

Lower Mainland Region Copy.

A G R E E M E N T

B E T W E E N :

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH COLUMBIA,
represented by the Minister of Lands,
Parks and Housing

(hereinafter called the "Province")

OF THE FIRST PART

A N D

WHISTLER MOUNTAIN SKI CORPORATION,
a company organized under the laws of
British Columbia and having an office
at 602 - 325 Howe Street, Vancouver,
British Columbia

(hereinafter called "Whistler")

OF THE SECOND PART



Province of
British Columbia

Ministry of
Attorney-General

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THIS AGREEMENT dated for reference the 30th day of September, 1982.

B E T W E E N :

HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA
represented by the Minister of Lands,
Parks and Housing

(hereinafter called the "Province")

OF THE FIRST PART

A N D

WHISTLER MOUNTAIN SKI CORPORATION, a company
organized under the laws of British
Columbia and having an office at 602 -
325 Howe Street, Vancouver,
British Columbia

(hereinafter called "Whistler")

OF THE SECOND PART

WITNESSES THAT WHEREAS:

- A. Whistler operates a recreational ski development on land that is owned by the Province and has submitted a detailed proposal to the Province for the future expansion of the development;
- B. The Province has agreed to permit Whistler to continue to operate the development and carry out the expansion of the development on the terms and conditions herein contained.

ARTICLE I - DEFINITIONS

1.01 In this Article, unless the context otherwise requires

"Access Routes" means the access required to be provided under section 4.02 and includes any other access required by government agencies having jurisdiction;

"Appraised Market Value" in reference to a Recreation Improvement, the Gondola Base or the North Side Base, means the appraised market value of it determined under section 13.05 or by arbitration under Article XIX;

"Base Areas" means any area designated as such in Schedule "B" except any parts of such Base Areas owned by Whistler and any other areas designated as Base Areas in an amendment to the Whistler Master Plan;

"Base Area Phases" means the phases of development of the Base Areas in the stages described in the Phasing Schedule;

"Bed Units" in reference to a Base Area Phase means the number of created bed units shown for that Base Area Phase in the Phasing Schedule;

"Controlled Recreation Area" means all the Resort Area and includes all lands on which Recreation Improvements have been or are intended to be constructed in the Resort Area;

"Construction and Completion Schedule" means a construction and completion schedule referred to in section 4.02 (a) (vi);

"Corresponding Mountain Phase" in reference to a Base Area Phase, means the Mountain Phase described opposite to that Base Area Phase in the Phasing Schedule;

"Crown Land" means land in a Base Area that is owned by the Province;

"Day Skier Facility" means any building in the Controlled Recreation Area that is designed to provide day use facilities for skiers;

"Day Skier Visits" means the total number of people, exclusive of employees of Whistler, in a particular day who use any of the Lifts regardless of whether the use is pursuant to a day ticket, pass for a fixed period of time, season pass, ski school arrangement or otherwise;

"Development Scheme" means the proposed scheme of subdivision or development referred to in section 14.04 (b) (i);

"Engineer" means the engineer or architect appointed by Whistler to supervise the construction of the Recreation Improvements and the development of the Base Areas;

"Event of Default" means an event referred to in section 12.01;

"Fees" means the money payable to the Province under section 8.01;

"Financial Information" means the audited financial statement of Whistler for its financial year ending October 31, 1981 prepared by Messrs. Peat Marwick and Mitchell, Chartered Accountants;

"Financial Year" means the financial year of Whistler ending on October 31 in each year during the currency of this agreement or on any other date permitted under Article VIII;

"Gondola Base" means that part of the Whistler Lands described as Block A of D.L. 5316, on which a Base Terminal Facility or a Lift is now or may hereafter be located, including a reasonable skier milling area adjacent thereto;

"Gross Revenue" means all the receipts or receivables of Whistler during any Financial Year for the right to use the Recreation Improvements determined in accordance with generally accepted accounting principles and includes, without limitation

- (i) amounts paid to Whistler by the user or other wholesale or retail purchaser, as the case may be, for an hourly or day ticket, pass for a fixed period, season or other pass,
- (ii) where the right to use the Recreation Improvements is included in a package, that portion of the package price that represents the Recreation Improvement charges based on customary charges for hourly or single day use, or, if discounted as part of the package price, the discounted price to be received by Whistler from the user or other wholesale or retail purchaser,
- (iii) subsequent recoveries of receivables previously written off or reserved (to be included in the Financial Year in which they are recovered),

but does not include uncollectable or doubtful receivables written off or reserved by Whistler in accordance with generally accepted accounting principles and the right to use Recreation Improvements does not include the sale of food, beverages, ski lessons, ski repairs or other similar services;

"Hiking Trail" means a trail designated as a hiking trail on Schedule "A";

"Independent Recreation Facility" means any recreation facility owned by Whistler in the Resort Area and open to the public that is not part of a hotel or condominium complex and includes without limitation swimming pools, gymnasiums, skating rinks, tennis and raquet courts, riding stables, golf courses, playing fields, toboggan and sled runs, and similar recreation facilities that are open to the public;

"Interest" means the rights of Whistler in respect of the Resort Area under this agreement including the Recreation Improvements, the Tenures and the business and operations of Whistler conducted in the Controlled Recreation Area in connection therewith;

"Lift" means a ski lift that has or is to be constructed pursuant to this agreement;

"Lift Terminal Facility" means the structure at either end of a Lift for the loading or unloading of skiers and any building that is used to house the mechanical or structural end of a Lift;

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

"Minimum Fee" means the fee referred to in section 8.01 (c);

"Minister" means that member of the Executive Council of the Province who is from time to time charged with the administration of the Land Act, and includes any one appointed by the Province or the Minister to act as his representative;

"Mountain Phases" means the phases of development of the Recreation Improvements in the stages in the Phasing Schedule";

"Moveable Recreation Improvement" means all Lifts and their component parts and other Recreation Improvements which are in the nature of tenant's improvements and would at common law be removeable by a tenant on the expiration of a term of years;

