

STANDARD CHARGE TERMS

**FILED BY: RESORT MUNICIPALITY OF WHISTLER**

**STANDARD HOUSING AGREEMENT, 219 COVENANT AND RENT CHARGE AND INDEMNITY**

The following standard charge terms will be incorporated by reference in every Section 219 covenant and housing agreement in which the set is referred to by its filing number as provided by Section 235 of the *Land Title Act*.

WHEREAS:

- A. Section 219 of the Land Title Act permits the registration of a covenant of a negative or positive nature in favour of the Resort Municipality of Whistler (the "Municipality") in respect of the use of land or construction on land;
- B. The Owner (hereinafter defined) is the registered owner of the Land (hereinafter defined);
- C. 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 s.905 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 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. "Assessed Value" means the most recent assessed 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 highest price in terms of money that the real property will fetch under all conditions requisite to a fair sale with the buyer and seller each acting prudently, knowledgeably and assuming the price is not effected by undue stimulus as estimated by a real estate appraiser accredited in the jurisdiction in which the real property is located;
  - c. "CPI" means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function, where Occupancy Permit Year (hereinafter defined) = 100;

- d. "Daily Amount" means \$100.00 per day as of December 31, 2000 adjusted thereafter by an amount determined by multiplying \$100.00 by the percentage change in the CPI since December 31, 2000 to January 1 of the year that a written notice is delivered to the owner by the Municipality pursuant to section 24 herein;
- e. "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;
- f. "Dwelling Units" means all residential dwelling units located or to be located on the Land whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, into which ownership or right of possession or occupation of the Land may be Subdivided (hereinafter defined);
- g. "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 during that time is located within the boundaries of the Resort Municipality of Whistler;
- h. "Employee Unit" means a Dwelling Unit designated as an employee unit in accordance with Part II herein to be used, occupied and Disposed of in accordance with 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. "Gross Floor Area" means the habitable gross floor area of each Employee Unit and includes enclosed sunrooms but does not include crawl spaces, open patios, open balconies or parking spaces. 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;
- k. "Interest" means the property interest of the Owner in an Employee Unit;
- l. "Land" means the land described in Item 2 of the General Instrument and any part into which said land is Subdivided;
- m. "LTO" means the New Westminster/Vancouver Land Title Office or its successor;
- n. "Occupancy Permit Year" means the calendar year in which the Municipality issues an occupancy permit for an Employee Unit;
- o. "Original Rent" means \$1.25 per square foot per month;
- p. "Owner" means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of an Employee Unit from time to time;

- q. "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;
- r. "Qualified Person" means a person 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, 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 Assessed Value of the Employee Unit; or
  - ii. the real property he or she 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 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 Unit on terms acceptable to the Municipality in its sole discretion;
- s. "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;
- t. "RFR" means a right of first refusal and option to purchase the Land granted or to be granted by the Owner to the Municipality;
- u. "Subdivide" means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative units" or "shared interests in land" as defined in the *Real Estate Act*;
- v. "Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting rights to occupy an Employee Unit;
- w. "Tenant" means an occupant of an Employee Unit by way of a Tenancy Agreement.

**PART II - USE OF LAND AND CONSTRUCTION OF EMPLOYEE UNITS**

- 2. The Owner covenants and agrees with the Municipality that:
  - a. the Land will not be developed and no building or structure will be constructed on the Land unless:
    - i. as part of the construction and development of any such building or structure, the Owner also designs and constructs to completion, in accordance with a building permit issued by the Municipality and in accordance with any development permit issued by the

