

MASTER DEVELOPMENT AGREEMENT

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**

AND:

MOUNT BALDY SKI CORPORATION

**MASTER DEVELOPMENT AGREEMENT
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MASTER DEVELOPMENT AGREEMENT

THIS AGREEMENT is dated as of May 19, 2006.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Agriculture and Lands, Parliament Buildings, Victoria, British Columbia V8V 1X4

(the "Province")

AND MOUNT BALDY SKI CORPORATION, a company incorporated pursuant to the laws of Canada and registered in British Columbia (INCORPORATION NO. 0681126) and having its registered office at Mott Rutherford Welsh & Greig, 100 – 166 Main Street, Penticton, BC V2A 5A4

(the "Developer")

WHEREAS:

- A. The Developer has been operating the Mount Baldy Ski Resort pursuant to an agreement with the Province dated June 30, 2002, {as assigned to Mount Baldy Ski Corporation by Assignment dated April 30, 2004 and amended by a Modification Agreement dated September 10, 2004, and further amended by a Modification Agreement dated April 22, 2005 and further amended by a Modification Agreement dated October 21, 2005.}
- B. The Developer wishes to expand certain recreation improvements in the resort and to develop the base area on land that is owned by the Province;
- C. The Developer has submitted a detailed Resort Master Plan to the Province outlining its proposals and the plan has been approved;
- D. By way of this agreement, the parties wish to incorporate the approved Resort Master Plan, and otherwise set out their respective rights and obligations with respect to the resort.

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I - INTERPRETATION

1.01 In this Agreement and the recitals to it, unless the context otherwise requires

"Access Route" means an access:

- (a) required under section 6.04; or
- (b) by way of dedicated or gazetted highway, easement or right of way, whether Existing or which the Developer is required by Government Agencies or Regulatory Authorities to provide in the Controlled Recreation Area, to Parking Facilities and Improvements.

"Anniversary" means an anniversary of the Reference Date;

"Application" means an application to the Province under this Agreement for a disposition of an interest in Crown Land;

"Appraiser" means a person designated as an appraiser by the British Columbia Association of the Appraisal Institute of Canada;

"Appraised Land Value" means, in reference to any parcel of Crown Land, the fair market value of such parcel, excluding the timber on it, valued in accordance with its intended use as land fully serviced to the parcel boundaries, regardless of any zoning or servicing then existing for such land, as of the first day of the applicable period in section 7.02 which value will be determined by an Appraiser under Article VII, provided that in no case will the Appraised Land Value be less than \$10,000.00 for any parcel of Crown Land;

"Appraised Timber Value" means, in reference to the timber on any parcel of Crown Land, the stumpage value of the Merchantable Timber on such parcel as of the day of the Application for the land under Article VII using stumpage rates provided by the Ministry of Forests (or any successor Provincial ministry responsible for determining stumpage rates) using the timber cruise report obtained in accordance with section 7.11, provided that if stumpage rates are at any time no longer set in respect of Crown timber, the Appraised Timber Value will be the fair market value of such timber as of the day of the Application for the land under Article VII determined by qualified professional selected by the Province, which professional will be required to use the timber cruise report obtained in

accordance with section 7.11 and comply with policies of the Province then in effect in respect of the valuation and sale of Crown timber;

"Approved Lender" means a lender taking a mortgage, pledge, charge or other encumbrance against the Interest and approved by the Province pursuant to section 16.04;

"Arbitration" means arbitration in accordance with Article XX;

"Arms Length Party" means a person:

- (i) who deals at arms length with the Developer and each of the Shareholders and in which none of the Developer, the Shareholders, or any spouse or child of the Developer or any of the Shareholders, has any direct or indirect financial interest including as a shareholder, member, beneficiary or otherwise; or
- (ii) is designated in writing by the Province to be an arms length party;

"Base Area" means that part of the Development Area shown or defined as the base area in the Resort Master Plan, as amended and endorsed with approval of the Province from time to time;

"Base Area Phase" means a phase of development of the Base Area which is in a Phase, as described in the Phasing Schedule;

"Bed Unit" means public or private overnight accommodation for one person in the Base Area (which unit is also commonly referred to as a "pillow" in the ski resort industry in British Columbia);

"Capital Budget", in reference to a Mountain Phase, means the capital budget for the construction of Improvements and Access Routes in that Mountain Phase;

"Commercial Alpine Ski Policy" means the policy of the Province in effect from time to time, relating to the development of commercial alpine ski areas;

"Commercial Recreation Activity" means a recreational activity within the Controlled Recreation Area covered by the Commercial Recreation Policy;

"Commercial Recreation Policy" means the policy of the Province in effect, from time to time, relating to commercial recreation activities on Crown Land other than activities governed by the Commercial Alpine Ski Policy and the General Commercial Policy of the Province;

- "Commercial Recreation Tenure"** means a disposition issued to the Developer under the *Land Act* in accordance with the Commercial Recreation Policy over all or part of the Controlled Recreation Area;
- "Consideration"** in connection with a person means all receipts, receivables and other direct and indirect benefits to that person, its directors, officers and shareholders and, in the case of the Developer, the Shareholders and Related Parties, and parties associated with any of the foregoing;
- "Construction and Completion Schedule"** means a construction and completion schedule submitted from time to time indicating the general sequence and timetable for construction of the Improvements and Access Routes to be constructed in each Mountain Phase;
- "Controlled Recreation Area"** means, at any given time during the Term, Crown land within the Development Area;
- "Corresponding Base Area Phase"**, in reference to a Phase or Mountain Phase, means the Base Area Phase included in or accompanying the same Phase;
- "Corresponding Mountain Phase"**, in reference to a Phase or Base Area Phase, means the Mountain Phase included in or accompanying the same Phase;
- "Crown Land"** means Crown land as defined by the *Land Act* at any time and from time to time;
- "Day Use Facility"** means any building that is, or will be, constructed on Crown Land that is designed to provide day use facilities for patrons, including cafeteria/restaurant facilities, brown bag facilities, changing areas, sanitation facilities and holding facilities for injured patrons;
- "Designated Authority"** means the individual or office designated by the minister responsible for the *Ministry of Lands, Parks and Housing Act* or any corporation to which such minister has delegated his authority;
- "Development"** means the development contemplated by the Resort Master Plan and this Agreement;
- "Development Area"** means the Crown land and the private land described in Schedule "A";
- "Event of Default"** means an event referred to in section 15.01;

"Existing" when referred to in reference to an Improvement or an Access Route means existing within the Controlled Recreation Area on the date of this Agreement;

"Fees" means the charges, licence fees and rent to be calculated and paid to the Province in accordance with Article V;

"Financial Information" means the financial statements for the Developer for its financial period ending the Last Year End;

"Financial Year" means a period commencing on June 1 of a year during the term of this Agreement and ending on May 31 in the immediately following year but the first Financial Year will commence on the Reference Date and end on May 31, 2007, or such other period as may be agreed to in writing by the Province and the last Financial Year will commence on June 1 and end on the last day of the term of this Agreement;

"Golf Course" means the golf course to be constructed on the Golf Course Land as is described as such in the Resort Master Plan and includes clubhouse, proshop, restaurant, bar and banquet facilities, cart paths, washrooms, parking lots, maintenance and equipment buildings and those other similar and related facilities and any utility, service, service road or other similar works installed, constructed by or for the Developer on the Golf Course Land other than a Utility;

"Golf Course Land" means that portion of the Base Area described as such in the Resort Master Plan and which has not been transferred from time to time in fee simple from the Province to the Developer or otherwise in accordance with this Agreement;

"Golf Revenue" shall have the meaning set out in Article V;

"Government Agencies" means all ministries and agencies of the Province having jurisdiction over the Development or charged by a statute of the Province with the regulation, control or supervision of the construction of improvements, which ministries and agencies include, but are not limited to, the Comptroller (as defined in the *Water Act*), the Environmental Appeal Board established under the *Environment Management Act*, an approving officer appointed under the *Land Title Act* and the ministries of the Province having responsibility for lands, parks, highways, forests and the environment;

"Gross Revenue" shall have the meaning set out in Article V;

"Improvements" means the Recreation Improvements, the Golf Course and the Utilities;

"Independent Operator" means an Arms Length Party who enters into a contract with the Developer for the operation of a Commercial Recreation Activity;

"Independent Operator Revenue" shall have the meaning set out in Article V;

"Interest" means the rights of the Developer under this Agreement and the Tenures and the business and operations of the Developer in connection with this Agreement and the Tenures excluding

- (a) land held in fee simple by the Developer outside the Development Area;
- (b) any interest held by the Developer in land outside of the Development Area; and
- (c) the business or operation of the Developer carried on outside of the Development Area which is not part of the business and operation of the Developer in connection with this Agreement and the Tenures;

"Interim Parking Facility" means any vehicular parking lot in the Controlled Recreation Area that the Developer intends to use to provide interim or temporary parking space for users of the Improvements, employees of the Developer and its contractors until Parking Facilities are built as contemplated in the Resort Master Plan;

"Land Title Office" means the Kamloops Land Title Office or any successor to it;

"Last Year End" means the most recent completed financial period of the Developer;

"Licence" means the licence granted under Article IV;

"Lift" means a lift that is Existing, or is to be constructed in accordance with the terms of this Agreement, including, but not limited to,

- (a) all pylons, cables, gondolas, chairs and equipment used in connection with the lift;
- (b) the structure at either end of the lift that loads and unloads people and all machines and equipment used to drive the lift; and

- (c) any building that is used to house the mechanical or structural end of the lift;

"Local Government" means the Regional District of Kootenay Boundary and the Regional District of Okanagan Similkameen (or any successor local government, including a resort municipality) having jurisdiction over the Development Area, or any part of it;

"Maintenance Facility" means any facility which is constructed in the Controlled Recreation Area for the purpose of housing, storing or maintaining equipment;

"Merchantable Timber" means trees on a parcel of Crown Land which are of quality and in quantities sufficient to be commercially valuable in accordance with the policies of the Province then in effect in respect of the valuation and sale of Crown timber;

"Minor Improvement" means a Recreation Improvement of a minor nature specified in the Resort Master Plan and for which the Province in its discretion does not require a Tenure;

"Mountain Phase" means a phase of development of the Recreation Improvements which is in a Phase, as described in the Phasing Schedule;

"Moveable Recreation Improvements" means all Lifts and other Recreation Improvements that are in the nature of tenant's improvements which would, at common law, be removable by a tenant on the expiration of a tenancy;

"Parking Facility" means any vehicular parking lot, except any Interim Parking Facility, specified in the Resort Master Plan and located in the Controlled Recreation Area that the Developer intends to use to provide permanent parking space for the users of the Improvements or employees of the Developer or its contractors;

"Performance Deposit" means the bond referred to in section 17.02;

"Person" means any individual, corporation, body corporate, partnership, joint venture, trust, unincorporated organization or other entity, any government or governmental or regulatory authority, however constituted, or any trustee, executor, administrator or other legal representative;

"Phase" means a phase of development of the Base Area and the Recreation Improvements as described in the Phasing Schedule, and each Phase includes a Base Area Phase or a Mountain Phase or both;

"Phasing Schedule" means the summary of the phases of the Development set out in the Resort Master Plan, as amended and endorsed with the approval of the Province from time to time, in accordance with this Agreement;

"Policies" means the Commercial Alpine Ski Policy, the Commercial Recreation Policy and the General Commercial Policy and other policies of the Province in effect from time to time relating to the operation of recreation or resort activities on, or the development of, Crown Land;

"Preceding Base Area Phase" means the Base Area Phase in the Phase that immediately precedes the referenced Phase, Base Area Phase or Mountain Phase;

"Preceding Mountain Phase" means the Mountain Phase in the Phase that immediately precedes the referenced Phase, Base Area Phase or Mountain Phase;

"Prior Agreement" means the prior agreements between the Province and the Developer or the predecessor(s) in title to the Developer with respect to the Controlled Recreation Area other than an Interim Agreement, interim tenures, tenures and Commercial Recreation Tenures including:

- (a) Operating Agreement dated the ___n/a___ day of ___n/a___, ___n/a___;
- (b) Master Development Agreement dated the ___n/a___ day of ___n/a___, ___;

"Prior Agreement Reference Date" means the reference date of the ___n/a___, namely ___n/a___.

"Prior Rights" means those rights, interests and encumbrances described in Schedule "J";

"Professional Consultant" means the engineer, planner, architect or landscape architect, or other professional as appropriately qualified under the relevant legislation, appointed by the Developer to supervise or review the construction of Improvements or Access Routes, or the development of the Base Area or a portion of it;

"Receiver" means both receiver and receiver manager or either of them;

"Recreation Improvement" includes a Lift, Day Use Facility, Maintenance Facility, Parking Facility, Trail, Snowmaking Equipment, surfaced

pathways in the Development Area, and any other similar and related facilities and any Support Utility, service road or other similar works installed, constructed by or for the Developer in the Development Area as described in the Resort Master Plan other than a Utility and the Golf Course;

"Reference Date" means the reference date of this agreement, namely May 19, 2006;

"Regulatory Authorities" means all federal, municipal, local, regional or other regulatory approving authority or agency having jurisdiction over all or any part of the Development other than Government Agencies and includes Local Government;

"Related Party" means any corporation the issued shares in the authorized capital of which are all registered in the name of and beneficially owned by the Developer or the Shareholders or some of them;

"Replacement Offer" means any replacement offer referred to in Article XVIII;

"Resort" means the resort known or to be known as Mount Baldy Resort and located in the Development Area;

"Resort Master Plan" means the document entitled "Mount Baldy Resort Expansion Master Plan" dated February, 2005 prepared by Brent Harley and Associates Inc. for and on behalf of the Developer, including any amendments made to it made under Article XII;

"Security Deposit" means the security referred to in section 17.01;

"Shareholder" means any registered or beneficial owner of a share in the authorized share structure of the Developer;

"Skiers At One Time" means, in reference to a Lift or a Mountain Phase, the skier and snowboarder at one time capacity of that Lift or Mountain Phase, as applicable, based on the Skiers At One Time ("SAOT") formula described in Schedule "D";

"Snowmaking Equipment" means a system for making artificial snow, including, but not limited to, all reservoirs and equipment, pipes, fittings, fixed or tower mount guns, pumps and attachments necessarily incidental to that system but not including any portable guns or flexible hoses that are not permanently affixed to the land;

"Structural Improvement" means an Improvement or Access Route other than a Trail or service road, a fairway, bunker or green on the Golf Course, or other landscaping;

"Subdivision Scheme" means a scheme of subdivision referred to in section 7.03 (c) (i);

"Substantial Completion" means, subject to section 1.02,

- (a) in reference to an Improvement, the condition arrived at, as certified by the Professional Consultant under his or her professional seal (except if the Professional Consultant is a planner, then as certified in a certificate signed by the planner without a seal), when the construction of it and all associated Access Routes and Utilities, if any, have been completed in accordance with the design, plans and specifications for the Improvement and Access Routes and Utilities and the Improvement is ready for its intended use, with the exception of minor deficiencies that do not materially affect its appearance or impair its use;
- (b) in reference to a Mountain Phase, the condition arrived at when all of the Improvements and Access Routes in that Mountain Phase are certified as required by paragraph (a) of this definition to be in the condition as specified in that paragraph, and
- (c) in reference to the improvements contemplated in a Base Area Phase, the condition arrived at, as certified by the Professional Consultant under his or her professional seal (except if the Professional Consultant is a planner, then as certified in a certificate signed by the planner without a seal), when the construction of all improvements in that Base Area Phase and Access Routes and Utilities, if any, have been completed and are ready for their intended use, with the exception of minor deficiencies that do not affect their appearance or impair their use;

"Support Utility" means a utility or service which is utilized only by another Recreation Improvement;

"Tenure" means,

- (a) for a Recreation Improvement other than a Lift, Snowmaking Equipment, Trail, surfaced pathway, or a Support Utility, service road or other similar work, a lease substantially in the form set out in Schedule "E";

- (b) for a Recreation Improvement which is a Lift, Snowmaking Equipment, surfaced pathway, or a Support Utility or other similar work, or for an Access Route, a right of way substantially in the form set out in Schedule "F";
- (c) for the Golf Course, a lease substantially in the form set out in Schedule "E"; and
- (d) for a Utility, a right of way substantially in the form of tenure established by the Province from time to time under its Public and Private Utility Policy;

and the leases or rights of way for the same which are in place on the date of this Agreement, and for Trails or service roads, the licences in place on the date of this Agreement;

"Trail" means an alpine ski run, cross country ski trail, or other trail shown in or contemplated by the Resort Master Plan; and

"Utility" means any utility or other service constructed by or for the Developer in the Controlled Recreation Area as described in the Resort Master Plan and which is utilized by other than just a Recreation Improvement or the Golf Course;

and where a definition is in the plural the singular refers to one of them.

