# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION
**WASHINGTON, D.C. 20549**

# FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended October 31, 2016

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 001-09614


# Vail Resorts, Inc.
**(Exact Name of Registrant as Specified in Its Charter)**

| **Delaware** | **51-0291762** |
|---|---|
| **(State or Other Jurisdiction of Incorporation or Organization)** | **(I.R.S. Employer Identification No.)** |
| **390 Interlocken Crescent Broomfield, Colorado** | **80021** |
| **(Address of Principal Executive Offices)** | **(Zip Code)** |

**(303) 404-1800**
**(Registrant's Telephone Number, Including Area Code)**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☒ Yes ☐ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

| | | | |
|---|---|---|---|
| Large accelerated filer | ☒ | Accelerated filer | ☐ |
| Non-accelerated filer | ☐ (Do not check if a smaller reporting company) | Smaller reporting company | ☐ |

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☒ No

As of December 6, 2016, 39,955,039 shares of the registrant's common stock were outstanding.

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**Vail Resorts, Inc.**
**Consolidated Condensed Balance Sheets**
**(In thousands, except share and per share amounts)**
**(Unaudited)**

| | October 31, 2016 | July 31, 2016 | October 31, 2015 |
|---|---|---|---|
| **Assets** | | | |
| Current assets: | | | |
| Cash and cash equivalents | $ 106,751 | $ 67,897 | $ 39,606 |
| Restricted cash | 13,203 | 6,046 | 5,562 |
| Trade receivables, net | 59,445 | 147,113 | 52,389 |
| Inventories, net | 112,792 | 74,589 | 95,001 |
| Other current assets | 40,172 | 27,220 | 61,762 |
| Total current assets | 332,363 | 322,865 | 254,320 |
| Property, plant and equipment, net (Note 6) | 1,699,087 | 1,363,814 | 1,388,565 |
| Real estate held for sale and investment | 116,852 | 111,088 | 120,769 |
| Goodwill, net (Note 6) | 1,454,943 | 509,037 | 499,607 |
| Intangible assets, net | 286,360 | 140,007 | 142,687 |
| Other assets | 34,514 | 35,207 | 37,129 |
| Total assets | $ 3,924,119 | $ 2,482,018 | $ 2,443,077 |
| **Liabilities and Stockholders' Equity** | | | |
| Current liabilities: | | | |
| Accounts payable and accrued liabilities (Note 6) | $ 542,923 | $ 397,488 | $ 438,837 |
| Income taxes payable | 73,739 | 95,639 | 54,312 |
| Long-term debt due within one year (Note 4) | 38,374 | 13,354 | 13,319 |
| Total current liabilities | 655,036 | 506,481 | 506,468 |
| Long-term debt (Note 4) | 1,371,779 | 686,909 | 814,797 |
| Other long-term liabilities (Note 6) | 272,309 | 270,168 | 254,251 |
| Deferred income taxes | 98,192 | 129,994 | 110,912 |
| Total liabilities | 2,397,316 | 1,593,552 | 1,686,428 |
| Commitments and contingencies (Note 8) | | | |
| Stockholders' equity: | | | |
| Preferred stock, $0.01 par value, 25,000,000 shares authorized, no shares issued and outstanding | — | — | — |
| Common stock, $0.01 par value, 100,000,000 shares authorized, 45,060,893, 41,614,432 and 41,566,094 shares issued, respectively | 451 | 416 | 416 |
| Exchangeable shares, $0.01 par value, 418,095, zero and zero shares issued and outstanding, respectively (Note 5) | 4 | — | — |
| Additional paid-in capital | 1,209,935 | 635,986 | 624,274 |
| Accumulated other comprehensive loss | (19,784) | (1,550) | (7,321) |
| Retained earnings | 394,690 | 486,667 | 358,507 |
| Treasury stock, at cost, 5,434,977, 5,434,977, and 5,326,941 shares, respectively (Note 10) | (246,979) | (246,979) | (233,192) |
| Total Vail Resorts, Inc. stockholders' equity | 1,338,317 | 874,540 | 742,684 |
| Noncontrolling interests | 188,486 | 13,926 | 13,965 |
| Total stockholders' equity | 1,526,803 | 888,466 | 756,649 |
| Total liabilities and stockholders' equity | $ 3,924,119 | $ 2,482,018 | $ 2,443,077 |

The accompanying Notes are an integral part of these unaudited consolidated condensed financial statements.

**Vail Resorts, Inc.**
**Consolidated Condensed Statements of Operations**
**(In thousands, except per share amounts)**
**(Unaudited)**

| | Three Months Ended October 31, | |
|---|---|---|
| | **2016** | **2015** |
| Net revenue: | | |
| Mountain | $ 110,767 | $ 100,933 |
| Lodging | 67,402 | 64,286 |
| Real estate | 96 | 9,348 |
| Total net revenue | 178,265 | 174,567 |
| Segment operating expense (exclusive of depreciation and amortization shown separately below): | | |
| Mountain | 168,253 | 151,158 |
| Lodging | 64,080 | 61,437 |
| Real estate | 1,485 | 9,341 |
| Total segment operating expense | 233,818 | 221,936 |
| Other operating (expense) income: | | |
| Depreciation and amortization | (40,581) | (38,700) |
| Gain on sale of real property | 6,466 | 1,159 |
| Change in estimated fair value of contingent consideration (Note 7) | (300) | — |
| Loss on disposal of fixed assets and other, net | (550) | (1,779) |
| Loss from operations | (90,518) | (86,689) |
| Mountain equity investment income, net | 832 | 842 |
| Investment income and other, net | 4,523 | 198 |
| Interest expense | (11,964) | (10,595) |
| Loss before benefit from income taxes | (97,127) | (96,244) |
| Benefit from income taxes | 33,509 | 36,574 |
| Net loss | (63,618) | (59,670) |
| Net loss attributable to noncontrolling interests | 1,031 | 83 |
| Net loss attributable to Vail Resorts, Inc. | $ (62,587) | $ (59,587) |
| Per share amounts (Note 3): | | |
| Basic net loss per share attributable to Vail Resorts, Inc. | $ (1.70) | $ (1.63) |
| Diluted net loss per share attributable to Vail Resorts, Inc. | $ (1.70) | $ (1.63) |
| Cash dividends declared per share | $ 0.81 | $ 0.6225 |

The accompanying Notes are an integral part of these unaudited consolidated condensed financial statements.

**Vail Resorts, Inc.**
**Consolidated Condensed Statements of Comprehensive Income (Loss)**
**(In thousands)**
**(Unaudited)**

| | Three Months Ended October 31, | |
|---|---|---|
| | 2016 | 2015 |
| Net loss | $ (63,618) | $ (59,670) |
| Foreign currency translation adjustments, net of tax | (24,412) | (2,408) |
| Comprehensive loss | (88,030) | (62,078) |
| Comprehensive loss attributable to noncontrolling interests | 7,209 | 83 |
| Comprehensive loss attributable to Vail Resorts, Inc. | $ (80,821) | $ (61,995) |

The accompanying Notes are an integral part of these unaudited consolidated condensed financial statements.

**Vail Resorts, Inc.**
**Consolidated Condensed Statements of Stockholders' Equity**
**(In thousands)**
**(Unaudited)**

| | Common Stock | | Additional Paid in Capital | Retained Earnings | Treasury Stock | Accumulated Other Comprehensive Loss | Total Vail Resorts, Inc. Stockholders' Equity | Noncontrolling Interests | Total Stockholders' Equity |
|---|---|---|---|---|---|---|---|---|---|
| | Vail Resorts | Exchangeable | | | | | | | |
| Balance, July 31, 2015 | $ 415 | $ — | $ 623,510 | $ 440,748 | $ (193,192) | $ (4,913) | $ 866,568 | $ 14,018 | $ 880,586 |
| Comprehensive loss: | | | | | | | | | |
| Net loss | — | — | — | (59,587) | — | — | (59,587) | (83) | (59,670) |
| Foreign currency translation adjustments, net of tax | — | — | — | — | — | (2,408) | (2,408) | — | (2,408) |
| Total comprehensive loss | | | | | | | (61,995) | (83) | (62,078) |
| Stock-based compensation expense | — | — | 4,090 | — | — | — | 4,090 | — | 4,090 |
| Issuance of shares under share award plans, net of shares withheld for taxes | 1 | — | (6,001) | — | — | — | (6,000) | — | (6,000) |
| Tax benefit from share award plans | — | — | 2,675 | — | — | — | 2,675 | — | 2,675 |
| Repurchase of common stock (Note 10) | — | — | — | — | (40,000) | — | (40,000) | | (40,000) |
| Dividends (Note 3) | — | — | — | (22,654) | — | — | (22,654) | — | (22,654) |
| Contributions from noncontrolling interests, net | — | — | — | — | — | — | — | 30 | 30 |
| Balance, October 31, 2015 | $ 416 | $ — | $ 624,274 | $ 358,507 | $ (233,192) | $ (7,321) | $ 742,684 | $ 13,965 | $ 756,649 |
| Balance, July 31, 2016 | $ 416 | $ — | $ 635,986 | $ 486,667 | $ (246,979) | $ (1,550) | $ 874,540 | $ 13,926 | $ 888,466 |
| Comprehensive loss: | | | | | | | | | |
| Net loss | — | — | — | (62,587) | — | — | (62,587) | (1,031) | (63,618) |
| Foreign currency translation adjustments, net of tax | — | — | — | — | — | (18,234) | (18,234) | (6,178) | (24,412) |
| Total comprehensive loss | | | | | | | (80,821) | (7,209) | (88,030) |
| Stock-based compensation expense | — | — | 4,577 | — | — | — | 4,577 | — | 4,577 |
| Shares issued for acquisition (Note 5) | 33 | 4 | 574,608 | — | — | — | 574,645 | — | 574,645 |
| Issuance of shares under share award plans, net of shares withheld for taxes | 2 | — | (11,526) | — | — | — | (11,524) | — | (11,524) |
| Tax benefit from share award plans | — | — | 6,290 | — | — | — | 6,290 | — | 6,290 |
| Dividends (Note 3) | — | — | — | (29,390) | — | — | (29,390) | — | (29,390) |
| Acquisition of noncontrolling interest (Note 5) | — | — | — | — | — | — | — | 181,818 | 181,818 |
| Distributions to noncontrolling interests, net | — | — | — | — | — | — | — | (49) | (49) |
| Balance, October 31, 2016 | $ 451 | $ 4 | $ 1,209,935 | $ 394,690 | $ (246,979) | $ (19,784) | $ 1,338,317 | $ 188,486 | $ 1,526,803 |

The accompanying Notes are an integral part of these unaudited consolidated condensed financial statements.

**Vail Resorts, Inc.**
**Consolidated Condensed Statements of Cash Flows**
**(In thousands)**
**(Unaudited)**

| | Three Months Ended October 31, | |
|---|---|---|
| | **2016** | **2015** |
| Cash flows from operating activities: | | |
| Net loss | $ (63,618) | $ (59,670) |
| Adjustments to reconcile net loss to net cash provided by operating activities: | | |
| Depreciation and amortization | 40,581 | 38,700 |
| Cost of real estate sales | — | 6,940 |
| Stock-based compensation expense | 4,577 | 4,090 |
| Deferred income taxes, net | (33,509) | (36,574) |
| Gain on sale of real property | (6,466) | (1,159) |
| Other non-cash income, net | (5,879) | (703) |
| Changes in assets and liabilities: | | |
| Restricted cash | (1,111) | 7,450 |
| Trade receivables, net | 90,431 | 62,174 |
| Inventories, net | (22,490) | (21,612) |
| Accounts payable and accrued liabilities | 74,681 | 83,805 |
| Income taxes payable | (24,405) | (2,795) |
| Other assets and liabilities, net | (7,289) | (6,075) |
| Net cash provided by operating activities | 45,503 | 74,571 |
| Cash flows from investing activities: | | |
| Capital expenditures | (46,043) | (25,077) |
| Acquisition of business, net of cash acquired | (512,348) | — |
| Cash received from the sale of real property | 7,692 | 2,842 |
| Other investing activities, net | 538 | 181 |
| Net cash used in investing activities | (550,161) | (22,054) |
| Cash flows from financing activities: | | |
| Proceeds from borrowings under Vail Holdings Credit Agreement term loan | 509,375 | — |
| Proceeds from borrowings under Vail Holdings Credit Agreement revolver | 110,000 | 70,000 |
| Repayments of borrowings under Vail Holdings Credit Agreement revolver | (50,000) | (57,500) |
| Dividends paid | (29,390) | (22,654) |
| Repurchases of common stock | — | (40,000) |
| Other financing activities, net | 3,456 | 2,576 |
| Net cash provided by (used in) financing activities | 543,441 | (47,578) |
| Effect of exchange rate changes on cash and cash equivalents | 71 | (792) |
| Net increase in cash and cash equivalents | 38,854 | 4,147 |
| Cash and cash equivalents: | | |
| Beginning of period | 67,897 | 35,459 |
| End of period | $ 106,751 | $ 39,606 |
| | | |
| Non-cash investing and financing activities: | | |
| Accrued capital expenditures | $ 17,546 | $ 24,631 |

The accompanying Notes are an integral part of these unaudited consolidated condensed financial statements.

