

**PART 2 – TERMS OF INSTRUMENT
SECTION 215 COVENANT
(Gondola Six)**

THIS AGREEMENT dated for reference _____ is

BETWEEN:

(Insert owner's name)

(the "Owner")

AND:

RESORT MUNICIPALITY OF WHISTLER
4325 Blackcomb Way, Whistler, BC V0N 1B4
("Municipality")

GIVEN THAT

A. Section 215 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Municipality in respect of the use of land or construction on land;

B. The Owner and the Municipality wish to enter into this Agreement to provide for affordable employee housing on the terms and conditions set out in this Agreement, and agree that this agreement is both a section 215 covenant under the *Land Title Act* and a housing agreement under s. 963.2 of the *Municipal Act*;

This Agreement is evidence that in consideration of \$2.00 paid by the Municipality to the Owner (the receipt of which is acknowledged by the Owner), the Owner covenants and agrees with the Municipality, in accordance with section 215 of the *Land Title Act*, as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Agreement:

- (a) "Employee" means an individual:
 - (i) who is either employed or self-employed for an average of not less than 20 hours per week over the most recent three months and whose principal place of employment or business is located within the boundaries of the Resort Municipality of Whistler; and
 - (ii) who is a member in good standing of the Whistler Valley Housing Society;
- (b) "LTO" means the New Westminster/Vancouver Land Title Office;
- (c) "Municipality" means the Resort Municipality of Whistler;
- (d) "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;
- (e) "Retiree" means an individual;

- (i) 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
 - (ii) who is a member in good standing of the Whistler Valley Housing Society;
- (f) "Strata Lot" means a parcel of land in the Resort Municipality of Whistler legally described in item 2 of Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

1.2 Interpretation

In this Agreement:

- (a) reference to the singular includes a 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" or "year" is a reference to a calendar day, calendar month, or calendar year unless otherwise expressly provided.

ARTICLE 2 HOUSING AGREEMENT AND SUBDIVISION RESTRICTIONS

2.1 Use and Occupancy

- (a) The Owner agrees that the Owner may only sell a Strata Lot to an Employee or to a Retiree.

- (b) The Owner agrees that each Strata Lot may only be used or occupied as a permanent residence, and then only by an individual who resides in the Strata Lot and who is:
 - (i) an Employee;
 - (ii) a Retiree; or
 - (iii) living in the Strata Lot with an Employee or Retiree in a single domestic unit and
 - (A) is related to the Employee or Retiree by blood, marriage, adoption, common law marriage or foster parenthood; or
 - (B) is in a spousal relationship with the Employee or Retiree.

2.2 Sales Lottery Covenant

The Owner covenants and agrees with the Municipality that none of the Strata Lots may be sold separately from any of the Other Strata Lots, except in accordance with the following conditions:

- (a) a Strata Lot may be sold separately from the Other Strata Lots only to an Employee or a Retiree;
- (b) the first sale of a Strata Lot must be to an Employee or Retiree who has been selected as an eligible purchaser through a lottery held by the Whistler Valley Housing Society in accordance with the rules and policies on such lotteries of the Whistler Valley Housing Society current at the time of the lottery.

2.3 Statutory Declaration

Within three days after receiving notice from the Municipality, the Owner must deliver to the Municipality a statutory declaration, substantially in the form attached as Schedule A, sworn by the Owner 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 any particular Strata Lot no more than four times in any calendar year.

2.4 Relief from Occupancy Restriction

If the Owner is in breach of section 2.1(b), the Owner may request to be relieved from the obligations under that section for reasons of hardship, but no such request may be made later than 30 days after the Owner has been given notice of breach by the Municipality. The request must be delivered in writing to the Clerk of the Municipality. The request must set out the circumstances of the default and 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.

2.5 Restriction On Lease or Rental

- (a) The Owner must not rent or lease any Strata Lot except in accordance with this section.
- (b) Without limiting the generality of section 2.3, the Owner may rent or lease a Strata Lot to an individual who is permitted to reside in the Strata Lot by section 2.1.
- (c) The Owner agrees that if a Strata Lot is rented or leased, the rent payable for the Strata Lot must not exceed the rent set out below, as applicable to the Strata Lot:
- | | | |
|-------|---|----------------------|
| (i) | studio/ loft unit | \$650.00 per month |
| (ii) | one bedroom unit | \$650.00 per month |
| (iii) | one bedroom plus den unit | \$750.00 per month |
| (iv) | two bedroom unit | \$1,000.00 per month |
| (v) | three bedroom unit | \$1,500.00 per month |
| (vi) | one bedroom located in a two or three bedroom unit, per bedroom | \$500.00 per month. |
- (d) The Owner agrees that no extra charges or fees may be levied or collected by or on behalf of the Owner 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 for other telecommunications, gas utility or electricity utility fees or charges.
- (e) The Owner agrees that the rent for a Strata Lot may be increased annually, beginning with the first anniversary of the day on which the occupancy permit was issued by the Municipality for the Strata Lot, by increasing the rent in accordance with the following formula:

Original rent as determined under section 2.4(c), plus all previous annual increases X 40%) x Prime Rate on the anniversary date - 2%.