"North Side Base" means that part of the Whistler Lands described in subparagraph (iv) of the definition of Whistler Lands;

"Parking Facility" means any vehicular parking lot in the Resort Area that is intended to provide parking space for the users of the Recreation Improvements;

"Percentage Fee" means the fee referred to in section 8.01 (c);

"Performance Bond" means the bond referred to in section 9.03;

"Phasing Schedule" means the summary of phased development for the Resort Area set out in Schedule "C" and includes all maps, plans, summaries and other documents referred to in the Phasing Schedule;

"Preceding Mountain Phase" means the Mountain Phase shown in the Phasing Schedule that immediately precedes a Corresponding Mountain Phase;

"Provincial Ski Area Policy" means the policy of the Province in effect from time to time relating to the development of ski areas;

"Recreation Improvement" means any Lift (including a Lift Terminal Facility, pylons, cables, gondolas, chairs, equipment and equipment used in connection with a Lift) Day Skier Facility, Maintenance Facility, Parking Facility, Ski Trail and Access Route that is located within or is intended to be constructed within the Resort Area and includes any other similar facility within the Resort Area;

"Regional Director" means that employee of the Province who, from time to time, holds the position of Regional Director, Lower Mainland Region, Ministry of Lands, Parks and Housing, or any other person designated by the Minister;

"Resort Area" means the area shown outlined in red on Schedule "A" except the Whistler Lands and Base Areas acquired by Whistler under this agreement;

"Renewal Offer" means the offer referred to in section 16.02;

"SAOT Formula" means the skier at one time formula described in Schedule "D";

"Season" means the period commencing on the 1st day of December, in any one year and continuing for the next 150 days;

"Security Bond" means the bond referred to in section 9.01;

"Sites 1, 2, 3, 5, and 6" mean the parcels of land shown on Schedule "B" under those designations and that are described in Table 2.02 of Schedule "C" and "Site" means any one of Sites 1, 2, 3, 5, and 6;

"Ski Trail" means a ski trail, ski run or hiking trail shown in or contemplated by the Whistler Master Plan;

"Skier Carrying Capacity"

- (i) in reference to a Lift means the skier at one time capacity of it based on the SAOT Formula,
- (ii) in reference to a Mountain Phase, the skier at one time capacity of that Mountain Phase based on the SAOT Formula;

"Substantial Completion"

- (i) in reference to a Recreation Improvement means the condition arrived at, as certified by the Engineer under his professional seal, when the construction of it has been completed in accordance with the design, plans and specifications for the Recreation Improvement and it is in a condition of presentable appearance and is ready for its intended use with the exception of minor deficiencies that do not affect its appearance or impair its use;
- (ii) in reference to a Mountain Phase means the condition arrived at when all of the Recreation Improvements in that Mountain Phase are in a state of Substantial Completion,
- (iii) in reference to the improvements contemplated in a Base Area Phase, means the condition arrived at, as certified by the Engineer, under his professional seal, when

the construction of the improvements have been completed and are ready for their intended use except for minor deficiencies that do not impair its use;

"Tenure" means any lease, right-of-way or licence issued to Whistler by the Province in respect of a Recreation Improvement, and includes the land that is described in the instrument creating that Tenure;

"Utilization"

- (i) in reference to a Season means the aggregate of the Day Skier Visits during the Season divided by 150,
- (ii) in reference to Weekdays, means the aggregate of the Day Skier Visits on Weekdays during a Season divided by the number of Weekdays during that Season,
- (iii) in reference to Weekends and Holidays, means the aggregate of the Day Skier visits on Weekends and Holidays during a Season divided by the number of days of Weekends and Holidays during that Season;

"Weekdays" means days other than days that are Weekends and Holidays;

"Weekends and Holidays" means Saturdays, Sundays, statutory holidays in British Columbia and days on which public schools in British Columbia are not required to be open pursuant to the School Act and regulations under that Act;

"Whistler Lands" means the interests in lands owned by Whistler situate in the Resort Municipality of Whistler including the lands legally described as follows:

- (i) Lot 1, Block F, D.L. 4749, Plan 18962, N.W.D.,
- (ii) Block A of D.L. 5316,
- (iii) D.L. 4751, Group 1, N.W.D., and

(iv) strata lots 1, 5, and 6 and an undivided one-half interest in strata lots 3 and 4, D.L. 3020, Strata Plan VR 1163, including the interests of Whistler in the limited common property designated for the exclusive use of Whistler and the operator of Blackcomb Mountain;

"Whistler Master Plan" means the document entitled "Whistler Mountain Ski Area Master Plan" prepared by Ecosign Mountain Recreation Planners Ltd. and dated November, 1979 as amended from time to time in accordance with this agreement.

ARTICLE II - STATEMENT OF OBJECTIVES

2.01 It is the policy of the Province to encourage the economic development of ski facilities and related resort development in British Columbia and to allocate lands owned by it to this use where the Province considers that allocation is in the public interest.

2.02 In accordance with its policy, the Province has agreed to permit Whistler to develop the Resort Area, in phases,

(a) by constructing and operating the Recreation Improvements in accordance with acceptable British Columbia industry standards in a manner that will attain the development objectives of the Whistler Master Plan;

(b) by developing the Base Areas to provide a balanced mix of commercial and residential accommodation that compliments the utilization of the Recreation Improvements;

on the terms and conditions contained in this agreement.

2.03 It is contemplated that the Recreation Improvements will be constructed in specific stages in accordance with the Whistler Master Plan and the Phasing Schedule subject to the provisions of this agreement.

2.04 It is further contemplated that Whistler shall be entitled to purchase from the Province Crown Lands in the Base Areas, in stages that correspond to particular Mountain Phases, for development in accordance with the land uses and densities specified in the Whistler Master Plan on the terms and conditions contained in this agreement.