## 1. Organization and Business

Vail Resorts, Inc. ("Vail Resorts") is organized as a holding company and operates through various subsidiaries. Vail Resorts and its subsidiaries (collectively, the "Company") operate in three business segments: Mountain, Lodging and Real Estate.

In the Mountain segment, the Company operates ten world-class mountain resort properties including Vail, Breckenridge, Keystone and Beaver Creek mountain resorts in Colorado; Park City mountain resort in Utah ("Park City"); Heavenly, Northstar and Kirkwood mountain resorts in the Lake Tahoe area of California and Nevada; Whistler Blackcomb Resort ("Whistler Blackcomb," acquired in October 2016) in British Columbia, Canada; Perisher Ski Resort ("Perisher") in New South Wales, Australia; and the ski areas of Wilmot Mountain in Wisconsin ("Wilmot," acquired in January 2016), Afton Alps in Minnesota and Mount Brighton in Michigan (together "Urban" ski areas); as well as ancillary services, primarily including ski school, dining and retail/rental operations, and for Perisher including lodging and transportation operations. The resorts located in the United States ("U.S."), except for Northstar, Park City and the Urban ski areas, operate primarily on federal land under the terms of Special Use Permits granted by the United States Department of Agriculture Forest Service (the "Forest Service"). The operations of Whistler Blackcomb are conducted on land owned by the government of the province of British Columbia, Canada within the traditional territory of the Squamish and Lil'wat nations. The operations of Perisher are conducted pursuant to a long-term lease and license on land owned by the government of New South Wales, Australia.

In the Lodging segment, the Company owns and/or manages a collection of luxury hotels and condominiums under its RockResorts brand, as well as other strategic lodging properties and a large number of condominiums located in proximity to the Company's North American mountain resorts, National Park Service ("NPS") concessionaire properties including the Grand Teton Lodge Company ("GTLC"), which operates destination resorts in Grand Teton National Park, Colorado Mountain Express ("CME"), a Colorado resort ground transportation company, and mountain resort golf courses.

Vail Resorts Development Company ("VRDC"), a wholly-owned subsidiary, conducts the operations of the Company's Real Estate segment, which owns, develops and sells real estate in and around the Company's resort communities.

The Company's mountain business and its lodging properties at or around the Company's mountain resorts are seasonal in nature with peak operating seasons primarily from mid-November through mid-April in North America. The Company's operating seasons at Perisher, its NPS concessionaire properties and its golf courses generally occur from June to early October.

## 2. Summary of Significant Accounting Policies

***Basis of Presentation***

*Consolidated Condensed Financial Statements*— In the opinion of the Company, the accompanying Consolidated Condensed Financial Statements reflect all adjustments necessary to state fairly the Company's financial position, results of operations and cash flows for the interim periods presented. All such adjustments are of a normal recurring nature. Results for interim periods are not indicative of the results for the entire fiscal year, particularly given the significant seasonality to the Company's operating cycle. The accompanying Consolidated Condensed Financial Statements should be read in conjunction with the audited Consolidated Financial Statements included in the Company's Annual Report on Form 10-K for the fiscal year ended July 31, 2016. Certain information and footnote disclosures, including significant accounting policies, normally included in fiscal year financial statements prepared in accordance with accounting principles generally accepted in the U.S. ("GAAP") have been condensed or omitted. The Consolidated Condensed Balance Sheet as of July 31, 2016 was derived from audited financial statements.

*Use of Estimates*— The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the balance sheet date and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ from those estimates.

*Fair Value Instruments*— The recorded amounts for cash and cash equivalents, receivables, other current assets, and accounts payable and accrued liabilities approximate fair value due to their short-term nature. The fair value of amounts outstanding under the Vail Holdings Credit Agreement revolver and term loan, Whistler Credit Agreement revolver and the Employee Housing Bonds (all as defined in Note 4, Long-Term Debt) approximate book value due to the variable nature of the interest rate associated with the debt.

***Recently Issued Accounting Standards***

*Adopted Standards*

In February 2015, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2015-02, "Consolidation (Topic 810): Amendments to the Consolidation Analysis," which amends the consolidation requirements in ASC 810, "Consolidation." This ASU affects reporting entities that are required to evaluate whether they should consolidate certain legal entities. All legal entities are subject to reevaluation under the revised consolidation model. Specifically, the amendments: (i) modify the evaluation of whether limited partnerships and similar legal entities are variable interest entities ("VIEs") or voting interest entities, (ii) eliminate the presumption that a general partner should consolidate a limited partnership, (iii) affect the consolidated analysis of reporting entities that are involved with VIEs, particularly those that have fee arrangements and related party relationships and (iv) provide a scope exception for certain entities. The standard was effective for the first interim period within fiscal years beginning after December 15, 2015 (the Company's first quarter of fiscal 2017). The standard may be applied retrospectively or through a cumulative effect adjustment to retained earnings as of the beginning of the fiscal year of adoption. The Company has adopted this standard as of August 1, 2016 which did not have a material impact on the Company's financial position or results of operations and cash flows. In October 2016, the FASB issued ASU 2016-17, "Consolidation (Topic 810): Interests Held through Related Parties That Are under Common Control," which changes how a single decision maker will consider its indirect interests when performing the primary beneficiary analysis under the VIE model. Under the new guidance, the single decision maker will consider that indirect interest on a proportionate basis. The Company does not have any VIEs under common control and therefore this standard will not have a material impact on the Company's financial position or results of operations and cash flows.

In April 2015, the FASB issued ASU No. 2015-05, "Intangibles - Goodwill and Other - Internal-Use Software (Subtopic 350-40): Customer's Accounting for Fees Paid in a Cloud Computing Arrangement." The standard provides guidance about whether a cloud computing arrangement includes a software license. If a cloud computing arrangement includes a software license, then the software license element of the arrangement should be accounted for as an acquisition of a software license. If a cloud computing arrangement does not include a software license, it should be accounted for as a service contract. The standard was effective for the first interim period within fiscal years beginning after December 15, 2015 (the Company's first quarter of fiscal 2017) and may be adopted either retrospectively or prospectively. The Company adopted this standard retrospectively as of August 1, 2016 which did not have a material impact on the Company's financial position or results of operations and cash flows.

In November 2015, the FASB issued ASU No. 2015-17, "Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes." The standard changes how deferred taxes are classified on an entity's balance sheets. The standard eliminates the current requirement for entities to present deferred tax liabilities and assets as current and noncurrent in a classified balance sheet. Instead, entities will be required to classify all deferred tax assets and liabilities as noncurrent, on a jurisdiction by jurisdiction basis. The standard is effective for financial statements issued for annual periods beginning after December 15, 2016 (the Company's first quarter of fiscal 2018), with early adoption permitted, and may be applied prospectively or retrospectively. The Company adopted this new accounting standard as of July 31, 2016 which amended presentation requirements, but did not affect the Company's overall financial position or results of operations and cash flows. The Company adopted this standard on a prospective basis, which reclassified the current deferred income tax asset to the noncurrent deferred income tax liability. Accordingly, the Consolidated Condensed Balance Sheet as of October 31, 2015 has not been retrospectively adjusted.

*Standards Being Evaluated*

The authoritative guidance listed below is currently being evaluated for its impact to Company policies upon adoption as well as any significant implementation matters yet to be addressed.

In May 2014, the FASB issued ASU No. 2014-09, "Revenue from Contracts with Customers (Topic 606)," which supersedes the revenue recognition requirements in Accounting Standards Codification ("ASC") 605, "Revenue Recognition." This ASU is based on the principle that revenue is recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The ASU also requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts, including significant judgments and changes in judgments and assets recognized from costs incurred to obtain or fulfill a contract. In August 2015, the FASB issued ASU No. 2015-14, which defers the effective date of the new revenue standard by one year, and would

allow entities the option to early adopt the new revenue standard as of the original effective date. This standard will be effective for the first interim period within fiscal years beginning after December 15, 2017 (the Company's first quarter of fiscal 2019 if it does not early adopt), using one of two retrospective application methods. The Company is evaluating the impacts, if any, the adoption of this accounting standard will have on the Company's financial position or results of operations and cash flows and related disclosures and is determining the appropriate transition method.

In February 2016, the FASB issued ASU No. 2016-02, "Leases (Topic 842)," which supersedes "Leases (Topic 840)." The standard requires lessees to recognize the assets and liabilities arising from all leases, including those classified as operating leases under previous accounting guidance, on the balance sheet and disclose key information about leasing arrangements. The standard also allows for an accounting policy election not to recognize on the balance sheet lease assets and liabilities for leases with a term of 12 months or less. Under the new guidance, lessees will be required to recognize a lease liability and a right-of-use asset on their balance sheets, while lessor accounting will be largely unchanged. The standard will be effective for fiscal years beginning after December 15, 2018, including interim periods within those years (the Company's first quarter of fiscal 2020), and must be applied using a modified retrospective transition approach to leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with early adoption permitted. The Company is currently evaluating the impacts the adoption of this accounting standard will have on the Company's financial position or results of operations and cash flows and related disclosures. Additionally, the Company is evaluating the impacts of the standard beyond accounting, including system, data and process changes required to comply with the standard.

In March 2016, the FASB issued ASU No. 2016-09, "Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting." The new guidance requires entities to record all excess tax benefits and tax deficiencies as income tax expense or benefit in the income statement when the awards vest or are settled. The guidance also requires entities to present excess tax benefits as an operating activity and cash paid to a taxing authority to satisfy statutory withholding as a financing activity on the statement of cash flows. Additionally, the guidance allows entities to make a policy election to account for forfeitures either upon occurrence or by estimating forfeitures. The standard is effective for financial statements issued for fiscal years beginning after December 15, 2016 (the Company's first quarter of fiscal 2018), with early adoption permitted. The Company is currently evaluating the impacts the adoption of this accounting standard will have on the Company's financial position or results of operations and cash flows.

In August 2016, the FASB issued ASU No. 2016-15, "Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments." The standard provides guidance for eight targeted changes with respect to how cash receipts and cash payments are classified in the statements of cash flows, with the objective of reducing diversity in practice. The standard is effective for financial statements issued for fiscal years beginning after December 15, 2017 (the Company's first quarter of fiscal 2019), with early adoption permitted. The Company is currently evaluating the impacts the adoption of this accounting standard will have on the Company's cash flows.

## 3. Net Loss Per Share

Basic earnings per share ("EPS") excludes dilution and is computed by dividing net loss attributable to Vail Resorts stockholders by the total weighted-average shares outstanding during the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised, resulting in the issuance of shares of common stock that would then participate in the earnings of Vail Resorts. Presented below is basic and diluted EPS for the three months ended October 31, 2016 and 2015 (in thousands, except per share amounts):

| | Three Months Ended October 31, | | | |
|---|---|---|---|---|
| | 2016 | | 2015 | |
| | Basic | Diluted | Basic | Diluted |
| Net loss per share: | | | | |
| Net loss attributable to Vail Resorts | $ (62,587) | $ (62,587) | $ (59,587) | $ (59,587) |
| Weighted-average Vail Resorts shares outstanding | 36,766 | 36,766 | 36,471 | 36,471 |
| Weighted-average Exchangeco shares outstanding | 68 | 68 | — | — |
| Total Weighted-average shares outstanding | 36,834 | 36,834 | 36,471 | 36,471 |
| Effect of dilutive securities | — | — | — | — |
| Total shares | 36,834 | 36,834 | 36,471 | 36,471 |
| Net loss per share attributable to Vail Resorts | $ (1.70) | $ (1.70) | $ (1.63) | $ (1.63) |

In connection with the Company's acquisition of Whistler Blackcomb in October 2016 (see Note 5, Acquisitions), the Company issued consideration in the form of shares of Vail Resorts common stock, par value $0.01 per share (the "Vail Shares"), and shares of the Company's wholly owned Canadian subsidiary ("Exchangeco"). Whistler Blackcomb shareholders elected to receive 3,327,719 Vail Shares and 418,095 shares of Exchangeco (the "Exchangeco Shares"). The Company's calculation of weighted-average shares outstanding includes Vail Shares as well as Exchangeco Shares. Both Vail Shares and Exchangeco Shares have a par value of $0.01 per share and Exchangeco Shares, while outstanding, are substantially the economic equivalent of the corresponding Vail Shares and are exchangeable, at any time prior to the seventh anniversary of the closing, into Vail Shares. Holders of Exchangeco Shares are entitled to cast votes on matters for which holders of Vail Shares are entitled to vote and will be entitled to receive dividends economically equivalent to the dividends declared by Vail Resorts with respect to the Vail Shares.

The Company computes the effect of dilutive securities using the treasury stock method and average market prices during the period. The number of shares issuable on the exercise of share based awards excluded from the calculation of diluted net loss per share because the effect of their inclusion would have been anti-dilutive totaled 1.7 million and 1.6 million for the three months ended October 31, 2016 and 2015, respectively.

The Company paid cash dividends of $0.81 and $0.6225 per Vail Resorts share ($29.4 million and $22.7 million in the aggregate) during the three months ended October 31, 2016 and 2015 respectively.