- Municipality, at least the number of Employee Units on the Land specified in the General Instrument; and
- ii. if required by the Municipality in its sole discretion, an RFR is fully registered against title to the Land in the LTO, with priority as set out in section 2(e) herein;
- b. the number of Dwelling Units on the Land will not exceed the number of Dwelling Units specified in the General Instrument;
  - c. the Owner will meet or exceed the construction standards for Employee Units as specified by the Municipality in a development permit issued by the Municipality in respect of development on the Land;
  - d. the Owner will at all times ensure that the Land is used and occupied in compliance with all statutes, laws, regulations, and orders of any authority having jurisdiction and without limiting the generality of the foregoing all bylaws of the Municipality and all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws; and
  - e. the Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement and an RFR, if required, will be registered against title to the Land in priority to all charges and encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in writing by the Municipality or in favour of the Municipality.
3. If not all the Dwelling Units on the Land are to be used as Employee Units the owner will not apply for a discharge of this Agreement pursuant to section 6 in respect of any Dwelling Unit, and the Municipality will be under no obligation to provide such discharge, unless at the time that the Owner applies for the discharge the Owner is not in breach of any of its obligations under this Agreement and there are [insert the number of Employee Units stipulated in the General Instrument] other Dwelling Units on the Land which:
    - a. are designated as Employee Units pursuant to section 4 and for which occupancy permits have been issued by the Municipality and which are and always have been used, occupied and Disposed of in compliance with this Agreement;
    - b. are not designated as Employee Units but the location of which has been approved in writing by the Municipality for use as Employee Units and for which occupancy permits have been issued by the Municipality and which are not and have never been Disposed of, used or occupied; or
    - c. are otherwise acceptable to the Municipality in its sole discretion upon conditions the Municipality considers necessary in its sole discretion, to ensure that the Owner fully complies with its obligations under this Agreement.

For greater certainty, any combination of Dwelling Units referred to in a, b and c will suffice to meet the requirements of this section 3, provided that the total of the combination of Dwelling Units referred to in a, b and c is equal to or greater than the number of Employee Units specified in the General Instrument;
  4. All applications for Employee Unit designations must be made by the Owner by written notice delivered to the Municipality and are irrevocable by the Owner upon receipt by the Municipality of the written notice, but no designation is effective unless and until the Municipality confirms in writing that the location and

the size of the Dwelling Unit is approved by the Municipality for an Employee Unit, acting reasonably as a local government. If in the sole discretion of the Municipality the Owner has failed within a reasonable time to make application for Employee Unit designations as required by this Agreement, the Municipality may in its sole discretion make such designations.

5. Notwithstanding the definition of "Land" in section 1 herein, for the purpose of stipulating the maximum allowable number of Dwelling Units on the Land and for the purpose of stipulating the number of required Employee Units to be constructed on the Land by the Owner pursuant to this Part II and for the purpose of sections 3, 4 and 6 herein, and for the purpose of the definition of Dwelling Unit in section 1, but for no other purposes, "Land" means the entire area of the legal parcel described in Item 2 of the General Instrument as at the date of registration of the General Instrument at the LTO.
6. Subject to section 3, at the request of the Owner and at the Owner's sole expense, the Municipality will deliver to the Owner discharges of this Agreement in registrable form for each Dwelling Unit that:
  - a. is a separate legal parcel; and
  - b. is not an Employee Unit,

provided that, where the Land is subdivided under the *Strata Property Act*, the Municipality may withhold delivery of any discharges required to be delivered pursuant to this section until after the Municipality has received from the strata corporation its duly authorized agreement that it will not take any action that would result in an inability to rent the Employee Units in accordance with this Agreement or would render such rental a breach of the strata corporation bylaws.

### **PART III - USE AND OCCUPANCY OF EMPLOYEE UNITS**

7. The Owner agrees that each Employee Unit may only be used as a permanent residence occupied by Employees or Retirees, and the Owner further agrees that the number of Employees or Retirees who permanently reside in the Employee Unit must be equal to or less than the number of Employees or Retirees that 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.
8. The Owner will ensure that each Employee Unit is continuously used and occupied as set out in section 7.
9. Notwithstanding anything to the contrary contained in this Agreement, if a potential tenant would be an Employee except for the fact that such potential tenant has not resided in the Municipality over the most recent twelve months, then the Owner may rent the Employee Unit to such potential tenant provided that the Employee Unit is rented or leased in accordance with all other requirements of this Agreement.
10. Within three days after receiving notice from the Municipality, the Owner will in respect of each Employee Unit, deliver, or cause to be delivered, to the Municipality a statutory declaration, substantially in the form attached as Schedule "A", sworn by the Owner, containing all of the information required to complete the statutory declaration. The Municipality may request such a statutory declaration in respect of the Employee Unit no more than four times in any calendar year. The Owner hereby irrevocably authorizes the Municipality to make such inquiries as it considers necessary and reasonable in order to confirm that the Owner is complying with this Agreement, and irrevocably authorizes and directs the recipient of the request for information from the Municipality to provide such information to the Municipality.