ARTICLE III - REPRESENTATIONS OF WHISTLER

3.01 Whistler warrants and represents to the Province that

- (a) Whistler is a corporation duly incorporated and existing under the laws of British Columbia, is a non-reporting company and is in good standing with respect to the filing of returns in the office of the registrar of companies of British Columbia;
- (b) Whistler has all the corporate power, capacity and authority to enter into this agreement and to carry out its obligations contemplated herein, all of which have been duly and validly authorized by all necessary corporate proceedings;
- (c) the authorized capital of Whistler consists of common shares without par value of which common shares are issued and outstanding;
- (d) the following persons are the owners of shares in the capital of Whistler in the amounts set opposite their respective names:

Name	<u>Number and Class of Shares</u>
------	---------------------------------------

Hastings West Investments Ltd.
Morell Enterprises Ltd.
Canarim Holdings Ltd.

- (e) there are no outstanding securities of Whistler that are convertible into shares in its capital and there are no outstanding options or rights to subscribe for any of the unissued shares in the capital of Whistler;
- (f) the directors and officers of Whistler are as follows:

Directors

Franz M. Wilhelmsen
Kenneth R. Tolmie
Frank Barker
Peter M. Brown
John McLernon

Gilbert G. Bradner
Alan D. Laird
Peter C. Alder
William F. Sirett

Officers

Franz M. Wilhelmsen	-	President
Peter C. Alder	-	Vice-President & General Manager
David F. Balfour	-	Vice-President, Finance & Administration
William F. Sirett	-	Secretary

- (g) the Financial Information was prepared in accordance with generally accepted accounting principles applied on a basis consistent with prior years, was true and correct in every material particular on October 31, 1981 and accurately reflects the results of Whistler's operations to that date;
- (h) there are no liabilities of Whistler that are not disclosed or reflected in the Financial Information except those incurred in the ordinary course of business since October 31, 1981 and indebtedness owed to shareholders.
- (i) Whistler has good title to and possession of all its assets, free and clear of all liens, charges or encumbrances except those described in the Financial Information and those granted by Whistler to secure monies borrowed by or indebtedness or other obligations incurred by Whistler in the ordinary course of its business;
- (j) Whistler is not a party to or threatened with any litigation and has no knowledge of any claims against it that would materially affect its undertaking or financial condition;
- (k) Whistler has filed all income tax returns for all years up to and including the fiscal year of Whistler ending December 30, 1980 and the liability of Whistler for income taxes, penalties and interest thereon on income earned up to and including October 31, 1981 does not exceed the sum set forth in the Financial Information;

- (l) Whistler has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and 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 Whistler under those laws as of the date of this agreement;
- (m) Whistler is not, to the best of its knowledge, in breach of any statute, regulation or by-law applicable to Whistler or its operations that would adversely affect in any material respect its financial condition or ability to conduct its business in the ordinary course;
- (n) the making of this agreement and the completion of the transactions contemplated hereby and the performance of and compliance with the terms of this agreement does not conflict with or result in a breach of, or the acceleration of any indebtedness under, any terms, provisions or conditions of, or constitute a default under, the memorandum or articles of Whistler or any indenture, mortgage, deed of trust, agreement, lease, franchise, certificate, consent, permit, licence, authority or other instrument to which Whistler is a party or is bound or any judgment, decree, order, rule or regulation of any court or administrative body by which Whistler is bound or, to the knowledge of Whistler, any statute or regulation applicable to Whistler.

ARTICLE IV - RECREATION IMPROVEMENTS

- 4.01 Whistler may operate its existing Recreation Improvements and may construct and operate future Recreation Improvements within the Resort Area in accordance with the Whistler Master Plan subject to the provisions of this agreement.
- 4.02 Whistler shall not construct any Recreation Improvements in a Mountain Phase
- (a) until Whistler has delivered to the Province
 - (i) a statement of the estimated capital costs of the Recreation Improvements in that Mountain Phase verified by the Engineer under his professional seal;
 - (ii) applications under the Land Act for rights-of-way for all Recreation Improvements in that Mountain Phase that consist of Lifts together with a preliminary site plan for each of them,
 - (iii) applications under the Land Act for ground leases for all Recreation Improvements other than Lifts, Ski Trails and Access Routes together with preliminary boundary plans for each of them,
 - (iv) applications under the Land Act for a licence to construct Recreation Improvements in that Mountain Phase that are Ski Trails or Access Routes together with preliminary site plans and cutting and clearing plans (where cutting and clearing is required) for each of them,
 - (v) a Security Bond and a Performance Bond (if a Performance Bond is required under Article IX),
 - (vi) a construction and completion schedule for that Mountain Phase,
 - (b) unless the Recreation Improvement for that Mountain Phase is shown or provided for in the Whistler Master Plan and the Phasing Schedule for that Mountain Phase;
 - (c) that consists of a Recreation Improvement that is to be a building unless the design and location of it is consistent with the Whistler Master Plan;

- 4.03 Whistler shall provide or cause to be provided Access Routes
- (a) by way of dedicated or gazetted road or by way of right-of-way to each Parking Facility;
 - (b) by way of pedestrian foot paths (having a width of not less than 5 metres) from each Parking Facility to a Lift Terminal Facility;
 - (c) by way of dedicated or gazetted road or by way of right-of-way to the Gondola Base.
- 4.04 All Access Routes shall be located in areas that are approved by the Province, and where an Access Route, or any part of it, is located on land that is not Crown Land, Whistler shall at the request of the Province and at the expense of Whistler, cause the Access Route (or that part of it that is not located on Crown land) to be conveyed by way of right-of-way to the Province, free and clear of any liens, charges and encumbrances except existing utility easements and rights-of-way.
- 4.05 Prior to the construction of any Recreation Improvement that consists of a Parking Facility, Lift, Lift Terminal Facility, Maintenance Facility or Day Skier Facility, Whistler shall, if that Recreation Improvement or any part of it is to be located on land that is not Crown Land, other than Whistler Lands, at its expense, cause the Recreation Improvement (or that part of it that is not located on Crown land) to be conveyed to the Province free and clear of any liens, charges and encumbrances except existing utility easements and rights-of-way.
- 4.06 Where Whistler conveys land or causes land to be conveyed to the Province under section 4.05 and has applied for a permitted Tenure of that land under the Land Act, the conveyance shall be conditional upon a grant by the Province of the Tenure over that land for its intended purpose in accordance with Article VI.

