

## STANDARD CHARGE TERMS

**FILED BY: RESORT MUNICIPALITY OF WHISTLER**

The following standard charge terms are deemed to be included 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. 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 (as hereinafter defined);
- C. The Owner and the Municipality wish to enter into this Agreement (as hereinafter defined) to facilitate the provision of affordable employee housing, to ensure that the Employee Units (as hereinafter defined) are leased and sold only to qualified individuals and for a price that reflects the public interest in employee housing; and
- D. In order to ensure that the Employee Units are used and developed in accordance with this Agreement, the Owner has agreed with the Municipality to provide to the Municipality a covenant under section 219 of the *Land Title Act* and a housing agreement under s.905 of the *Municipal Act*.

**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. "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.
- g. "**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.
- h. "Housing Agreement" means the housing agreement under s.905 of the *Municipal Act*, the covenant under section 219 of the *Land Title Act*, and the indemnity, and rent charge between the Owner and the Municipality granted by the Owner pursuant to this Agreement.
- i. "Interest" means the property interest of the Owner in the Employee Unit.
- j. "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.
- k. "LTO" means the New Westminster/Vancouver Land Title Office or its successor.
- l. "Owner" means the Transferor described in the General Instrument.
- m. "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.
- n. "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 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 reasonable time period specified by the Municipality.

- o. "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.
- p. "Tenancy Agreement" means a tenancy agreement, lease, license or other right to occupy an Employee Unit.
- q. "Tenant" means an occupant of a Employee Unit by way of Tenancy 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.

#### CONSTRUCTION

- 3. The Owner covenants and agrees with the Municipality that:
  - a. the Land may only be developed, built upon, and used, if, as part of any construction and development, the Owner also designs and constructs to completion, in accordance with the development permit and building permit for the Land issued by the Municipality, at least the number of Employee Units specified in the General Instrument and grants to the Municipality a right of first refusal and option to purchase (the "RFR") which is registered in the LTO against the Land concurrently with this Agreement;
  - b. if not all of the Dwelling Units on the Land are to be used as Employee Units, unless and until the Employee Units are ready for occupancy, and an interim occupancy permit has been issued for them by the Municipality, an equivalent number of other Dwelling Units on the Land will be left unused and unoccupied;
  - c. it will do everything necessary, at its expense, to ensure that this Agreement and the RFR will be registered against title to the Lands in priority over any mortgages or other financial charges registered or pending registration against title to the Land;
  - d. the Owner will at all times ensure that the Land is used in compliance with all laws relating to the environment; and
  - e. the Owner will meet or exceed the construction standards specified by the Municipality in a list provided to the Owner at the time that the Owner signs the General Instrument.
- 4. The Municipality covenants and agrees with the Owner that if not all the Dwelling Units on the Land are to be used as Employee Units, at the request of the Owner and at the expense of the Owner, the Municipality will deliver to the Owner partial discharges of this Agreement in registrable form for the Dwelling Units that are not Employee Units, but only if at the time the Owner requests the discharges, the Owner has complied with, or fulfilled its obligations under s. 3.a. and 3.b. of this Agreement, or made such arrangements with the Municipality as the Municipality considers necessary, in its absolute discretion, to ensure that the Owner will be fulfilling its obligations under this Agreement.

#### USE AND OCCUPANCY

5. The Owner agrees that an Employee Unit will continuously be used and occupied as a permanent residence by Employees or Retirees and the number of Employees or Retirees who permanently reside in the Employee Unit will be equal to 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 the Municipality's Employee Works and Service Charge Bylaw No.1186, 1996, and any other bylaws.

#### STATUTORY DECLARATION

6. Within three days after receiving notice from the Municipality, the Owner will in respect of each Employee Unit owned by the Owner, deliver, or cause to be delivered, to the Municipality a statutory declaration, substantially in the form attached as Schedule A, sworn by the Owner, or by the individual who is responsible in law for management of the Employee Unit, under oath before a commissioner for taking affidavits in British Columbia, 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.

#### RELIEF FROM OCCUPANCY RESTRICTION

7. 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, but no such request may be made later than 30 days after the Owner has been given notice of breach by the Municipality. The Owner must deliver the request in writing in accordance with section 22 of this Agreement. The request must set out the circumstances of the hardship involved. 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 and the Owner agrees that the relief, if any, is to be determined by the Municipality in its absolute and unfettered discretion.