11. If the Owner cannot comply with the occupancy requirements for any Employee Unit for reasons of hardship, the Owner may request that the Municipality alter the Owner's obligations with respect to that Employee Unit on terms acceptable to the Municipality, but no such request may be made later than 30 days after the Municipality has delivered to the owner a notice of breach of this Agreement under Part VII herein. The Owner must deliver the request in writing in accordance with section 37 of this Agreement. The request must set out the circumstances of the hardship involved. The request must set out 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 UNITS**

12. In this Part, the following words have the following meanings:
- a. "Average Purchaser Index" means the average monthly Housing Price Index (hereinafter defined) for the 12 months immediately preceding the month of any offer to purchase the Interest of the Owner in the Employee Unit. For example, if the offer to purchase the Employee Unit is dated January 15, 2001, the *Average Purchaser Index* means the average of the monthly Housing Price Indices for the months from and including January, 2000 to and including December, 2000;
  - b. "Average Vendor Index" means the average monthly Housing Price Index for the 12 months immediately preceding the month in which the Interest of the current Owner of the Employee Unit was submitted for registration in the LTO (the "Old Completion Date"). For example, if the Old Completion Date was January 15, 2000, the *Average Vendor Index* means the average of the monthly Housing Price Indices for the months from and including January, 1999 to and including December, 1999;
  - c. "First Purchaser" means the person to whom the Interest in an Employee Unit is first transferred after issuance of the occupancy permit for the Employee Unit by the Municipality;
  - d. "Housing Price Index" means the appropriate (Detached, Attached, or Apartment) Multiple Listing Service housing price index for Greater Vancouver, B.C., as published by the Real Estate Board of Vancouver in collaboration with Canada Mortgage and Housing Corporation, the Real Estate Foundation of British Columbia, the University of British Columbia, and their respective successors in function;
  - e. "Housing Price Multiplier" means the Average Purchaser Index divided by the Average Vendor Index;
  - f. "Maximum Price" for the sale of the Employee Unit to the First Purchaser means the amount determined by multiplying the Gross Floor Area of the Employee Unit by \$155. In addition to the Maximum Price payable by the First Purchaser, the Owner that sells the Employee Unit to the First Purchaser will be entitled to charge the First Purchaser the net GST payable by the First Purchaser and the fee paid by the Owner to obtain the home warranty insurance required by the *Home Protection Act*.

"Maximum Price" for the sale of the Employee Unit by the First Purchaser or a Subsequent Purchaser (hereinafter defined) means the greater of:

- i. the value for the Employee Unit set out in Item 2(b) of the Form A - Freehold Transfer registered in the LTO transferring the Interest in the Employee Unit to the First Purchaser or a Subsequent Purchaser, as the case may be (the "Previous Sale Price"); and
- ii. the Previous Sale Price multiplied by the Housing Price Multiplier.

Notwithstanding anything to the contrary contained in this Agreement, if for any reason whatsoever the Housing Price Multiplier cannot be determined, the Maximum Price means the Previous Sale Price;

Examples of how to calculate the Maximum Price for the sale of an Employee Unit by the First Purchaser or a Subsequent Purchaser are attached to this Agreement as Schedule "B", which forms part of this Agreement; and

- g. "Subsequent Purchaser" means a person who purchases the Employee Unit from the First Purchaser or from someone who owned the Employee Unit after the First Purchaser.