- (f) If a Strata Lot is rented or leased under this section 2.4:

- (i) a copy of this Agreement must be attached to the rental agreement or lease and the rental agreement or lease must contain the agreement of the tenant or lessee that the Strata Lot is subject to the occupancy restriction in section 2.1(b);
 - (ii) the rental agreement or lease must contain a provision that the Strata Lot cannot be occupied in breach of the occupancy restriction in section 2.1(b); and
 - (iii) the rental agreement or lease must entitle the Owner to terminate it on 30 days' notice if the tenant or lessee occupies, or allows occupation of, the Strata Lot in breach of the occupancy restriction in section 2.1(b).
- (g) The Owner agrees to terminate any rental agreement or lease where the tenant or lessee occupies, or allows occupation of, a Strata Lot in breach of the occupancy restriction in section 2.1(b), in accordance with the terms of the rental agreement or lease and the *Residential Tenancy Act* (British Columbia).
- (h) The Municipality may, in its sole discretion, on the request of the Owner agree to permit from time to time any increase in the rents otherwise permitted under this section on such terms and conditions and in such amounts as the Municipality considers desirable.

2.6 Damages and Rent Charge

- (a) 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. The Owner therefore agrees that for each day the Strata Lot is occupied in breach of this Agreement, the Owner must pay the Municipality \$100.00 for each day ("Daily Amount") on which the breach has occurred, as liquidated damages and not as penalty, due and payable at the office of the Municipality on the last day of the calendar month in which the breach occurred. The Daily Amount is increased on January 1 of each year by the amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase between the preceding January 1 and the immediately preceding December 31 in the All-Items Consumer Price Index published by Statistics Canada for Vancouver, where 1996 = 100. The Owner agrees that payment may be enforced by the Municipality in a court of competent jurisdiction as a contract debt.
- (b) By this section, the Owner grants to the Municipality a rent charge under s. 215 of the *Land Title Act* (British Columbia) and at common law, securing payment by the Owner to the Municipality of the amounts described in section 2.6(a). The Municipality agrees that enforcement of the rent charge granted by this section is suspended until the date that is 30 days after the date on which any amount due under section 2.6(a) is due and payable to the Municipality in accordance with

section 2.6(a). The Municipality may enforce the rent charge granted by this section by an action for an order for sale or by proceedings for the appointment of a receiver.

2.7 Specific Performance

The Owner agrees that the Municipality is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement. The Owner agrees that this is reasonable given the public interest in restricting the occupancy of the Strata Lots in accordance with this Agreement.

2.8 Notice of Housing Agreement

For clarity, the Owner acknowledges and agrees that:

- (a) this Agreement constitutes both a covenant under s. 215 of the *Land Title Act* and a housing agreement entered into under s. 963.2 of the *Municipal Act* (British Columbia);
- (b) the Municipality is required to file a notice of housing agreement in the LTO against title to the Strata Lots; and
- (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in a Strata Lot.

ARTICLE 3 GENERAL

3.1 No Effect On Laws or Powers

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 Strata Lots,
- (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 Strata Lots, or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Strata Lots.

3.2 Notice

Any notice which may be or is required to be given under this Agreement must be in writing and either be delivered or sent by facsimile transmission. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it must promptly give notice of its new address or facsimile number, or both, to the other party as provided in this section.

3.3 Covenant Runs With the Strata Lot

Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the Municipality in accordance with section 215 of the *Land Title Act* in respect of each of the Strata Lots and this Agreement burdens each of the Strata Lots and runs with each of them and binds the Owner's successors in title to each of them and binds every parcel into which they are consolidated or subdivided by any means, including by subdivision or by strata plan under the *Condominium Act* (British Columbia).

3.4 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 a Strata Lot.

3.5 Waiver

An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

3.6 Further Acts

The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

3.7 Severance

If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

3.8 No Other Agreements

This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

3.9 Amendment

This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the Municipality.

3.10 Enurement

This Agreement binds the parties to it and their respective successors, heirs, executors and administrators. Reference in this Agreement to the "Municipality" is a reference also to the elected and appointed officials, employees and agents of the Municipality.

3.11 Deed and Contract

By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

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 to which this Agreement is attached and which forms part of this Agreement.