- 1.02 For the purpose of the definition of "Substantial Completion" in section 1.01, where the Developer has not retained a Professional Consultant to supervise the construction of an Improvement or an Access Route, the Substantial Completion that is required to be verified under this Agreement may be evidenced by,
- (a) a certificate of the secretary of the Developer verifying the matters otherwise required to be verified by the Professional Consultant; and
 - (b) at the option of the Province, other evidence of Substantial Completion that the Province reasonably requires to verify that fact.
- 1.03 In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
- 1.04 The headings of Articles are for convenience of reference only and are not to be construed as defining or in any way limiting the scope or intent of the provisions of this Agreement.

- 1.05 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 1.06 Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect, and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.
- 1.07 If any section of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and they will be enforceable to the fullest extent permitted by law.
- 1.08 This Agreement constitutes the entire agreement between the Province and the Developer with respect to the subject matter of this Agreement and may not be modified except as provided in this Agreement or by subsequent modification or agreement in writing between the Province and the Developer.
- 1.09 The terms and conditions of this Agreement are binding upon and enure to the benefit of the parties, their successors and permitted assigns.
- 1.10 If the Developer is more than one person, the obligations of the Developer pursuant to this Agreement will be joint as well as several.
- 1.11 If there is a conflict or inconsistency between
- (a) the provisions of this Agreement (including without limitation, the Phasing Schedule) and the Resort Master Plan, this Agreement applies and prevails to the extent of the conflict or inconsistency;
 - (b) the body of this Agreement and the contents of a schedule to this Agreement, the body of this Agreement applies and prevails to the extent of the conflict or inconsistency;
 - (c) this Agreement and a Tenure, this Agreement applies and prevails to the extent of the conflict or inconsistency.
- 1.12 Wherever this Agreement provides that:
- (a) the form or content of a document being tendered, an action being taken, a decision or determination being made, or a review of something is to be satisfactory or acceptable to a party or subject to consent or approval by a party;

- (b) a decision or determination is to be made by a party; or
- (c) a party may request or require something;

then such party will act reasonably and in a timely manner:

- (d) in deciding or determining whether the document, action, thing, decision or determination is satisfactory or acceptable, or to be consented to or approved; and
- (e) in making such decision or determination or request or requirement;

except where this Agreement expressly states that a party has "discretion" (such as "in its discretion") when there will be no requirement to show reasonableness or to act reasonably.

- 1.13 The word "including", when following any general statement, term or matter, will not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation", "without limiting the generality of the foregoing", or "but not limited to" or words of similar import) is used with reference to it, but rather will be deemed to refer to all other items or matters that could reasonably fall within the scope of such general statement, term or matter.
- 1.14 Each section and subsection of this Agreement is separate and distinct from every other section and subsection of this Agreement and will not limit in any way any other section or subsection of this Agreement unless the context otherwise requires.

ARTICLE II – TERM AND COMMENCEMENT

- 2.01 This Agreement, including the License, shall be deemed to have commenced on the Reference Date and shall terminate on the day before the 60th anniversary of that date unless terminated under Article XV or replaced under Article XVIII.
- 2.02.1 The commencement of this Agreement is subject to the Developer satisfying all of the following conditions precedent on or before May 19, 2006:
- a) Complete Benefit Agreement between Mount Baldy Ski Corporation and Osoyoos Indian Band;

The conditions precedent in this section are for the sole benefit of the Province and may be waived by written notice from the Province to the Developer prior to the above date. If the conditions precedent in this section are not satisfied or waived on or before the above date, this Agreement terminates.

- 2.03 The Developer's obligations in this agreement are subject to the Developer reaching agreement with the Local Government by May 19, 2007 with respect to the following matters as they apply to the Development Area: zoning, the official community plan, and any other matters within the jurisdiction of the Regional Districts which are necessary to operate the Development.

This condition precedent is for the sole benefit of the Developer and may be waived by written notice from the Developer to the Province prior to the above date. If this condition precedent is not satisfied or waived on or before the above date, this Agreement terminates.

ARTICLE III - STATEMENT OF OBJECTIVES & LIMITATIONS

- 3.01 It is the policy of the Province to encourage the economic development and continuous operation of ski facilities, golf courses and related four season resorts in British Columbia and pursuant to the *Land Act* and *Ministry of Lands, Parks and Housing Act* to allocate lands owned by it to this use where that is in the public interest as determined by the Province in its discretion.

- 3.02 In accordance with the applicable Policies, the Province has reviewed and adopted the Resort Master Plan and has agreed to permit the Developer to develop the Development Area (to the extent of the Province's jurisdiction) in the Phases shown in the Phasing Schedule, on the terms and conditions contained in this Agreement, by

- (a) constructing and operating the Recreation Improvements in accordance with accepted British Columbia industry standards and substantially in accordance with the Resort Master Plan; and
- (b) developing the Base Area to provide a golf course and a balanced mix of commercial and residential accommodation that complements the utilization of the Recreation Improvements;

and has approved the future disposition of interests in Crown Land, save with respect to Tenures for Utilities, as provided in this Agreement pursuant to the *Ministry of Lands, Parks and Housing Act*.

- 3.03 Subject to the provisions of this Agreement, it is contemplated that:

- (a) the Developer shall be entitled to charge fees or receive other remuneration for the use and occupation of the Recreation Improvements, the Golf Course and the Controlled Recreation Area;
- (b) Improvements will be constructed in Phases in accordance with the Resort Master Plan and the Phasing Schedule;
- (c) the Developer will, in association with a Mountain Phase, be entitled to purchase certain Crown Land in the Base Area from the Province in the Corresponding Base Area Phase, to be developed substantially in accordance with the land uses and densities specified in the Resort Master Plan; and
- (d) on the termination of this Agreement the Improvements and Access Routes will remain in place to ensure the future viable operation of the Resort.

3.04 The Province and the Developer acknowledge that from time to time and for a variety of reasons, there may be a need for mutually agreed upon changes to any or all of the Resort Master Plan, the Phasing Schedule and the Construction and Completion Schedule. The Province agrees that no sequencing or timing of a development on Crown Land in the Base Area purchased by the Developer under Article VII will be binding on the Developer, such sequencing or timing to be determined by the Developer having regard to factors such as financial viability, market factors and good business practice. This section does not diminish the restriction set out in section 6.01(c).

3.05 The Developer acknowledges that:

- (a) this Agreement will not interfere with, influence, encroach upon or fetter the jurisdiction, processes or discretion of any Government Agency or Regulatory Authority which may, within its scope of authority or jurisdiction, in considering applications by the Developer in connection with all or any part of the Development, impose conditions and obligations on the Developer pursuant to its normal approval process;
- (b) it is the Developer's sole responsibility to obtain all approvals necessary or of advantage for the Development from the Government Agencies and the Regulatory Authorities; and
- (c) the Province has not made any representation, warranty or assurance as to the feasibility of all or any part of the Development or whether or not any or all further approvals or permissions necessary or of advantage for all or any part of the Development will be granted.

3.06 The Developer acknowledges that this Agreement:

- (a) provides for the business, activities and developments of the Developer within the Development Area referred to in the Resort Master Plan;
- (b) does not imply that licences or interests in the land comprising the Controlled Recreation Area will not be granted to persons other than the Developer, but only as provided in Article XXI;
- (b) does not mean that the only interests in land in the Controlled Recreation Area that are necessary or of advantage for the Development are the Licence and Tenures; and
- (d) does not mean that interests in land outside the Controlled Recreation Area are not necessary or of advantage for the Development.

ARTICLE IV – LICENCE OF CONTROLLED RECREATION AREA

4.01 Pursuant to Section 39 of the *Land Act*, the Province grants to the Developer a licence of occupation of that part of the Controlled Recreation Area for which Tenures are not outstanding from time to time for the purpose of the operation of the Resort and fulfilling the obligations of the Developer under this Agreement including the exclusive right to:

- (a) develop and construct those Access Routes and Improvements contemplated in the Resort Master Plan;
- (b) use, operate, maintain, repair and replace Access Routes and Improvements ;
- (c) control the Controlled Recreation Area in the name of the Developer for the purpose of conducting the Developer's business;
- (d) conduct such other activities as are incidental to the foregoing including the right to conduct inspections and surveys;

for such consideration and upon such terms and conditions as the Developer may determine from time to time, all as provided and in accordance with the terms and conditions of this Agreement.

4.02 The Licence and the rights granted by it are subject to:

- (a) the Prior Rights;
- (b) the terms and conditions of this Agreement;

- (c) the right of the Province pursuant to section 21.09 to grant licences of and interests in the land comprising the Controlled Recreation Area; and
 - (d) the right of authorized servants, delegates, employees, representatives, agents and contractors (and their respective employees) of the Province acting within the scope of their authority, with or without vehicles and equipment, to have access to and use of the Controlled Recreation Area.
- 4.03 The Developer will not unreasonably refuse to issue a pass or other form of permission (subject to such terms and conditions as the Developer may impose) to allow a person to pass freely and without charge through the Controlled Recreation Area for the purpose of a recreational or other activity where that person will not make use of the Recreation Improvements provided, however:
- (a) the Developer may place reasonable restrictions on the activities of that person that are consistent with the use and management of a resort area;
 - (b) the Developer may designate corridors through the Controlled Recreation Area on which that person may pass; and
 - (c) that person is not a patron of or associated with an operation which is in conflict or competition with the operations of the Developer or any of its Independent Operators in the Controlled Recreation Area.

ARTICLE V – FEES

- 5.01 Gross Revenue shall be determined in accordance with generally accepted accounting principles, consistently applied, according to the following:
- (a) Gross Revenue shall be the sum of any and all Consideration received by the Developer for
 - (i) rights to use or occupy any part of the Recreation Improvements or the Controlled Recreation Area; and
 - (ii) Commercial Recreation Activities.
 - (b) Gross Revenue shall include the following:
 - (i) Consideration for an hourly or day ticket, entrance or admission fees, and activities;
 - (ii) Consideration for a pass for a fixed period or a season or other pass including that portion of club membership fees equal to the

- customary charges for the duration of the membership for the use or activities to which the member is entitled;
- (iii) Consideration from a wholesale purchaser for hourly or day tickets, entrance or admission fees and activities;
 - (iv) subsequent recoveries of accounts receivable which have been written off (which shall be included in Gross Revenue in the Financial Year in which they are recovered);
 - (v) proceeds from business interruption insurance;
 - (vi) where the rights are part of a package which includes other benefits, if the other benefits are provided by an Arms Length Party, that portion of the package price that represents the rights, otherwise the value of the rights as if the rights were not part of a package but rather were sold separately; and
 - (vii) rent or revenue from facilities that are within the Controlled Recreation Area.
- (c) Gross Revenue shall not include the following:
- (i) accounts receivable which have been written off (according to generally accepted accounting principles);
 - (ii) gains arising from the sale or other disposition of capital assets;
 - (iii) revenue from expropriation awards or sales or other transfers in lieu of and under the threat of expropriation;
 - (iv) proceeds of any insurance other than business interruption insurance;
 - (v) any provincial sales tax, goods and services tax under the *Excise Tax Act* (Canada) or any other tax paid to the Developer;
 - (vi) discounts or complimentary passes issued by the Developer for commercially sound reasons associated with the operation or promotion of the resort including those to employees and their families;
 - (vii) Independent Operator Revenue;
 - (viii) Golf Revenue;

- (ix) Consideration from lessons, equipment repairs and rentals, food and beverage sales, retail sales or day care fees, and
- (x) rent or revenue from restaurant or cafeteria facilities or from banquets, weddings or similar functions.

5.02 Golf Revenue shall be determined in accordance with generally accepted accounting principles, consistently applied, according to the following:

- (a) Golf Revenue shall be the sum of any and all Consideration received by the Developer for rights to use or occupy or services provided on the Golf Course or the Golf Course Land;
- (b) Golf Revenue shall include the following:
 - (i) Consideration for green fees and practice fees;
 - (ii) Consideration for passes for a fixed period or a season or other pass including that portion of club membership fees equal to the customary charges for the duration of the membership for the use or other activities to which the member is entitled;
 - (iii) Consideration from a wholesale purchaser for green fees, practice fees, fees for other activities or entrance or admission fees;
 - (iv) subsequent recoveries of accounts receivable which have been written off (to be included in Golf Revenue in the Financial Year in which they are recovered);
 - (v) proceeds from business interruption insurance;
 - (vi) where the rights are part of a package which includes other benefits, if the other benefits are provided by an Arms Length Party, that portion of the package price that represents the rights, otherwise the value of the rights as if the rights were not part of a package but rather were sold separately; and
 - (vii) rent or revenue from facilities that are within the Controlled Recreation Area.
- (c) Golf Revenue shall not include the following:
 - (i) accounts receivable which have been written off (according to generally accepted accounting principles);
 - (ii) gains arising from the sale or other disposition of capital assets;

- (iii) revenue from expropriation awards or sales or other transfers in lieu of and under the threat of expropriation;
- (iv) proceeds of any insurance other than business interruption insurance;
- (v) any provincial sales tax, goods and services tax under the *Excise Tax Act* (Canada) or any other tax paid to the Developer by any person for the right to use the Golf Course or Golf Course Lands;
- (vi) discounts or complimentary passes issued by the Developer for commercially sound reasons associated with the operation or promotion of the resort including those to employees and their families; and
- (vii) any provincial sales tax, goods and services tax under the *Excise Tax Act* (Canada) or any other tax paid to the Developer;
- (viii) Consideration from lessons, equipment repairs and rentals, including golf cart rentals, food and beverage sales, retail sales or day care fees; and
- (ix) rent or revenue from restaurant or cafeteria facilities or from banquets, weddings or similar functions.

5.03 Independent Operator Revenue for an Independent Operator shall be determined in accordance with generally accepted accounting principles, consistently applied, according to the following:

- (a) Independent Operator Revenue for an Independent Operator shall be the sum of any and all Consideration received by the Independent Operator for activities and services in the Controlled Recreation Area;
- (b) Independent Operator Revenue for an Independent Operator shall include the following:
 - (i) Consideration for an hourly or day ticket, entrance or admission fees and activities;
 - (ii) Consideration for a pass for a fixed period or a season or other pass including that portion of club membership fees equal to the customary charges for the duration of the membership for the use or activities to which the member is entitled;

- (iii) Consideration for a wholesale purchaser for hourly or day tickets, entrance or admission fees, and activities;
 - (iv) subsequent recoveries of accounts receivable which have been written off (which are to be included in the Independent Operator Revenue in the Financial Year in which they are recovered);
 - (v) the proceeds of business interruption insurance;
 - (vi) where the rights are part of a package which includes other benefits, that portion of the package price that represents the rights; and
 - (vii) consideration from lessons and equipment repairs and rentals;
- (c) Independent Operator Revenue for an Independent Operator shall not include the following:
- (i) accounts receivable which have been written off (according to generally accepted accounting principles);
 - (ii) gains arising from the sale or other disposition of capital assets;
 - (iii) revenue from expropriation awards or sales or other transfers in lieu of and under the threat of expropriation;
 - (iv) proceeds of any insurance other than business interruption insurance;
 - (v) any provincial sales tax, goods and services tax under the *Excise Tax Act* (Canada) or any other tax paid to the Developer;
 - (vi) Consideration to the Developer which is included in Gross Revenue; and
 - (vii) food and beverage sales and retail sales.

5.04 In consideration of the rights granted under this Agreement and as rental and licence fees the Developer shall pay to the Province the Fees as set out in the following sections of this Article.

5.05 Fees for the Recreation Improvements and Controlled Recreation Area other than Golf Course Land shall be equal to 2%, or such other percentage as may be provided pursuant to section 5.08, of Gross Revenue for each Financial Year to be paid as follows:

- (a) for each Financial Year, an interim payment, to be paid on or before the 30th day of September of that Financial Year equal to 1% of the Gross Revenue for the immediately preceding Financial Year;
- (b) for each Financial Year other than the last Financial Year, a final payment of the balance, payable on or before the 30th day of September of the immediately following Financial Year; and
- (c) for the last Financial Year, a final payment of the balance within two months of the last day of that Financial Year.

