

STANDARD CHARGE TERMS

FILED BY: RESORT MUNICIPALITY OF WHISTLER

STANDARD RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE

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 a Covenant 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 (hereinafter defined);
- D. Pursuant to the terms of the Housing Agreement the Owner has or will agree to build or maintain Employee Units (hereinafter defined) on the Land; and
- E. In order to ensure that the Employee Units are 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 Employee Units on the terms and conditions set out in this Agreement,

THIS AGREEMENT is evidence that in consideration of the mutual promises contained in it and in consideration of the payment of \$2.00 by the Municipality to the Owner, the receipt and sufficiency of which is hereby acknowledged by the Owner, the parties agree as follows:

PART I – DEFINITIONS

- 1. 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. "Average Purchaser Index" means the average monthly Housing Price Index (hereinafter defined) for the 12 months immediately preceding the month of the Bona Fide Offer to purchase 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;
- d. "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;
- e. "Bona Fide Offer" means an offer to purchase the Owner's Interest in the Employee 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 for the Municipality's Subject (as hereinafter defined);
 - iv. providing for a deposit of not less than 10% of the proposed purchase price within 72 hours of the removal or waiver of the Municipality's Subject;
 - v. providing that if the Municipality does not exercise its right of first refusal as set forth in this Agreement, the Outside Offeror will grant to the Municipality a right of first refusal and option to purchase the Lands upon the same terms and conditions as are set forth in this Agreement;
 - vi. providing that the Outside Offeror will not assign or transfer the contract for the purchase the Employee Unit; and
 - vii. 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;
- f. "Business Day" means Monday to Friday inclusive except for those excluded days declared by lawful authority as holidays, excluding any day that the LTO is not open for business;
- g. "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;
- h. "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;
- i. "Efforts to Sell" means the best efforts of the Owner to sell the Employee Unit using all reasonable means including, listing the Employee Unit for sale with a licensed real estate agent, advertising the Employee Unit for sale in the local newspapers, posting "for sale" signs on any bulletin boards maintained by the Municipality for sale of such units, and offering to sell the Employee Unit to the Municipality on the following terms:

- i. specifying in a written notice that it is offering to sell the Employee Unit to the Municipality in accordance with section 6, 7 or 8 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 Owner pursuant to section 6, 7, or 8 of this Agreement, to give a written notice to the Owner agreeing to purchase the Employee Unit for the purchase price which is the lesser of the Fair Market Value of the Employee Unit and the Maximum Price, and on the terms that are set out in section 5.b. to 5.g. of this Agreement.
- j. "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;
 - k. "Employee Unit" means a Dwelling Unit designated as an employee unit in accordance with the Housing Agreement to be used, occupied and Disposed of in accordance with the Housing Agreement;
 - l. "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;
 - m. "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;
 - n. "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;
 - o. "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;
 - p. "Housing Price Multiplier" means the Average Purchaser Index divided by the Average Vendor Index;
 - q. "Interest" means the property interest of the Owner in the Employee Unit.
 - r. "Land" means the land described in Item 2 of the General Instrument and any part into which said Land is Subdivided (hereinafter defined);
 - s. "Lender" means a mortgagee that is a bank or other financial institution established or regulated under any enactment of British Columbia or Canada, or a receiver or receiver-manager acting on

behalf of such mortgagee.

- t. "LTO" means the New Westminster/Vancouver Land Title Office or its successor.
- u. "Maximum Price" 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 "A", which forms part of this Agreement;

- v. "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 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;

- w. "Outside Offeror" means a purchaser or prospective purchaser of the Employee Unit who deals at arm's-length with the vendor of the Employee Unit;
- x. "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;

- y. "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;
- z. "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; andthat 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;
- aa. "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;
- ab. "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*;
- ac. "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.

PART II - GENERAL

- 2. The Owner covenants and agrees that the Owner will not Dispose of its Interest in any Employee Unit unless such Interest is Disposed of in accordance with this Agreement. The Owner will not Dispose of its Interest in any Employee Unit other than to the Municipality or to an Outside Offeror pursuant to a Bona Fide Offer.
- 3. Provided that the Owner is not in breach of any of its obligations under this Agreement or under the Housing Agreement, 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 is not an Employee Unit; and

- b. Is not an Employee Unit.