13. The Owner will not Dispose of the Interest in an Employee Unit except in accordance with the terms and conditions set out in this Agreement and the RFR.
14. The Owner will not accept any offer to purchase the Interest in an Employee Unit for a purchase price exceeding the Maximum Price.
15. The Owner will not permit the Interest in an Employee Unit to be disposed of by sublease or assignment of a Tenancy Agreement unless such subletting or assignment is done in compliance with this Agreement.
16. The Owner will give prior written notice of this Agreement to any person to whom it proposes to Dispose of the Interest in an Employee Unit.
17. The Owner must not rent or lease any Employee Unit except to an Employee or Retiree in accordance with section 7 and 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 monthly rent payable for the Employee Unit will not exceed the rent, rounded to the nearest dollar, determined by multiplying the Gross Floor Area by the Original Rent. Subject always to the provisions of the *Residential Tenancy Act* (British Columbia), the Owner may increase the rent payable for the Employee Unit annually, beginning with the first anniversary of the day on which the occupancy permit was issued by the Municipality for the Employee Unit, and thereafter on each successive anniversary date, by an amount determined by multiplying the rent payable for the Employee Unit at the time of the proposed rent increase by the percentage change in the CPI since the last anniversary date;
  - c. the Owner will not require the Tenant to pay any extra charges or fees for use of any common property, limited common property, or other common area, or for sanitary sewer, storm sewer, water utilities, property taxes. For clarity, this section does not apply to cablevision, telephone, other telecommunications, gas utility or electricity utility fees or charges;
  - d. the Owner will attach a copy of this Agreement to the Tenancy Agreement;

- e. 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;
  - f. 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;
  - g. 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;
  - h. 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;
  - i. 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;
  - j. the Tenancy Agreement will provide that the Tenant will not sublease the Employee Unit or assign the Tenancy Agreement; and
  - k. the Owner will deliver a copy of the Tenancy Agreement to the Municipality upon demand.
18. The Owner will terminate any Tenancy Agreement where the Tenant uses or occupies, or allows use or occupation of an Employee Unit in breach of this Agreement, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act* (British Columbia).
19. 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.
20. If the Owner is leasing or renting one or more Employee Units, the Owner will, forthwith upon request by the Municipality, and from time to time as the Employee Units become vacant, identify to the Municipality which Employee Units are vacant and available for occupancy and the Owner will make best efforts to lease or rent the vacant Employee Units to qualified applicants on the Municipality's applicant list.
21. 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 notwithstanding that the Employee Unit may be leased or rented to someone from the Municipality's applicant list. For greater certainty, the Owner agrees that the Municipality is not responsible for, and makes no representation to the Owner regarding, the suitability of any prospective tenant on the Municipality's applicant list.

## **PART V - CAPITAL IMPROVEMENTS**

22. If the Owner has made capital improvements to the Employee Unit that required the issuance of a building permit by the Municipality, then the Municipality may, in its sole discretion, permit the Owner to increase the sale price for the Employee Unit up to an amount commensurate with the value of the 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.

## **PART VI - DEMOLITION OF EMPLOYEE UNIT**

23. The Owner will not demolish an Employee Units 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 their value above their 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, the Owner will use and occupy the replacement Dwelling Unit in compliance with this Housing Agreement, and sections 2.c., 2.d. and 2.e. herein will apply to the construction of the replacement Dwelling Unit to the same extent and in the same manner as those sections apply to the construction of the original Dwelling Unit, and the Dwelling Unit must be approved by the Municipality as a Employee Unit in accordance with section 4.

## **PART VII - DEFAULT AND REMEDIES**

24. 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 or rented at a rate in excess of that permitted under this Agreement, the Owner will pay, as a rent charge under section 25, the Daily Amount to the Municipality for every day that the breach continues after 30 days written notice from the Municipality to the Owner stating the

particulars of the breach. 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 CPI 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.

25. 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.
26. If the Employee Unit is sold for a purchase price exceeding the Maximum Price 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 the Prime Rate calculated from the due date until the date paid, compounded annually not in advance. The Owner further acknowledges and agrees that the Municipality's Excess Amount is fair and reasonable and is not to be construed as a penalty or forfeiture but as liquidated damages.