5.06 Fees for the Golf Course and Golf Course Lands shall not be payable until the effective date of the golf course lease and shall be equal to 5%, or such other percentage as may be provided pursuant to section 5.08, of the Golf Revenue for each Financial Year thereafter and shall be paid as follows:

- (a) an interim payment of \$5,000.00 on the first day of the term of the lease;
- (b) for each subsequent Financial Year an interim payment, to be paid on or before the 30th day of September of that Financial Year equal to 2.5% of the Golf Revenue for the immediately preceding Financial Year;
- (c) for each Financial Year other than the last Financial Year a final payment of the balance, payable on or before the 30th day of September of the immediately following Financial Year; and
- (d) for the last Financial Year, a final payment of the balance within two months of the last day of that Financial Year

provided, however, that this fee shall be no less than \$10,000.00 for any Financial Year after the first day of the term of the lease.

5.07 Fees for Independent Operator operations shall be calculated and paid as follows:

- (a) subject to section 5.07(b), fees for each Independent Operator shall be 2%, or such other percentage as may be provided pursuant to section 5.08, of the Independent Operator Revenue of that Independent Operator for each Financial Year;
- (b) in the event that the Independent Operator Revenue for an Independent Operator in a Financial Year is less than \$10,000.00 no fee will be payable in respect of that Independent Operator for that Financial Year;

- (c) for each Financial Year other than the last Financial Year payment shall be made on or before the 30th day of September of the following Financial Year; and
 - (d) for the last Financial Year payment shall be made within two months of the last day of that Financial Year.
- 5.08 The Province may increase or decrease the percentages used to calculate the Fees payable pursuant to sections 5.05, 5.06 and 5.07 on the tenth Anniversary and on each subsequent fifth Anniversary provided that:
- (a) an increase or decrease is not more than .5% (decimal five percent);
 - (b) the percentage in section 5.05 will not then exceed the percentage specified by the Province under the Commercial Alpine Ski Policy; and
 - (c) the percentage in section 5.06 will not then exceed the percentage specified by the Province under the General Commercial Policy.
- 5.09 At the time that Fees are payable pursuant to sections 5.05, 5.06 and 5.07, the Developer will deliver to the Province detailed statements of Gross Revenue, Golf Revenue and Independent Operator Revenue, as the case may be, for the Financial Year to which the Fees relate, such statements to be prepared in accordance with the format prescribed, and supported by such receipts and other information and documentation as may be required, by the Province.
- 5.10 Upon reasonable notice and at reasonable times, the Province may inspect and take copies of and cause an audit to be undertaken by an independent auditor of the books and records of the Developer as they pertain to Gross Revenue, Golf Revenue and Independent Operator Revenue. Save as provided in section 5.11 or for an audit undertaken by the Province because the Developer fails to deliver to the Province a detailed statement of Gross Revenue, Golf Revenue or Independent Operator Revenue for a Financial Year in accordance with section 5.09, the Province will bear the cost of the audit.
- 5.11 In the event that an audit taken under section 5.10 in accordance with generally accepted auditing standards reveals that the Developer has understated Gross Revenue, Golf Revenue or Independent Operator Revenue for a Financial Year, the Developer will immediately pay to the Province all outstanding Fees, together with interest on the outstanding Fees at the rates established under section 14.01(i), calculated from the date the outstanding Fees should have been paid and until the date of payment and, if the outstanding Fees are greater than 5% of the total Fees which should have been paid for that Financial Year, the Developer will immediately pay to the Province the cost of that audit.
- 5.12 The Fees are in addition to:

- (a) charges levied by the Province to recover costs of processing Applications and issuing grants, Tenures, consents and approvals;
- (b) other fees prescribed in such dispositions including those for Utilities.

5.13 If the Developer fails to deliver to the Province a detailed statement of Gross Revenue, Golf Revenue or Independent Operator Revenue for a Financial Year in accordance with section 5.09, the Province may by notice in writing to the Developer estimate Gross Revenue, Golf Revenue or Independent Operator Revenue, as the case may be, for that Financial Year and such estimates will be the minimum Gross Revenue, Golf Revenue or Independent Operator Revenue for that Financial Year for the purposes of this Agreement, subject to any greater amounts being determined for the Gross Revenue, Golf Revenue or Independent Operator Revenue for that Financial Year pursuant to an audit taken under section 5.10.

ARTICLE VI - CONSTRUCTION IN THE CONTROLLED RECREATION AREA

6.01 The Developer may construct or cause to be constructed a Recreation Improvement, Access Route or Utility, in a Mountain Phase if:

- (a) the same is stipulated in the Resort Master Plan and the Phasing Schedule as part of that Mountain Phase or is ancillary to them;
- (b) it has delivered to the Province:
 - (i) a financial plan for the financing of the Capital Budget of that Mountain Phase if requested by the Province in its discretion;
 - (ii) Applications for Tenures for the Recreation Improvement, other than a Trail, service road or Minor Improvement, and, if applicable, all Access Routes, Utilities and Support Utilities to be constructed in that Mountain Phase;
 - (iii) a Performance Deposit for that Mountain Phase, if it is required under section 17.02;
 - (iv) the Security Deposit for that Mountain Phase;
 - (v) a current Certificate of Insurance confirming the existence of construction insurance in accordance with the requirements of Article XIV;
 - (vi) a Construction and Completion Schedule for that Mountain Phase;

- (vii) a copy of the conceptual plans for any building in that Mountain Phase prepared in accordance with the Resort Master Plan evidencing that the proposed location of the building does not impede any Access Route, Utility, Support Utility or Lift;
 - (viii) a sketch plan for all Trails, service roads or Minor Improvements to be constructed in that Mountain Phase; and
 - (ix) all authorizations and approvals required under the Public and Private Utility Policy of the Province for any Utilities to be constructed in that Mountain Phase; and
- (c) all Improvements and Access Routes in each Preceding Mountain Phase are in a state of Substantial Completion.

6.02 The Developer may construct or cause to be constructed the Golf Course if:

- (a) the same is stipulated in the Resort Master Plan; and
- (b) it has delivered to the Province:
 - (i) an Application for a Tenure for the Golf Course; and
 - (ii) a Certificate of Insurance confirming the existence of construction insurance in accordance with the requirements of Article XIV.

6.03 The Developer will construct or cause to be constructed Improvements and Access Routes:

- (a) at its expense, providing for all labour, materials and supplies required;
- (b) in substantial compliance with the Resort Master Plan and this Agreement;
- (c) in a good and workmanlike manner consistent with accepted industry standards for new and similar developments in British Columbia; and
- (d) subject to section 3.04 and section 21.03, substantially within the time frame for the completion as specified in the Construction and Completion Schedule and the Phasing Schedule;

and only if:

- (e) following the construction, erection or placement of the same, the Developer will have exclusive title to and property in the same subject to

this Agreement, the rights of the Province under the Licence and Tenures and the rights of any Approved Lender; and

- (f) a notice of interest is registered in accordance with the *Builders Lien Act* against any title which exists in the Land Title Office in respect of that part of the Controlled Recreation Area on which the same is to be constructed to warn other persons that the Province's interest in such land is not bound by a lien claimed under the *Builders Lien Act* in respect of any improvement undertaken on that land unless that improvement is undertaken at the express request of the Province (and the Province authorizes the Developer to register any such notice of interest as agent for the Province).

6.04 In each Mountain Phase, the Developer will, in accordance with requirements of the Province, provide or obtain:

- (a) Access Routes secured by way of:
 - (i) a dedicated or gazetted highway to each Parking Facility;
 - (ii) an easement or right-of-way in favor of the Province, at least 5 meters in width, for pedestrian foot paths from each Parking Facility to the terminus of a Lift where the same is to be located on land that is not owned by the Province; or
 - (iii) a Tenure for pedestrian foot paths from each Parking Facility to the terminus of a Lift where the same is to be located on land that is owned by the Province; and
- (b) Utilities and Support Utilities, when not operated by a third party utility company, secured by way of:
 - (i) a right of way in favour of the Province, in a width required by any Governmental Agency or Regulatory Authority, where the same is to be located on land that is not owned by the Province; and
 - (ii) a Tenure where the same is to be located on land that is owned by the Province.

6.05 The Developer will cause Access Routes, Utilities and Support Utilities on Crown Land, to be located in areas that are approved by the Province. Where any part of an Access Route, Utility or Support Utility is to be located on land that is not owned by the Province, the Developer will, at the request of the Province and at the expense of the Developer:

- (a) in the case of one described in section 6.04(a)(i), cause that land to be dedicated or conveyed to the Province free and clear of any liens, charges and encumbrances, except existing utility easements and rights-of-way; and
- (b) in the case of one described in section 6.04(a)(ii) or section 6.04(b)(i), obtain an easement or right-of-way in favor of the Province, in a form satisfactory to the Province, and which will be made in priority to any liens, charges and encumbrances, except existing utility easements and rights-of-way.

6.06 Prior to the construction of any improvement set out in the Resort Master Plan which would be a Recreation Improvement if on Crown Land but which is to be built on land that is not owned by the Province and which is integral to the operation of the Resort on the expiration or earlier termination of this Agreement, the Developer will, at its expense, cause that land to be conveyed in fee simple to the Province free and clear of any liens, charges and encumbrances, except existing utility easements and rights-of-way, as follows;

- i. The Developer is currently the registered owner in fee simple of lands which include the existing day lodge and day skier parking lot. Pursuant to a Ministerial Decision Note dated May 30, 2006 (reference no. 4401050) a decision has been made to exchange the fee simple lands critical to the ski resort operations consisting of the existing day lodge and day skier parking lot for other Crown granted lands defined in the Master Plan for Phase 1. The lands exchanged are to be approximately similar in area. The land exchange is to be completed by May 1, 2007.
- ii. The Province acknowledges and agrees that the land exchange may result in the Developer having exceeded its base land entitlement in accordance with the SAOT formula on an interim basis, but the Developer must, by the end of Phase 1, comply with the base land entitlement prior to any further Crown grants.

6.07 Where the Developer conveys land or causes land to be conveyed to the Province under section 6.05 or 6.06 and it applies for a Tenure over that land in accordance with Article IX, the conveyance to the Province will be conditional upon the grant by the Province to the Developer of the Tenure.

6.08 Land conveyed to the Province under this Article will be added to and form part of the Controlled Recreation Area pursuant to section 12.06.

ARTICLE VII - BASE AREA DEVELOPMENT

7.01 If there is no Event of Default outstanding, the Developer may:

- (a) purchase the Golf Course Land when and if the Resort Master Plan so stipulates; or
- (b) during or after a Phase purchase that Crown Land in the Base Area identified in the Resort Master Plan and Phasing Schedule as being available for purchase from the Province in that Phase;

for development in accordance with the timing, land uses, densities and design criteria specified in the Resort Master Plan and the Phasing Schedule on the terms and conditions contained in this Article.

7.02 The purchase price for a parcel of Crown Land pursuant to this Article, other than Golf Course Land, will be an amount equal to the sum of the Appraised Timber Value and, for any Application made to purchase during the period beginning on:

- (a) the Reference Date and ending on the day prior to the 10th Anniversary, \$12,355.00 per hectare (\$5,000 per acre);
- (b) the 10th Anniversary and ending on the day prior to the 15th Anniversary, the greater of \$12,355.00 per hectare (\$5,000.00 per acre) or 5% of the Appraised Land Value;
- (c) the 15th Anniversary and ending on the day prior to the 20th Anniversary, the greater of \$12,355.00 per hectare (\$5,000.00 per acre) or 10% of the Appraised Land Value, and
- (d) the 20th Anniversary, an amount for the bare land to be fixed by the Province in accordance with the Commercial Alpine Ski Policy then in effect,

and for a parcel of Golf Course Land will be an amount equal to the sum of the Appraised Timber Value and, for any Application made to purchase during:

- (e) the period beginning on the Reference Date and ending on the day prior to the 10th Anniversary, \$12,355.00 per hectare (\$5,000.00 per acre); and
- (f) any subsequent five (5) year period, the Appraised Land Value.

For the purpose of this section, if the purchase price for a parcel of Crown Land has not been determined prior to the Application to purchase that parcel, the purchase price will be calculated by the Province no later than 140 days after the Application pursuant to sections 7.10 and 7.11. Any purchase price which is

determined on a per hectare basis will be subject to adjustment upon completion of the survey, if required.

- 7.03 The Developer may, from time to time during or after a Phase make an Application for a fee simple grant of Crown Land in the Base Area available for purchase for development in the Corresponding Base Area Phase and this Application must
- (a) identify only parcels of Crown Land in the Base Area that are identified in the Resort Master Plan and Phasing Schedule as being available for purchase from the Province in that Phase in accordance with the Phasing Schedule;
 - (b) include evidence, satisfactory to the Province, that all Improvements and Access Routes in the Corresponding Mountain Phase are in a state of Substantial Completion, provided that the Developer will not be required to provide evidence that the same are in a state of Substantial Completion if the Developer elects to post with the Province on or before the completion of the purchase of the Crown Land in the Base Area in accordance with sections 7.04 and 7.05 a Performance Deposit in respect of any which are not in a state of Substantial Completion, and in such case the Developer's Application made under this section 7.03 need only state that the Developer will post such Performance Deposit on or before completion;
 - (c) include:
 - (i) a proposed preliminary scheme of subdivision for that Crown Land by way of a proposed subdivision plan under the *Land Title Act* or a proposed strata or bare land strata plan under the *Strata Property Act*, that substantially complies with the uses and densities contemplated for that land in the Resort Master Plan,
 - (ii) a description of the proposed uses and the maximum number of Bed Units, if any, to be allocated to each proposed parcel of land within the Subdivision Scheme; and
 - (iii) a description of, and preliminary site plan for, all services and utilities required to be developed in connection with the Subdivision Scheme.

The Developer may during the term of this Agreement make an Application for a fee simple grant of Crown Land for all the Golf Course Land if and when the Resort Master Plan so stipulates.

7.04 The obligation of the Province to sell Crown Land to the Developer is subject to the following conditions:

- (a) if applicable, the Developer must have satisfied the requirements set out in section 7.03(b);
- (b) the Developer must have delivered to the Province
 - (i) all other information required by the Province in writing, and
 - (ii) a boundary survey of that Crown Land prepared by a British Columbia land surveyor in accordance with the standards and instructions, then in effect for such plans to be acceptable for filing in the Land Title Office.
- (c) subject to this section, the purchase price for that Crown Land must have been determined in accordance with section 7.02; and
- (d) the purchase price for that Crown Land, together with all fees due pursuant to section 5.12 for issuing a Crown grant of that Crown Land, must be paid in full at the time title is transferred, as evidenced by the issuance of title to that Crown Land in the name of the Developer in the Land Title Office (and it will be sufficient for the Developer to provide to the Province the undertaking of the Developer's lawyer to pay such amount forthwith upon the issuance of title in the name of the Developer).

Notwithstanding the foregoing, if at any time the Appraised Land Value and the Appraised Timber Value have not been determined in accordance with section 7.12, but all other conditions precedent to the sale of that Crown Land have been met, the Developer may request that the Province complete the transfer of that Crown Land to the Developer on the basis of the purchase price estimated by the Province, and in which case the parties will make a final accounting of the purchase price (and the Developer or the Province, as applicable, will pay to the other party the amount determined in accordance with such final accounting) forthwith upon the determination.