On December 8, 2016, the Company's Board of Directors declared a quarterly cash dividend of $0.81 per share, for both Vail Resorts shares and Exchangeco shares, payable on January 12, 2017 to stockholders of record as of December 28, 2016.

## 4. Long-Term Debt

Long-term debt as of October 31, 2016, July 31, 2016 and October 31, 2015 is summarized as follows (in thousands):

| | Maturity | October 31, 2016 | July 31, 2016 | October 31, 2015 |
|---|---|---|---|---|
| Vail Holdings Credit Agreement term loan (a) | 2021 | $ 750,000 | $ 240,625 | $ 250,000 |
| Vail Holdings Credit Agreement revolver (a) | 2021 | 135,000 | 75,000 | 197,500 |
| Whistler Credit Agreement revolver (b) | 2021 | 142,103 | — | — |
| Employee housing bonds | 2027-2039 | 52,575 | 52,575 | 52,575 |
| Canyons obligation | 2063 | 324,521 | 323,099 | 318,866 |
| Other | 2017-2028 | 10,617 | 11,021 | 11,436 |
| Total debt | | 1,414,816 | 702,320 | 830,377 |
| Less: Unamortized debt issuance costs (c) | | 4,663 | 2,057 | 2,261 |
| Less: Current maturities (d) | | 38,374 | 13,354 | 13,319 |
| Long-term debt | | $ 1,371,779 | $ 686,909 | $ 814,797 |

(a) On October 14, 2016, in order to finance the cash portion of the consideration and payment of associated fees and expenses of the Whistler Blackcomb acquisition (see Note 5, Acquisitions), the Company's wholly owned subsidiary, Vail Holdings, Inc., entered into the Second Amendment to Seventh Amended and Restated Credit Agreement, dated as of May 1, 2015 (the "Vail Holdings Credit Agreement"), with Bank of America, N.A., as administrative agent, and other lenders names therein, through which such lenders provided an additional $509.4 million in incremental term loans, and agreed on behalf of all lenders to extend the maturity date for the outstanding term loans and revolver facility under the Vail Holdings Credit Agreement to October 14, 2021 (the "Amendment"). The Vail Holdings Credit Agreement, as amended by the Amendment, consists of a $400.0 million revolving credit facility and a term loan facility in the amount of $750.0 million. Borrowings under the Vail Holdings Credit Agreement, including the term loan facility, bear interest at approximately 1.7% as of October 31, 2016. The other material terms of the Vail Holdings Credit Agreement, including those disclosed in the Company's Annual Report on Form 10-K filed on September 26, 2016, were not altered by the Amendment. The term loan facility is subject to quarterly amortization of principal, which begins on January 31, 2017, in equal installments, with five percent payable in each year and the final payment of all amounts outstanding, plus accrued and unpaid interest due October 2021.

(b) The WB Partnerships (as defined in Note 5, Acquisitions) are party to a credit agreement, dated as of November 12, 2013 (as amended, the "Whistler Credit Agreement"), by and among Whistler Mountain Resort Limited Partnership ("Whistler LP"), Blackcomb Skiing Enterprises Limited Partnership ("Blackcomb LP"), certain subsidiaries of Whistler LP and Blackcomb LP party thereto as guarantors (the "Whistler Subsidiary Guarantors"), the financial institutions party thereto

as lenders and The Toronto-Dominion Bank, as administrative agent. The Whistler Credit Agreement consists of a C$300.0 million revolving credit facility which matures on November 12, 2021. The WB Partnerships' obligations under the Whistler Credit Agreement are guaranteed by the Whistler Subsidiary Guarantors and are collateralized by a pledge of the capital stock of the Whistler Subsidiary Guarantors and a pledge of substantially all of the assets of Whistler LP, Blackcomb LP and the Whistler Subsidiary Guarantors. In addition, pursuant to the terms of the Whistler Credit Agreement, the WB Partnerships have the ability to increase the commitment amount by up to C$75.0 million. Borrowings under the Whistler Credit Agreement are available in Canadian or U.S. Dollars and bear interest annually, subject to an applicable margin based on the WB Partnerships' Consolidated Total Leverage Ratio (as defined in the Whistler Credit Agreement), with pricing as of October 31, 2016, in the case of borrowings (i) in Canadian Dollars, at the WB Partnerships' option, either (a) at the Canadian Prime Rate plus 1.0% per annum or (b) by way of the issuance of bankers' acceptances at a stamping fee of 2.00% per annum; and (ii) in U.S. Dollars, at the WB Partnerships option, either at (a) the U.S. Base Rate plus 0.75% per annum or (b) Banker's Acceptance Rate plus 1.75% per annum (approximately 2.7% as of October 31, 2016). The Whistler Credit Agreement also includes a quarterly unused commitment fee based on the Consolidated Total Leverage Ratio, which as of October 31, 2016 is equal to 0.3937% per annum. The Whistler Credit Agreement provides for affirmative and negative covenants that restrict, among other things, the WB Partnerships' ability to incur indebtedness and liens, dispose of assets, make capital expenditures, make distributions and make investments. In addition, the Whistler Credit Agreement includes the restrictive financial covenants (leverage ratios and interest coverage ratios) customary for facilities of this type. In connection with the Whistler Blackcomb transaction, the WB Partnerships obtained an amendment to the Whistler Credit Agreement to waive the change of control provision that otherwise would have required repayment in full of the facility as a result of the closing of the Whistler Blackcomb acquisition and to extend the maturity to November 12, 2021.

(c) The Company adopted ASU 2015-03 and ASU 2015-15 as of July 31, 2016 which alters the presentation of debt issuance costs. As a result, approximately $2.3 million of debt issuance costs have been reclassified to Long-term debt as of October 31, 2015.

(d) Current maturities represent principal payments due in the next 12 months.

Aggregate maturities for debt outstanding as of October 31, 2016 reflected by fiscal year (August through July) are as follows (in thousands):

| | | **Total** |
|---|---|---|
| 2017 (November 2016 through July 2017) | $ | 28,576 |
| 2018 | | 38,397 |
| 2019 | | 38,455 |
| 2020 | | 38,516 |
| 2021 | | 38,580 |
| Thereafter | | 1,232,292 |
| Total debt | $ | 1,414,816 |

The Company incurred gross interest expense of $12.0 million and $10.6 million for the three months ended October 31, 2016 and 2015, respectively, of which $0.2 million was amortization of deferred financing costs in both periods.

## 5. Acquisitions

*Whistler Blackcomb*

On August 5, 2016, the Company entered into an Arrangement Agreement (the "Arrangement Agreement") to acquire 100% of the outstanding common shares of Whistler Blackcomb (the "Arrangement"). On October 17, 2016, the Company, through Exchangeco, acquired all of the outstanding common shares of Whistler Blackcomb, for aggregate purchase consideration paid to Whistler Blackcomb shareholders of $1.09 billion. The consideration paid consisted of (i) approximately C$673.8 million ($512.6 million) in cash (or C$17.50 per Whistler Blackcomb share), (ii) 3,327,719 Vail Shares and (iii) 418,095 Exchangeco Shares. Each Exchangeco Share is exchangeable by the holder thereof for one Vail Share (subject to customary adjustments for stock splits or other reorganizations). In addition, the Company may require all outstanding Exchangeco Shares to be exchanged into an equal number of Vail Shares upon the occurrence of certain events and at any time following the seventh anniversary of the closing of the Arrangement. While outstanding, holders of Exchangeco Shares will be entitled to cast votes on matters for

which holders of Vail Shares are entitled to vote and will be entitled to receive dividends economically equivalent to the dividends declared by the Company with respect to the Vail Shares.`

Whistler Blackcomb owns a 75% interest in each of Whistler LP and Blackcomb LP (the “WB Partnerships”), which together operate Whistler Blackcomb resort, a year round mountain resort in British Columbia, Canada with a comprehensive offering of recreational activities, including both snow sports and summer activities. The remaining 25% limited partnership interest in each of the WB Partnerships is maintained by Nippon Cable, an unrelated party to the Company. The WB Partnerships hold land leases and rights-of-way under long-term agreements with the government of the province of British Columbia, Canada within the traditional territory of the Squamish and Lil’wat nations, which provide for the use of land at Whistler Mountain and Blackcomb Mountain.

The total cash consideration paid was C$673.8 million. The Company executed forward contracts for the underlying Canadian dollar cash consideration to economically hedge the risk associated with the U.S. dollar to Canadian dollar exchange rates. The Company’s total cost was $509.2 million to accumulate C$673.8 million which was required for the cash component of the purchase consideration. The estimated fair value of the Canadian dollars was approximately $512.6 million upon settlement. Accordingly, the Company realized a gain of $3.4 million on foreign currency exchange rate changes. The gain on foreign currency is considered a separate transaction as it primarily benefited the Company and therefore the Company recorded this gain within Investment income and other, net in its Consolidated Condensed Statements of Operations. The estimated fair value of $512.6 million is considered the cash component of the purchase consideration.

The Company held an investment in the form of shares of Whistler Blackcomb common stock prior to the acquisition and, as such, the acquisition-date estimated fair value of this previously held investment was a component of the purchase consideration. Based on the estimated fair value of this investment of $4.3 million, the Company recorded a gain of $0.8 million within Investment income and other, net in its Consolidated Condensed Statements of Operations.

Nippon Cable’s 25% limited partnership interest is a noncontrolling economic interest containing certain protective rights and no ability to participate in the day to day operations of the WB Partnerships. The WB Partnership agreements provide that distributions made out of the partnerships be made on the basis of 75% to Whistler Blackcomb and 25% to Nippon Cable. In addition, based upon the terms of the WB Partnerships agreements, the annual distribution rights are non-transferable and transfer of the limited partnership interest is limited to Nippon Cable’s entire interest. Accordingly, the estimate of fair value associated with the noncontrolling interest has been determined based on expected underlying cash flows of the WB Partnerships discounted at a rate commensurate with a market participants expected rate of return for an equity instrument with these associated restrictions.

The following summarizes the purchase consideration and the preliminary estimated fair values of the identifiable assets acquired and liabilities assumed at the date the transaction was effective (in thousands, except exchange ratio and share price).

| (in thousands, except exchange ratio and share price amounts) | | Acquisition Date Estimated Fair Value |
|---|---|---|
| Total Whistler Blackcomb shares acquired | | 38,500 |
| Exchange ratio as of October 14, 2016 | | 0.097294 |
| Total Vail Resorts shares issued to Whistler Blackcomb shareholders | | 3,746 |
| Vail Resorts closing share price on October 14, 2016 | $ | 153.41 |
| Total value of Vail Resorts shares issued | $ | 574,645 |
| Total cash consideration paid at C$17.50 ($13.31 on October 17, 2016) per Whistler Blackcomb share | | 512,558 |
| Total purchase consideration to Whistler Blackcomb shareholders | | 1,087,203 |
| Estimated fair value of previously held investment in Whistler Blackcomb | | 4,308 |
| Estimated fair value of Nippon Cable's 25% interest in Whistler Blackcomb | | 181,818 |
| Total estimated purchase consideration | $ | 1,273,329 |
| | | |
| ***Allocation of total estimated purchase consideration:*** | | |
| Estimated fair values of assets acquired: | | |
| Current assets | $ | 35,969 |
| Property, plant and equipment | | 334,384 |
| Real estate held for sale and investment | | 8,216 |
| Goodwill | | 964,606 |
| Identifiable intangibles | | 150,514 |
| Other assets | | 3,113 |
| Current liabilities | | (74,466) |
| Assumed long-term debt | | (144,922) |
| Deferred income taxes | | (1,665) |
| Other long-term liabilities | | (2,420) |
| Net assets acquired | $ | 1,273,329 |

The estimated fair values of assets acquired and liabilities assumed in the acquisition of Whistler Blackcomb are preliminary and are based on the information that was available as of the acquisition date. The Company believes that information provides a reasonable basis for estimating the fair values of assets acquired and liabilities assumed; however the Company is obtaining additional information necessary to finalize those estimated fair values. Therefore, the preliminary measurements of estimated fair values reflected are subject to change. The Company expects to finalize the valuation and complete the purchase consideration allocation no later than one year from the acquisition date.

The estimated fair values of definite-lived and indefinite-lived identifiable intangible assets were determined using significant estimates and assumptions. The estimated fair value and estimated useful lives of identifiable intangible assets, where applicable, are as follows.

| | Estimated Fair Value ($ in thousands) | | Weighted Average Amortization Period (in years) [1] |
|---|---|---|---|
| Trademarks and trade names | $ | 139,977 | n/a |
| Season pass holder relationships | | 7,417 | 5 |
| Property management contracts | | 3,120 | n/a |
| Total acquired identifiable intangible assets | $ | 150,514 | |

[1] Trademarks and trade names and property management contracts are indefinite-lived intangible assets.

The excess of the purchase consideration over the aggregate estimated fair values of assets acquired and liabilities assumed was recorded as goodwill. The goodwill recognized is attributable primarily to expected cost efficiencies from the elimination of certain public company costs as well as other select areas of general and administrative functions, synergies, including utilization of the

Company's yield management strategies at Whistler Blackcomb and increased season pass sales and visitation across the Company's resort portfolio, the assembled workforce of Whistler Blackcomb and other factors. The goodwill is not expected to be deductible for income tax purposes. The operating results of Whistler Blackcomb, which are primarily recorded in the Mountain segment, contributed $0.6 million of net revenue for the three months ended October 31, 2016, prospectively from the acquisition date (acquired on October 17, 2016). The Company recognized $2.6 million of transaction related expenses in Mountain operating expense in the Consolidated Condensed Statements of Operations for the three months ended October 31, 2016.