#### RESTRICTION ON LEASE OR RENTAL

8. The Owner covenants and agrees not to rent or lease the Employee Unit unless the Employee Unit is rented or leased to an Employee or Retiree who is going to continuously use or occupy the Employee Unit as a permanent resident in accordance with this Agreement, and only on the following additional conditions:
  - a. the Employee Unit will be used or occupied only pursuant to a Tenancy Agreement;
  - b. the rent payable for the Employee Unit will not exceed the rent determined by multiplying the Gross Floor Area by the Original Rent Per Square Foot (as described in the General Instrument), rounded to the nearest dollar (the "Maximum Initial Rent"). **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 change in the CPI (as defined in the General Instrument) 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 or water utilities. 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 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 Owner will specify in the Tenancy Agreement that only the persons named in the Tenancy Agreement may occupy the Employee Unit;
  - h. the Owner will not consent to subletting or assignment of the Tenant's rights under the Tenancy Agreement unless such subletting or assignment is done in compliance with this Agreement;
  - i. the Tenancy Agreement will provide for termination of the Tenancy Agreement in situations where the Employee Unit is occupied by more or fewer people 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 the Municipality's Employee Works and Service Charge Bylaw No.1186, 1996, and any other bylaws;
  - j. in the Tenancy Agreement the Owner will have the right, at its 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; and
  - k. the Owner will in the Tenancy Agreement prohibit guests residing in an Employee Unit for more than 30 days, whether or not consecutive, in any 12 month period, without the prior written consent of the Owner, which consent the Owner may withhold or revoke if it appears to the Owner that the guest would not be eligible for tenancy in the Employee Unit.
9. 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 the use and occupancy restriction in this Agreement, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act* (British Columbia).
  10. The Municipality may, in its absolute and unfettered discretion, on the request of the Owner in writing, agree to permit from time to time any increase in the rents otherwise not permitted under this Agreement on such terms and conditions and in such amounts as the Municipality considers desirable.
  11. **If the Owner is leasing or renting any of the Employee Units, the Owner will notify the Municipality of an impending vacancy or actual vacancy of an Employee Unit within 48 hours of receiving proper notice of intent to terminate a Tenancy Agreement from a Tenant, or upon discovery by the Owner that the Tenant of a particular Employee Unit is in breach of this Agreement. On receipt of such notice the Municipality will have 7 business days to provide an applicant from it's applicant list. If the Municipality does not provide an applicant within 7 business days, the Owner will have the right to offer the Employee Unit to a qualified applicant on the Owner's applicant list.**
  12. **If before or within the 7 business days referred to in s. 11 of this Agreement, the Municipality asks the Owner to place an applicant on the Municipality's list in the Employee Unit or to place the applicant from the Municipality's list on the Owner's applicant list under s.13 of this Agreement, the**

Owner will accept the applicants so placed by the Municipality as Tenants, subject to the Owner screening the applicants supplied by the Municipality in the same way as it would screen any Tenant on the Owner's list and applying the criteria referred to in s. 13 of this Agreement. Any Tenant from the Municipality's list will become the Tenant of the Owner and the Tenant and the Owner will be subject to all the rules and regulations applicable to a Tenant selected by the Owner.

13. The Owner will maintain an applicant list and will select Tenants from that list according to a specific set of objective weighted criteria to determine the applicant's eligibility to become a Tenant. These criteria must include the criteria set out in this Agreement and must include other criteria set by the Municipality when the Owner signs the General Instrument. Forthwith upon request by the Municipality, the Owner will, from time to time, identify to the Municipality which Employee Units will be available for occupancy by potential Tenants.

#### DAMAGES AND RENT CHARGE

14. The Owner acknowledges that the Municipality requires employee housing to attract employees to work for the local businesses which generate tax and other revenue for the Municipality and economic growth for the community. The Owner therefore agrees that for each day an Employee Unit is occupied in breach of this Agreement, after 30 days written notice from the Municipality to the Owner stating the particulars of the breach and the breach not being cured within that 30 day period, the Owner will pay the Municipality \$100 for each day on which the breach has occurred after the 30 day notice, as liquidated damages and not as a penalty, due and payable at the offices of the Municipality on the last day of the calendar month in which the breach occurred. The \$100 per day will increase on January 1 of each year by the amount calculated by multiplying the amount per day payable on the previous January 1 by the percentage increase between that previous January 1 and the immediately preceding December 31 in the CPI.
15. 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 the amount payable by the Owner pursuant to section 14 of 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.

#### NOTICE OF HOUSING AGREEMENT

16. For clarity, the Owner acknowledges and agrees that:
  - a. this Agreement constitutes a covenant under s.219 of the *Land Title Act* and a housing agreement entered into under s.905 of the *Municipal Act* (British Columbia); and
  - b. the Municipality is required to file a notice of housing agreement in the LTO against title to the Employee Unit.

#### FURTHER ASSURANCES

17. Each of the parties will at all times hereafter execute and deliver at the request of the other all such further documents, deeds and instruments and will do and perform such acts as may be reasonably necessary to give full effect to the intent and meaning of this Agreement.



### TIME OF ESSENCE

18. Time is of the essence in this Agreement.

### MANAGEMENT

19. 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 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.

### LIABILITY

20. 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

21. 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.

### NOTICE

22. 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 V0N 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 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.

#### PARTIES TO THIS AGREEMENT

23. This Agreement will extend to be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

#### SEVERABILITY

24. 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.

#### NON-ASSIGNABILITY

25. 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.

#### WAIVER

26. 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

27. 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.

#### SOLE AGREEMENT

28. This Agreement, and the agreement for the RFR, represent the whole agreement between the Municipality and the Owner respecting the use and operation of the Employee Units, and there are no warranties, representations, conditions or collateral agreements except as set forth in this Agreement.

#### FURTHER ASSURANCE

29. 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.

#### COVENANT RUNS WITH THE LAND



30. Every obligation and covenant of the Owner in this Agreement constitutes a contractual obligation, a housing agreement entered into under s.905 of the *Municipal Act* (British Columbia), and a covenant granted by the Owner to the Municipality in accordance with section 219 of the *Land Title Act* (British Columbia) in respect of the Land and this Agreement burdens the Land and runs with it and binds the Owner's successors in title to the Land. This Agreement burdens the Land and binds 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 *Condominium Act* (British Columbia).

#### LIMITATION ON OWNER'S OBLIGATIONS

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

#### EQUITABLE REMEDIES

32. 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

33. 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

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