- 4.07 Whistler shall not construct any Recreation Improvement that is a Ski Trail without the consent of the Province which consent shall not be unreasonably withheld, so long as its design and location conform to the Whistler Master Plan.
- 4.08 Land conveyed to the Province under this Article shall be added to and form part of the Controlled Recreation Area.

ARTICLE V- MOUNTAIN PHASES

- 5.01 Whistler shall, at its expense, construct the Recreation Improvements in the Mountain Phases set out in the Phasing Schedule
- (a) in compliance with the Whistler Master Plan and this agreement;
 - (b) in a good and workmanlike manner consistent with accepted industry standards for new and similar developments in British Columbia;
 - (c) within the time frame for their completion specified in a Construction and Completion Schedule for each Mountain Phase delivered under section 4.02 (a) (vi);
- and shall provide all labour, materials and supplies incidental thereto.
- 5.02 When the Recreation Improvements of a Mountain Phase are in a state of Substantial Completion, Whistler shall undertake the construction of the Recreation Improvements specified for each succeeding Mountain Phase in the order set out in the Phasing Schedule and Article IV applies to each succeeding Mountain Phase.
- 5.03 Notwithstanding section 5.02, Whistler shall not be required to proceed with any succeeding Mountain Phase until the Utilization of the last completed Mountain Phase during a Season on Weekdays is 35% and on Weekends and Holidays is 80% of the Skier Carrying Capacity of all completed Mountain Phases.
- 5.04 Whistler shall not without the consent of the Province (which consent shall not be unreasonably withheld) proceed with the construction of Recreation Improvements in a succeeding Mountain Phase until all of the Recreation Improvements in preceding Mountain Phases are in a state of Substantial Completion.
- 5.05 It is a condition of the obligation of Whistler to construct a Recreation Improvement that
- (a) the permitted Tenure for that Recreation Improvement shall have been granted to Whistler; and

(b) the time from the date Whistler commences construction of the Recreation Improvement to the expiry of the term of the Tenure is

- (i) in respect to a Lift, Parking Facility, Ski Trail or Lift Terminal Facility, at least 10 years,
- (ii) in respect of Recreation Improvements other than a Parking Facility, Ski Trail or Lift Terminal Facility, at least 20 years.

ARTICLE VI - FORMS OF TENURE (RECREATION IMPROVEMENTS)

- 6.01 The form of Tenure for Recreation Improvements other than Lifts, Access Routes and Ski Trails shall be by way of lease substantially in the form of lease set out in Schedule "E".
- 6.02 The form of Tenure for Recreation Improvements that are Lifts shall be by right-of-way substantially in the form of right-of-way set out in Schedule "F".
- 6.03 The form of Tenure for Recreation Improvements that are Ski Trails or Access Routes shall be by way of licence authorizing Whistler to construct and maintain them substantially in the form of licence set out in Schedule "G".
- 6.04 Not later than 12 months after the construction of a Recreation Improvement (other than a Ski Trail or Access Route) is in a state of Substantial Completion, Whistler shall
- (a) for any Recreation Improvement that is a Lift, prepare a surveyed right-of-way plan that encompasses land reasonably required for the operation and maintenance of that Recreation Improvement, which shall not without the consent of the Province encompass a strip of land more than 15 metres in perpendicular width lying between lines parallel to and situated such number of centimetres from each side of the centre line of the Lift;
 - (b) for any Recreation Improvement other than a Lift, Ski Trail or Access Route, prepare a surveyed boundary plan that encompasses land that is occupied by the Recreation Improvement and land reasonably required for its intended use.
- 6.05 Whistler shall prepare the plans referred to in section 6.04, in compliance with the standards of the Surveyor-General and instructions issued by him from time to time and deliver two approved copies of them to the Regional Director for his acceptance.
- 6.06 On the acceptance of a survey plan by the Regional Director under section 6.05,
- (a) Whistler shall affix one copy of the accepted plan

to the appropriate Tenure for the Recreation Improvement described in it, and

- (b) the Regional Director shall retain the other copy for his records

and thereafter the plan so affixed shall in all respects establish, govern and define the land forming part of the Tenure and any surplus land shall be released and discharged from the rights therein granted.

- 6.07 The term of each Tenure issued to Whistler in connection with a Recreation Improvement shall commence on the date it is issued and shall terminate on September 30, 2032.
- 6.08 The Province shall not be under any obligation to grant a Tenure for a Recreation Improvement until the expiration of 30 days after any conditions precedent to the grant of the Tenure have been met provided such conditions precedent shall be restricted to the usual and customary conditions precedent required by the Regional Director in respect of grants of similar tenures to lands owned by the Province.