PART III - RIGHT OF FIRST REFUSAL

- 4. The Owner covenants and agrees as follows:
 - a. The Owner will not sell or offer to sell any Employee Unit for any consideration not consisting entirely of lawful money of Canada;
 - b. If the Owner receives a Bona Fide Offer to purchase any Employee Unit which the Owner is willing to accept, then the Owner will offer to sell the Employee Unit to the Municipality on the terms that are set out in section 5 of this Agreement, by giving to the Municipality a notice in writing (the "Notice") attached to a copy of the Bona Fide Offer. The Municipality will have the exclusive right for 15 Business Days (the "Election Period") from the date on which the Municipality receives from the Owner the Notice and a copy of the Bona Fide Offer within which to purchase the Employee Unit on the terms set out in section 5 of this Agreement. The Owner agrees that the Municipality's Election Period to purchase the Employee Unit will not start to run until the Owner gives to the Municipality notice of the Bona Fide Offer with the only condition precedent or subject in the Bona Fide Offer being the Municipality's Subject;
 - c. If the Municipality wishes to exercise this right of first refusal, 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 right of first refusal with respect to a specific Bona Fide Offer, the Municipality's rights under this right of first refusal with respect to the particular Bona Fide Offer will be waived, but 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 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 Employee 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;
 - (2) signed Form C granting to the Municipality an option to purchase and a right of first refusal to purchase the Employee 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 this Agreement (the "Discharge") for execution by the Municipality;
 - (4) undertakings from the solicitor or notary for the Outside Offeror (the "Legal Representative") on terms satisfactory to the Municipality, including that:
 - (a) the Legal Representative will only register the Discharge 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 the Employee Unit in priority to all mortgages and other financial liens, charges and encumbrances, except for any charges in favour of 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 Employee 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 Employee 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 Employee Unit.

PART IV - GRANT OF OPTION

5. The Owner hereby grants to the Municipality the sole and exclusive irrevocable option to purchase the Employee Units (the "Option") 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 Bona Fide Offer (if any); and
 - ii. the Maximum Price.
 - b. The purchase of the Employee Unit by the Municipality will be completed on the date ("Completion Date") to be chosen by the Municipality, acting reasonably, such date not to be later than thirty Business 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 or the Housing 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, 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, 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. This obligation will survive the termination of 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 or notaries, 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).

PART V - EXCEPTIONS TO RIGHT OF FIRST REFUSAL AND OPTION

- 6. Notwithstanding any other provision in this Agreement, if the Owner is a Lender and the Lender has for between 90 days and 119 days made Efforts to Sell, and if the Lender has been unable to enter into a Bona Fide Offer or to sell the Employee Unit to the Municipality, 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. Notwithstanding any other provision in this Agreement, if the Owner is a Lender and the Lender has for at least 120 days made Efforts to Sell, and if the Lender has been unable to enter into a Bona Fide Offer or sell the Employee Unit to the Municipality, 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 but the Housing Agreement and this Agreement will not apply.
- 8. Notwithstanding any other provision in this Agreement, if the Owner is not a Lender and the Owner has for at least 120 days made Efforts to Sell, and if the Owner has been unable to enter into a Bona Fide Offer or sell the Employee Unit to the Municipality, 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 Municipal zoning enactments applicable to the use of the Employee Unit but the Housing Agreement and this Agreement will not apply.

PART VI - INTERPRETATION

- 9. 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

- 10. **Municipality not Obligated to Exercise Right of First Refusal or Option.** The Owner acknowledges and agrees that the Municipality is under no obligation to exercise its Option or the RFR.
- 11. **Duration of Option and Right Of First Refusal .** 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 Form C referring to this Agreement is deposited for registration in the LTO.
- 12. **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 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.
- 13. **Assignability.** 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. 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

14. **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.
15. **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.
16. **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.
17. **Liability.** 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.
18. **Costs.** Unless otherwise specified in this Agreement, the Owner will comply with all the requirements of this Agreement at its own cost and expense and will pay to the Municipality, on request, all reasonable costs or expenses it incurs in connection with this Agreement.
19. **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 of the LTO, and in the case of the Municipality addressed:

To: Clerk, Resort Municipality of Whistler,
4325 Blackcomb Way, Whistler, BC VON 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.

20. **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.
21. **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.
22. **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.
23. **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.
24. **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.
25. **Covenant Runs with the Land.** 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 itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Land.
26. **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.
27. **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.
28. **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.
29. **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.

30. **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 "B"

Note: Attach 2 page excel sheets with examples of calculations

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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.

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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	
12 Month Average												
	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

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.