The following presents the unaudited pro forma consolidated financial information of the Company as if the acquisition of Whistler Blackcomb was completed on August 1, 2015. The following unaudited pro forma financial information includes adjustments for (i) depreciation on acquired property, plant and equipment; (ii) amortization of intangible assets recorded at the date of the transactions; (iii) transaction and business integration related costs; (iv) interest expense associated with financing the cash portion of the transaction and (v) total weighted average shares outstanding. This unaudited pro forma financial information is presented for informational purposes only and does not purport to be indicative of the results of future operations or the results that would have occurred had the transaction taken place on August 1, 2015 (in thousands, except per share amounts).

| | Three Months Ended October 31, | |
|---|---|---|
| | **2016** | **2015** |
| Pro forma net revenue | $ 200,929 | $ 195,449 |
| Pro forma net loss attributable to Vail Resorts, Inc. | $ (67,678) | $ (71,000) |
| Pro forma basic net loss per share attributable to Vail Resorts, Inc. | $ (1.69) | $ (1.77) |
| Pro forma diluted net loss per share attributable to Vail Resorts, Inc. | $ (1.69) | $ (1.77) |

*Wilmot Mountain*

On January 19, 2016, the Company, through a wholly-owned subsidiary, acquired all of the assets of Wilmot, a ski area located in Wisconsin near the Illinois state line, for total cash consideration of $20.2 million. The purchase price was allocated to identifiable tangible and intangible assets acquired and liabilities assumed based on their estimated fair value at the acquisition date. The Company has completed its preliminary purchase price allocation and has recorded $12.5 million in property, plant and equipment, $0.2 million in other assets, $0.4 million in other intangible assets (with a weighted-average amortization period of 10 years) and $0.3 million of assumed liabilities on the date of acquisition. The excess of the purchase price over the aggregate estimated fair values of assets acquired and liabilities assumed was $7.4 million and was recorded as goodwill. The goodwill recognized is attributable primarily to expected synergies, the assembled workforce of Wilmot and other factors. The goodwill is expected to be deductible for income tax purposes. The operating results of Wilmot are reported within the Mountain segment.

## 6. Supplementary Balance Sheet Information

The composition of property, plant and equipment follows (in thousands):

| | October 31, 2016 | July 31, 2016 | October 31, 2015 |
|---|---|---|---|
| Land and land improvements | $ 530,634 | $ 440,300 | $ 431,798 |
| Buildings and building improvements | 1,157,546 | 1,025,515 | 1,006,033 |
| Machinery and equipment | 954,722 | 866,008 | 814,362 |
| Furniture and fixtures | 291,141 | 284,959 | 289,173 |
| Software | 106,901 | 103,754 | 107,063 |
| Vehicles | 64,344 | 58,159 | 61,546 |
| Construction in progress | 82,895 | 39,396 | 86,042 |
| Gross property, plant and equipment | 3,188,183 | 2,818,091 | 2,796,017 |
| Accumulated depreciation | (1,489,096) | (1,454,277) | (1,407,452) |
| Property, plant and equipment, net | $ 1,699,087 | $ 1,363,814 | $ 1,388,565 |

The composition of accounts payable and accrued liabilities follows (in thousands):

| | October 31, 2016 | July 31, 2016 | October 31, 2015 |
|---|---|---|---|
| Trade payables | $ 90,773 | $ 72,658 | $ 101,016 |
| Deferred revenue | 328,009 | 182,506 | 240,288 |
| Accrued salaries, wages and deferred compensation | 29,544 | 43,086 | 11,878 |
| Accrued benefits | 28,564 | 29,175 | 22,818 |
| Deposits | 18,418 | 23,307 | 15,979 |
| Other liabilities | 47,615 | 46,756 | 46,858 |
| Total accounts payable and accrued liabilities | $ 542,923 | $ 397,488 | $ 438,837 |

The composition of other long-term liabilities follows (in thousands):

| | October 31, 2016 | July 31, 2016 | October 31, 2015 |
|---|---|---|---|
| Private club deferred initiation fee revenue | $ 120,546 | $ 121,750 | $ 124,449 |
| Unfavorable lease obligation, net | 27,284 | 27,322 | 29,279 |
| Other long-term liabilities | 124,479 | 121,096 | 100,523 |
| Total other long-term liabilities | $ 272,309 | $ 270,168 | $ 254,251 |

The changes in the net carrying amount of goodwill allocated between the Company's segments for the three months ended October 31, 2016 are as follows (in thousands):

| | Mountain | Lodging | Goodwill, net |
|---|---|---|---|
| Balance at July 31, 2016 | $ 441,138 | $ 67,899 | $ 509,037 |
| Whistler Blackcomb acquisition | 964,606 | — | 964,606 |
| Effects of changes in foreign currency exchange rates | (18,700) | — | (18,700) |
| Balance at October 31, 2016 | $ 1,387,044 | $ 67,899 | $ 1,454,943 |

**7. Fair Value Measurements**

The FASB issued fair value guidance that establishes how reporting entities should measure fair value for measurement and disclosure purposes. The guidance establishes a common definition of fair value applicable to all assets and liabilities measured at fair value and prioritizes the inputs into valuation techniques used to measure fair value. Accordingly, the Company uses valuation techniques which maximize the use of observable inputs and minimize the use of unobservable inputs when determining fair value. The three levels of the hierarchy are as follows:

Level 1: Inputs that reflect unadjusted quoted prices in active markets that are accessible to the Company for identical assets or liabilities;

Level 2: Inputs include quoted prices for similar assets and liabilities in active and inactive markets or that are observable for the asset or liability either directly or indirectly; and

Level 3: Unobservable inputs which are supported by little or no market activity.

The table below summarizes the Company's cash equivalents, Contingent Consideration (as described in our Annual Report on Form 10-K) and Interest Rate Swap measured at fair value (all other assets and liabilities measured at fair value are immaterial) (in thousands).

| | Estimated Fair Value Measurement as of October 31, 2016 | | | |
|---|---|---|---|---|
| Description | Total | Level 1 | Level 2 | Level 3 |
| Assets: | | | | |
| Money Market | $ 3,001 | $ 3,001 | $ — | $ — |
| Commercial Paper | $ 2,401 | $ — | $ 2,401 | $ — |
| Certificates of Deposit | $ 2,403 | $ — | $ 2,403 | $ — |
| Liabilities: | | | | |
| Contingent Consideration | $ 11,400 | $ — | $ — | $ 11,400 |
| Interest Rate Swap | $ 1,990 | $ — | $ 1,990 | $ — |

| | Estimated Fair Value Measurement as of July 31, 2016 | | | |
|---|---|---|---|---|
| Description | Total | Level 1 | Level 2 | Level 3 |
| Assets: | | | | |
| Commercial Paper | $ 2,401 | $ — | $ 2,401 | $ — |
| Certificates of Deposit | $ 2,403 | $ — | $ 2,403 | $ — |
| Liabilities: | | | | |
| Contingent Consideration | $ 11,100 | $ — | $ — | $ 11,100 |

| | Estimated Fair Value Measurement as of October 31, 2015 | | | |
|---|---|---|---|---|
| Description | Total | Level 1 | Level 2 | Level 3 |
| Assets: | | | | |
| Commercial Paper | $ 2,401 | $ — | $ 2,401 | $ — |
| Certificates of Deposit | $ 2,901 | $ — | $ 2,901 | $ — |
| Liabilities: | | | | |
| Contingent Consideration | $ 6,900 | $ — | $ — | $ 6,900 |

The Company's cash equivalents and Interest Rate Swap are measured utilizing quoted market prices or pricing models whereby all significant inputs are either observable or corroborated by observable market data. The Interest Rate Swap is an instrument assumed in the Whistler Blackcomb acquisition that expires in September 2020, and is a C$125.0 million ($93.2 million as of October 31, 2016) fixed swap on the floating interest rate on the assumed Whistler Credit Agreement. Interest Rate Swap settlements and changes in fair value are recognized in Interest Expense on the Consolidated Condensed Statement of Operations.

The changes in Contingent Consideration during the three months ended October 31, 2016 and 2015 were as follows (in thousands):

| | 2016 | 2015 |
|---|---|---|
| Balance as of July 31, | $ 11,100 | $ 6,900 |
| Change in estimated fair value | 300 | — |
| Balance as of October 31, | $ 11,400 | $ 6,900 |

During the three months ended October 31, 2016, the Company increased the estimated fair value of the participating contingent payments by approximately $0.3 million, resulting in an estimated fair value of the Contingent Consideration of $11.4 million reflected in other long-term liabilities in the Consolidated Condensed Balance Sheets.

**8. Commitments and Contingencies**

Metropolitan Districts

The Company credit-enhances $8.0 million of bonds issued by Holland Creek Metropolitan District ("HCMD") through an $8.1 million letter of credit issued under the Vail Holdings Credit Agreement. HCMD's bonds were issued and used to build infrastructure associated with the Company's Red Sky Ranch residential development. The Company has agreed to pay capital improvement fees to the Red Sky Ranch Metropolitan District ("RSRMD") until RSRMD's revenue streams from property taxes are sufficient to meet debt service requirements under HCMD's bonds, and the Company has recorded a liability of $2.0 million, $2.0 million, and $1.8 million primarily within "other long-term liabilities" in the accompanying Consolidated Condensed Balance Sheets, as of October 31, 2016, July 31, 2016 and October 31, 2015, respectively, with respect to the estimated present value of future RSRMD capital improvement fees. The Company estimates it will make capital improvement fee payments under this arrangement through the fiscal year ending July 31, 2031.

Guarantees/Indemnifications

As of October 31, 2016, the Company had various other letters of credit totaling $66.3 million, consisting of $53.4 million to support the Employee Housing Bonds and $12.9 million for workers' compensation, general liability construction related deductibles and other activities. The Company also had surety bonds of $9.3 million as of October 31, 2016, primarily to provide collateral for its workers compensation self-insurance programs.

In addition to the guarantees noted above, the Company has entered into contracts in the normal course of business that include certain indemnifications under which it could be required to make payments to third parties upon the occurrence or non-occurrence of certain future events. These indemnities include indemnities related to licensees in connection with third-parties' use of the Company's trademarks and logos, liabilities associated with the infringement of other parties' technology and software products, liabilities associated with the use of easements, liabilities associated with employment of contract workers and the Company's use of trustees, and liabilities associated with the Company's use of public lands and environmental matters. The duration of these indemnities generally is indefinite and generally do not limit the future payments the Company could be obligated to make.

As permitted under applicable law, the Company and certain of its subsidiaries have agreed to indemnify their directors and officers over their lifetimes for certain events or occurrences while the officer or director is, or was, serving the Company or its subsidiaries in such a capacity. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has a director and officer insurance policy that should enable the Company to recover a portion of any amounts paid.

Unless otherwise noted, the Company has not recorded any significant liabilities for the letters of credit, indemnities and other guarantees noted above in the accompanying Consolidated Condensed Financial Statements, either because the Company has recorded on its Consolidated Condensed Balance Sheets the underlying liability associated with the guarantee, the guarantee is with respect to the Company's own performance and is therefore not subject to the measurement requirements as prescribed by GAAP, or because the Company has calculated the fair value of the indemnification or guarantee to be immaterial based upon the current facts and circumstances that would trigger a payment under the indemnification clause. In addition, with respect to certain indemnifications it is not possible to determine the maximum potential amount of liability under these potential obligations due to the unique set of facts and circumstances likely to be involved in each particular claim and indemnification provision. Historically, payments made by the Company under these obligations have not been material.

As noted above, the Company makes certain indemnifications to licensees for their use of the Company's trademarks and logos. The Company does not record any liabilities with respect to these indemnifications.

Self Insurance

The Company is self-insured for claims under its U.S. health benefit plans and for the majority of workers' compensation claims in the U.S. Workers compensation claims in the U.S. are subject to stop loss policies. The self-insurance liability related to workers' compensation is determined actuarially based on claims filed. The self-insurance liability related to claims under the Company's U.S. health benefit plans is determined based on analysis of actual claims. The amounts related to these claims are included as a component of accrued benefits in accounts payable and accrued liabilities (see Note 6, Supplementary Balance Sheet Information).

Legal

The Company is a party to various lawsuits arising in the ordinary course of business. Management believes the Company has adequate insurance coverage and/or has accrued for all loss contingencies for asserted and unasserted matters deemed to be probable losses and estimable. As of October 31, 2016, July 31, 2016 and October 31, 2015, the accruals for the above loss contingencies were not material individually and in the aggregate.

## 9. Segment Information

The Company has three reportable segments: Mountain, Lodging and Real Estate. The Mountain segment includes the operations of the Company's mountain resorts/ski areas and related ancillary activities. The Lodging segment includes the operations of the Company's owned hotels, RockResorts, NPS concessionaire properties, condominium management, CME and mountain resort golf operations. The Real Estate segment owns, develops and sells real estate in and around the Company's resort communities.