ARTICLE VII - COVENANTS OF WHISTLER

7.01 Whistler shall

- (a) observe, abide by and comply with all laws, by-laws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Recreation Improvements, the use and occupation of the land on which they are situate, or that affects the undertaking of Whistler or the manner in which it carries on its business and to indemnify and save the Province harmless from all loss, damage cost or expense suffered by the Province by reason of the failure of Whistler to do so;
- (b) use all reasonable efforts to minimize the adverse environmental impact of the development contemplated herein and comply in all material respects with the environmental requirements set forth in Schedule "H";
- (c) operate the Recreation Improvements in accordance with industry standards for similar developments in British Columbia, and without limiting the generality of the foregoing, comply in all material respects with all its operating covenants set forth in Schedule "I";
- (d) provide all management and technical expertise necessary for Whistler 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 at all times, the following policies of insurance:
 - (i) fire insurance and extended coverage supplemental risks contract on all Recreation Improvements in an amount not less than 100% of their full replacement cost,
 - (ii) comprehensive public liability insurance in respect of claims for personal injury, death or property damage arising out of any one occurrence in the Controlled Recreation Area to an amount not less than \$10,000,000 which

amount should be adjusted from time to time in keeping with the amounts customarily carried by prudent operators of similar ski areas in Canada, and which policy may permit a reasonable deductible amount; and

- (iii) such other insurance as would be maintained by a prudent operator of a ski area in Canada, including without limitation, policies of insurance to cover the risk, if any, associated with the operation of any motor vehicle and aircraft, including helicopters, that are owned or leased by Whistler;
- (f) cause each policy of insurance required to be maintained by it
- (i) to name the Province as a named insured as its interest may appear under the policy,
 - (ii) to prohibit the insurer from exercising any rights of subrogation against the Province,
 - (iii) to afford protection to the Province in respect of cross-liability between the Province and Whistler and to provide that the coverage under the policy shall not be cancelled or any provisions changed or deleted unless 30 days prior written notice is given to the Province by the insurer;
- (g) apply all proceeds of the insurance referred to in section 7.01 (e) (i) to be used for the repair or rebuilding of Recreation Improvements damaged or destroyed by the hazard insured against and cause that policy of insurance to provide that the proceeds shall be paid to Whistler or its mortgage creditor having a charge on a Recreation Improvement (as their interests appear) and when received by Whistler or such mortgage creditor, to be used in accordance with this covenant;

- (h) provide to the Province from time to time, upon request, proof that all premiums under the policies required to be maintained by Whistler have been paid and that they are in full force and effect and contain the above terms;
- (i) use all reasonable efforts to procure from each mortgage creditor referred to in section 7.01 (g) an agreement with Whistler that the insurance proceeds under policies referred to in section 7.01 (e) (i) will be dealt with as provided in section 7.01 (g) notwithstanding any default under such creditor's mortgage or charge;
- (j) pay when due all taxes, rates, assessments, levies or other dues now or hereafter charged, or levied against the land comprised in the Tenures and all Recreation Improvements constructed or installed thereon and all other taxes, rates and assessments payable by Whistler under any Federal or Provincial statute including without limitation the Income Tax Act (Canada) and the Workers Compensation Act;
- (k) pay interest to the Province on Fees in arrears at the rate of interest prescribed from time to time under the Land Act in respect of money payable to the Province under that Act;
- (l) subject to section 7.02, indemnify and save the Province harmless against all loss, damage, costs and liabilities, including fees of solicitors and other professional advisors arising out of
 - (i) any breach, violation or non-performance of any covenant, term or condition contained in this agreement or in a Tenure or other interest in land granted to Whistler under Article VI,
 - (ii) any personal injury, death, or property damage occurring in the Controlled Recreation Area, or the activities carried out by Whistler in the Controlled Recreation Area including any matter or thing permitted or omitted (whether negligent or otherwise) by Whistler, its servants, agents, contractors or subcontractors,

and the amount of that loss, damage, costs and liabilities shall be added to the Fees and Whistler shall pay the amount so added to the Province immediately;

- (m) pay all accounts and expenses as they become due for labour performed on or materials supplied for constructing or repairing the Recreation Improvements save and except for money that Whistler is required to holdback under the Builders' Lien Act and if any claim of lien is made under that Act, Whistler shall take all necessary steps to have the same discharged unless the claim of lien is being contested in good faith by Whistler and Whistler has taken steps to ensure that the claim will not subject any of its Tenures or the Recreation Improvements to sale or forfeiture;
- (n) notwithstanding Article XVII, permit any person to pass and repass by foot on the Hiking Trails during the months of May to November of each year without fee or charge;

7.02 The obligation of Whistler under section 7.01 (1) (ii) does not apply to any personal injury, death or property damage sustained by a person as a result of his passing or repassing on a Hiking Trail by foot, motor vehicle, motorcycle or any other means during the period from the first day of May to the last day of November of each year during the continuance of this agreement.

ARTICLE VIII- FEES

- 8.01 In consideration of the development rights granted herein and as rental for all Tenures granted hereunder, Whistler shall pay to the Province:
- (a) an initial fee of \$100 for each Tenure issued hereunder, payable in advance on the date of issuance;
 - (b) a minimum fee in an amount equal to 1% of the Gross Revenue of Whistler during its last completed Financial Year payable in advance on January 1, 1983 and on January 1 in each and every year thereafter during the term of this agreement; and
 - (c) a percentage fee of 2%, or such other percentage determined in accordance with section 8.02, of the Gross Revenue of Whistler calculated in respect of each Financial Year less the Minimum Fee;
- 8.02 The percentage of the Percentage Fee shall be reviewed by the Province on December 1, 1993 and on each 10th anniversary of that date and the Province may at each review, increase the percentage by an amount it may determine but no increase shall be more than 1% and no increase shall be so large as to cause the Percentage Fee to be an amount greater than the highest fee then charged by the Province under any Provincial Ski Area Policy then in effect.
- 8.03 Within 120 days after the end of each Financial Year, Whistler shall deliver to the Province a detailed statement of Gross Revenue for that Financial Year audited by the auditor of Whistler together with payment of the Percentage Fee as required by section 8.01.
- 8.04 Whistler shall give notice in writing to the Province of its Financial Year end and any changes to that date and no fiscal year of Whistler shall exceed 12 months.
- 8.05 The Province shall have the right to inspect and take copies of and cause an audit to be taken by an independent auditor of the books and records of Whistler pertaining to Gross Revenue upon reasonable notice and at reasonable times.
- 8.06 The fees provided in section 8.01 are in addition to the fees provided in the Land Act or regulations under that Act in effect from time to time in respect of processing of applications for the Tenures and issuing them.

