

ST000002

STANDARD CHARGE TERMS**FILED BY: WHISTLER VALLEY HOUSING SOCIETY**

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*.

GIVEN THAT:

- A. The transferor (the "Owner") described in item 5 of the Land Title Act Form C General Instrument Part 1 (the "Form C") which refers to this Agreement and which forms part of this Agreement is the owner of the strata lot (the "Strata Lot") referred to in item 2 of the Form C, wishes to grant to Whistler Valley Housing Society (the "Purchaser") the right of first refusal and option to purchase granted herein;
- B. The Purchaser is a non-profit society that has transferred land (including the Strata Lot) to the developer of the Strata Lot for \$1.00 so that land could be developed for employee housing in accordance with the Housing Agreement (hereinafter defined);
- C. The Owner and the Purchaser wish to enter into this Agreement to ensure that the Strata Lot is sold only to qualified individuals and for a price that reflects the non-profit nature of the project; and
- D. The Owner has agreed to grant to the Purchaser a right of first refusal and option to purchase the Strata Lot.

This Agreement is evidence that, in consideration of the payment of \$10 by the Purchaser to the Owner (the receipt and sufficiency of which is acknowledged) and in consideration of the promises exchanged below, the parties agree with each other as follows:

Definitions

- 1. In this Agreements:
 - a) "Employee" means an individual who is either employed or self-employed and whose principal place of employment or business is located within the boundaries of the Municipality (hereafter defined);
 - b) "Housing Agreement" means the housing agreement under s.963.2 of the *Municipal Act, R.S.B.C. (1979)* between Columbus Properties Development

Municipality dated for reference September 1, 1996 and deposited for registration as a s. 215 *Land Title Act* covenant in the LTO under number BL054219;

- c) "Interest" means the interest of the Owner in the Strata Lot;
- d) "LTO" means the New Westminster/Vancouver Land Title Office;
- e) "Municipality" means the Resort Municipality of Whistler;
- f) "Offer" means a *bona fide* offer to purchase an Interest in the Strata Lot made by a Third Party;
- g) "Owner's Purchase Price" means the purchase price of the Strata Lot disclosed to the Purchaser at the time that the Owner became the registered Owner of the Strata Lot and described in the Form C;
- h) "Permitted Encumbrances" means any charges and interests registered against title to the Strata Lot in favour of the Municipality, the Purchaser, or any utility;
- i) "Price Control Index" means the percentage multiplier determined under section 5(a) with respect to any period;
- j) "Prime Rate" means the annual rate of interest, expressed as a percentage, published from time to time by the Royal Bank of Canada's Main Branch in Vancouver, British Columbia as that Bank's prime rate and used as a reference rate by the Bank for determining interest rates on Canadian dollar loans;
- k) "Retiree" means an individual 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; and
- l) "Third Party" means any person, other than the Purchaser, who makes an Offer.

Interpretation

2. In this Agreement:

- a) reference to the singular includes reference to the plural, and vice versa, unless the context requires otherwise;
- b) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- d) the word "enactment" has the meaning given to it in the *Interpretation Act* (British Columbia) on the reference date of this Agreement;

- e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- f) reference to a "party" or the "parties" is a reference to a party, or the parties, to this Agreement and their respective successors, assigns, trustees, administrators and receivers; and
- g) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year unless otherwise expressly provided.

RFR and Option Grant

3. The Owner grants to the Purchaser a right of first refusal, and the option, to purchase the fee simple title to the Strata Lot on the terms of this Agreement. The Owner agrees that it must not sell, assign or in any way transfer (collectively, "Sell", "Sale" and "Sold") any of its Interest to any person other than the Purchaser unless that Interest is first offered for Sale to the Purchaser in accordance with section 4. Subject to sections 4 and 5, the Purchaser has 15 business days from the date on which it receives the notice under section 4 to elect, in its sole discretion, either to:

- (a) acquire the Strata Lot on the same terms as those of the Offer (including purchase price) except that the agreement of purchase and sale created by that election is to be on the terms set out in sections 9 through 30; or
- (b) exercise the option to purchase hereby granted to the Purchaser to acquire the Strata Lot:
 - (i) for the purchase price that is the lesser of:
 - (A) the purchase price set out in the Offer; and
 - (B) the purchase price calculated in accordance with section 5; and
 - (ii) on the terms set out in sections 9 through 30.

Offer Notice

4. If the Owner receives an Offer, the Owner must at once give notice of the Offer to the Purchaser and must deliver a copy of the Offer along with that notice.