#### **PART VIII - INTERPRETATION**

27. 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 1X - MISCELLANEOUS**

- 28. **Housing Agreement.** The Owner acknowledges and agrees that this:
  - a. Agreement constitutes a covenant under s.219 of the *Land Title Act* and a housing agreement entered into under s.905 of the *Local Government Act* (British Columbia);
  - b. where an Employee Unit is a separate legal parcel the Municipality may file a notice of housing agreement under s.905 of the *Local Government Act* in the LTO against title to the Employee Unit; and
  - c. where Employee Units are not separate legal parcels, or have not yet been constructed, or where the land has not yet been Subdivided to create the Employee Units, the Municipality may file a notice of housing agreement under s. 905 of the *Local Government Act* in the LTO against title to the Land.
  
- 29. **Modification.** This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the Municipality, if it is signed by the Municipality and a person who is the current registered owner of the Land.
  
- 30. **Management.** The Owner covenants and agrees that it will furnish good and efficient management of the Employee Units and will permit representatives of the Municipality to inspect the Employee Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Employee Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land. Notwithstanding the forgoing, the Owner acknowledges and agrees that the Municipality, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Employee Units.
  
- 31. **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.

32. **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.
33. **Survival.** The obligations of the Owner set out in sections 24, 25, 26, 31 and 32 will survive termination of this Agreement.
34. **Municipalities 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.
35. **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;
  - 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.
36. **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.
37. **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 V0N 1B4
- 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 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.

38. **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.
39. **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.
40. **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.
41. **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.
42. **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.
43. **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.
44. **Limitation on Owner's Obligations.** The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
45. **Equitable Remedies.** 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.
46. **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.
47. **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.
48. **Deed and Contract.** By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

**SCHEDULE "A"**  
**STATUTORY DECLARATION**  
**CANADA**  
**PROVINCE OF BRITISH COLUMBIA**  
**IN THE MATTER OF A HOUSING**  
**AGREEMENT WITH THE RESORT**  
**MUNICIPALITY OF WHISTLER ("Housing**  
**Agreement")**

TO WIT:

I, \_\_\_\_\_ of \_\_\_\_\_, British Columbia, do solemnly declare that:

1. I am the owner of \_\_\_\_\_ (the "Employee Unit"), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement in respect of the Employee Unit.
3. For the period from \_\_\_\_\_ to \_\_\_\_\_ the Employee Unit was occupied only by the Employees and Retirees (as defined in the Housing Agreement) whose names and current addresses and whose employer's names and current addresses appear below:

Names, addresses and phone numbers of Employees and Retirees:  
Names, addresses and phone numbers of Employers:

4. The rent charged each month for the Employee Unit is as follows:
  - (a) the monthly rent on the date 365 days before this date of this statutory declaration: \$\_\_\_\_\_ per month;
  - (b) the rent on the date of this statutory declaration: \$\_\_\_\_\_; and
  - (c) the proposed or actual rent that will be payable on the date that is 90 days after the date of this statutory declaration: \$\_\_\_\_\_.
5. I acknowledge and agree to comply with the Owner's obligations under this Agreement, and other charges in favour of the Municipality registered in the land title office against the land on which the Employee Unit is situated and confirm that the Owner has complied with the Owner's obligations under these Agreements.
6. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the Canada Evidence Act.

DECLARED BEFORE ME at the \_\_\_\_\_ )  
\_\_\_\_\_, British Columbia, )  
this \_\_\_\_ day of \_\_\_\_\_ )  
) )  
) )  
) )  
) )  
\_\_\_\_\_ )  
A for taking Affidavits for )  
British Columbia )

**Schedule "B"**

Insert 2 page Excel sheets for examples of calculations

## Page 1 of Schedule 'B'

### HOUSING PRICE INDEX - RESALE OF ATTACHED DWELLINGS

Attached	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1997											129.9	127.3
1998	126.9	128.2	128.7	127.4	129.5	126.4	122.6	122.7	123.3	124.4	120.9	120.4
1999	122.8	122.4	122.6	123.2	124.0	122.0	123.4	122.0	122.8	123.9	123.0	120.2
2000	119.0	124.8	124.3	125.3	123.2	127.4	122.8	117.5	123.2	119.8	122.9	
12 Month Average	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1998										126.4	125.7	125.1
1999	124.8	124.3	123.8	123.4	123.0	122.6	122.7	122.6	122.6	122.5	122.7	122.7
2000	122.4	122.6	122.7	122.9	122.8	123.3	123.2	122.9	122.9	122.5	122.5	
2001												