7.05 The instrument conveying Crown Land under this Article will:

- (a) except and reserve to the Province the rights, titles, interests and privileges referred to in section 50 of the *Land Act*;
- (b) be subject only to
 - (i) any conditional or final water licence or substituted water licence issued or given under the *Water Act* or under any prior or subsequent enactment of the Province of British Columbia of like

effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under that licence,

- (ii) any statutory right-of-way, right-of-way or easement issued under the *Land Act* that encumbers the Crown Land; and
 - (iii) the Prior Rights;
- (c) be registered concurrently with a covenant or covenants granted by the transferee in favour of the Province registerable under section 219 of the *Land Title Act* in a form or forms satisfactory to the Province providing as follows:
- (i) the maximum number of Bed Units, if any, which may be utilized on that Crown Land to be sold by the Province,
 - (ii) restricts to golf course use that portion of that Crown Land which is Golf Course Land;
 - (iii) that that Crown Land may not be subdivided except in accordance with the Subdivision Scheme and any requirements set out in the Resort Master Plan and with the prior written approval of the Province in accordance with this Agreement; and
 - (iv) that no buildings on any portion of that Crown Land may be constructed unless and until the Developer, if required by the Province, registers against title to the portion of the land to be developed a restrictive covenant or covenants in accordance with section 7.06, at which time the covenant referred to in this section 7.05(c) will be released from title to the portion of land to be developed;
- (d) in the event an improvement has been or is to be constructed to which section 6.06 applies, be registered concurrently with either a conveyance or an option to purchase the land as provided in section 6.06; and
- (e) grant title to the Developer unless the Developer assigns the right to receive title to another person and delivers a direction in writing to the Province to that effect together with an acknowledgement from the assignee, in the form prescribed by the Province from time to time, that the land is subject to all the terms and conditions of this Agreement.

7.06 The Developer will not develop any Crown Land purchased by the Developer pursuant to this Article or any other privately owned land within the Development Area unless and until the Developer, if required by the Province, registers against

title to the land to be developed a covenant or covenants registerable under section 219 of the *Land Title Act* in a form or forms satisfactory to the Province providing as follows:

- (a) the maximum number of Bed Units, if any, which may be utilized on the land;
- (b) restricts to golf course use that portion of the land which is Golf Course Land;
- (c) that the land may not be subdivided by a conventional subdivision plan or a strata or bare land strata plan except with the prior written approval of the Province in accordance with section 7.08;
- (d) that the land may not be developed or used except substantially in accordance with the Subdivision Scheme and any requirements set out in the Resort Master Plan and so that the development or use does not impair an Access Route; and
- (e) any further requirements as may be required by the Province in respect of the development, use or governance of the land, which may include building design guidelines, siting restrictions, permitted uses, densities and heights, parking requirements, environmental restrictions, waste management procedures, utility and servicing requirements, development review and approval procedures, rental pool covenants where required and other matters necessary to comply with the Resort Master Plan and this Agreement.

7.07 The covenant or covenants registerable under section 219 of the *Land Title Act* referred to in sections 7.05 (c) and 7.06 will be registered as charges in the Land Title Office in priority to all financial encumbrances and the Developer consents to those registrations and agrees to obtain all agreements necessary to ensure such priorities.

7.08 The Developer may amend a Subdivision Scheme with the consent of the Province, provided that such amendment is in accordance with this Agreement and the Resort Master Plan. The Developer will not subdivide by way of a conventional subdivision plan or strata or bare land strata plan any Crown Land purchased by the Developer pursuant to this Article except with the prior written consent of the Province. The Province will, as soon as reasonably possible and in any event within 30 days after delivery, approve a conventional subdivision plan or strata or bare land strata plan pursuant to the requirements of a covenant referred to in section 7.05(c) or 7.06 so long as that plan conforms to the Subdivision Scheme, Phasing Schedule and Resort Master Plan for that Crown Land and has been approved by the appropriate Government Agency for deposit in the Land Title Office.

7.09 The Developer will execute and deliver to the Province all instruments and assurances that may be necessary to implement the provisions of sections 7.05 (c) and 7.06.

7.10 The Province will commission, at its expense, an Appraiser;

- (a) to determine the Appraised Land Value and
- (b) to deliver notice of the Appraised Land Value, including a complete copy of the appraisal, to the Province and the Developer,

within 140 days of receipt of an Application under section 7.03 from the Developer. The Province will set the terms of reference for such appraisal in accordance with guidelines of the Appraisal Institute of Canada and this Agreement, after providing the Developer with an opportunity to review and comment on such terms of reference.

7.11 The Province will commission, at its expense, an expert

- (a) to conduct a timber cruise of the volumes of timber, by species, on the Crown Land for which an Application has been made under section 7.03, and
- (b) to deliver notice of those volumes, including a complete copy of the timber cruise report, to the Province and the Developer,

within 140 days of receipt of an Application under section 7.03 from the Developer. The Province will set the terms of reference for such timber cruise, after providing the Developer with an opportunity to review and comment on such terms of reference. Within 30 days of receiving the timber cruise report, the Province will determine the Appraised Timber Value and provide notice of the Appraised Timber Value to the Developer.

7.12 If the parties do not agree as to the Appraised Land Value and Appraised Timber Value within 60 days after receipt of the appraisal and timber cruise report commissioned by the Province under sections 7.10 and 7.11, either party may refer the determination of the value or values on which they do not agree to Arbitration, failing which the parties will be deemed to have agreed that the Appraised Land Value will be as set out in such appraisal and the Appraised Timber Value will be as determined by the Province under section 7.11.

7.13 Other than grants to the Developer pursuant to this Agreement, the Province will during the term of this Agreement or any replacement term, only grant licences of or interests in the land comprising of the Controlled Recreation Area or any part of it in accordance with Article XXI.

ARTICLE VIII - BED UNIT ENTITLEMENT

- 8.01 The rate of development of facilities with Bed Units in each Base Area Phase is governed by the development of Improvements in each Corresponding Mountain Phase.
- 8.02 The number of Bed Units which may be developed in a Base Area Phase is specified in the Phasing Schedule.
- 8.03 The Developer will earn Bed Units in a Base Area Phase when Substantial Completion of all Improvements in the Corresponding Mountain Phase (as shown on the Resort Master Plan) occurs, except where a Performance Deposit has been provided as contemplated by section 17.02 in which case the Bed Units will be earned when the Performance Deposit has been provided.

ARTICLE IX – APPLICATIONS FOR TENURES AND GRANTS

- 9.01 This article applies to all Applications which the Developer wishes or must make pursuant to this Agreement. Each Application will be:
- (a) subject to this Article and the other Articles of this Agreement;
 - (b) made in accordance with the forms and procedures prescribed by the Designated Authority at the time of the Application; and
 - (c) for the final interests in Crown Land sought by the Developer.
- 9.02 An Application must include:
- (a) preliminary boundary plans or right of way plans as may be applicable for the interest sought;
 - (b) cutting and clearing plans where cutting and clearing is required;
 - (c) all other information or documentation that the Province may require under its land administration policies and procedures or under this agreement for the interest sought as those policies and procedures exist from time to time.
- 9.03 The Province will provide to the Developer authorization if and when required to:
- (a) apply to the Local Government to zone or rezone part of the Controlled Recreation Area;

- (b) apply to the appropriate Government Agency for preliminary subdivision approvals for part of the Controlled Recreation Area;
- (c) cooperate with the Local Government in the creation of an official community plan for part or all of the Controlled Recreation Area in accordance with the Resort Master Plan; and
- (d) apply to the Local Government to amend an existing official community plan for part or all of the Controlled Recreation Area.

9.04 If the Developer is not in breach of its obligations under this Agreement and has fulfilled all conditions precedent the Province will, pursuant to this Agreement:

- (a) offer the Tenure or fee simple grant to the Developer within 90 days of receipt of the Application; and
- (b) issue to the Developer:
 - (i) the Tenure 30 days; or
 - (ii) the fee simple grant 60 days;

after any outstanding conditions have been met.

9.05 Not later than 12 months after the date of Substantial Completion of the Golf Course, each Recreation Improvement other than a Trail or service road, each Access Route to which section 6.04(a)(iii) applies and each Utility to which section 6.04(b)(ii) applies, and prior to obtaining a Tenure for it, the Developer will in the case of:

- (a) a Lift, Snowmaking Equipment, Access Route to which section 6.04(a)(iii) applies, or Utility or Support Utility to which section 6.04(b)(ii) applies prepare a surveyed right-of-way plan for the land that is reasonably required for the operation and maintenance of it provided that the right-of-way plan will not, without the prior consent of the Province, encompass a strip of land more than 15 metres in width lying between lines parallel to and situated not more than 7.5 metres from each side of the centre line of the Lift or Snowmaking Equipment for which the right-of-way plan is prepared;
- (b) each Recreation Improvement other than a Lift, Snowmaking Equipment, Trail or service road, or Support Utility prepare a surveyed boundary plan that encompasses the land occupied by it and any other land required for its intended use; or

- (c) the Golf Course prepare a surveyed boundary plan that encompasses the land occupied by it and any other land reasonably required for its intended use,

and will deliver two copies of each plan to the Designated Authority for acceptance. The surveyed plans referred to in this section will be prepared in compliance with the standards and instructions in effect from time to time for such plans to be acceptable for filing in the Land Title Office.

- 9.06 The term of each Tenure issued to the Developer pursuant to this Agreement will commence on the date it is issued and will, except for a Tenure for a Utility, expire on its expiration date or on the termination of this Agreement whichever is sooner. The Tenure for a Utility will expire in accordance with the provisions of the Public and Private Utility Policy of the Province in effect from time to time.

ARTICLE X – COMMERCIAL RECREATION ACTIVITIES

- 10.01 The Developer may, subject to the Prior Rights, conduct Commercial Recreation Activities or enter into a written contract with an Independent Operator to operate a Commercial Recreation Activity on the following conditions:

- (a) the contract with the Independent Operator will provide for the Independent Operator to maintain proper financial records for the activity, for the right to an audit by the Province of the records of the Independent Operator and for an annual report from the Independent Operator in a form prescribed by the Province from time to time;
- (b) the Developer will provide an annual report with respect to the Independent Operator in a form prescribed by the Province from time to time; and
- (c) the Independent Operator will take out or cause to be taken out and keep or cause to be kept in force those policies of insurance set out in section 14.01(e) which apply to the activities of the Independent Operator;

provided the Developer collects all usual Lift fees and includes such Lift fees in Gross Revenue regardless of whether the Commercial Recreation Activity is conducted by the Developer or an Independent Operator.

- 10.02 From and after the execution of this Agreement the Commercial Recreation Tenures held by the Developer and the instruments creating them will be void insofar as these are applicable to the Controlled Recreation Area.

ARTICLE XI - EXISTING RECREATION IMPROVEMENTS AND ACCESS ROUTES

- 11.01 From and after the execution of this Agreement the Existing Recreation Improvements, the Existing Golf Courses, the Existing Access Routes and the Tenures listed under Schedule "J" will be governed by and be subject to the terms and conditions of this Agreement including the calculation and payment of Fees.

- 11.02 If this Agreement varies the term of the Prior Agreement, the following provisions will apply:
n/a

ARTICLE XII - MODIFICATIONS TO THE RESORT MASTER PLAN, PHASING SCHEDULE AND DEVELOPMENT AREA

- 12.01 The Developer will, when determined by the Developer or required by the Province, but in any event at least once every 5 years, review and re-evaluate the Resort Master Plan and Phasing Schedule and in conducting that review and re-evaluation the Developer will take into account, but will not be obligated to implement, any changes in technology in the ski, golf or four season resort industry or in the preferences of the public.
- 12.02 Where, on the basis of a review under section 12.01, the Developer considers that the Resort Master Plan, the Phasing Schedule, or any part of either of them, should be altered, it will submit the proposed alteration to the Province for its approval.
- 12.03 A proposal under section 12.02 will be in writing and will, where necessary, be accompanied by plans and other documents that show conceptually and in detail the alterations being recommended and the impact of them on the then existing Resort Master Plan and Phasing Schedule.
- 12.04 The Province may, in its discretion, refuse to approve an alteration under this Article if it would

- (a) impair the objectives of the parties referred to in Article III or render them unattainable; or
- (b) conflict with any of the Policies.

12.05 Notwithstanding sections 12.02, 12.03 and 12.04 a change or alteration to the Resort Master Plan or Phasing Schedule that does not

- (a) require the Province to discharge a restrictive covenant or condition referred to in section 7.05 (c), 7.06 or 7.09;
- (b) reduce the Skier At One Time capacity of any Lift to be constructed in any Mountain Phase;
- (c) increase the number of Bed Units to be constructed on any parcel of Crown Land in the Base Area conveyed or to be conveyed to the Developer under Article VII in a Base Area Phase; or
- (d) alter the Phasing Schedule other than to advance or delay the date on which a Recreation Improvement in a Mountain Phase or a Base Area Phase is to be constructed;

will not constitute a change to the Resort Master Plan or the Phasing Schedule that requires the consent of the Province but the Developer must give written notice of those changes to the Province.

12.06 The boundaries of the Development Area may from time to time be amended

- (a) pursuant to section 6.08; or
- (b) by agreement of the parties;

provided such boundary changes are consistent with the Resort Master Plan and any changes or alterations to the Resort Master Plan under this Article it being understood by the Developer and the Province that the boundaries of the Development Area will encompass only that area identified in the Resort Master Plan and proposed by the Developer for development. In the discretion of the Province, any amendments to the boundaries of the Development Area may be subject to review by Government Agencies or others and to the execution of prescribed releases and grants.

ARTICLE XIII - REPRESENTATIONS

13.01 The Developer warrants and represents to the Province that, as at the date of this Agreement and except as set out in Schedule C;

- (a) the Developer is a corporation duly organized and existing under the laws of the Province of British Columbia and in good standing with respect to the filing of returns in the office of the registrar of companies of British Columbia;
- (b) the Developer has all the power, capacity and authority to enter into this Agreement and to carry out its obligations contemplated in this Agreement, all of which have been duly and validly authorized by all necessary proceedings;
- (c) the authorized share structure of and the issued shares in the Developer are as set out in Schedule "B" and:
 - (i) there are no outstanding options or rights to subscribe for any of the unissued shares of the Developer,
 - (ii) the Shareholders own shares in the amounts and classes set opposite their respective names in Schedule "B", free and clear of all liens, charges, options and encumbrances, other than as noted in Schedule "B"; and
 - (iii) any special conditions set out in Schedule "B" with respect to the Shareholders are true and correct.
- (d) the directors and officers of the Developer are as set out in Schedule "B";

- (e) the Financial Information was prepared in accordance with generally accepted accounting principles in Canada applied on a basis consistent with prior years, was true and correct in every particular on the Last Year End and reflects the results of its operations to that date;
- (f) with respect to the Developer since the Last Year End:
 - (i) there has been no material adverse change to its financial condition or position;
 - (ii) it has no liabilities, contingent or otherwise, that are not disclosed or reflected in the Financial Information except those incurred in the ordinary course of business;
 - (iii) it has not made any distributions of any kind to the Shareholders;
 - (iv) it has not made any capital expenditure or commitment other than those shown in the Financial Information;
 - (v) it has not repaid any loans from any of the Shareholders, either in whole or in part, or paid any interest on such loans other than as shown in the Financial Information;
 - (vi) it has complied with all workers compensation legislation and other similar legislation to which it may be subject and has paid all taxes, fees and assessments calculated to be due by it under the laws of British Columbia;
- (g) The Developer:
 - (i) has filed income tax returns for all years up to and including the fiscal year ending on the Last Year End and its liability for income taxes, penalties and interest up to and including that date does not exceed the sum set out in the Financial Information;
 - (ii) for the fiscal year ending the Last Year End, has filed all tax, corporate information and returns required to be filed by the laws of British Columbia;
 - (iii) it has good title to and possession of all of its assets, free and clear of all liens, charges or encumbrances, except those described in the Financial Information;

- (iv) is not threatened with or, to its knowledge, a party to litigation that would materially affect its undertaking or financial condition and it has no knowledge of any such claim against it;
 - (v) is not in breach of any statute, regulation or by-law applicable to it or its operations; and
 - (vi) holds or will acquire all permits, licences, consents and authorities issued by any Government Agencies or Regulatory Authorities that are necessary or of advantage in connection with its business and operations;
- (h) to its knowledge all of the information set out in the Resort Master Plan:
- (i) was compiled by qualified professional consultants, or by duly qualified employees of the Developer, who conducted all studies, investigations, testings, analyses and other reviews necessary for its preparation; and
 - (ii) is accurate and realistically demonstrates the feasibility of the Development;
- (i) the making of this Agreement, the completion of the transactions contemplated by this Agreement and the performance of and compliance with the terms of this Agreement does not conflict with or result in a breach or acceleration of, any indebtedness, term, provision or condition of, or constitute a default under, the constating documents of the Developer or any indenture, mortgage, deed of trust, agreement, lease, franchise, certificate, consent, permit, licence, authority or other instrument to which it is a party or is bound or any judgment, decree, order, rule or regulation of any court or administrative body by which it is bound or any statute or regulation applicable to it; and
- (j) where a representation or warranty is made on the basis of the knowledge of the Developer, the Developer has made all due inquiry to be able to make that representation and warranty.

