Instrument, and in the case of the Municipality addressed:

To: Clerk, Resort Municipality of Whistler, 4325 Blackcomb Way, Whistler, BC VON 1B4, and

And to: Whistler Housing Authority, 4335 Main Street, Whistler, BC V0N 1B4

or to the most recent postal address provided in a written notice given by 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.

TIME OF ESSENCE

12. Time is of the essence in this Agreement.

LIABILITY

13. Except to the extent caused by the negligence of the Municipality or any other person for whose negligence the Municipality is responsible in law, the Owner agrees to and does hereby indemnify and save harmless the Municipality, its officers, servants, agents and their heirs, personal representatives, successors and assigns against all loss, damage, costs and liabilities which they will or may be liable for or suffer in connection with the Land. The obligations of the Owner as set out in this section survive termination of this Agreement.

NO EFFECT ON LAWS OR POWERS

14. 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.

SEVERABILITY

15. 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.

ASSIGNABILITY

16. The Owner will not assign its interest under this Agreement without the prior written consent of the Municipality, which consent the Municipality may arbitrarily withhold.

17. The Municipality may assign any of its rights or interests under this Agreement to a company owned by it or to an Employee or Retiree, and upon such assignment the Municipality will have no further obligations under this Agreement with respect to the rights or interests assigned by the Municipality.

SOLE AGREEMENT

18. This Agreement, and the Housing Agreement, represent the whole agreement between the Municipality and the Owner respecting the use, operation and sale of the Employee Units, and there are no warranties, representations, conditions or collateral agreements except as set forth therein.

WAIVER

19. 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 exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

INTERPRETATION

20. This Agreement is to be read with all changes in gender and number required by the context. Where an obligation falls on more than one person, the obligation is joint and several. The use of headings in this agreement is for convenience of reference only.

FURTHER ASSURANCE

21. 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.

LIMITATION ON OWNER'S OBLIGATIONS

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

owner of the Land.

EQUITABLE REMEDIES

23. 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.

APPLICABLE LAW

24. 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. Where there is a reference to an enactment in this Agreement, that reference will include reference to that enactment as amended, consolidated, re-enacted or revised, and any subsequent enactment of like effect.

DEED AND CONTRACT

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

"END OF SET"