*These figures are based on the Housing Price Index as published monthly by the Real Estate Board of Greater Vancouver in collaboration with Canada Mortgage and Housing Corporation, the Real Estate Foundation of BC, and the University of British Columbia. Website: www.realtylink.org*

#### **EXAMPLE: For determination of the Maximum Price for an Attached Employee Unit on Resale**

*If the Owner (the Vendor) became the registered owner of the Employee Unit (an Attached Unit) on November 20, 1998 (the Completion Date), the Owner's Purchase Price was \$143,452.00 (the Previous Sale Price), the date of the Bona Fide Offer is July 8, 2000, and the proposed completion date for the sale of the Employee Unit is August 15, 2000, then:*

The **Average Vendor Index** is the 12 Month Average Housing Price Index (Attached) for October, 1998 (this value is 126.4).

The **Average Purchaser Index** is the 12 Month Average Housing Price Index (Attached) for June, 2000 (this value is 123.3).

The **Housing Price Multiplier** is the Average Purchaser Index / Average Vendor Index (this value is  $123.3 / 126.4 = 0.975475$ ).

The **Previous Sale Price** is \$143,452.00.

The **Previous Sale Price** multiplied by the Housing Price Multiplier is:  $\$143,452.00 \times 0.975475 = \$139,933.83$ .

The **Maximum Price** is the greater of the Previous Sale Price and the Previous Sale Price multiplied by the Housing Price Multiplier, therefore, in this case, the Maximum Price is \$143,452.00.

## Page 2 of Schedule 'B'

### HOUSING PRICE INDEX - RESALE OF DETACHED DWELLINGS

Detached	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1997											134.1	132.0
1998	131.2	133.3	128.1	131.9	126.1	127.6	125.3	124.9	123.3	120.4	123.5	124.5
1999	122.8	122.8	123.2	122.9	125.5	125.7	126.4	127.6	125.9	125.8	126.2	127.0
2000	128.0	126.5	127.2	128.4	130.7	128.7	127.5	126.9	127.2	125.7	126.7	
<b>12 Month Average</b>												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1998										128.2	127.3	126.7
1999	126.0	125.1	124.7	123.9	123.9	123.7	123.8	124.1	124.3	124.7	124.9	125.2
2000	125.6	125.9	126.2	126.7	127.1	127.4	127.5	127.4	127.5	127.5	127.5	
2001												

*These figures are based on the Housing Price Index as published monthly by the Real Estate Board of Greater Vancouver in collaboration with Canada Mortgage and Housing Corporation, the Real Estate Foundation of BC, and the University of British Columbia. Website: [www.realtylink.org](http://www.realtylink.org)*

#### **EXAMPLE: For determination of the Maximum Price for a Detached Employee Unit on Resale**

*If the Owner (the Vendor) became the registered owner of the Employee Unit (a Detached Unit) on July 12, 1999 (the Completion Date), the Owner's Purchase Price was \$311,937.00 (the Previous Sale Price), the date of the Bona Fide Offer is August 24, 2000, and the proposed completion date for the sale of the Employee Unit is September 30, 2000, then:*

The **Average Vendor Index** is the 12 Month Average Housing Price Index (Detached) for June, 1999 (this value is 123.7).

The **Average Purchaser Index** is the 12 Month Average Housing Price Index (Detached) for July, 2000 (this value is 127.5).

The **Housing Price Multiplier** is the Average Purchaser Index / Average Vendor Index (this value is  $127.5 / 123.7 = 1.03072$ ).

The **Previous Sale Price** is \$311,937.00.

The **Previous Sale Price multiplied by the Housing Price Multiplier** is:  $\$311,937.00 \times 1.03072 = \$321,519.51$ .

The **Maximum Price** is the greater of the Previous Sale Price and the Previous Sale Price multiplied by the Housing Price Multiplier, therefore, in this case, the Maximum Price is \$321,519.51.