13.02 The Developer acknowledges that except as set out in Schedule C:

- (a) it has conducted independent inspections and investigations of the Controlled Recreation Area and any surrounding or neighbouring land including the condition, environmental or otherwise and current past uses thereof and has waived to the extent permitted by law, any requirement for the Province to provide to the Purchaser a "site profile" for the

Controlled Recreation Area under the *Environmental Management Act* or any regulation under that Act;

- (b) it is satisfied as to
 - (i) the suitability of the Controlled Recreation Area for its business purposes,
 - (ii) the condition, environmental or otherwise, of the Controlled Recreation Area including surface and groundwater, the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Controlled Recreation Area and on or under any surrounding or neighbouring land and the current and past uses of the Controlled Recreation Area;
 - (iii) the general condition and state of all utilities or other systems on or under the Controlled Recreation Area, and
 - (iv) the zoning of the Controlled Recreation Area and the bylaws of the Local Government which relate to the use and occupation of the Controlled Recreation Area,

and accepts the Controlled Recreation Area "as is" in the condition and state existing at the Reference Date;

- (c) it has made its own investigation of the economic feasibility of the Development;
- (d) the Province has made no representation or warranty respecting the matters referred to in section 13.02(b) or economic feasibility of the Resort Master Plan or any development contemplated by the Resort Master Plan;
- (e) there are no representations or warranties of the Province except as expressed in this Agreement;
- (f) the rights and interests of the Developer in the Controlled Recreation Area are subject to the Prior Rights; and
- (g) it has obtained copies of and reviewed the Prior Rights.

13.03 The Province acknowledges that there are no representations or warranties of the Developer except as expressed in this Agreement.

ARTICLE XIV - COVENANTS OF THE DEVELOPER**14.01 The Developer will**

- (a) observe, abide by and comply with all laws, by-laws, ordinances, regulations, orders and directions of any Regulatory Authority or Government Agency, in any way affecting the Improvements, the use and occupation of the Controlled Recreation Area and the operation of the Developer's business;
- (b) use all reasonable efforts to minimize any adverse environmental impact of the Development and comply with the environmental requirements set out in Schedule "G" in respect of the Controlled Recreation Area;
- (c) ensure that the Improvements and Access Routes are operated in accordance with generally accepted industry standards for similar developments in British Columbia and comply with all operating covenants set out in Schedule "H" and all conditions of tenure set out in Schedule "I";
- (d) provide all management and technical expertise necessary for it to carry out its obligations under this Agreement;
- (e) take out or cause to be taken out and keep or cause to be kept in force the following policies of insurance with insurers authorized to do business in Canada:
 - (i) before commencement of construction of any Structural Improvement and until ten (10) days after such construction has reached Substantial Completion, an all risk course of construction policy covering all construction, and all materials and equipment intended for permanent use or incidental to the construction, while on or about the Controlled Recreation Area awaiting or during construction, covering the usual perils on an all risk basis:
 - I. in an amount not less than the price to construct the entire Structural Improvement covering the full replacement value of the property insured;
 - II. containing a provision stating that any act or omission on the part of anyone named or described as an insured under the policy will not prejudice the interest of any other insured, named or described in the policy; and
 - III. adding the Province as a named insured as its interest may appear;

- (ii) before commencement of construction of any Improvement or Access Route, a wrap up liability policy in an amount no less than Ten Million Dollars per occurrence, adding the Province as a named insured and including twenty four (24) months completed operation coverage;
- (iii) an all risk property policy covering all Structural Improvements for which Substantial Completion has been obtained on the basis of full replacement value, adding the Province as a named insured as its interests may appear and which will not be invalidated as respects the interest of the Province by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies;
- (iv) from the effective date of this Agreement until Substantial Completion of all Improvements and Access Routes in the Resort Master Plan including an extended reporting period of not less than three (3) years following such Substantial Completion, a project specific errors and omissions policy in an amount not less than Five Million Dollars including all professional consultants working on the Development as named insureds;
- (v) a commercial general liability policy to fully insure against liability of the Developer arising out of the maintenance, operation, use or occupation of the Controlled Recreation Area an amount not less than Ten Million Dollars per occurrence which amount will be adjusted from time to time in keeping with amounts customarily carried by prudent operators of similar developments in Canada and adding the Province as an additional insured; and
- (vi) such other insurance as would be maintained by prudent operators of similar developments in Canada including policies of insurance to cover the risk associated with the operation of motor vehicles or aircraft including helicopters;

all of which policies shall to the extent possible:

- (vii) be primary and not require the sharing of any loss by any insurer of the Province;
- (viii) provide for thirty (30) days prior written notice to the Province of any material change or cancellation;
- (ix) have the limits and other terms adjusted from time to time as required by the Province in keeping with policies customarily

carried by prudent operators of similar developments in Canada;
and

- (x) except for a policy required pursuant to section 14.01(e)(iv), contain waiver of subrogation and cross liability clauses,

it being acknowledged by the Developer that the foregoing are minimum requirements and do not constitute a representation by the Province that the amounts or types of insurance are adequate;

- (f) provide the Province with evidence of all required insurance including the insurance to be carried by Independent Operators, upon request and prior to commencement of any construction. Such evidence of insurance shall be in the form of a completed Province of British Columbia Certificate of Insurance. When requested by the Province the Developer shall provide certified copies of required insurance policies;
- (g) apply all applicable proceeds of the insurance referred to in section 14.01(e) to the repair or rebuilding of Improvements or Access Routes damaged or destroyed by the hazard insured against and cause that policy of insurance to provide that the proceeds will be paid to the Developer, or its creditors holding security over the Improvements, as their interests appear, and when received by the Developer or its creditors holding security over the Improvements, to be held in trust for the Developer and the Province, together with any interest that may accrue on the proceeds, to be dealt with in accordance with this covenant;
- (h) pay when due all taxes, rates, assessments, levies or other dues now or after the date of execution of this Agreement charged or levied against the land comprised in the Licence or the Tenures and all Improvements constructed or installed on that land, all other taxes, rates, assessments, levies or other dues payable by the Developer under any federal or provincial statute including the *Income Tax Act* (Canada) and the *Workers Compensation Act* and all charges incurred by the Developer for electricity, gas and other utilities and services supplied to the Controlled Recreation Area;
- (i) pay interest to the Province on Fees in arrears at the rate of interest prescribed from time to time under the *Land Act* (or other provincial legislation applicable to such arrears) in respect of money payable to the Province under that Act or this Agreement, immediately upon the written demand of the Province for such interest;
- (j) from and after the Reference Date, assume all environmental liabilities relating to the Controlled Recreation Area including responsibilities

provided under the Contaminated Site Regulation of the *Environmental Management Act* and any liability for clean-up of any toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Controlled Recreation Area or migrating from the Controlled Recreation Area, including surface water and ground water and excluding acts of God and any liabilities arising from the exercise by any person of any rights under the Prior Rights;

- (k) pay all accounts and expenses as they become due for labour performed on or materials supplied for the Improvements or Access Routes, save and except for money that the Developer is required to hold back under the *Builders' Lien Act*, and if any claim of lien is made under that Act, the Developer will take all necessary steps to have the lien discharged unless the claim of lien is being contested in good faith by the Developer and the Developer has taken steps to ensure that the claim will not subject any of the Licence, the Tenures, the Improvements or Access Routes to sale or forfeiture;
- (l) procure from each of its creditors holding security over the Improvements and Access Routes an agreement with the Province that the insurance proceeds under the policies referred to in section 14.01(e) will be dealt with in accordance with section 14.01 (g) notwithstanding any default under that creditor's security;
- (m) not construct, erect, build, place or expand any improvement in the Development Area other than in accordance with the terms and conditions of this Agreement;
- (n) not commit or allow any willful or voluntary waste, spoilage or destruction on the Controlled Recreation Area without the prior written consent of the Province and will not do or allow to be done anything that may be or become a nuisance or annoyance to the owners or occupiers of adjoining land;
- (o) use the Controlled Recreation Area, the Improvements and the Access Routes only as authorized by a Tenure, this Agreement or the Province in writing and in a safe, clean, sanitary and orderly manner including:
 - (i) establishing and delineating a recreation area boundary within the Controlled Recreation Area and designating that boundary by notices, posted signs, fences or otherwise;
 - (ii) regulating and prohibiting the access and entry of persons and vehicles to the Controlled Recreation Area;

- (iii) controlling, regulating, prohibiting and directing the movement and activities of persons and vehicles within the Controlled Recreation Area; and
- (iv) keeping the Improvements and the Access Routes in good repair in accordance with the standard of a prudent owner;
- (p) subject to section 1.11, comply with the Resort Master Plan and the covenants and other commitments of the Developer in the Resort Master Plan in constructing, operating and maintaining the Improvements;
- (q) issue complimentary passes and discounts with respect to Commercial Recreation Activities or the right to use the Recreation Improvements or the Controlled Recreation Area or any part thereof only for commercially sound reasons associated with the operation or promotion of the Resort;
- (r) supervise and regulate the operations of each Independent Operator so as to ensure the compliance of the Independent Operator with the terms and conditions of this Agreement;
- (s) obtain annually from each Independent Operator the annual report required pursuant to section 10.01(b) and assign to the Province any and all authorization required to conduct audits as provided in section 10.01(a);
- (t) not to cut, destroy or remove timber or trees standing on the land except in compliance with an agreement issued under the *Forest Act*, in compliance with that Act and the *Forest and Range Practices Act* and then only to the extent necessary to develop the Controlled Recreation Area in compliance with this Agreement;
- (u) not to interfere with the Prior Rights; and
- (v) provide a final sketch plan showing the location of each Trail, service road or Minor Improvement not later than 12 months after the date of Substantial Completion of that Trail or service road located on Crown Land.

14.02 The Developer will make efforts to prevent all persons who are permitted to use the Controlled Recreation Area from:

- (a) entering into any area within the Controlled Recreation Area that is, in the Developer's opinion, unsafe due to existing or potential hazards; or

- (b) carrying on activities within the Controlled Recreation Area that are prohibited under the *Forest Act*, the *Forest and Range Practices Act* or the *Land Act*;

provided however that this section will not impose upon the Developer any obligation to make safe any area within the Controlled Recreation Area or to remove any existing hazards within that area, except to the extent that it is required to do so under its operating covenants as set out in Schedule "H" or the conditions of tenure set out in Schedule "I" or as an occupier under the *Occupiers' Liability Act*.

14.03 The Developer covenants and agrees to indemnify and save the Province and its servants, delegates, employees, representatives, contractors and agents harmless from and against any losses, damages, claims, demands, actions, causes of action, costs, liabilities and expenses, including fees and disbursements, and taxes thereon, of solicitors and other professional advisors, that the Province or its servants, delegates, employees, representatives, contractors or agents may suffer or be put to at any time either before or after the termination of this Agreement which are based upon arise out of or occur directly or indirectly in connection with

- (a) any breach, violation or non-performance of any covenant, term or condition contained in this Agreement or any Tenure;
- (b) any personal injury, death or property damage occurring in the Controlled Recreation Area, except where the same occurs pursuant to the exercise of any of the Prior Rights;
- (c) the activities carried out by the Developer in the Controlled Recreation Area including any matter or thing permitted or omitted by the Developer;
- (d) any and all environmental liabilities relating to the Controlled Recreation Area for which the Developer is responsible pursuant to the terms of this Agreement including any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land;
or
- (e) any trespass or other unlawful interference by the Developer with the rights and interests of the holders of the Prior Rights, provided always that nothing in this Agreement shall be interpreted to imply that the Developer assumes liability to ensure the lawful use of the Controlled Recreation Area by the holders of Prior Rights or by those for whom the holders of Prior Rights are responsible at law;

occurring as a result of an act or omission of the Developer or any person for whom it is responsible at law including its Independent Operators, employees,

servants, agent contractors, subcontractors, subtenants or predecessors in title whether negligent or otherwise excepting the independent negligent acts or omissions of the Province or any person for whom the Province is responsible at law.

14.04 The Developer hereby releases the Province, its servants, employees, delegates, representatives, contractors and agents from and against all claims, demands, liabilities, losses, damages, costs, actions, causes of action, suits and proceedings by the Developer with respect to all environmental liabilities relating to the Controlled Recreation Area, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Controlled Recreation Area.

ARTICLE XV - EVENTS OF DEFAULT

15.01 The Province may exercise any or all of its remedies under section 15.02 on the happening of any one or more of the following events:

- (a) if the Developer fails to pay Fees when due and the default continues for a period of 60 days after written notice has been given by the Province to the Developer specifying the default and requiring the same to be remedied;
- (b) if the Developer fails to observe or perform or keep any of its covenants or obligations under this Agreement, or any Tenure (other than its covenant to pay Fees) and the default continues for a period of 60 days after written notice has been given by the Province to the Developer specifying the default and requiring the same to be remedied unless:
 - (i) the nature of the default reasonably requires more than 60 days to be remedied; and
 - (ii) the Developer commences remedying the default within the 60 day period; and
 - (iii) after that period pursues the remedying of the default to completion with diligence and continuity;
- (c) if an order is made, a resolution passed or a petition filed (unless the petition is defended in good faith by the Developer) for the liquidation or winding up of the Developer;
- (d) if the Developer is adjudicated insolvent or makes an assignment for the general benefit of its creditors, a person takes an action pursuant to the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed

or presented against the Developer (unless the action or petition is defended in good faith by the Developer) or the Developer consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging the Developer bankrupt under any law relating to bankruptcy or insolvency;

- (e) if any execution, sequestration, extent or other process of any court becomes enforceable against the Developer (except in favour of an Approved Lender) or if a distress or analogous process is levied on its Interest or property (except in favour of an Approved Lender) and the Developer fails to defend such process in good faith;
- (f) if the Developer ceases to carry on business or to operate the Improvements in accordance with this Agreement;
- (g) if a Receiver is appointed to administer or carry on the business operations of the Developer other than the Receiver of an Approved Lender and such appointment continues for a period in excess of 30 days;
- (h) if the Developer does any act or thing or omits to do any act or thing that constitutes a default (and fails to remedy such default within any grace or cure period provided for) under any indenture, mortgage, deed of trust, bill of sale or other security instrument to which the Developer is a party or is bound in respect of financing provided to the Developer for its operations under or pursuant to this Agreement such that the holder of such security exercises its default remedies under such security and such exercise affects the Interest, except in respect of any security held by an Approved Lender;
- (i) if, without the prior consent of the Province:
 - (i) a change in the control (as used in section 2(3) of the *Business Corporations Act*) of the Developer or a Shareholder occurs; or
 - (ii) any of the special conditions set out in Schedule "B" cease to be true and correct;
- (j) if the Developer fails to provide within a reasonable time, after receipt from the Province of a written request (which requests will not exceed one in each calendar year), a list containing the names of each Shareholder and setting out opposite the name of each Shareholder:
 - (i) the number, class and shares held by the Shareholder in the Developer, and

- (ii) the name, number and class of shares held by those persons holding issued shares in the authorized capital of that Shareholder;
- (k) if a representation of the Developer under this Agreement is or is proven to be untrue in any material way; or
- (l) if, without the consent of the Province, the Developer is amalgamated with another person other than a Related Party in accordance with section 16.01 or is reorganized other than with a Related Party in accordance with section 16.01;

15.02 At any time after the happening of an Event of Default, the Province may do any one or more of the following:

- (a) pursue any remedy available to it at law or in equity, it being acknowledged by the Developer that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy to cure an Event of Default;
- (b) take any action in its own name or in the name of the Developer that may be required to cure the Event of Default, in which case all payments, costs and expenses incurred by the Province will be payable by the Developer to the Province on demand as provided in section 14.03;
- (c) suspend on a permanent or interim basis, the rights of the Developer under this Agreement to acquire any further Tenures or any Crown Land;
- (d) terminate this Agreement and all Tenures held subject to this Agreement;
- (e) appoint a Receiver under section 15.03, subject only to the prior right of an Approved Lender to appoint a Receiver as set out in section 15.04; or
- (f) waive the Event of Default provided, however, that any waiver of an Event of Default will not operate as a waiver of any subsequent or continuing Event of Default.