The Company's reportable segments, although integral to the success of the others, offer distinctly different products and services and require different types of management focus. As such, these segments are managed separately. The Company reports its segment results using Reported EBITDA (defined as segment net revenue less segment operating expenses, plus or minus segment equity investment income or loss, and for the Real Estate segment, plus gain on sale of real property). The Company reports segment results in a manner consistent with management's internal reporting of operating results to the chief operating decision maker (Chief Executive Officer) for purposes of evaluating segment performance.

Items excluded from Reported EBITDA are significant components in understanding and assessing financial performance. Reported EBITDA should not be considered in isolation or as an alternative to, or substitute for, net income (loss), net change in cash and cash equivalents or other financial statement data presented in the consolidated condensed financial statements as indicators of financial performance or liquidity.

The Company utilizes Reported EBITDA in evaluating performance of the Company and in allocating resources to its segments. Mountain Reported EBITDA consists of Mountain net revenue less Mountain operating expense plus or minus Mountain equity investment income or loss. Lodging Reported EBITDA consists of Lodging net revenue less Lodging operating expense. Real Estate Reported EBITDA consists of Real Estate net revenue less Real Estate operating expense plus gain or loss on sale of real property. All segment expenses include an allocation of corporate administrative expense. Assets are not allocated between segments, or used to evaluate performance, except as shown in the table below. The accounting policies specific to each segment are the same as those described in Note 2, Summary of Significant Accounting Policies.

The following table presents financial information by reportable segment, which is used by management in evaluating performance and allocating resources (in thousands):

| | Three Months Ended October 31, | |
|---|---|---|
| | 2016 | 2015 |
| Net revenue: | | |
| Lift | $ 21,426 | $ 20,153 |
| Ski school | 3,851 | 3,384 |
| Dining | 13,368 | 12,355 |
| Retail/rental | 36,479 | 32,389 |
| Other | 35,643 | 32,652 |
| Total Mountain net revenue | 110,767 | 100,933 |
| Lodging | 67,402 | 64,286 |
| Total Resort net revenue | 178,169 | 165,219 |
| Real estate | 96 | 9,348 |
| Total net revenue | $ 178,265 | $ 174,567 |
| Operating expense: | | |
| Mountain | $ 168,253 | $ 151,158 |
| Lodging | 64,080 | 61,437 |
| Total Resort operating expense | 232,333 | 212,595 |
| Real estate | 1,485 | 9,341 |
| Total segment operating expense | $ 233,818 | $ 221,936 |
| | | |
| Gain on sale of real property | $ 6,466 | $ 1,159 |
| Mountain equity investment income, net | $ 832 | $ 842 |
| Reported EBITDA: | | |
| Mountain | $ (56,654) | $ (49,383) |
| Lodging | 3,322 | 2,849 |
| Resort | (53,332) | (46,534) |
| Real estate | 5,077 | 1,166 |
| Total Reported EBITDA | $ (48,255) | $ (45,368) |
| | | |
| Real estate held for sale and investment | $ 116,852 | $ 120,769 |
| | | |
| Reconciliation to net loss attributable to Vail Resorts, Inc.: | | |
| Total Reported EBITDA | $ (48,255) | $ (45,368) |
| Depreciation and amortization | (40,581) | (38,700) |
| Change in estimated fair value of Contingent Consideration | (300) | — |
| Loss on disposal of fixed assets and other, net | (550) | (1,779) |
| Investment income and other, net | 4,523 | 198 |
| Interest expense | (11,964) | (10,595) |
| Loss before benefit from income taxes | (97,127) | (96,244) |
| Benefit from income taxes | 33,509 | 36,574 |
| Net loss | $ (63,618) | $ (59,670) |
| Net loss attributable to noncontrolling interests | 1,031 | 83 |
| Net loss attributable to Vail Resorts, Inc. | $ (62,587) | $ (59,587) |

**10. Share Repurchase Program**

On March 9, 2006, the Company's Board of Directors approved a share repurchase program, authorizing the Company to repurchase up to 3,000,000 Vail Shares. On July 16, 2008, the Company's Board of Directors increased the authorization by an additional 3,000,000 Vail Shares, and on December 4, 2015, the Company's Board of Directors increased the authorization by an additional 1,500,000 Vail Shares for a total authorization to repurchase shares of up to 7,500,000 Vail Shares. During the three months ended October 31, 2016, the Company did not repurchase any Vail Shares. During the three months ended October 31, 2015, the Company repurchased 377,830 Vail Shares (at a total cost of $40.0 million). Since inception of its share repurchase program through October 31, 2016, the Company has repurchased 5,434,977 Vail Shares at a cost of approximately $247.0 million. As of October 31, 2016, 2,065,023 Vail Shares remained available to repurchase under the existing share repurchase program which has no expiration date. Vail Shares purchased pursuant to the repurchase program will be held as treasury shares and may be used for the issuance of Vail Shares under the Company's employee share award plan.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Vail Resorts, Inc., together with its subsidiaries, is referred to throughout this Quarterly Report on Form 10-Q for the period ended October 31, 2016 ("Form 10-Q") as "we," "us," "our" or the "Company."

The following Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") should be read in conjunction with our Annual Report on Form 10-K for the fiscal year ended July 31, 2016 ("Form 10-K") and the Consolidated Condensed Financial Statements as of October 31, 2016 and 2015 and for the three months then ended, included in Part I, Item 1 of this Form 10-Q, which provide additional information regarding our financial position, results of operations and cash flows. To the extent that the following MD&A contains statements which are not of a historical nature, such statements are forward-looking statements, which involve risks and uncertainties. See "Forward-Looking Statements" below. These risks include, but are not limited to, those discussed in this Form 10-Q and in our other filings with the Securities and Exchange Commission ("SEC"), including the risks described in Item 1A "Risk Factors" of Part I of the Form 10-K.

The MD&A includes discussion of financial performance within each of our three segments. We have chosen to specifically include Reported EBITDA (defined as segment net revenue less segment operating expense, plus or minus segment equity investment income or loss and for the Real Estate segment, plus gain or loss on sale of real property) and Net Debt (defined as long-term debt plus long-term debt due within one year less cash and cash equivalents), in the following discussion because we consider these measurements to be significant indications of our financial performance and available capital resources. Reported EBITDA and Net Debt are not measures of financial performance or liquidity under generally accepted accounting principles ("GAAP"). We utilize Reported EBITDA in evaluating our performance and in allocating resources to our segments. Refer to the end of the Results of Operations section for a reconciliation of Reported EBITDA to net loss attributable to Vail Resorts, Inc. We also believe that Net Debt is an important measurement as it is an indicator of our ability to obtain additional capital resources for our future cash needs. Refer to the end of the Results of Operations section for a reconciliation of Net Debt to long-term debt.

Items excluded from Reported EBITDA and Net Debt are significant components in understanding and assessing financial performance or liquidity. Reported EBITDA and Net Debt should not be considered in isolation or as an alternative to, or substitute for, net income (loss), net change in cash and cash equivalents or other financial statement data presented in the Consolidated Condensed Financial Statements as indicators of financial performance or liquidity. Because Reported EBITDA and Net Debt are not measurements determined in accordance with GAAP, Reported EBITDA and Net Debt, as presented herein, may not be comparable to other similarly titled measures of other companies.

**Overview**

Our operations are grouped into three integrated and interdependent segments: Mountain, Lodging and Real Estate. Resort is the combination of the Mountain and Lodging segments.

***Mountain Segment***

The Mountain segment is comprised of the operations of mountain resort properties at Vail, Breckenridge, Keystone and Beaver Creek in Colorado ("Colorado" resorts); Park City in Utah ("Park City"); Heavenly, Northstar and Kirkwood in the Lake Tahoe area of California and Nevada ("Tahoe" resorts); Whistler Blackcomb in British Columbia, Canada (acquired in October 2016); Perisher Ski Resort ("Perisher") in New South Wales, Australia; and the ski areas of Wilmot Mountain in Wisconsin ("Wilmot," acquired in January 2016), Afton Alps in Minnesota and Mount Brighton in Michigan (together "Urban" ski areas); as well as ancillary services, primarily including ski school, dining and retail/rental operations, and for Perisher including lodging and transportation operations.

Mountain segment revenue is seasonal, with the majority of revenue earned from our North American mountain resorts and ski areas occurring in our second and third fiscal quarters and the majority of revenue earned from Perisher occurring in our first and fourth fiscal quarters. Our North American mountain resorts are typically open for business from mid-November through mid-April, which is the peak operating season for the Mountain segment, and Perisher is typically open for business from June to early October. Consequently, our first fiscal quarter is a seasonally low period as our North American ski operations are generally not open for business until our second fiscal quarter while the activity of Perisher's peak season and our North American summer operating results are not sufficient to offset the losses incurred during the seasonally low periods at our North American mountain resorts and ski areas. Revenue of the Mountain segment during the first fiscal quarter is primarily generated from summer and group related visitation at our North American mountain resorts, retail/rental operations and peak season Perisher operations.

***Lodging Segment***

Operations within the Lodging segment include (i) ownership/management of a group of luxury hotels and condominiums through the RockResorts brand proximate to our Colorado mountain resorts; (ii) ownership/management of non-RockResorts branded hotels and condominiums proximate to our North American mountain resorts; (iii) National Park Service ("NPS") concessionaire properties including the Grand Teton Lodge Company ("GTLC"); (iv) Colorado Mountain Express ("CME"), a Colorado resort ground transportation company; and (v) mountain resort golf courses.

Revenue of the lodging segment during our first fiscal quarter is generated primarily by the operations of our NPS concessionaire properties (as their peak operating season generally occurs during the months of June to October), as well as golf operations and seasonally low operations from our other owned and managed properties and businesses. Lodging properties (including managed condominium rooms) at or around our mountain resorts, and CME, are closely aligned with the performance of the Mountain segment and generally experience similar seasonal trends. Management primarily focuses on Lodging net revenue excluding payroll cost reimbursements and Lodging operating expense excluding reimbursed payroll costs (which are not measures of financial performance under GAAP) as the reimbursements are made based upon the costs incurred with no added margin, as such the revenue and corresponding expense do not affect our Lodging Reported EBITDA, which we use to evaluate Lodging segment performance.

***Real Estate Segment***

The principal activities of our Real Estate segment include the marketing and selling of remaining condominium units that are available for sale, which primarily relate to The Ritz-Carlton Residences, Vail and One Ski Hill Place in Breckenridge; the sale of land parcels to third-party developers; planning for future real estate development projects, including zoning and acquisition of applicable permits; and the occasional purchase of selected strategic land parcels for future development. Revenue from vertical development projects is not recognized until closing of individual units within a project, which occurs after substantial completion of the project. Additionally, our real estate development projects most often result in the creation of certain resort assets that provide additional benefit to the Mountain and Lodging segments. We continue undertaking preliminary planning and design work on future projects and are pursuing opportunities with third-party developers rather than undertaking our own significant vertical development projects. We believe that, due to our low carrying cost of real estate land investments, we are well situated to promote future projects with third-party developers while limiting our financial risk. Our revenue from the Real Estate segment, and associated expense, can fluctuate significantly based upon the timing of closings and the type of real estate being sold, causing volatility in the Real Estate segment's operating results from period to period.

**Recent Trends, Risks and Uncertainties**

Together with those risk factors we have identified in this Form 10-Q and our Form 10-K, we have identified the following important factors (as well as risks and uncertainties associated with such factors) that could impact our future financial performance or condition:

- The timing and amount of snowfall can have an impact on Mountain and Lodging revenue particularly in regards to skier visits and the duration and frequency of guest visitation. To help mitigate this impact, we sell a variety of season pass products prior to the beginning of the ski season resulting in a more stabilized stream of lift revenue. Additionally, our season pass products provide a compelling value proposition to our guests, which in turn create a guest commitment predominately prior to the start of the ski season. For the 2015/2016 ski season, pass revenue represented approximately 40% of total lift revenue for the entire fiscal year. Through December 4, 2016, our season pass sales for the 2016/2017 ski season have increased approximately 16% in units and increased approximately 20% in sales dollars, compared to the prior year period through December 6, 2015, each excluding Whistler Blackcomb season pass sales and Epic Australia pass sales in both periods. We cannot predict the ultimate impact that season pass sales will have on total lift revenue or effective ticket price for the 2016/2017 North American ski season.

- On October 17, 2016, the Company, through its wholly owned Canadian subsidiary ("Exchangeco"), acquired all of the outstanding common shares of Whistler Blackcomb, for an aggregate purchase consideration paid to Whistler Blackcomb shareholders of approximately $1.09 billion, consisting of (i) approximately C$673.8 million in cash (or C$17.50 per Whistler Blackcomb share), (ii) 3,327,719 shares of the Company's common stock, par value $0.01 per share (the "Vail Shares"), and (iii) 418,095 shares of Exchangeco (the "Exchangeco Shares"). The cash purchase consideration portion was funded through borrowing from an incremental term loan under our Seventh Amended and Restated Credit Agreement (the "Vail Holdings Credit Agreement"). Whistler Blackcomb, through a 75% ownership interest in Whistler Mountain Resort Limited Partnership and a 75% ownership interest in Blackcomb Skiing Enterprises Limited Partnership, collectively (the "WB Partnerships"), operates a four season mountain resort that features two adjacent and integrated mountains, Whistler Mountain and Blackcomb Mountain. The remaining 25% ownership interest in each of the WB Partnerships is held by Nippon Cable, an unrelated party to Vail Resorts. We expect that Whistler Blackcomb will significantly contribute to our results of operations; however; we cannot predict whether we will realize all of the expected synergies from the combination of the operations of Whistler Blackcomb nor can we predict all the resources required to integrate Whistler Blackcomb operations and the ultimate impact Whistler Blackcomb will have on our future results of operations.