Price

5. For the purposes of section 3.(b)(i)(B), the purchase price is to be determined in accordance with the following:

- (a) for the purposes of this section, the Purchaser is to determine the Price Control Index in respect of each quarter within each year, by subtracting 2.0% from the Prime Rate in effect on the first day of each quarter and multiplying the result by 0.1;

- (b) the purchase price for the purposes of section 3.(b)(i)(B) must not exceed the amount determined by the following method:
- (i) up to the end of the first quarter in which the Owner became the registered owner of the Strata Lot, the purchase price would be determined by adding to the Owner's Purchase Price, the figure determined by multiply the Price Control Index by the number of days remaining in the first quarter of the year, dividing that figure by the number of days in that quarter and multiplying it by the Owner's Purchase Price; and
 - (ii) for each subsequent quarter (up to the date set for the completion of the sale of the Strata Lot), the maximum purchase price would be determined by adding to the maximum purchase price determined at the end of the previous quarter, the figure determined by multiply the Price Control Index for the relevant quarter by the number of days remaining in that quarter, dividing that figure by the number of days in that quarter, and multiplying that number by the maximum purchase price determined at the end of the previous quarter.

Example: If the Owner became the registered owner of the Strata Lot on November 20, 1998, the Owner's Purchase Price was \$131,133.96, the proposed completion date for the Strata Lot was August 15, 1999, and the prime rate as at October 1, 1998 was 7.25%, then:

- the Price Control Index for the first quarter = $(.0725 - .02)(0.1) = .00525$
- the maximum purchase price for the purposes of section 3.(b)(i)(B) as at January 1, 1999 would be: $\$131,133.96 + (0.00525 \times 42/92 \times \$131,133.96) = \$131,448.25$
- if the prime rate on January 1, 1999 was 6.75%, the maximum purchase price for the purposes of section 3(b)(i)(B) as at April 1, 1999 would be $+ \$131,448.25 + (0.00475 \times 90/90 \times \$131,448.25) = \$132,072.63$
- if the prime rate on April 1, 1999 was 6.5%, the maximum purchase price for the purposes of section 3(b)(i)(B) as at July 1, 1999 would be: $\$132,072.63 + (.0045 \times 91/91 \times \$132,072.63) = \$132,666.96$
- if the prime rate on July 1, 1999 was 6.25%, as at August 15, 1999, the date sale of the Strata Lot was scheduled to close, the maximum purchase price for the purposes of section 3(b)(i)(B) as at August 15, 1999 would be: $\$132,666.96 + (.00425 \times 45/92 \times \$132,666.96) = \$132,942.75$

- (c) if a professional appraiser appointed by the Purchaser at the expense of the Owner determines that the Owner has made capital improvements to the Strata Lot that materially increase its market value beyond the purchase price determined under this section, the purchase price may be increased to reflect, but not exceed, the increase in market value as certified by the appraiser in his or her report to the Purchaser.

Waiver

6. As an alternative to election under section 3, the Purchaser is entitled to give notice to the Owner that the Purchaser agrees to waive its rights thereunder with respect to a specific Offer. The Purchaser must give notice under this section within 15 business days from the date on which it receives the notice under section 4. If the Purchaser gives notice under this section, the Purchaser's rights are deemed to be waived only if:

- (a) the Owner delivers to the Purchaser, within 2 business days after the notice of waiver is given by the Purchaser under this section a valid and binding written agreement of Purchase and Sale between the Owner and the Third Party in respect of the Interest and substantially on the terms and conditions of the Offer ("APS");
- (b) subject to section 7, at least 5 business days before completion of the sale to the Third Party the Owner delivers to the Purchaser written proof, satisfactory to the Purchaser, in its sole discretion that:
 - (i) the Third Party is:
 - (A) an Employee; or
 - (B) a Retiree; and
 - (ii) the APS cannot be assigned or transferred by the Third Party; and
- (c) at least 5 business days before completion of the sale to the Third Party the Owner delivers to the Purchaser written proof, satisfactory to the Purchaser, in its sole discretion that the purchase price payable by the Third Party under the APS does not exceed the purchase price calculated in accordance with section 5.

If the Owner does not comply with sections 6(a) through (c), the Purchaser's rights under section 3 are deemed not to be waived and the Owner is deemed not to have given the Purchaser the notice under section 4, and this Agreement and the rights it grants to the Purchaser continue in force. The Owner agrees that every APS entered into by the Owner must contain a provision by which the Owner and the Third Party with whom the agreement is entered into agree that the agreement is subject to a condition precedent for the benefit of both that may not be waived by either of them, such that the agreement becomes void and unenforceable unless the Purchaser's rights are deemed to be waived in accordance with sections 6.a. through c.