ARTICLE IX- SECURITY BOND AND PERFORMANCE

- 9.01 The Security Bond required to be delivered to the Province under section 4.02 (a) (v) shall
- (a) be in the amount of \$50,000;
 - (b) be in the form of an unconditional letter of credit issued by a Canadian chartered bank that remains in effect until the Mountain Phase in respect of which it is given is in a state of Substantial Completion, or in any other form acceptable to the Province.
- 9.02 The Province may use the Security Bond given by Whistler with respect to any Mountain Phase for the payment of all costs and expenses incurred by the Province to cure or compel Whistler to cure any Event of Default that relates to the construction of Recreation Improvements for that Mountain Phase or to remedy any material damage to the environment caused by that construction or by the activities of Whistler, its servants, agents or contractors.
- 9.03 When the Recreation Improvements in a Mountain Phase are in a state of Substantial Completion, the Province shall return the Security Bond to Whistler less all sums drawn down by the Province to pay or provide for the payments of costs and expenses under section 9.02.
- 9.04 Where the Province draws down money under the Security Bond under section 9.02, Whistler shall, within 30 days of that event, deliver another Security Bond to the Province in an amount equal to the amount drawn down by the Province under section 9.02.
- 9.05 Subject to section 9.07, Whistler shall, at the request of the Province, post security in the form of an unconditional letter of credit issued by a Canadian chartered bank and that remains in effect until the Mountain Phase in respect of which it is given is in a state of Substantial Completion (or in any other form acceptable to the Province) in an amount equal to 100% of the estimated capital costs of the Recreation Improvements for the Mountain Phase that may be called and drawn down if Whistler fails to construct the Recreation Improvements for which the security is given to a state of Substantial Completion.

9.06 A Performance Bond may provide partial releases as follows:

- (a) by an amount equal to 25% on receipt by the Province of a certificate from the Engineer, under his professional seal stating that 25% of the work to be undertaken by the contract has been completed or is in place;
- (b) by an amount equal to 25% on receipt by the Province of a certificate from the Engineer under his professional seal stating that 50% of the work to be undertaken by the contract has been completed or is in place;
- (c) by an amount equal to 25% on receipt by the Province of a certificate from the Engineer under his professional seal stating that 75% of the work to be undertaken by the contract has been completed or is in place; and
- (d) the balance in 60 days after receipt by the Province of a certificate of the Engineer under his professional seal stating that the work to be undertaken by the contract is in a state of Substantial Completion.

9.07 Notwithstanding section 9.05, the Province shall not be entitled to request Whistler to post a Performance Bond unless it relates to a Mountain Phase that is not in a state of Substantial Completion at the time the Province conveys to Whistler Crown land required for the construction of the Base Area Phase described in Column II of the Phasing Schedule immediately opposite to that Mountain Phase.

ARTICLE X - MODIFICATIONS TO WHISTLER MASTER PLAN

10.01 Whistler shall, in consultation with the Province, continually review and re-evaluate the Whistler Master Plan and the Phasing Schedule and in conducting that review and re-evaluation shall take into account changing technology in the industry and changing public requirements.

10.02 Where, on the basis of a review under section 10.01, Whistler considers that the Whistler Master Plan, the Phasing Schedule, or any part of either of them should be altered in a material way, it shall submit the proposed alteration to the Province for its approval.

10.03 A proposal under section 10.02 shall be in writing and shall be accompanied by maps, schedules and other documents that show conceptually and in detail the alterations being recommended and the impact of them on the existing Whistler Master Plan and the Phasing Schedule.

10.04 A change or alteration to the Whistler Master Plan or the Phasing Schedule that

(a) does not require the Province to discharge a restrictive covenant or condition referred to in section 14.09;

(b) does not reduce the Skier Carrying Capacity of Recreation Improvements that are Lifts, Lift Terminal Facilities or Ski Trails;

(c) does not increase the number of Bed Units to be constructed in a Base Area; or

(d) does not decrease the number of parking spaces referred to in paragraph (x) of Schedule "I";

(e) does not identify further Base Areas;

does not constitute a change to the Whistler Master Plan or the Phasing Schedule that requires the consent of the Province but Whistler shall give written notice of those changes to the Province.

10.05 The Province shall not unreasonably refuse to approve an alteration under this Article so long as it does not,

(a) impair the objectives of the parties referred to in Article II or render them unattainable;

(b) conflict with the Provincial Ski Area Policy.

ARTICLE XI - EXISTING RECREATION IMPROVEMENTS

11.01 Prior to or contemporaneously with the execution of this agreement, Whistler shall deliver the following to the Province

- (a) applications under the Land Act for rights-of-way for each Recreation Improvement in Mountain Phases I to VII that is a Lift together with a surveyed right-of-way plan for each of them prepared in accordance with Article VII;
- (b) applications under the Land Act for leases for each Recreation Improvement (other than a Lift, Ski Trail or Access Route) together with a surveyed boundary plan of each of them prepared in accordance with Article VII; and
- (c) an application under the Land Act for one licence for all existing Recreation Improvements that are Ski Trails or Access Routes together with a sketch plan showing the general area in which they are located;
- (d) other information and documentation that the Province reasonably requires under its land administration policy and procedure (as it exists from time to time) to grant the leases, licences, and rights-of-way applied for under this Article.

11.02 The Province shall, within 120 days of the receipt of the material referred to in section 11.01, grant the Tenures applied for to Whistler.

11.03 The Tenures issued under this Article shall, on the dates they are issued, supercede and replace all other rights, titles, interests, in land previously issued by the Province to Whistler in the Controlled Recreation Area, and on and after those dates those earlier rights, titles and interests and the instruments creating them shall be void.