  The estimated fair values of assets acquired and liabilities assumed in the Whistler Blackcomb acquisition are preliminary and are based on the information that was available as of the acquisition date. We believe that information provides a reasonable basis for estimating the fair values of assets acquired and liabilities assumed; however, we are obtaining additional information necessary to finalize those estimated fair values. Therefore, the preliminary measurements of estimated fair value reflected within the Consolidated Condensed Balance Sheets as of October 31, 2016 and their associated impact to our Consolidated Condensed Statements of Operations are subject to change.

- Key U.S. economic indicators have remained steady in 2016, including strong consumer confidence and declines in the unemployment rate. However, the growth in the U.S. economy may be impacted by economic challenges in the U.S. or declining or slowing growth in economies outside of the U.S., accompanied by devaluation of currencies and lower commodity prices. Given these economic uncertainties, we cannot predict what the impact will be on overall travel and leisure spending or more specifically, on our guest visitation, guest spending or other related trends for the upcoming 2016/2017 North American ski season.

- As of October 31, 2016, we had $191.2 million available under the revolver component of our Vail Holdings Credit Agreement (which represents the total commitment of $400.0 million less outstanding borrowings of $135.0 million and certain letters of credit outstanding of $73.8 million). Additionally, we amended our prior credit agreement to provide for an incremental term loan of $509.4 million, for a total Vail Holdings Credit Agreement term loan amount outstanding of $750.0 million, to fund the cash portion of the Whistler Blackcomb acquisition. Also, we assumed in the Whistler Blackcomb acquisition a credit facility which supports the liquidity needs of Whistler Blackcomb (the "Whistler Credit Agreement"). As of October 31, 2016, we had C$108.9 million ($81.2 million) available under the revolver component of the Whistler Credit Agreement (which represents the total commitment of C$300.0 million ($223.8 million) less outstanding borrowings of C$190.5 million ($142.1 million) and a letter of credit outstanding of C$0.6 million ($0.5 million)).

We believe that the terms of our credit agreements allow for sufficient flexibility in our ability to make future acquisitions, investments, distributions to stockholders and incur additional debt. This, combined with the continued positive cash flow from operating activities of our Mountain and Lodging segments less resort capital expenditures, has and is anticipated to continue to provide us with significant liquidity. We believe our liquidity will allow us to consider strategic investments and other forms of returning value to our stockholders including additional share repurchases and the continued payment of a quarterly cash dividend.

- Real Estate Reported EBITDA is highly dependent on, among other things, the timing of closings on condominium units available for sale, which determines when revenue and associated cost of sales is recognized. Changes to the anticipated timing or mix of closing on one or more real estate projects, or unit closings within a real estate project, could materially impact Real Estate Reported EBITDA for a particular quarter or fiscal year. As of October 31, 2016, we had four units at The Ritz-Carlton Residences, Vail and two units (of which one unit sold subsequent to October 31, 2016) at One Ski Hill Place in Breckenridge available for sale with a remaining book value of approximately $13.5 million for both projects. We cannot predict the ultimate number of units that we will sell, the ultimate price we will receive, or when the units will sell, although we currently anticipate the selling process will take less than two years to complete assuming continued stability in resort real estate markets.

**RESULTS OF OPERATIONS**

***Summary***

Below is a summary of operating results for the three months ended October 31, 2016, compared to the three months ended October 31, 2015 (in thousands):

| | Three Months Ended October 31, | |
|---|---|---|
| | **2016** | **2015** |
| Mountain Reported EBITDA | $ (56,654) | $ (49,383) |
| Lodging Reported EBITDA | 3,322 | 2,849 |
| Resort Reported EBITDA | $ (53,332) | $ (46,534) |
| Real Estate Reported EBITDA | $ 5,077 | $ 1,166 |
| Loss before benefit from income taxes | $ (97,127) | $ (96,244) |
| Net loss attributable to Vail Resorts, Inc. | $ (62,587) | $ (59,587) |

A discussion of the segment results and other items can be found below.

***Mountain Segment***

***Three months ended October 31, 2016 compared to the three months ended October 31, 2015***

Mountain segment operating results for the three months ended October 31, 2016 and 2015 are presented by category as follows (in thousands, except effective ticket price ("ETP")):

| | Three Months Ended October 31, | | Percentage Increase (Decrease) |
|---|---|---|---|
| | 2016 | 2015 | |
| Net Mountain revenue: | | | |
| Lift | $ 21,426 | $ 20,153 | 6.3 % |
| Ski school | 3,851 | 3,384 | 13.8 % |
| Dining | 13,368 | 12,355 | 8.2 % |
| Retail/rental | 36,479 | 32,389 | 12.6 % |
| Other | 35,643 | 32,652 | 9.2 % |
| Total Mountain net revenue | 110,767 | 100,933 | 9.7 % |
| Mountain operating expense: | | | |
| Labor and labor-related benefits | 57,682 | 51,799 | 11.4 % |
| Retail cost of sales | 18,404 | 16,479 | 11.7 % |
| General and administrative | 41,984 | 38,599 | 8.8 % |
| Other | 50,183 | 44,281 | 13.3 % |
| Total Mountain operating expense | 168,253 | 151,158 | 11.3 % |
| Mountain equity investment income, net | 832 | 842 | (1.2)% |
| Mountain Reported EBITDA | $ (56,654) | $ (49,383) | (14.7)% |
| | | | |
| Total skier visits | 429 | 435 | (1.4)% |
| ETP | $ 49.94 | $ 46.33 | 7.8 % |

Certain Mountain segment operating expenses presented above for the three months ended October 31, 2015 have been reclassified to conform to presentation for the three months ended October 31, 2016.

Mountain Reported EBITDA includes $3.9 million and $3.4 million of stock-based compensation expense for the three months ended October 31, 2016 and 2015, respectively.

Our first fiscal quarter historically results in negative Mountain Reported EBITDA, as our North American mountain resorts and ski areas generally do not open for ski operations until our second fiscal quarter which begins in November. Additionally, the first fiscal quarter generally consists of operating and administrative expenses, summer activities (including dining), retail/rental operations and the operations of Perisher, which has its peak operating season from June through early October. Mountain Reported EBITDA for the three months ended October 31, 2016 decreased by $7.3 million, or 14.7%, compared to the three months ended October 31, 2015. The decrease in Mountain Reported EBITDA was primarily due to the inclusion of Whistler Blackcomb results, an EBITDA loss of $2.6 million, which is included in our consolidated results prospectively from the acquisition date (acquired on October 17, 2016), reflecting a period with no ski operations as well as transaction and integration costs of $2.8 million. Excluding Whistler Blackcomb operations and transaction and integration costs, Mountain Reported EBITDA decreased $1.9 million, or 3.8%.

During the three months ended October 31, 2016, Perisher generated $1.3 million and $0.5 million increases in lift revenue and ski school revenue, respectively, compared to the three months ended October 31, 2015, primarily due to increases in pricing and higher visitation, excluding season pass holders. Dining revenue increased $1.0 million, or 8.2%, for the three months ended October 31, 2016 compared to the three months ended October 31, 2015, primarily due to increases in dining revenue at our U.S. mountain resorts as a result of increased summer visitation.

Retail/rental revenue increased $4.1 million, or 12.6%, for the three months ended October 31, 2016 compared to the same period in the prior year, primarily due to an increase in retail sales of $3.7 million, or 13.2%, and an increase in rental revenue of $0.4 million, or 8.8%. The increase in retail revenue was primarily attributable to strong sales at pre-ski season sales events at our stores

in Colorado (both front range and mountain resort stores), Tahoe and in the San Francisco Bay Area. Other revenue mainly consists of summer visitation and mountain activities revenue, employee housing revenue, guest services revenue, commercial leasing revenue, marketing and internet advertising revenue, private club revenue (which includes both club dues and amortization of initiation fees), municipal services revenue and other recreation activity revenue. Other revenue is also comprised of Perisher lodging and transportation revenue. For the three months ended October 31, 2016, other revenue increased $3.0 million, or 9.2%, compared to the same period in the prior year, primarily attributable to an increase in summer activities revenue from improved summer visitation at our U.S. mountain resorts, including the expansion of our on-mountain Epic Discovery summer activities offerings.

Operating expense increased $17.1 million, or 11.3%, for the three months ended October 31, 2016 compared to the three months ended October 31, 2015. Of this increase, Whistler Blackcomb represents incremental operating expenses of $3.2 million as well as $2.8 million of transaction and integration costs associated with the acquisition. Excluding Whistler Blackcomb incremental operating expense and transaction and integration costs, operating expense increased $11.1 million, or 7.3%.

The following discussion provides information of the changes in operating expenses for the three-month period ended October 31, 2016, as compared to the prior year comparative period, excluding the impact of Whistler Blackcomb. Labor and labor-related benefits increased $4.8 million, or 9.3%, primarily due to normal wage adjustments and increased staffing levels at Perisher and at our U.S. resorts to support higher summer visitation. Retail cost of sales increased $1.7 million, or 10.6%, compared to an increase in retail sales of $3.4 million, or 12.0%. General and administrative expense increased $2.5 million, or 6.4%, primarily due to a higher Mountain segment component of allocated corporate costs. Other expense increased $2.0 million, or 4.6%, primarily due to higher repairs and maintenance expense, credit card fees, utilities expense, rent expense and food and beverage cost of sales commensurate with increased dining revenue.

Mountain equity investment income, net primarily includes our share of income from the operations of a real estate brokerage joint venture.

***Lodging Segment***

***Three months ended October 31, 2016 compared to the three months ended October 31, 2015***

Lodging segment operating results for the three months ended October 31, 2016 and 2015 are presented by category as follows (in thousands, except average daily rates ("ADR") and revenue per available room ("RevPAR")):

| | Three Months Ended October 31, | | Percentage Increase (Decrease) |
|---|---|---|---|
| | 2016 | 2015 | |
| Lodging net revenue: | | | |
| Owned hotel rooms | $ 18,063 | $ 17,306 | 4.4% |
| Managed condominium rooms | 8,521 | 8,247 | 3.3% |
| Dining | 15,337 | 15,041 | 2.0% |
| Transportation | 2,473 | 2,320 | 6.6% |
| Golf | 8,513 | 8,247 | 3.2% |
| Other | 11,418 | 10,425 | 9.5% |
| | 64,325 | 61,586 | 4.4% |
| Payroll cost reimbursements | 3,077 | 2,700 | 14.0% |
| Total Lodging net revenue | 67,402 | 64,286 | 4.8% |
| Lodging operating expense: | | | |
| Labor and labor-related benefits | 29,877 | 28,695 | 4.1% |
| General and administrative | 8,764 | 7,969 | 10.0% |
| Other | 22,362 | 22,073 | 1.3% |
| | 61,003 | 58,737 | 3.9% |
| Reimbursed payroll costs | 3,077 | 2,700 | 14.0% |
| Total Lodging operating expense | 64,080 | 61,437 | 4.3% |
| Lodging Reported EBITDA | $ 3,322 | $ 2,849 | 16.6% |
| | | | |
| Owned hotel statistics: | | | |
| ADR | $ 214.83 | $ 199.41 | 7.7% |
| RevPAR | $ 144.12 | $ 133.14 | 8.2% |
| Managed condominium statistics: | | | |
| ADR | $ 196.78 | $ 177.76 | 10.7% |
| RevPAR | $ 47.95 | $ 43.92 | 9.2% |
| Owned hotel and managed condominium statistics (combined): | | | |
| ADR | $ 207.34 | $ 190.35 | 8.9% |
| RevPAR | $ 80.53 | $ 74.20 | 8.5% |

Lodging Reported EBITDA includes $0.8 million and $0.7 million of stock-based compensation expense for the three months ended October 31, 2016 and 2015, respectively.

Total Lodging net revenue (excluding payroll cost reimbursements) for the three months ended October 31, 2016 increased $2.7 million, or 4.4%, as compared to the three months ended October 31, 2015. This increase was primarily attributable to increased revenue at our Colorado mountain resort properties and GTLC, due to an increase in summer visitation, partially offset by a decrease in visitation due to the early closure of Flagg Ranch in September 2016, as a result of a forest fire in Grand Teton National Park. Operating losses incurred at Flagg Ranch as a result of the early closure were offset by a recovery of these losses under the Company's business interruption insurance policy which was recorded in other revenue.