Exception to RFR and Option

7. The purchaser agrees that, if paragraph (f) of this section has been complied with in each case, the Purchaser's rights under section 3 and 5 do not apply in any of the following cases:

- (a) If a mortgagee of the Interest that is a bank or other financial institution established or regulated under any enactment of British Columbia or Canada (Lender") has commenced foreclosure proceedings against the Owner under the terms of a registered mortgage of the Interest granted by the Owner to the Lender, and the Lender has both obtained a court order for sale of the Interest and, for at least 45 days after the date of

the order for sale, used reasonable best efforts to enter into an APS, including by listing the Interest for Sale with the Purchaser or with a licensed real estate agent ("Agent"), or both, but has been unable to enter into an APS within the 45 days:

- (i) the Lender may, despite section 2.1(a) of the Housing Agreement, after that time Sell the Interest to a Third Party who is not an Employee or Retiree, but the purchase price for the Interest must not exceed the purchase price calculated in accordance with section 5; and
 - (ii) the Strata Lot may only be used and occupied in accordance with the Housing Agreement, but section 2.1(a) of the Housing Agreement does not apply;
- (b) If a Lender has commenced foreclosure proceedings against the Owner under the terms of a registered mortgage of the Interest granted by the Owner to the Lender, and the Lender has both obtained a court order for sale of the Interest and for at least 90 days after the date of the order for sale, used reasonable best efforts to enter into an APS, including by listing the Interest for Sale with the Purchaser or with an Agent, or both, but has been unable to enter into an APS within the 90 days:
 - (i) the Lender may, despite section 2.1(a) of the Housing Agreement, after that time Sell the Interest to a Third Party who is not an Employee or Retiree and the purchase price for the Interest may be different from the purchase price calculated in accordance with section 5; and
 - (ii) the Strata Lot may only be used and occupied in accordance with the Housing Agreement, but section 2.1(a) of the Housing Agreement does not apply;
- (c) If a Lender has commenced foreclosure proceedings against Owner under the terms of a registered mortgage of the Interest granted by the Owner to the Lender, and the Lender has both obtained a court order for sale of the Interest and for at least 120 days after the date of the order for sale, used reasonable best efforts to enter into an APS, including by listing the Interest for Sale with the Purchaser or with an Agent, or both, but has been unable to enter into an APS within 120 days:
 - (i) the Lender may after that time Sell the Interest to a Third Party who is not an Employee or Retiree and the purchase price for the Interest may be different from the purchase price calculated in accordance with section 5; and
 - (ii) the Strata Lot may only be used and occupied subject only to all enactments applicable to the use of land and the Housing Agreement does not apply; and
- (d) if the Owner is not a Lender and the Owner has for at least 45 days used reasonable best efforts to enter into an APS, including by listing the Interest for Sale with the Purchaser or with an Agent or both, but has been unable to enter into an APS within the 45 days:

- (i) the Owner may, despite section 2.1(a) of the Housing Agreement, after that time Sell the Interest to a Third Party who is not an Employee or Retiree, but the purchase price for the Interest must not exceed the purchase price calculated in accordance with section 5; and
- (ii) the Strata Lot may only be used and occupied in accordance with Housing Agreement, but section 2.1(a) of the Housing Agreement does not apply.

The Owner agrees that:

- (e) for clarity, this section applies each time an Offer is received by the Owner and each time the Interest is Sold; and
- (f) it, or the Lender to the Owner, must promptly after the Lender becomes entitled under the terms of the mortgage of the Interest between the Owner and the Lender to foreclose and become the Owner of the Interest, deliver to the Purchaser written proof satisfactory to the Purchaser, in its sole discretion, to establish the existence of any of the cases set out in this section before this section operates such that the rights of the Purchaser under section 3 and 5 do not apply.

Interest Disposal

8. Subject to section 6, if the Purchaser does not make an election under section 3, the Owner may dispose of the Interest upon substantially the same term as those of the Offer, but not otherwise, and if the Owner does not dispose of the Interest, this Agreement and the rights it grants to the Purchaser continue in force at all times. For clarity, even if the Purchaser does not elect to purchase the Strata Lot under section 3, or does not under section 6 waive its right to make that election, this Agreement and the rights it grants to the Purchaser continue in force at all times.