ARTICLE XII - EVENTS OF DEFAULT

12.01 The Province may exercise its remedies under section 12.03 on the happening of any one or more of the following events:

- (a) if Whistler fails to pay Fees when due and the default continues for a period of 15 days after written notice has been given by the Province to Whistler specifying the default and requiring the same to be remedied;
- (b) if Whistler fails in any material respect to observe or perform or keep any of its covenants or obligations under this agreement (other than its covenants to pay Fees) or any Tenure granted hereunder, and the default continues for a period of 30 days after written notice has been given by the Province to Whistler specifying the default and requiring the same to be remedied or, if the nature of the default reasonably requires more than 30 days to be cured, Whistler fails to commence curing the default within the 30 day period and thereafter fails to prosecute to completion with diligence and continuity the curing of the default;
- (c) if an order is made or a resolution passed for the liquidation or winding up of Whistler or if a petition is filed for the liquidation or winding up of Whistler;
- (d) if Whistler makes an assignment for the general benefit of its creditors or if a bankruptcy petition is filed or presented against Whistler or Whistler consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging Whistler bankrupt under any law relating to bankruptcy or insolvency;
- (e) if any execution, sequestration, extent or other process of any court becomes enforceable against Whistler in respect of any part of its Interest or if a distress or analogous process is levied on its Interest or any part of it and Whistler fails to defend such process in good faith while having taken steps to ensure that its Interest or such part of it will not be subject to sale or forfeiture;

- (f) if Whistler ceases to carry on its business as a ski area operator in the Resort Area;
- (g) if any floating charge granted by Whistler over its Interest crystallizes or becomes enforceable or if any other charge or encumbrance granted, created or issued over its Interest becomes enforceable (including the appointment of a receiver or receiver-manager) and in either case such enforcement adversely affects in any material respect the Interest or Whistler's ability to carry on its business as a ski area operator in the Resort Area;
- (h) if Whistler does any act or thing or omits to do any act or thing that constitutes a default under any indenture, mortgage, deed of trust, bill of sale or other security instrument that affects its Interest to which it is a party or is bound and which default adversely affects in any material respect the ability of Whistler to carry on its business as a ski area operator in the Resort Area;
- (i) if without the consent of the Province, Hastings West Investment Ltd. ceases to own or control, directly or indirectly at least 51% of the issued and outstanding voting shares in the capital of Whistler;
- (j) if, without the consent of the Province, Whistler is amalgamated with another company or is reorganized and Hastings West Investment Ltd. does not acquire, directly or indirectly or through a corporation in which it owns not less than 51% of the issued voting shares, ownership or effective control of, or thereafter ceases to be the owner of or to retain effective control of, at least 51% of the issued and outstanding voting shares in the capital of the amalgamated or reorganized company;
- (k) if, without the consent of the Province, Whistler directly or indirectly enters into a partnership or co-ownership agreement whereby the other party to it acquires an interest in a Recreation Improvement or Whistler sells or transfers an interest in a Recreation Improvement to any person, firm or corporation.

12.02 Section 12.01 (k) does not apply where Whistler transfers, sells or disposes of its Interest to a partnership or limited partnership in which Hastings West Investment Ltd.

(a) is a partner; and

(b) pursuant to the partnership agreement, either directly or indirectly or through a corporation in which it owns not less than 51% of the issued voting shares, Hastings West Investment Ltd. controls the business and affairs of the partnership.

12.03 On the happening of an Event of Default or at any time thereafter, 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 Whistler 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 all actions in its own name or in the name of Whistler that may reasonably be required to cure the Event of Default in which case all payments, costs and expenses incurred therefor shall be payable by Whistler to the Province on demand;

(c) suspend the rights of Whistler under this agreement to acquire any further Tenures or any Crown Lands in a Base Area;

(d) terminate this agreement and any Tenure granted hereunder;

(e) waive the Event of Default provided, however, that any waiver of the particular Event of Default shall not operate as a waiver of any subsequent or continuing Event of Default.

ARTICLE XIII - DISPOSITION OF RECREATION IMPROVEMENTS

- 13.01 All Recreation Improvements constructed on Tenures, exclusive of Moveable Recreation Improvements and Independent Recreation Facilities outside the Controlled Recreation Area shall be and remain vested in the Province absolutely.
- 13.02 Whistler shall not remove any Moveable Recreation Improvements during the term of this agreement except for the purpose of repair or replacement in accordance with its normal maintenance program or the Whistler Master Plan.
- 13.03 On the expiration of this agreement by effluxion of time, all Recreation Improvements shall vest in and become the property of the Province absolutely except those that the Province, by notice in writing to Whistler, elects not to retain in which case Whistler may, within two years of the date of expiration, remove the Recreation Improvements described in the notice.
- 13.04 Where Whistler removes a Recreation Improvement described in a notice given under section 13.03, it shall remove all concrete foundations (other than Lift tower footings) and leave the surface of the land in a safe, clean and tidy condition satisfactory to the Regional Director.
- 13.05 If this agreement is terminated by the Province under section 12.03, the market value of each of the Recreation Improvements, Gondola Base and the North Side Base shall be determined by an independent appraiser acceptable to the parties which appraiser shall determine the amount that a purchaser in an arms length transaction would pay for them and the right to operate them on a going concern basis in their then existing condition and location on the basis that they would be situate on Tenures having a maximum term of years permitted under the Provincial Ski Area Policy in effect as of the date of termination at the rents specified in that policy for those tenures and the cost of such appraisal shall be borne equally by the parties.