Revenue from owned hotel rooms increased $0.8 million, or 4.4%, for the three months ended October 31, 2016 compared to the three months ended October 31, 2015. Owned room revenue was positively impacted by an increase of $1.3 million at GTLC, partially offset by lower revenue due to the early closure of Flagg Ranch. Additionally, revenue at our owned Colorado lodging properties increased $0.4 million as a result of increased visitation due to increased summer activities. Revenue from managed condominium rooms increased $0.3 million, or 3.3%, for the three months ended October 31, 2016 compared to the three months

ended October 31, 2015, consistent with our owned properties, which was primarily a result of increased visitation at our managed Colorado lodging properties due to summer activities.

Dining revenue for the three months ended October 31, 2016 increased $0.3 million, or 2.0%, as compared to the three months ended October 31, 2015, primarily due to increased dining revenue generated at GTLC and our Colorado lodging properties. Transportation revenue for the three months ended October 31, 2016 increased $0.2 million, or 6.6%, as compared to the three months ended October 31, 2015, primarily due to the increased summer visitation to our Colorado resorts. Other revenue increased $1.0 million, or 9.5%, compared to the same period in the prior year primarily due to a business interruption insurance recovery related to the early closure of Flagg Ranch in September 2016.

Operating expense (excluding reimbursed payroll costs) increased $2.3 million, or 3.9%, for the three months ended October 31, 2016 compared to the three months ended October 31, 2015. Labor and labor-related benefits increased $1.2 million, or 4.1%, resulting from normal wage increases. General and administrative expense increased $0.8 million, or 10.0%, due to higher allocated corporate costs, including increased marketing and sales expenses.

Revenue from payroll cost reimbursement and the corresponding reimbursed payroll costs relate to payroll costs at managed hotel properties where we are the employer and all payroll costs are reimbursed by the owners of the properties under contractual arrangements. Since the reimbursements are made based upon the costs incurred with no added margin, the revenues and corresponding expenses have no effect on our Lodging Reported EBITDA.

***Real Estate Segment***

***Three months ended October 31, 2016 compared to the three months ended October 31, 2015***

Real Estate segment operating results for the three months ended October 31, 2016 and 2015 are presented by category as follows (in thousands):

| | Three Months Ended October 31, | | Percentage Increase (Decrease) |
|---|---|---|---|
| | 2016 | 2015 | |
| Total Real Estate net revenue | $ 96 | $ 9,348 | (99.0)% |
| Real Estate operating expense: | | | |
| Cost of sales (including sales commission) | — | 7,767 | (100.0)% |
| Other | 1,485 | 1,574 | (5.7)% |
| Total Real Estate operating expense | 1,485 | 9,341 | (84.1)% |
| Gain on sale of real property | 6,466 | 1,159 | 457.9 % |
| Real Estate Reported EBITDA | $ 5,077 | $ 1,166 | 335.4 % |

Our Real Estate net revenue is primarily determined by the timing of closings and the mix of real estate sold in any given period. Different types of projects have different revenue and profit margins; therefore, as the real estate inventory mix changes it can greatly impact Real Estate segment net revenue, operating expense and Real Estate Reported EBITDA.

***Three months ended October 31, 2016***

Real Estate Reported EBITDA for the three months ended October 31, 2016 included a gain on sale of real property of $6.5 million for a land parcel in Breckenridge which sold for cash proceeds of $9.3 million.

Other operating expense of $1.5 million for the three months ended October 31, 2016 was primarily comprised of general and administrative costs, which includes marketing expense for the real estate available for sale (including those units that have not yet closed), carrying costs for units available for sale and overhead costs, such as labor and labor-related benefits and allocated corporate costs.

***Three months ended October 31, 2015***

Real Estate segment net revenue for the three months ended October 31, 2015 was primarily due to the closing of two condominium units at The Ritz-Carlton Residences, Vail ($5.9 million of revenue with an average selling price of $2.9 million and an average price per square foot of $1,616) and two condominium units at One Ski Hill Place ($2.5 million of revenue with an average selling price of $1.2 million and an average price per square foot of $1,129). The average price per square foot for these projects is primarily due to their premier locations and the comprehensive and exclusive amenities related to these projects. Additionally, we recorded a gain on sale of real property of $1.2 million for a land parcel which sold for $2.9 million.

Operating expense for the three months ended October 31, 2015 included cost of sales of $6.4 million resulting from the closing of two condominium units at The Ritz-Carlton Residences, Vail (average cost per square foot of $1,207) and two condominium units at One Ski Hill Place (average cost per square foot of $931). The cost per square foot for The Ritz-Carlton Residences, Vail and One Ski Hill Place projects is reflective of the high-end features and amenities and high construction costs associated with mountain resort development. Additionally, sales commissions of approximately $0.7 million were incurred commensurate with revenue recognized. Other operating expense of $1.6 million was primarily comprised of general and administrative costs, which includes marketing expense for the real estate available for sale (including those units that have not yet closed), carrying costs for units available for sale and overhead costs, such as labor and labor-related benefits and allocated corporate costs.

***Other Items***

In addition to segment operating results, the following material items contributed to our overall financial position.

*Depreciation and amortization.* Depreciation and amortization expense for the three months ended October 31, 2016 increased $1.9 million compared to the same period in the prior year, primarily due to assets acquired in the Whistler Blackcomb acquisition.

*Investment income and other, net.* Investment income and other, net for the three months ended October 31, 2016 increased $4.3 million compared to the same period in the prior year, primarily due to a $3.4 million gain recognized on foreign currency forward contracts that were entered into in conjunction with funding the cash consideration required for the Whistler Blackcomb acquisition and a $0.8 million non-cash gain recognized on an investment in Whistler Blackcomb shares that we held prior to the acquisition.

*Interest expense*. Interest expense for the three months ended October 31, 2016 increased $1.4 million compared to the same period in the prior year, primarily due to incremental term loan borrowings under our amended senior credit facility of $509.4 million, which was used to fund the cash consideration portion for the Whistler Blackcomb acquisition, and the Whistler Blackcomb credit facility with $142.1 million (C$190.5 million) outstanding as of October 31, 2016, which was assumed as part of the Whistler Blackcomb acquisition.

*Income taxes.* The effective tax rate benefit for the three months ended October 31, 2016 was 34.5%, compared to 38.0% for the three months ended October 31, 2015. The interim period effective tax rate is primarily driven by anticipated pre-tax book income for the full fiscal year adjusted for items that are deductible/non-deductible for tax purposes only (i.e., permanent items) and taxable income generated by state and foreign jurisdictions that varies from anticipated consolidated pre-tax book income. The decrease in the estimated effective tax rate during the three months ended October 31, 2016 compared to the three months ended October 31, 2015 is primarily associated with the Whistler Blackcomb acquisition, where the Canadian statutory tax rate is lower than the U.S. statutory tax rate.

***Reconciliation of Segment Performance and Net Debt***

The following table reconciles from segment Reported EBITDA to net loss attributable to Vail Resorts, Inc. (in thousands):

| | Three Months Ended October 31, | |
|---|---|---|
| | 2016 | 2015 |
| Mountain Reported EBITDA | $ (56,654) | $ (49,383) |
| Lodging Reported EBITDA | 3,322 | 2,849 |
| Resort Reported EBITDA | (53,332) | (46,534) |
| Real Estate Reported EBITDA | 5,077 | 1,166 |
| Total Reported EBITDA | (48,255) | (45,368) |
| Depreciation and amortization | (40,581) | (38,700) |
| Loss on disposal of fixed assets and other, net | (550) | (1,779) |
| Change in estimated fair value of Contingent Consideration | (300) | — |
| Investment income and other, net | 4,523 | 198 |
| Interest expense | (11,964) | (10,595) |
| Loss before benefit from income taxes | (97,127) | (96,244) |
| Benefit from income taxes | 33,509 | 36,574 |
| Net loss | (63,618) | (59,670) |
| Net loss attributable to noncontrolling interests | 1,031 | 83 |
| Net loss attributable to Vail Resorts, Inc. | $ (62,587) | $ (59,587) |

The following table reconciles Net Debt to long-term debt (in thousands):

| | October 31, | |
|---|---|---|
| | 2016 | 2015 |
| Long-term debt | $ 1,371,779 | $ 814,797 |
| Long-term debt due within one year | 38,374 | 13,319 |
| Total debt | 1,410,153 | 828,116 |
| Less: cash and cash equivalents | 106,751 | 39,606 |
| Net Debt | $ 1,303,402 | $ 788,510 |

**LIQUIDITY AND CAPITAL RESOURCES**

***Significant Sources of Cash***

Historically, our operations generate seasonally low operating cash flow in the first fiscal quarter given that the first and the prior year's fourth fiscal quarters have limited North American Mountain segment operations. We had $106.8 million of cash and cash equivalents as of October 31, 2016, compared to $39.6 million as of October 31, 2015. We currently anticipate that our Mountain and Lodging segment operating results will continue to provide a significant source of future operating cash flows (primarily those generated in our second and third fiscal quarters) combined with proceeds from occasional land sales.

At October 31, 2016, we had $191.2 million available under the revolver component of our Vail Holdings Credit Agreement (which represents the total commitment of $400.0 million less outstanding borrowings of $135.0 million and certain letters of credit outstanding of $73.8 million). Additionally, we amended our prior credit agreement to provide for an incremental term loan of $509.4 million, for a total Vail Holdings Credit Agreement term loan amount outstanding of $750.0 million, to fund the cash portion of the Whistler Blackcomb acquisition. Also, to further support the liquidity needs of Whistler Blackcomb, we had C$108.9 million ($81.2 million) available under the revolver component of our Whistler Credit Agreement (which represents the total commitment of C$300.0 million ($223.8 million) less outstanding borrowings of C$190.5 million ($142.1 million) and a letter of credit outstanding of C$0.6 million ($0.5 million)). We expect that our liquidity needs in the near term will be met by continued use of operating cash flows and borrowings under both the Vail Holdings Credit Agreement and Whistler Credit Agreement, if needed. We believe the Vail Holdings Credit Agreement, which matures in October 2021, provides adequate flexibility and is priced favorably with any new borrowings currently priced at LIBOR plus 1.5%.

***Three months ended October 31, 2016 compared to the three months ended October 31, 2015***

We generated $45.5 million of cash from operating activities during the three months ended October 31, 2016, a decrease of $29.1 million compared to $74.6 million of cash generated during the three months ended October 31, 2015. The decrease in operating cash flows was primarily a result of lower Mountain segment operating results (including Whistler Blackcomb operations and transaction and transition costs) for the three months ended October 31, 2016 compared to the three months ended October 31, 2015, as well as a decrease in accounts payable and an increase in estimated income tax payments made during the three months end October 31, 2016 compared to the three months ended October 31, 2015. Additionally, we generated no proceeds from real estate development project closings during the three months ended October 31, 2016 compared to $8.8 million in proceeds (net of sales commissions and deposits previously received) from real estate closings that occurred in the three months ended October 31, 2015. These decreases were partially offset by an increase in season pass accounts receivable collections combined with increased season pass sales during the three months ended October 31, 2016 compared to the three months ended October 31, 2015.

Cash used in investing activities for the three months ended October 31, 2016 increased by $528.1 million, primarily due to cash payments related to the acquisition of Whistler Blackcomb of $512.3 million, net of cash acquired, and an increase in capital expenditures of $21.0 million during the three months ended October 31, 2016 as compared to the three months ended October 31, 2015.

Cash provided by financing activities increased $591.0 million during the three months ended October 31, 2016, compared to the three months ended October 31, 2015, primarily due to incremental term loan borrowings under our Vail Holdings Credit Agreement of $509.4 million used to fund the cash portion of the purchase consideration for the Whistler Blackcomb acquisition and an increase in net borrowings under the revolver portion of our Vail Holdings Credit Agreement of $47.5 million during the three months ended October 31, 2016; combined with a reduction of cash outflows in the prior year related to $40.0 million of repurchases of common stock during the three months ended October 31, 2015. These net increases in cash inflows from financing activities were partially offset by an increase in dividends paid of $6.7 million during the three months ended October 31, 2016 compared to the same period in the prior year.

***Significant Uses of Cash***

*Capital Expenditures*

We have historically invested significant amounts of cash in capital expenditures for our resort operations, and we expect to continue to do so subject to operating performance particularly as it relates to discretionary projects. Current planned capital expenditures primarily include investments that will allow us to maintain our high quality standards, as well as certain incremental discretionary improvements at our mountain resorts and throughout our owned hotels. We evaluate additional discretionary capital improvements based on an expected level of return on investment. We currently anticipate we will spend approximately $95 million to $100 million on resort capital expenditures for calendar year 2016, excluding capital expenditures for summer-related activities of approximately $13 million, one-time transformational investments at Wilmot of approximately $14 million and capital investments at Whistler Blackcomb for the period from closing on October 17, 2016 through the end of calendar year 2016. Included in these estimated capital expenditures is approximately $60 million of maintenance capital expenditures, which are necessary to maintain appearance and level of service appropriate to our resort operations. Discretionary expenditures for calendar year 2016 include, among other projects, a new 500-seat restaurant at the top of Peak 7 in Breckenridge, upgrading the Sun Up chairlift at Vail Mountain (Chair 17) from a fixed-grip triple to a high-speed four-passenger chairlift, renovation of the Pines Lodge in Beaver Creek, revamping our primary websites to a single ‘responsive’ desktop/mobile platform which is integrated with our data-based and personalized marketing technology, and further upgrading our customer database and our call center technology. Approximately $73 million was spent for capital expenditures in calendar year 2016 as of October 31, 2016, leaving approximately $22 million to $27 million to spend in the remainder of calendar year 2016, excluding capital expenditures for summer-related activities, one-time investments at Wilmot and capital investments at Whistler Blackcomb for the period from closing on October 17, 2016 through the end of calendar year 2016.