Runs with Land

9. This Agreement and the rights it grants to the Purchaser run with the Strata Lot and burden and bind every parcel into which the Strata Lot is subdivided by any means (including any strata lot or bare land strata lot created by deposit of a strata plan under the *Condominium Act* (British Columbia), but not any common property created upon deposit of a strata plan). For clarity, this Agreement and the rights it grants to the Purchaser burden and bind each Strata Lot.

Completion Date

10. The agreement arising from election under section 3 shall be completed on the date ("Completion Date") to be chosen by the Purchaser, such date not be later than thirty (30) days after the date of the election notice being given to the Owner.

Payment of Purchase Price

11. The purchase price determined under section 3 shall be paid by the Purchaser to the Owner, subject to adjustments as provided in this Agreement, on the Completion date according to the closing procedures as provided in this Agreement.

Title

12. On the Completion Date, the Owner shall convey the Strata Lot to the Purchaser free and Clear of all liens, charges and encumbrances except for the Permitted Encumbrances.

Possession

13. The Owner shall give vacant possession of the Strata Lot to the Purchaser, subject only to the Permitted Encumbrances and existing tenancies, following payment of the adjusted Purchase Price to the Owner on the Completion Date.

Adjustments

14. All adjustments, both incoming and outgoing, in connection with the purchase and sale of the Strata Lot, including adjustment of taxes, rates, rents and other matters usually the subject of adjustment between vendor and purchaser shall be made as at the Completion Date.

Representations, Warranties and Covenants of the Owner

15. The Owner covenants and agrees that it shall, from and after the date of the application to register this Agreement in the LTO:

- (a) take all reasonable care to protect and safeguard the Strata Lot and operate and otherwise deal with the Strata Lot as a careful and prudent owner would do and in such a manner that, except as contemplated in this Agreement, the warranties, representations and covenants of the Owner as contained in this Agreement remain true and correct;
- (b) 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 Strata Lot in the Purchaser 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 and to enable the Owner to carry out the sale of the Strata Lot and to execute and deliver this Agreement as valid and binding obligations of the Owner.

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

- (a) the Owner has no indebtedness or obligation to any person which might now or in the future constitute a lien, charge, or encumbrances on the Strata Lot other than the Permitted Encumbrances;
- (b) the Owner has not used the Strata Lot or permitted any use of the Strata Lot to store, manufacture, dispose of, emit, spill, leak, generate, transport, remediate, produce, process, release, discharge, landfill, treat or remediate any explosive, radioactive material, asbestos, urea formaldehyde, chlorobiphenyl, hydrocarbon, underground tank, pollution, contamination, hazardous substance, corrosive substance, toxic substance, special waste, waste, or matter of any kind which is or may be harmful to

human safety or health or to the environment, including anything the storage, manufacture, disposal, emission, discharge, treatment, generation, use transport, remediation or release into the environment of which is now or at any time after the execution of this Agreement is prohibited, controlled, regulated or licensed under any laws applicable to the Strata Lot ("Contaminants");

- (c) the Owner has not caused or permitted, the storage, manufacture, disposal, emission, spilling, leakage, treatment, generation, transportation, remediation, production, processing, release, discharge, landfilling, treatment or remediation of any Contaminants in, on, under or from the Strata Lot; and
- (d) the Owner has at all times used the Strata Lot in compliance with all laws relating to Contaminants and to the environment.

Indemnity

17. The Owner covenants and agrees with the Purchaser, which covenant shall survive the completion of any conveyance of the Strata Lot arising from the exercise of this Option, that the owner must indemnify and save harmless the Purchaser, 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 Purchaser, whether brought against any one or more of them by the Owner or by any other person, or by any governmental authority, by reason of a breach of any representation or warranty, covenant or agreement of the Owner set forth in this Agreement.

Closing Documents

18. Not less than 14 days before the Completion Date, the Purchaser shall deliver to the Owner's solicitors:

- (a) two copies of a Form A Transfer transferring the fee simple title to the Strata Lot to the Purchaser ("Transfer") subject only to Permitted Encumbrances;
- (b) two copies of the Owner's Statements of Adjustments to be approved and executed by the Owner; and
- (c) a statutory declaration of the Owner or any authorized officer of the Owner that the Owner is a resident of Canada within the meaning of the *Income Tax Act* (Canada).