- 13.06 Within 30 days after the Appraised Market Value of the Recreation Improvements has been determined under section 13.05, the Province shall, by way of public tender, solicit offers for the right to purchase and operate the Recreation Improvements in their existing state over the maximum term of years permitted under and on terms and conditions consistent with the Provincial Ski Area Policy in effect on the date of termination.
- 13.07 If the Province wishes to accept an offer solicited under this Article and the bid price specified in it for the Recreation Improvements and the right to operate them is in the aggregate, less than the Appraised Market Value of them, the Province shall, on the closing of the purchase and sale contemplated by the offer, pay to Whistler an amount equal to the difference between the Appraised Market Value of them and the bid price for the Recreation Improvements that was specified in the offer.
- 13.08 Section 13.07 does not apply where Whistler consents in writing to the acceptance of an offer by the Province for the right to operate the Recreation Improvements at an amount less than their Appraised Market Value.
- 13.09 If the Province elects not to accept any offer made as a result of the solicitation under section 13.06, the Province shall within the 12 month period following the closing of tenders, make a second solicitation for offers for the right to operate the Recreation Improvements in their existing state over the maximum term of years permitted under and on terms and conditions of the Provincial Ski Area Policy in effect on the date of termination.
- 13.10 Sections 13.07 and 13.08 apply in respect of offers made in response to a solicitation made under section 13.09.
- 13.11 If the Province elects not to accept an offer made in response to a solicitation under section 13.09, Whistler shall remove all Recreation Improvements that are Lifts, Lift Terminal Facilities and buildings from the Tenures (save and except for concrete footings of the Lift towers) and leave the surface of the Tenures in a safe, clean and tidy condition satisfactory to the Regional Director.

- 13.12 Where the Province accepts an offer made in response to a solicitation under this Article, it shall, subject to section 13.07, pay to Whistler an amount equal to the amount bid for the Recreation Improvements on the same terms and conditions and at the time the Province is paid for them.
- 13.13 If the Province fails to comply with sections 13.06 to 13.12, Whistler shall be entitled to solicit offers for the purchase of the Recreation Improvements and the right to operate them and the Province shall accept and agree to an offer presented by Whistler under this section.
- 13.14 Notwithstanding any other provision of this Article, the Province shall not be entitled to refuse to accept any offer to purchase and operate the Recreation Improvements if the price specified in the offer is equal to or greater than the Appraised Market Value.
- 13.15 On the expiration or earlier termination of this agreement, Whistler shall sell and the Province shall purchase the Gondola Base and the North Side Base for a price equal to the Appraised Market Value determined in accordance with section 13.05.

ARTICLE XIV - BASE AREA DEVELOPMENT

14.01 So long as Whistler is not in default under this agreement, it shall be entitled to purchase the Crown Land in the Base Areas from the Province, in phases, for development in accordance with the Whistler Master Plan on the terms and conditions set forth in this Article.

14.02 Subject to section 14.10, the purchase price for

(a) Sites 1, 2, 3, 5, and 6, if purchased by Whistler on or before September 30, 1992, shall be as follows:

Site 1 - \$ 72,000
Site 2 - \$136,000
Site 3 - \$130,000
Site 5 - \$212,000
Site 6 - \$ 92,000; and

(b) a parcel of Crown land in a Base Area identified in an amendment to the Whistler Master Plan that is purchased by Whistler on or before September 30, 1992, shall be the value of such parcel as at September 30, 1982 as determined by the Province in accordance with the Provincial Ski Area Policy;

and after September 30, 1992 shall be fixed by the Province in accordance with the Provincial Ski Area Policy in effect from time to time.

14.03 Subject to section 14.04, Whistler shall be entitled, from time to time, to apply under the Land Act for a fee simple grant of Crown Land in the Base Areas in the consecutive phases shown in the Phasing Schedule and the application for the Crown Land comprised in a Base Area Phase shall

(a) identify only those parcels that are necessary for the development of that Base Area Phase; provided that in the case of Base Area Phase I, Whistler shall be entitled to purchase any one or more of Sites 1, 2, 3, 5, and 6 from time to time and shall purchase not less than all of each such Site;

(b) identify those parcels necessary for the construction of Independent Recreation Facilities, if any, and describe the nature or type of them;

(c) be accompanied by evidence, in the form of a certificate of the Engineer under his professional seal

(i) that the Recreation Improvements comprised in the Preceding Mountain Phases that are described in the Phasing Schedule are in a state of Substantial Completion, and

(ii) that construction of the Recreation Improvements comprised in the Corresponding Mountain Phase has commenced or is in a state of Substantial Completion, as the case may be,

and if the Corresponding Mountain Phase is not in a state of Substantial Completion, the Province may request a Performance Bond under section 9.05.

14.04 The obligation of the Province to sell Crown Land for the development of a Base Area Phase to Whistler is subject to the following conditions:

(a) that

(i) the Recreation Improvements comprised in the Preceding Mountain Phases that are described in the Phasing Schedule are in a state of Substantial Completion, and

(ii) the construction of the Recreation Improvements comprised in the Corresponding Mountain Phase has commenced;

(b) that Whistler shall have delivered to the Province

(i) a proposed scheme of subdivision or development for the land in the Base Area Phase (by way of a proposed subdivision plan under the Land Title Act or a proposed strata plan under the Condominium Act) that shows the number of Bed Units to be allocated to each Site within that Base Area Phase,

(ii) a general description of the proposed development of the Base Area Phase and of the number and allocation of Bed Units to the proposed development,

(iii) a boundary survey of each parcel of Crown Land in the Base Area Phase prepared by a British Columbia land surveyor in accordance with the standards of the Surveyor-General and any instructions issued by him;

and for the purpose of paragraph (i) above, a subdivision or development plan shall specify the number of proposed single family units, condominium units and hotel units and the corresponding number of Bed Units calculated as follows:

1 single family unit	=	6 Bed Units
1 condominium unit	=	4 Bed Units
1 hotel unit	=	2 Bed Units

(c) that Whistler shall have paid the purchase price for the Crown Land in the Base Area Phase in full, together with all fees charged by the Province under the Land Act for processing and issuing a Crown grant of that Crown Land.

(d) that the Development Scheme complies in all material respects to the then existing subdivision and zoning by-laws of the Resort Municipality of Whistler.

14.05 Whistler shall be entitled to carry forward undeveloped Bed Units from completed Base Area Phases to succeeding Base Area Phases but sections 14.03 and 14.04 apply to the entitlement of Whistler to develop those succeeding Base Area Phases.

14.06 An instrument conveying Crown Land to Whistler under this Article shall

(a) except and reserve the rights, titles, interests and privileges referred to in section 47 of the Land Act;

(b) be subject 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 the licence at the date hereof;