15.03 At any time an Event of Default is outstanding, the Province may by instrument in writing appoint a Receiver of the Interest, or any part of it, and may remove the Receiver so appointed and appoint another in his place and stead and the following provisions will take effect:

- (a) the Receiver may enter upon any premises of the Developer and take possession of the Interest with power to exclude the Developer from the premises, to preserve, protect and maintain the Interest and make such replacements as the Receiver deems necessary, and to carry on the business and operations of the Developer, or any part of its business and

operations, and in so doing may do any act or take any proceeding in the name of the Developer or otherwise as the Receiver may deem reasonably necessary;

- (b) the Receiver may, with the prior written consent of the Province, borrow money for the purpose of carrying on the business and operations of the Developer or for the maintenance of the Improvements and Access Routes or any of them or for any other purpose approved by the Province and any amount so borrowed, together with interest on it, will form a charge upon the Interest and the revenue derived from the business and operations of the Interest;
- (c) the Province may from time to time fix reasonable remuneration for the Receiver;
- (d) the Receiver will be deemed to be the agent of the Developer and the Province will in no way be held responsible for any misconduct or negligence of the Receiver and the Developer will indemnify and hold harmless the Province from and against any losses, damages, costs or liabilities arising from the acts or omissions of the Receiver as provided in section 14.03;
- (e) in exercising his powers under this section, the Receiver will not be held liable for any loss except to the extent that it is caused or contributed to by his own negligence or willful default;
- (f) amounts received by the Receiver will be applied as the Province in its discretion directs including:
 - (i) the remuneration of the Receiver;
 - (ii) other costs and expenses including fees of solicitors and other advisors incurred by the Province in connection with the appointment of the Receiver or the Event of Default, or
 - (iii) other sums due to the Province pursuant to this Agreement or the Tenures.

15.04 If an Approved Lender appoints a Receiver of the Interest, then so long as that Receiver continues to be appointed, the Province will remove any Receiver appointed by it under section 15.03 and it will not appoint any Receiver except the one appointed by the Approved Lender.

15.05 The Province will not refuse to provide its consent to a transaction which, if concluded without such consent, would be an Event of Default under section 15.01(i) if in the opinion of the Province the Developer will upon completion of

that transaction have the financial capacity and proven management ability and business experience to develop, operate and maintain the Improvements and the Access Routes in accordance with accepted ski, golf or four season industry standards for similar developments in British Columbia, this Agreement and the Resort Master Plan.

15.06 To secure the obligations of the Developer to, and to protect the rights and remedies of, the Province under this Agreement, the Developer hereby:

- (a) mortgages and charges as and by way of a fixed and specific charge and assigns, transfers and grants to the Province a security interest in all of the Developer's right, title and interest in and to its presently owned or held or after-acquired or held personal property, of whatever nature or kind and wheresoever situate and all proceeds thereof and therefrom;
- (b) mortgages, charges, assigns, transfers and grants to the Province all of the right, title and interest of the Developer in and to all its presently owned or after acquired real property; and
- (c) charges by way of a floating charge and grants to the Province a security interest in and to all of the Developer's right, title and interest in and to all its presently owned or held or after acquired or held real, immovable and leasehold property and all interest therein and all easements, rights of way, privileges, benefits, licenses, improvements and other rights whether connected therewith or appurtenant thereto or separately owned or held including all structures, plants or fixtures and all assets and undertakings of the Developer of whatsoever nature and kind and wheresoever situate and all proceeds thereof and therefrom; *(cont'd on next page)*

and which form part of the Interest. To the extent any right held by the Developer is incapable of being mortgaged or charged or granted as provided herein the same shall be held by the Developer upon trust to assign and dispose thereof to any third party as the Province may direct.

ARTICLE XVI- TRANSFERS AND ENCUMBRANCES

16.01 The Developer will not sell, assign, transfer or otherwise dispose of its Interest, in whole or in part, without the prior written consent of the Province, provided that:

- (a) the licencing or other grant to any person of any right to use or enjoy any Improvement or the Controlled Recreation Area or any portion thereof in the ordinary course of business of the Developer;
- (b) a contract with an Independent Operator pursuant to Article X; and

- (c) an amalgamation or other reorganization of the Developer with a Related Party without the prior written consent of the Province provided that prior written notice (together with copies of such documents as may be required by the Province) is given to the Province, and if the entity resulting from the reorganization would not otherwise be responsible in law for the obligations of the Developer, the resulting entity enters into an agreement or agreements satisfactory to the Province under which it assumes the obligations of the Developer under this Agreement and the Tenures;

will not be a sale, assignment, transfer or other disposition of the Interest for the purposes of this section 16.01;

16.02 It will not be unreasonable for the Province to refuse to consent to a sale, assignment, transfer or disposition under section 16.01:

- (a) if the proposed purchaser, assignee, transferee or holder of the Interest, in the opinion of the Province does not have the financial capacity and proven management ability and business experience to develop, operate and maintain the Improvements, the Access Routes and the Controlled Recreation Area in accordance with the following:
 - (i) accepted industry standards for similar developments in British Columbia;
 - (ii) this Agreement and the Tenures; and
 - (iii) the Resort Master Plan,
- (b) if the proposed purchaser, assignee, transferee or holder of the Interest does not enter into an assumption agreement with the Province in accordance with section 16.03; or
- (c) if in the discretion of the Province where only a part of the Interest is to be sold, assigned, transferred or disposed of, the future viability of the Controlled Recreation Area will be prejudiced.
- (d) if the proposed sale, assignment, transfer or disposition is inconsistent with or contrary to the Benefit Agreement between Mount Baldy Ski Corporation and Osoyoos Indian Band.

16.03 Following the consent by the Province under section 16.01 and the purchaser, assignee, transferee or holder of the Interest, as the case may be, executing an assumption agreement in a form satisfactory to the Province by which it agrees to be bound by all the terms, covenants, obligations and agreements contained in this Agreement and the Tenures, the Developer will be released by the

Province from the same and any Security Deposit or Performance Deposit will be returned and any policy of insurance may be cancelled when the purchaser, assignee, transferee or holder of the Interest has provided the Province evidence of its compliance with the Security Deposit, Performance Deposit and insurance requirements of this Agreement.

16.04 The Developer will not mortgage, pledge, charge or otherwise encumber its Interest without the written consent of the Province. It may be a condition of any consent of the Province under this section that:

- (a) all of the Interest be mortgaged, pledged, charged, or encumbered to the proposed lender, and
- (b) the proposed lender to whom the Interest is mortgaged, pledged, charged or otherwise encumbered, agrees that if the proposed lender or any person deriving title from it acquires the Interest, the proposed lender or such person, as the case may be, will be bound by the terms and conditions of this Agreement including the provisions of section 16.01 and the Tenures and, in exercising its remedies, will have no greater rights than the Developer under the same.

16.05 The Province will, upon the request of the Developer, enter into a non-disturbance agreement with an Approved Lender, substantially in the form set out in Schedule "K" and under which the Province agrees:

- (a) to give the Approved Lender notice of any Event of Default pursuant to which the Province proposes to act under this Agreement and provides the Approved Lender with an opportunity to cure any such default; and
- (b) to subordinate the security held by the Province pursuant to section 15.06 in favour of the security held by the Approved Lender,

and containing such other terms and conditions as may be agreed to by the Province and the Approved Lender. The Province's liability for failing to provide notices of default under such non-disturbance agreements will be limited to using reasonable efforts to reinstate this Agreement for the purpose of providing a cure period to the Approved Lender, but otherwise, the Province will not be liable in damage or otherwise for such failure.

ARTICLE XVII - SECURITY DEPOSIT AND PERFORMANCE DEPOSIT

17.01 The Security Deposit required to be delivered to the Province under section 6.01 (b)(iv) will be in the form required by this Article and will:

- (a) be in the amount set by the Province, acting reasonably, for that Mountain Phase, but will not be less than \$50,000.00 for any Mountain Phase; and
- (b) remain in effect until all Improvements and Access Routes in the Mountain Phase in respect of which that security is given are in a state of Substantial Completion.

17.02 If when the Province conveys to the Developer fee simple ownership of any parcel of Crown Land in the Base Area in a Base Area Phase, all the Improvements and Access Routes specified in the Phasing Schedule for the Corresponding Mountain Phase are not in a state of Substantial Completion, the Province, in respect of the construction of a particular Improvement or Access Route, may require, and if so required, the Developer will post, a Performance Deposit in the form required by this Article that will remain in effect until that Improvement or Access Route is in a state of Substantial Completion. The Performance Deposit will be in an amount equal to 100% of the cost specified in the relevant Capital Budget to bring that Improvement or Access Route to a state of Substantial Completion and it may be called and drawn down by the Province if the Developer fails to construct that Improvement or Access Route to a state of Substantial Completion.

17.03 A Performance Deposit will provide for partial releases in 25% increments of the amount of the original Performance Deposit on receipt by the Province of the certificate stating that either:

- (a) twenty five (25%) percent;
- (b) fifty (50%) percent; or
- (c) seventy five (75%) percent;

of the construction to be undertaken has been completed. The balance of the Performance Deposit will be released 60 days after receipt by the Province of a certificate stating that the Improvement or Access Route is in a state of Substantial Completion. The certificate shall be from the Professional Consultant under his or her professional seal or if the Professional Consultant is a planner, a certificate signed by the planner without a professional seal.

17.04 Unless the Province accepts some other form of security, the form of the Security Deposit or Performance Deposit must be an unconditional, irrevocable Letter of Credit issued by a financial institution approved by the Province and the form prescribed by the Province.

17.05 The Province may use the proceeds of a Security Deposit or a Performance Deposit for the payment of any costs and expenses incurred by the Province to cure or compel the Developer to cure any Event of Default that relates to the

construction of Improvements or Access Routes in a Mountain Phase or to remedy any damage to the environment caused by such construction or by the activities of the Developer, its servants, agents, contractors or subcontractors, and for no other purpose. Any balance remaining after the payment of such costs and expenses will be paid to the Developer after all the Improvements in the Mountain Phase are in a state of Substantial Completion.

17.06 When all the Improvements and Access Routes in a Mountain Phase are in a state of Substantial Completion, the Province will (unless the parties otherwise agree) promptly return the Security Deposit and any Performance Deposit to the Developer less all sums drawn down by the Province to pay or provide for the payment of costs and expenses under section 17.05.

ARTICLE XVIII - REPLACEMENT

18.01 The Developer may, on or after the 30th anniversary of the Reference Date but not later than the 58th Anniversary, apply to the Province for a replacement of this Agreement and the Tenures for a replacement term of up to 60 years.

18.02 If there is no Event of Default outstanding, the Province will, not later than 180 days after an application is made under section 18.01, make a Replacement Offer to the Developer, in writing, setting out the terms and conditions of the offer, which offer will be consistent with the Policies then in effect.

18.03 The Developer will have a period of up to 1 year from the receipt of the Replacement Offer to accept such offer on the terms and conditions contained in it, provided that the Developer may discuss and negotiate the terms of any Replacement Offer with the Province during such period. The Developer may not accept any Replacement Offer after the 60th anniversary of the Reference Date.

18.04 If the Developer does not accept a Replacement Offer within the period of time specified in section 18.03, this Agreement and the Tenures will not be replaced but will continue in full force and effect pursuant to their respective terms and conditions unless the Developer makes another application under section 18.01 to the Province to replace this Agreement and the Tenures, and the Developer accepts a Replacement Offer made pursuant to that application.

18.05 If this Agreement and the Tenures have not been replaced prior to the 60th anniversary of the Reference Date, the Province will be at liberty to enter into an arrangement with any other person for the right to use, develop and operate the Improvements and the Controlled Recreation Area but in so doing the Province will not, for a period of five years after the date of the expiration of this Agreement, enter into an agreement with, or grant Tenures to, any person on terms and conditions more favourable than those specified in the Replacement

Offer without first offering a replacement of this Agreement and the Tenures to the Developer on those terms and conditions.

- 18.06 An agreement entered into by the Province with another person under section 18.05 will not, so far as it relates to the use, development and operation of Improvements and Access Routes and the purchase and development of Crown Land in the Controlled Recreation Area, come into force until the expiration or earlier termination of this Agreement.

ARTICLE XIX – POST-AGREEMENT MATTERS

19.01 On the expiration or earlier termination of this Agreement, the Developer will:

- (a) peaceably quit, surrender, yield up and deliver the Controlled Recreation Area and the Improvements, and those Access Routes in the Controlled Recreation Area, to the Province, in a safe, clean, sanitary and orderly condition and in good repair; and
- (b) remain liable for all Fees and other sums due to the Province pursuant to this Agreement and the Tenures due to the time of termination of this Agreement;

and subject to section 19.03, Improvements and Access Routes in the Controlled Recreation Area including the Moveable Recreation Improvements, will vest absolutely in, and be the property of, the Province.

19.02 The Developer will not, without the prior written consent of the Province, remove or permit the removal of any Improvement from the Controlled Recreation Area during the term of this Agreement except for the purpose of repair or replacement of it in accordance with the Developer's normal maintenance program or the Resort Master Plan.

19.03 On the expiration or earlier termination of this Agreement, the Province may, notwithstanding section 19.01, elect not to retain ownership of any Improvement which election must be made by written notice from the Province to the Developer within 30 days of expiration or earlier termination of this Agreement and if that election is made, the Developer may, within two years of the date of the expiration or earlier termination of this Agreement, remove any Improvement described in the notice.

19.04 Where the Developer removes an Improvement described in a notice given under section 19.03, it will do so at its own expense and it will leave the surface of the land in a safe, clean, sanitary and orderly condition to the satisfaction of the Designated Authority.

ARTICLE XX - ARBITRATION

20.01 In the event any dispute arises between the parties concerning any matter under this Agreement, if either this Agreement expressly provides that the matter will be referred to and determined by arbitration, or the parties otherwise agree to submit a dispute to arbitration, except for a matter within the discretion of the Province, such dispute will be referred to and finally resolved by a single arbitrator agreed to by the parties, and failing agreement as may be selected pursuant to the *Commercial Arbitration Act*, in an arbitration administered by the British Columbia International Commercial Arbitration Centre pursuant to its Rules of Procedure for Domestic Commercial Arbitration. The arbitrator will have the authority to determine and award the cost of the arbitration. The arbitration will be conducted at the offices of the Ministry of Tourism, Sport and the Arts (or any successor ministry) in, British Columbia, and if there is no office of the Ministry of Tourism, Sport and the Arts (or any successor ministry) in British Columbia, then the offices of Ministry of Agriculture and Lands (or any successor corporation or ministry) that is closest, except as otherwise may be agreed by the parties. The arbitration will be governed by the laws of the Province of British Columbia.

ARTICLE XXI - MISCELLANEOUS

21.01 The Developer and the Province will perform such further acts and execute all further documents that may be required from time to time to evidence or give full force and effect to the intent of this Agreement.

21.02 Nothing in this Agreement constitutes the Developer the agent, joint venturer or partner of the Province or gives the Developer any authority or power to bind the Province in any way.

21.03 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, laws, ordinances, rules, regulations or orders of governmental authorities, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the reasonable control of the Developer, other than financial reasons, the Developer is delayed in performing any of its obligations under this Agreement, then the time for completion or performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as

- (a) the Developer gives written notice to the Province within 30 days after the Developer becomes aware of the commencement of the delay setting forth the nature of it and an estimated time frame for the performance of the obligation and, if necessary, a revised Construction and Completion Schedule; and

(b) the Developer diligently attempts to remedy the cause of the delay.

21.04 For the purpose of section 21.03, the inability of the Developer to obtain financing or the funds necessary for the construction of an Improvement or Access Route is not a cause beyond the reasonable control of the Developer.

21.05 Nothing in this Agreement constitutes an obligation, express or implied, of the Province to use public funds for the construction or maintenance of any part of the Development or any Access Route.

21.06 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the Province
Ministry of Agriculture and Lands
145 3rd Avenue
Kamloops BC V2C 3M1
Fax: (250) 377-2383

to the Developer

Mount Baldy Ski Corporation
P.O. Box 1499
Oliver, BC V0H 1T0

Fax No: 250-498-4087

or at such other address as the other may from time to time direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, on the earlier of the date of receipt and 7 business days after the time of mailing except in the case of mail interruption in which case actual receipt is required.