Closing Procedure

19. On or before the Completion Date, the Owner shall deliver to the Purchaser's solicitors, in trust, the Transfer executed on behalf of the Owner and in registrable form on the undertakings that:

- (a) on the Completion Date, the Purchaser shall apply to register the Transfer in the LTO only if the adjusted Purchase Price has first been deposited in the trust account of the Purchaser's solicitors; and

- (b) 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 Strata Lot indicating that in the normal course of LTO procedure the Purchaser shall become the registered owner of the Strata Lot free and clear of all liens, charges and encumbrances other than the Permitted Encumbrances, the Purchaser shall pay the Owner at once the adjusted Purchase Price by solicitor's trust cheque delivered to the Owner's solicitors.

Despite the rest of this section:

- (c) if Owner has existing financial charges to be cleared from title, the Owner, while still required to clear such charges, may wait to pay and discharge those charges until immediately after receipt of the Purchase Price, but in this event the Purchaser may pay the Purchase Price to a lawyer or notary in trust, on undertakings to pay and discharge the existing financial charges and remit the balance, if any, to the Owner; and
- (d) if the Purchaser is relying upon a new mortgage to finance the Purchase Price, the Purchaser, while still required to pay the Purchase Price on the Completion Date, may wait to pay the Purchase Price to the Owner until after the transfer and instruments evidencing the new mortgage have been deposited for registration in the LTO, but only if, before the instruments have been deposited in the LTO, the Purchaser has:
 - (i) made available for tender to the Owner that portion of the Purchase Price that is not secured by the new mortgage;
 - (ii) fulfilled all conditions of the mortgage in respect of the new mortgage for advance to the Purchaser of the funds secured by the new mortgage, except any condition with respect to deposit of the mortgage for registration in the LTO; and
 - (iii) made available to the Owner the undertaking of a lawyer or notary to pay the Purchase Price forthwith upon deposit of the transfer and instruments evidencing the new mortgage and the advance by the mortgagee of the funds under the mortgage.

Risk

20. The Strata Lot shall be at the Owner's risk until the Completion Date and shall thereafter be at the risk of the Purchaser. In the event of loss or damage to the Strata Lot 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 Purchaser, at the Purchaser's option, may cancel this Agreement.

Access

21. The Purchaser, its agents and employees, have the licence, conditional on providing 48 hours prior written notice to the Owner, to enter upon the Strata Lot from time to time prior to the Completion Date, at the Purchaser's sole risk and expense, for the purpose of making reasonable inspections, surveys, tests and studies of the Strata Lot.

Fees and Taxes

22. The Purchaser shall pay:

- (a) any property transfer taxes under the *Property Transfer Tax Act* (British Columbia);
- (b) LTO registration fees in connection with the transfer of the Strata Lot to the Purchaser;
- (c) the Purchaser's legal fees and disbursements but not the Owner's; and
- (d) all goods and services tax, if any, payable in respect of the transfer of the Strata Lot to the Purchaser under the *Excise Tax Act* (Canada).

Further Assistance

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

Notice

24. Where any notice, request, direction, or other communication is required to be given or made by either party under this Agreement, it shall be in writing and is effective if delivered in person, sent by registered mail, by telegram, by telex or by facsimile addressed to the party for whom it is intended at the address set out above and any notice, request, direction or other communication shall be deemed to have been given if by registered mail, when the postal receipt is acknowledged by the other party; by telegram, when transmitted, by the carrier; and, by telex or facsimile when transmitted. The address of either party may be changed by notice in the manner set out in this provision.

Time of Essence

25. Time is of the essence of this Agreement

Tender

26. Any tender of document or money may be made upon the parties at their respective addresses set forth in the Agreement or upon their respective solicitors

Entire Agreement and its Survival

27. There are no representations, warranties, guaranties, promises or agreements other than those expressly contained in this Agreement, all of which shall survive the Completion Date, registration of documents and payment of the Purchase Price and shall not merge with any deeds or agreements delivered in connection with completion of this transaction and shall not merge with the Transfer or its registration. The provisions of this Option to Purchase Agreement (and any documents referred to therein) between the parties with respect to the Strata Lot constitute the entire agreement between the parties and terminate and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject of

this Option to Purchase Agreement.

Enurement

28. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

Modification

29. This Agreement may not be modified or amended except by an instrument in writing signed by the parties or by their successors or assigns.

Interpretation

30. Wherever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural the feminine or body corporate where the context or the parties so require.

Clarification as to Effect of Agreement

31. For clarity, the Owner expressly acknowledges and agrees that this Agreement grants to the Purchaser separate rights of first refusal and options to purchase in respect of the Strata Lot.

Duration of Option and RFR Created by This Agreement

32. The parties agree that 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.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C which refers to this Agreement and which forms part of this Agreement.

End of Set