21.07 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will abrogate from the deemed delivery provided in section 21.06.

21.08 To the extent necessary, the terms, covenants and obligations contained in this Agreement will survive the expiration or earlier termination of this Agreement.

21.09 The Province reserves the right in accordance with the Policies to grant licences of and interests in the land comprising the Controlled Recreation Area, or any

part of it, under the *Land Act* which are not inconsistent with the Resort Master Plan with the prior written consent of the Developer including the following:

- (a) by way of easement, right of way or statutory right of way to the Province, a Crown Corporation or agency, a municipality, Local Government or a public utility company; and
- (b) to persons other than the Developer pursuant to the Policies.

21.10 For the purposes of section 21.09, and without limiting the grounds on which the Developer may reasonably withhold its consent under that section, the Developer will be deemed to have reasonably withheld its consent if a grant to be made under that section would:

- (a) materially affect the Developer's exercise of any of its rights under this Agreement; or
- (b) be incompatible or in competition with the Developer's use of or business in and on the Controlled Recreation Area.

21.11 The Developer will not make a claim for compensation, in any form, in respect of a grant made under section 21.09 where the Developer has consented, or unreasonably withheld its consent, to such grant.

21.12 Nothing in this Agreement or a Tenure diminishes any right the Developer may have to use any highway (as that term is defined in the *Highway Act*).

21.13 Unless required by law, the Province will not disclose the Financial Information, any statement referred to in section 5.09, any information obtained in an audit pursuant to section 5.10 or any information as to Gross Revenue, Golf Revenue or Independent Operator Revenue to any person without the prior written consent of the Developer.

ARTICLE XXII – OTHER TERMS

22.01 The Province and the Developer agree that the following terms will apply to this Agreement:

Not applicable

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

SIGNED AND DELIVERED on behalf of)
HER MAJESTY THE QUEEN IN RIGHT OF)
THE PROVINCE OF BRITISH COLUMBIA)

by the Ministry of Agriculture and Lands Tourism, Sport and the Arts

in the presence of)

L. A. Aliach)
(Signature))

5th floor, 800 Johnson Street)
Victoria BC V8W 9N7)

(Address))

Exec. Admin. Asst.)
(Occupation))

[Signature])
Ministry of Agriculture and Lands, Tourism, Sport)
by its authorized signatory and the Arts

Acting Deputy Minister

SIGNED AND DELIVERED on behalf of)
Mount Baldy Ski Corporation)

the corporate seal of which was hereunto)
affixed in the presence of)

[Signature])
Authorized Signatory)

[Signature])
Authorized Signatory)

c/s

SCHEDULE "A"
CONTROLLED RECREATION AREA

The land on which the Development is to be built as described in the Mount Baldy Resort Master Plan.

:

SCHEDULE "C"

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES

None indicated

SCHEDULE "D"

SKIERS AT ONE TIME (SAOT) FORMULA

$$\frac{CP = CL \times VR \times LE \times HO}{VSD}$$

Where:

CP = effective lift pod capacity

CL = hourly lift capacity (skiers and snow boarders/hour)

VR = vertical rise of specific lift

LE = lift loading efficiency (.9)

HO = hours of operation (7)

VSD = vertical skied per day (10,000' except for beginners)

SCHEDULE "E"

FORM OF LEASE

**(For Recreation Improvements other than Lifts,
Snowmaking Equipment, Trails, surfaced pathways or utilities, services, service
roads or other similar works)**

THIS LEASE is dated for reference _____, 20__.

BETWEEN

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA**, as represented by the Minister of Agriculture
and Lands, Parliament Buildings, Victoria, British Columbia
V8V 1X4

(the "Lessor")

AND

MOUNT BALDY SKI CORPORATION, a company incorporated
pursuant to the laws of Canada and registered in British Columbia
(INCORPORATION NO. 0681126) and having its registered office
at Mott Rutherford Welsh & Greig, 100 – 166 Main Street,
Penticton, BC V2A 5A4

("the Lessee")

WHEREAS

- A. The Lessor and the Lessee are parties to a master development agreement (the "Development Agreement") dated for reference the 17th day of March, 2005, for the operation and development of the Resort;
- B. In accordance with the Development Agreement, the Lessor has agreed to lease various parcels of land in the Controlled Recreation Area to the Lessee on the terms and conditions contained in this Lease;

NOW THEREFORE in consideration of the Fees payable and the covenants and agreements set forth in this Lease, the parties agree as follows.

ARTICLE I - GRANT OF LEASE

- 1.01 The Lessor hereby leases to the Lessee the parcel or parcels of land described in and shown outlined in bold on Schedule "A" to this Lease (the "Land").
- 1.02 This Lease, and the estate granted by it, are subject to the terms and conditions of the Development Agreement and
- (a) if there is any inconsistency between a provision of this Lease and a provision of the Development Agreement, the provision of the Development Agreement will prevail; and
 - (b) capitalized terms used in this Lease or the recitals to it and not defined herein will be given the meaning accorded to them in the Development Agreement.

ARTICLE II - TERM

- 2.01 To have and to hold the Land unto the Lessee for the term of years beginning on the reference date of this Lease and ending on the expiration or earlier termination of the Development Agreement.

ARTICLE III - FEES

- 3.01 The Lessee will pay to the Lessor as rent, without any deduction or setoff, the Fees in the manner and at the time specified in Article V of the Development Agreement.

ARTICLE IV - LESSEE'S COVENANTS

- 4.01 In addition to the Lessee's covenants contained in the Development Agreement, the Lessee covenants with the Lessor;
- (a) to use the Land solely to construct, operate and maintain the Recreation Improvements and for the purpose described or shown in Schedule "A" to this Lease and any ancillary improvements or uses as contemplated by the Resort Master Plan and the Development Agreement;
 - (b) to pay and discharge when due all charges for electricity, gas and other utilities supplied to the Land;

- (c) to keep the Land and the Recreation Improvements situate on it in a safe, clean and sanitary condition and in repair and to repair according to notice;
- (d) on the expiration or earlier termination of the term of this Lease, to peaceably quit, surrender, yield up and deliver the Land and the Recreation Improvements situate on it to the Lessor in a safe, clean and sanitary condition and in repair (reasonable wear and tear excepted) and all right, interest and estate of the Lessee in the Land and the Recreation Improvements situate on it will cease and vest in the Lessor in accordance with the Development Agreement;
- (e) to permit the Lessor, its servants and agents at all reasonable times to enter on and inspect the Land and the Recreation Improvements situate on it;
- (f) not to cut, destroy or remove timber or trees standing on the Land except in compliance with an agreement issued under the *Forest Act*, and in compliance with that Act and the *Forest and Range Practices Act*, and then only to the extent necessary to develop the Land in compliance with the Development Agreement, and
- (g) not to interfere with the Prior Rights.

ARTICLE V - ASSIGNMENT

- 5.01 The Lessee may not assign, sublet or transfer this Lease without the prior written consent of the Lessor in accordance with Article XVI of the Development Agreement.
- 5.02 Despite section 5.01, the Lessee may rent to any person commercial or not-for-profit units in buildings on the Land or permit any person to operate commercial or not-for-profit concessions or undertakings within those commercial units, provided such rental or operating agreements refer to this Lease and require that person to abide by the terms and conditions of this Lease and the Development Agreement and the covenants of the Lessee under this Lease and the Development Agreement.

ARTICLE VI - MISCELLANEOUS

- 6.01 The Lessor is under no obligation under the terms of this Lease to provide access to the Land or to maintain or improve any existing or future access roads. This provision does not limit any right of the Lessee in respect of any Tenure or Interim Tenure in accordance with its terms and conditions.

- 6.02 Any interference with the rights of the Lessee under this Lease by virtue of the operation of the *Mineral Tenure Act, Petroleum and Natural Gas Act, Coal Act, Forest Act, or Water Act* or any certificate, lease, permit or licence issued under any of those Acts will not constitute a breach of the Lessor's implied covenant of quiet enjoyment.
- 6.03 This Lease and the estate herein granted is subject to
- (a) all subsisting grants to, or rights of, any person made or acquired under the *Mineral Tenure Act, Petroleum and Natural Gas Act, Coal Act, Forest Act* or *Water Act* whether or not the Lessee has actual notice of them;
 - (b) the exceptions and reservations of rights, interests, privileges and titles referred to in section 50 of the *Land Act*; and
 - (c) the Prior Rights.
- 6.04 Any default under the Development Agreement will be a default under this Lease; any default under this Lease will be a default under the Development Agreement.
- 6.05 The terms and provisions of this Lease are binding upon and enure to the benefit of the parties, their successors and permitted assigns.

ARTICLE VII - INTERPRETATION

- 7.01 In this Lease, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
- 7.02 The headings of Articles are for convenience of reference only and are not to be construed as defining or in any way limiting the scope or intent of the provisions of this Lease.
- 7.03 This Lease will be interpreted according to the laws of the Province of British Columbia.
- 7.04 Where there is a reference to an enactment of the Province of British Columbia in this Lease, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all statutes referred to in this Lease are enactments of the Province of British Columbia.

7.05 If any section of this Lease or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and they will be enforceable to the fullest extent permitted by law.

7.06 All schedules to this Lease form part of this Lease.

IN WITNESS WHEREOF the parties have executed this Lease as of the day and year first above written.

SIGNED AND DELIVERED on behalf of)
HER MAJESTY THE QUEEN IN RIGHT OF)
THE PROVINCE OF BRITISH COLUMBIA)
by Ministry of Agriculture and Lands,)
in the presence of)

(Signature))

(Address))

(Occupation))

Ministry of Agriculture and Lands,
by its authorized signatory

SIGNED AND DELIVERED on behalf of)
Mount Baldy Ski Corporation)

the corporate seal of which was hereunto)
affixed in the presence of)

Authorized Signatory)

Authorized Signatory)

c/s

SCHEDULE "A" TO THE LEASE

[insert legal description of the Land and a plan showing the Land outlined]

[insert description of the Recreation Improvements]

[insert description of purpose of land use]

SCHEDULE "F"**FORM OF RIGHT-OF-WAY**

(For Lifts, Snowmaking Equipment, surfaced pathways or services or other similar works)

THIS AGREEMENT is dated for reference _____, 20__.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Agriculture and Lands, Parliament Buildings, Victoria, British Columbia V8V 1X4

(the "Grantor")

AND

MOUNT BALDY SKI CORPORATION, a company incorporated pursuant to the laws of Canada and registered in British Columbia (INCORPORATION NO. 0681126) and having its registered office at Mott Rutherford Welsh & Greig, 100 – 166 Main Street, Penticton, BC V2A 5A4

("the Grantee")

WHEREAS

- A. The Grantor and the Grantee are parties to a Master Development Agreement (the "Development Agreement"), dated for reference the ___ day of _____, _____ for the operation and development of the Resort;
- B. In accordance with the Development Agreement, the Grantor has agreed to grant to the Grantee a right-of-way over that parcel of land described in and shown outlined in bold on Schedule "A" to this Agreement (the "Land") on the terms and conditions set forth in this Agreement;

NOW THEREFORE in consideration of the premises and of the Fees to be paid by the Grantee to the Grantor, the parties agree as follows.

ARTICLE I - GRANT OF RIGHT-OF-WAY

- 1.01 The Grantor grants to the Grantee the full, free and uninterrupted right-of-way, easement, right and privilege, for itself, its servants, agents, contractors, licensees and invitees to enter, pass and repass over the Land for the purpose of constructing, operating, maintaining and using the Recreation Improvements described or shown in Schedule "A" to this Agreement.
- 1.02 The rights herein granted are subject to the terms and conditions of the Development Agreement and
- (a) if there is any inconsistency between a provision of this Agreement and a provision of the Development Agreement, the Development Agreement will prevail; and
 - (b) capitalized terms used in this Agreement or the recitals of it and not defined herein will be given the meaning accorded to them in the Development Agreement.

ARTICLE II - DURATION

- 2.01 The duration of the right-of-way granted will be for the term of years beginning on the reference date of this Agreement and ending on the date of the expiration or earlier termination of the Development Agreement.

ARTICLE III - FEES

- 3.01 As fees for the rights granted by this Agreement, the Grantee will pay the Fees to the Grantor the times and in the manner specified in Article V of the Development Agreement.

ARTICLE IV - GRANTEE'S COVENANTS

- 4.01 In addition to the Grantee's covenants contained in the Development Agreement, the Grantee covenants with the Grantor:
- (a) to use the Land solely for the purpose for which this right-of-way is granted and in accordance with the Development Agreement;
 - (b) to pay and discharge when due all charges incurred by or on behalf of the Grantee for electricity, gas and other utilities supplied to the Land;

- (c) to operate and to keep the Recreation Improvements situate on it in a safe, clean and sanitary condition and in repair and to repair according to notice;
- (d) on the expiration or earlier termination of the term of this Agreement, to peaceably quit, surrender, yield up and deliver the Land and the Recreation Improvements situate on it to the Grantor in a safe, clean and sanitary condition and in repair (reasonable wear and tear excepted) and all right, interest and estate of the Grantee in the Land and the Recreation Improvements situate on it will cease and vest in the Grantor in accordance with the Development Agreement;
- (e) to permit the Grantor, its servants and agents at all reasonable times to enter on and inspect the Land and the Recreation Improvements situate on it;
- (f) not to cut, destroy or remove timber or trees standing on the Land except in compliance with an agreement issued under the *Forest Act*, and in compliance with that Act and the *Forest and Range Practices Act*, and then only to the extent necessary to develop the Land in compliance with the Development Agreement; and
- (g) not to interfere with the Prior Rights.

ARTICLE V - ASSIGNMENT

5.01 The Grantee may not assign this Agreement or the rights granted by it without the prior written consent of the Grantor in accordance with Article XVI of the Development Agreement except to the extent necessary to permit its customers to use the Controlled Recreation Area in the normal course of business of the Lessee..

ARTICLE VI - MISCELLANEOUS

6.01 This Agreement does not confer any right to the Grantee to interfere with the rights of any person under or by virtue of the operation of the *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Coal Act*, *Forest Act* or *Water Act* or any certificate, lease, permit or licence issued under any of those Acts.

6.02 This Agreement and the rights granted by it are subject to

- (a) all subsisting grants to, or rights of, any person made or acquired under the *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Coal Act*, *Forest Act* or *Water Act* whether or not the Grantee has actual notice of them;

- (b) the exceptions and reservations of rights, interests, privileges, and titles referred to in section 50 of the *Land Act*; and
 - (c) the Prior Rights.
- 6.03 The terms and provisions of this Agreement are, be binding upon and enure to the benefit of the parties, their successors and permitted assigns.
- 6.04 The Grantor is under no obligation under this Agreement to provide access to the Land or to maintain or improve any existing or future access roads. This provision does not limit any right of the Grantee in respect of any Tenure or Interim Tenure in accordance with its terms and conditions.
- 6.05 Any default under the Development Agreement will be a default under this Agreement; any default under this Agreement will be a default under the Development Agreement.

ARTICLE VII - INTERPRETATION

- 7.01 In this Agreement, unless the context otherwise requires the singular includes the plural and the masculine includes the feminine gender and a corporation.
- 7.02 The headings of Articles are for convenience of reference only and are not to be construed as defining or in any way limiting the scope or intent of the provisions of this Agreement.
- 7.03 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 7.04 Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect, and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.
- 7.05 If any section of this Agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and they will be enforceable to the fullest extent permitted by law.

7.06 All schedules to this Agreement form part of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

SIGNED AND DELIVERED on behalf of)
HER MAJESTY THE QUEEN IN RIGHT OF)
THE PROVINCE OF BRITISH COLUMBIA)
by Ministry of Agriculture and Lands,)
in the presence of)

_____))
(Signature))

_____))
(Address))

_____))
(Occupation))

_____))
Ministry of Agriculture and Lands,
by its authorized signatory

SIGNED AND DELIVERED on behalf of)
Mount Baldy Ski Corporation)

_____))
the corporate seal of which was hereunto)
affixed in the presence of)

_____))
Authorized Signatory)

_____))
Authorized Signatory)

c/s

SCHEDULE "A" TO THE RIGHT OF WAY

[insert legal description of the Land and a plan showing the Land outlined in bold]

[insert description of lifts etc.]

[insert description of purpose of land use]

SCHEDULE "G"

ENVIRONMENTAL REQUIREMENTS

The operator shall:

Water Management

1. Ensure that all operations are conducted in such a manner that they protect streambanks, and minimize damage to understory vegetation, that all ski runs will be logged and revegetated in a satisfactory manner and all service trails or roads to be stumped, cleared and graded shall be revegetated so as to minimize or eliminate siltation, particularly any water courses that reach any fish bearing streams.
2. Revegetate all new ski runs and disturbed areas adjacent to the chairlift right of way, cross drainage ditches and disturbed watercourses in developed areas with an erosion control forage seed mix, deciduous or coniferous trees to stabilize the slope. Planting and erosion control must be to the satisfaction of Grand Forks Forest District and Ministry of Environment.
3. Maintain natural drainage, not fill any gullies, and ensure that the drainage system drains ditches and controls ditch erosion, prevents water from being directed onto potentially unstable slopes or soil surfaces. All sediment from cross ditches and perimeter drainage for the base area and ski runs will be contained in settling ponds to prevent downstream deposit of effluent, silt, fuel, lubricants or other deleterious substances into any tributaries as a result of spring runoff or summer rain storms. This will protect the quality of water for downstream water licensees and fish habitat.
4. Agree that if any change to the location or nature of any watercourse is contemplated, then an Approval or Notification under Section 9 of the Water Act is required from the Ministry of Environment. Work in a watercourse is normally limited to a period of time called a "work window", which is typically one month in the summer, and is designed to minimize the impact of development activities on the fisheries resource.
5. Provide a responsible on site Environmental Monitor to monitor water runoff on a weekly or daily basis if heavy precipitation or runoff occurs. The Environmental Monitor will identify sediment sources, monitor suspended sediment levels in all watercourses potentially affected by all resort development and facilitate the timely implementation of any remedial measures to ensure that downstream water quality is not affected and to prevent erosion.
6. Use erosion control procedures throughout on-mountain construction processes, including hay bale filters in work areas, containment of water flows within trail contouring and configuration and settling ponds.

7. Ensure that its contractors, sub contractors and employees will act in a responsible manner by notifying the Environmental Monitor or Ski Area Manager if there are any erosion/drainage/siltation issues that may require an incident report or a work stoppage due to unmanageably wet site conditions.
8. Obtain approval of the Regional Water Manager or the Comptroller of Water Rights as required under the provisions of the Water Act to construct or use the works which in any manner alter, divert or diminish in quantity the flow of any natural water courses located on the Land which may be affected during the construction of improvements and to ensure that the drainage system a) drains ditches and controls ditch erosion and b) prevents water from being directed onto potentially unstable slopes or soil surfaces.

Drainage

9. Drain wet areas on trails subsurface where practicable, using proper drainage methods, perforated pipe and rock fill. Drainage should be deep enough to prevent freeze-up. Manmade drainages, both surface and subsurface, should discharge into natural drainages or rough, rocky terrain.
10. Ensure that manmade drainages do not overload natural drainages, thereby threatening channel stability.

Soil conservation

11. Ensure all organic soils excavated from the license are stockpiled for use in reclamation of other disturbed sites within the license area. No soil is to be sold or removed from the license area without the consent of the licensor.
12. Protect streambanks from soil breakdown by wheeled or tracked vehicle traffic other than for timer removal and initial road construction. During timber removal and all phases of road construction, soil disturbance of streambeds should be kept to a minimum.
13. Minimize construction activity close to drainages on higher elevation until the dry season (July - September) reduces stream flows.
14. Protect water quality during construction in drainages by diverting the clear water around the work site in some form of piping or culvert.
15. Size culverts for maximum stream flow conditions. Ensure that surface flows from the side do not encroach on top of buried culverts. Culverts should be placed so as to accept water flows straight on or have rock headers.
16. Leave buffer strips or trees and natural rough vegetation between work areas and drainages wherever possible.

Run Preparation

17. Conduct all slope clearing, trail clearing and other clearing in accordance with the Forest Act, the Forest and Range Practices Act and the Forest Practices Code of British Columbia Act; pay all stumpage, royalties and other charges payable under the Forest Act in respect of such clearing and any timber harvesting associated with it; and dispose of any slash by piling and burning, lopping and scattering or chipping, in accordance with a cutting permit issued under the Forest Act and any direction of the Chief Forester or his or her authorized representative;
18. Closecut trees by power saw rather than by bulldozing over wherever possible, except where grooming standards may otherwise require.
19. Utilize existing work roads wherever possible, rather than building new.
20. Cover disturbed ground as quickly as practicable with mulch. Hay mulch is preferable, but chip mulch is also acceptable. On steeper faces, mulch cover may be held down with light, biodegradable nylon mesh. Jute matting may be required to enhance soil stability.
21. Follow rough grading as closely as possible with final grading.
22. Noxious weed control strategies must be included in all development plans.
23. Minimize soil disturbance. Immediately following soil disturbance, seed at a minimum rate of 30 kg/ha with a Common #1 or better quality suitable forage seed mix free of noxious weeds. Legumes must be suitably nitrogen inoculated prior to seed mixing and seeding. On harsh sites or where topsoil has been substantially removed, a heavier seeding rate, fertilizer, slope stabilizers or seed stickers may additionally be required. Successful forage establishment (greater than 70% ground cover establishment within one season after the initial disturbance) is the proponent's responsibility. Test soil in order to develop the appropriate seed and fertilizer mixtures and ratios for re-vegetation.
24. Manage visual aspects of trail development, through scalloping of trails, feathering tree cover, the use of islands and bays, etc.
25. No logging equipment is to drive through or work in the creek.

Waste Management

26. Ensure that its contractors, sub contractors and employees act in a responsible manner with respect to refuse control to prevent any bear problems.
27. Dispose of all waste, including without limitation, solid, liquid, special or hazardous wastes, in accordance with all applicable laws.
28. Keep the Controlled Recreation Area, Parking Facilities and Day Skier Facilities reasonably free of litter and provide sufficient litter barrels for that purpose.

Miscellaneous

29. Comply with the Contaminated Sites Legislation with regard to the handling of petroleum products and other deleterious substances that may be utilized in the construction of ski trails, chairlift right of way and maintenance of ski hill equipment.
30. Pesticides and fertilizers used must not pose a threat to wildlife.
31. Provide a responsible on site Environmental Monitor to advise on prevention and mitigation of changes to wildlife habitat and populations within the Resort boundaries as development proceeds.

SCHEDULE "H"**OPERATING COVENANTS**

The Developer will:

- (a) maintain, at or near the Controlled Recreation Area, a management office with a full-time, on-site manager and sufficient staff of management, supervisors and operating and maintenance personnel to manage, supervise, maintain and operate the Controlled Recreation Area;
- (b) maintain and repair all Recreation Improvements including, but not limited to, the Lifts and all ancillary facilities, in keeping with accepted British Columbia industry standards of a ski and four season resort development;
- (c) maintain, in the Controlled Recreation Area, a first aid office with trained first aid attendants and station a sufficient number of first aid toboggans, complete with necessary equipment, for each major Lift and provide a sufficient number of first aid caches to serve the Controlled Recreation Area;
- (d) maintain, or cause to be maintained, and provide snow removal services on all Access Routes, service roads and Parking Facilities (provided that nothing in this Master Development Agreement requires the Developer to maintain any highway (as that term is defined in the *Highway Act*) outside the Controlled Recreation Area);
- (e) maintain, in the Day Skier Facility or other nearby building, a holding area for injured people;
- (f) at all times during the term of the Master Development Agreement when the Recreation Improvements are being operated as a ski area for alpine skiing,
 - (i) maintain avalanche forecasting, patrol and control for all parts of the Controlled Recreation Area serviced by Lifts and within patrolled ski area boundaries that are determined by the Developer, from time to time, and are clearly marked by the Developer;
 - (ii) maintain the Ski Trails in accordance with accepted British Columbia ski industry standards, including the use of snowcats and grooming equipment to pack and groom the Ski Trails;
 - (iii) maintain a qualified staff of trained ski patrol to serve the skiing public during winter hours of operation; and

- (iv) maintain a dispatch office on the mountain through which all snow safety programs and the dispatching of patrollers will be handled;
- (g) upon the written request of the Province, erect information signs indicating that the Controlled Recreation Area is under the management and control of the Developer;
- (h) establish and maintain a preventative maintenance program on all Lifts, ensure that trained maintenance personnel are available in the event of an emergency shut-down of a Lift and operate the Lifts in accordance with the requirements of Government Agencies;
- (i) provide Ski Trail international identification signs in the Controlled Recreation Area and provide and post appropriate notices with respect to the degree of skier ability required for each Ski Trail and the daily snow condition of each of them;
- (j) maintain appropriate traffic and direction signs, adequately supervise the flow of traffic in the Parking Facilities and otherwise supervise and control the Parking Facilities in accordance with accepted British Columbia ski industry standards;
- (k) not impose any charge for the use of Parking Facilities without the prior written consent of the Province provided, however, that the Province will not unreasonably withhold its consent to a charge for the use of Parking Facilities if that is the common practice in comparable ski and four season resort developments in British Columbia and if the Province consents to the Developer imposing a charge it will be included in Gross Revenue and Golf Revenue;
- (l) operate, or cause to be operated, a high quality ski school adequate for the Controlled Recreation Area and substantially all the instructors must be certified by the Canadian Ski Instructors Alliance or the Professional Ski Instructors of America or the international equivalent;
- (m) not charge the public for the use of brown bag rooms or sanitation facilities; and
- (n) deliver to the Province a detailed statement of Gross Revenue and Golf Revenue for each Financial Year in accordance with section 7.03 of the Master Development Agreement, signed by two directors of the Developer, which must include a breakdown of the number of users of each of the Recreation Improvements and the Controlled Recreation Area together with a statement of the amounts paid by those users to the Developer and a statement of all complimentary passes or passes including a discount issued to users of each of the Recreation Improvements and the Controlled Recreation Area.

SCHEDULE "I"**CONDITIONS OF TENURES****The Developer agrees that:**

1. It is estimated that at build-out (approximately 2014), based on the approved Resort Master Plan, the Comfortable Carrying Capacity of the resort will be 7776, with a corresponding maximum number of bed units of 7892 based on the following calculation:
 - Single-family: 6 bed units
 - Condominium/townhouse: 4 bed units
 - Hotel room: 2 bed units
2. The Phasing Schedule includes all development within the Development Area, whether on private or on Crown lands.
3. A covenant for Design Guidelines will be developed for the Resort and placed on title of all properties within the Resort Development Area.
4. Employee housing, appropriately phased and balanced with employment, will be provided by the Developer, with 10% of housing dedicated to employee housing in each phase after Phase 1.

Forest-related:

5. Any areas proposed for Crown Grant may have to be deleted from the Provincial Forest, unless the entire Base Area is removed from the Provincial Forest prior to the time of sale.
6. A Wildland/Urban Interface Plan will be prepared in accordance with applicable legislation prior to any further development of land of an urban character. That plan will address the issue of wildfire and the provision of water for firefighting for the development. A detailed study of the forest area in the area of development is recommended and should include a review and description of the current forest stand composition, health and fuel loading. The following should be considered in the Plan to the extent required by legislation:
 - Fuel modification
 - Stand conversion
 - Site design and layout
 - Incorporating hiking and access trails as fuel breaks, guards and fire access corridors
 - Preparedness planning
 - Fire suppression equipment purchases
 - Strategic placement of equipment caches and sump sites
 - Fire suppression training for resort staff

7. Building layout and design, and building materials like wood and shake roofs, should incorporate strategies to deal with risk from wildfire.
8. Landscape design guidelines should be adopted which recognize that certain species are fuel and considers appropriate spacing, distribution and proximity to structures.
9. The Developer acknowledges the importance of and supports the logging industry in the Region and will not exert pressure for additional visual management or forest preservation in the lands visible from the proposed development beyond the requirements of legislation imposed from time to time.
10. The Developer will not oppose application by the forest licensee within TFL 15 but outside of the Development Area for the right to remove timber, provided however that the timber removal does not harm recreational improvements or operations of the Resort where authorized by the Province.

Access:

11. Proposed loop roads which allow for public safety and access will be adequately completed once their construction has begun, regardless of whether or not the lands adjacent will be immediately developed.
12. Public roads are to be constructed to the prevailing applicable standards as required by legislation.

Bear Management:

13. Management of bear/human interactions during spring to fall activities will be addressed in a Bear Management Plan.

Fish Habitat:

14. Fish habitat use assessments will be conducted on any potential fish bearing stream that may be effected by the development prior to the start of development.
15. Developments adjacent to fish bearing streams will reflect appropriate protection measures called for by applicable regulations.

First Nations

16. Provincial guidelines re: archaeology sites, as administered by the Archaeology Branch, will be followed and that in the event an archaeological site is discovered, all work on that site will cease until an assessment has been made.

Water:

17. Any works in and about a stream are subject to review under the *Water Act*.
18. Best Management Practices (BMP's) for urban and rural development should be considered during the early stages of this development, including the Land Development Guidelines for the Protection of Aquatic Habitat, which provide guidance on storm water collection which is necessary to reduce potential impact to surface water quality (particularly important for the parking development).
19. Storm Water Management and Erosion and Sediment Control Management Plans must be in place prior to development. Treatment and handling of storm water and run-off will be designed in accordance with applicable legislation to protect sensitive ecosystems.
20. Water quality will be measured during construction in order to determine and mitigate effect on downstream users. Measurements will include turbidity, total suspended solids, dissolved oxygen and water temperature.
21. A snow melt study and design will be submitted at the time of application for each development.
22. Reservoir construction approval will require a hydrology assessment.

Solid Waste Management:

23. Solid Waste Management Plan must be in place prior to development, approved by Local Government.
24. The sewage treatment facility will comply with all applicable regulations and enactments.
25. Sewage is authorized to be discharged to ground at a rate of 228 cubic meters a day, and will require an amendment if the discharge increases by 1-10%. If the discharge increases by more than 10%, the discharge will have to be registered under the *Environmental Management Act* Municipal Sewage Regulation and an environmental impact study will be required.

Other:

26. Siting of all developments will be based on sound geologic footing (terrain analysis and detailed contour maps) as provided by a Professional Geotechnical Engineer certified in the Province of B.C. - these are to be provided at the permitting stage in detail.
27. An Environmental Management Plan must be in place prior to development.

SCHEDULE "J"**PRIOR RIGHTS**

1. All subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown Grant of the Development Area or any part thereof.
2. All subsisting grants to, or rights of, any person made or acquired under the *Mineral Tenure Act, Petroleum and Natural Gas Act, Coal Act, Forest Act or Water Act* whether or not the Developer has actual notice of them.
3. Exceptions and reservations of rights, interests, privileges and titles referred to in section 50 of the *Land Act*.
4. Licence No. 339380 dated June 30, 2002 in favour of Strata Corporation KAS 1840 and assigned unto the Mount Baldy Ski Corporation (Inc. No. 0681126) on April 30, 2004 and modified on September 10, 2004 and further modified on April 22, 2005 and further modified on October 21, 2005, issued for community alpine ski area purposes.
5. Right of Way No. 338704 dated January 17, 2002 in favour of Strata Corporation KAS 1840 and assigned to the Mount Baldy Ski Corporation (Inc. No. 0681126) on April 30, 2004, issued for ski lift purposes.
6. Licence No. 338702 dated September 15, 2002 in favour of Strata Corporation KAS 1840 issued for sewerline purposes.
7. Right of Way No 401992 dated January 28, 1993 in favour of British Columbia Hydro and Power Authority issued for powerline purposes
8. License No. 402446 dated February 25, 1996 in favour of Terasen Gas. Inc. issued for communication site purposes.
9. License No. 339187 dated March 1, 2003 in favour of VMR Communications Ltd. issued for communication site purposes.
10. License No. 338659 dated January 15, 2002 in favour of Frederic Moore issued for communication site purposes.
11. License No. 402406 dated August 15, 1995 in favour of Fortis BC Inc. for powerline purposes.
12. Mount Baldy Road
13. Grazing permit dated January 1, 2003 (expires 2013) in favour of Stewart Busmann for cattle grazing purposes.

14. Grazing permit #RAN074652 in favour of Dan Dumont (Dumont Ranch) for cattle grazing purposes.
15. Grazing permit #RAN0773401 in favour of Henry and Charlotte Meredith for cattle grazing purposes.
16. Trapping licenses
17. Guide-outfitter licenses