For calendar year 2017, we expect to incur resort capital expenditures of approximately $103 million, which excludes any capital expenditures for new summer activities, Whistler Blackcomb or integration capital. Additionally, we expect that the annual resort capital expenditures for Whistler Blackcomb will be approximately C$25 million (US$19 million). This estimated spending includes normal inflation on our capital investments at our resorts and an increase to reflect the ongoing annual capital investment at Whistler Blackcomb. We currently plan to utilize cash on hand, borrowings available under our credit agreements and/or cash flow generated from future operations to provide the cash necessary to complete our capital plans.

*Whistler Blackcomb Acquisition*

On October 14, 2016, in order to finance the cash portion of the consideration and payment of associated fees and expenses of the Whistler Blackcomb acquisition, the Company entered into an amendment to its Vail Holdings Credit Agreement through which Company increased its term loan borrowings by $509.4 million and extended the maturity date for the outstanding term loans and revolver facility under the Vail Holdings Credit Agreement to October 14, 2021. Borrowings under the Vail Holdings Credit Agreement, including the term loan facility, bear interest at approximately 1.7% as of October 31, 2016.

Additionally, the Company assumed, through its acquisition of a 75% interest in the WB Partnerships, the Whistler Credit Agreement which consists of a C$300.0 million ($223.8 million) revolving credit facility that matures on November 12, 2021. As of October 31, 2016, C$190.5 million ($142.1 million) was outstanding under this revolving credit facility.

*Debt*

Principal payments on the majority of our long-term debt ($1,270.9 million of the total $1,414.8 million debt outstanding as of October 31, 2016) are not due until fiscal 2021 and beyond. As of October 31, 2016 and 2015, total long-term debt (including long-term debt due within one year) was $1,410.2 million and $828.1 million, respectively. Net Debt (defined as long-term debt plus long-term debt due within one year less cash and cash equivalents) increased from $788.5 million as of October 31, 2015 to $1,303.4 million as of October 31, 2016, primarily due to debt incurred and assumed relating to the acquisition of Whistler Blackcomb, as discussed above.

Our debt service requirements can be impacted by changing interest rates as we had $1,079.7 million of variable-rate debt outstanding as of October 31, 2016. A 100-basis point change in our borrowing rates would cause our annual interest payments to change by approximately $9.9 million. Additionally, the annual payments associated with the financing of the Canyons transaction increase by the greater of CPI less 1%, or 2%. The fluctuation in our debt service requirements, in addition to interest rate and inflation changes, may be impacted by future borrowings under our credit agreements or other alternative financing arrangements we may enter into. Our long term liquidity needs depend upon operating results that impact the borrowing capacity under our credit agreements, which can be mitigated by adjustments to capital expenditures, flexibility of investment activities and the ability to obtain favorable future financing. We can respond to liquidity impacts of changes in the business and economic environment by managing our capital expenditures and the timing of new real estate development activity.

*Dividend Payments*

In fiscal 2011, our Board of Directors approved the commencement of a regular quarterly cash dividend on our common stock at an annual rate of $0.60 per share, subject to quarterly declaration. Since the initial commencement of a regular quarterly cash dividend, our Board of Directors has annually approved an increase to our cash dividend on our common stock and on March 9, 2016, our Board of Directors approved an approximate 30% increase to our quarterly cash dividend to $0.81 per share (or approximately $32.4 million per quarter based upon shares outstanding as of October 31, 2016, which includes approximately $3.0 million for shares issued in conjunction with the acquisition of Whistler Blackcomb). For the three months ended October 31, 2016, we paid cash dividends of $0.81 per share ($29.4 million in the aggregate.) These dividends were funded through available cash on hand and borrowings under the revolving portion of our Vail Holdings Credit Agreement. Subject to the discretion of our Board of Directors, applicable law and contractual restrictions, we anticipate paying regular quarterly cash dividends on our common stock for the foreseeable future. The amount, if any, of the dividends to be paid in the future will depend on our available cash on hand, anticipated cash needs, overall financial condition, restrictions contained in our Vail Holdings Credit Agreement, future prospects for earnings and cash flows, as well as other factors considered relevant by our Board of Directors.

*Share Repurchase Program*

Our share repurchase program is conducted under authorizations made from time to time by our Board of Directors. Our Board of Directors initially authorized the repurchase of up to 3,000,000 Vail Shares (March 9, 2006) and later authorized additional repurchases of up to 3,000,000 additional Vail Shares (July 16, 2008) and 1,500,000 Vail Shares (December 4, 2015), for a total authorization to repurchase shares of up to 7,500,000 Vail Shares. During the fiscal year ended July 31, 2016, we repurchased 485,866 Vail Shares at a cost of $53.8 million. We did not repurchase any Vail Shares during the three months ended October 31, 2016. Since inception of this stock repurchase program through October 31, 2016, we have repurchased 5,434,977 Vail Shares at a cost of approximately $247.0 million. As of October 31, 2016, 2,065,023 Vail Shares remained available to repurchase under the existing repurchase authorization. Vail Shares purchased pursuant to the repurchase program will be held as treasury shares and may be used for the issuance of Vail Shares under the Company’s share award plan. Repurchases under the program may be made from time to time at prevailing prices as permitted by applicable laws, and subject to market conditions and other factors. The timing as well as the number of Vail Shares that may be repurchased under the program will depend on several factors, including our future financial performance, our available cash resources and competing uses for cash that may arise in the future,

the restrictions in our Vail Holdings Credit Agreement, prevailing prices of Vail Shares and the number of Vail Shares that become available for sale at prices that we believe are attractive. The share repurchase program has no expiration date.

***Covenants and Limitations***

We must abide by certain restrictive financial covenants under our credit agreements. The most restrictive of those covenants include the following covenants: for the Vail Holdings Credit Agreement Net Funded Debt to Adjusted EBITDA ratio and the Interest Coverage ratio (each as defined in the Vail Holdings Credit Agreement) and for the Whistler Credit Agreement Consolidated Total Leverage Ratio and Consolidated Interest Coverage Ratio (each as defined in the Whistler Credit Agreement). In addition, our financing arrangements limit our ability to make certain restricted payments, pay dividends on or redeem or repurchase stock, make certain investments, make certain affiliate transfers and may limit our ability to enter into certain mergers, consolidations or sales of assets and incur certain indebtedness. Our borrowing availability under the Vail Holdings Credit Agreement is primarily determined by the Net Funded Debt to Adjusted EBITDA ratio, which is based on our segment operating performance, as defined in the Vail Holdings Credit Agreement. Our borrowing availability under the Whistler Credit Agreement is primarily determined based on the commitment size of the credit facility and our compliance with the terms of the Whistler Credit Agreement.

We were in compliance with all restrictive financial covenants in our debt instruments as of October 31, 2016. We expect that we will meet all applicable financial maintenance covenants in our credit agreements throughout the year ending July 31, 2017. However, there can be no assurance we will meet such financial covenants. If such covenants are not met, we would be required to seek a waiver or amendment from the banks participating in the credit agreements. There can be no assurance that such waivers or amendments would be granted, which could have a material adverse impact on our liquidity.

**OFF BALANCE SHEET ARRANGEMENTS**

We do not have off balance sheet transactions that are expected to have a material effect on our financial condition, revenue, expenses, results of operations, liquidity, capital expenditures or capital resources.

**FORWARD-LOOKING STATEMENTS**

Except for any historical information contained herein, the matters discussed in this Form 10-Q contain certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements relate to analyses and other information available as of the date hereof, which are based on forecasts of future results and estimates of amounts not yet determinable. These statements also relate to our contemplated future prospects, developments and business strategies.

These forward-looking statements are identified by their use of terms and phrases such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “will” and similar terms and phrases, including references to assumptions. Although we believe that our plans, intentions and expectations reflected in or suggested by such forward-looking statements are reasonable, we cannot assure you that such plans, intentions or expectations will be achieved. Important factors that could cause actual results to differ materially from our forward-looking statements include, but are not limited to:

- *prolonged weakness in general economic conditions, including adverse effects on the overall travel and leisure related industries;*
- *unfavorable weather conditions or natural disasters;*
- *willingness of our guests to travel due to terrorism, the uncertainty of military conflicts or outbreaks of contagious diseases, and the cost and availability of travel options and changing consumer preferences;*
- *the seasonality of our business combined with adverse events that occur during our peak operating periods;*
- *competition in our mountain and lodging businesses;*
- *high fixed cost structure of our business;*
- *our ability to fund resort capital expenditures;*
- *our reliance on government permits or approvals for our use of public land or to make operational and capital improvements;*
- *risks related to a disruption in our water supply that would impact our snowmaking capabilities;*
- *risks related to federal, state, local and foreign government laws, rules and regulations;*
- *risks related to our reliance on information technology, including our failure to maintain the integrity of our customer or employee data;*
- *adverse consequences of current or future legal claims;*
- *a deterioration in the quality or reputation of our brands, including our ability to protect our intellectual property and the risk of accidents at our mountain resorts;*
- *our ability to hire and retain a sufficient seasonal workforce;*
- *risks related to our workforce, including increased labor costs;*
- *loss of key personnel;*
- *our ability to successfully integrate acquired businesses, or that acquired businesses may fail to perform in accordance with expectations, including Whistler Blackcomb or future acquisitions;*
- *our ability to realize anticipated financial benefits from Park City;*
- *our ability to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act of 2002, with respect to acquired businesses;*
- *risks associated with international operations;*
- *fluctuations in foreign currency exchange rates, particularly the Canadian dollar and Australian dollar;*
- *changes in accounting estimates and judgments, accounting principles, policies or guidelines; and*
- *a materially adverse change in our financial condition.*

All forward-looking statements attributable to us or any persons acting on our behalf are expressly qualified in their entirety by these cautionary statements.

If one or more of these risks or uncertainties materialize, or if underlying assumptions prove incorrect, our actual results may vary materially from those expected, estimated or projected. Given these uncertainties, users of the information included in this Form 10-Q, including investors and prospective investors, are cautioned not to place undue reliance on such forward-looking statements. Actual results may differ materially from those suggested by the forward-looking statements that we make for a number of reasons, including those described in this Form 10-Q and in Part I, Item 1A “Risk Factors” of the Form 10-K. All forward-looking statements are made only as of the date hereof. Except as may be required by law, we do not intend to update these forward-looking statements, even if new information, future events or other circumstances have made them incorrect or misleading.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

*Interest Rate Risk.* Our exposure to market risk is limited primarily to the fluctuating interest rates associated with variable rate indebtedness. At October 31, 2016, we had $1,079.7 million of variable rate indebtedness, representing approximately 76.3% of

our total debt outstanding, at an average interest rate during the three months ended October 31, 2016 of 1.6%. Based on variable-rate borrowings outstanding as of October 31, 2016, a 100-basis point (or 1.0%) change in our borrowing rates would result in our annual interest payments changing by approximately $9.9 million. Our market risk exposure fluctuates based on changes in underlying interest rates.

We have entered into interest rate swap agreements to fix the interest rate on a portion of our Canadian-denominated senior credit facility, which has the effect of fixing the underlying floating interest rate on a portion of the principal amount outstanding.

*Foreign Currency Exchange Rate Risk.* We are exposed to currency translation risk because the results of our international entities are reported in local currency, which we then translate to U.S. dollars for inclusion in our consolidated financial statements. As a result, changes between the foreign exchange rates, in particular the Canadian dollar and Australian dollar compared to the U.S. dollar, affect the amounts we record for our foreign assets, liabilities, revenues and expenses, and could have a negative effect on our financial results.

The following table summarizes the amounts of foreign currency translation losses recognized in comprehensive loss (in thousands).

| | Three Months Ended October 31, | |
|---|---|---|
| | **2016** | **2015** |
| Foreign currency translation adjustments, net of tax | $ (24,412) | $ (2,408) |

The results of Whistler Blackcomb are reported in Canadian dollars, which we then translate to U.S. dollars for inclusion in our consolidated condensed financial statements. Foreign currency translation adjustments, net of tax increased for the three months ended October 31, 2016 compared to the three months ended October 31, 2015, primarily due to the acquisition of Whistler Blackcomb and the movement of the U.S. dollar against the Canadian dollar.

## ITEM 4. CONTROLS AND PROCEDURES

**Disclosure Controls and Procedures**

Management of the Company, under the supervision and with participation of the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), evaluated the effectiveness of the Company's disclosure controls and procedures as such term is defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Act") as of the end of the period covered by this report on Form 10-Q.

Based upon their evaluation of the Company's disclosure controls and procedures, the CEO and the CFO concluded that the disclosure controls and procedures are effective to provide reasonable assurance that information required to be disclosed by the Company in the reports that it files or submits under the Act is accumulated and communicated to management, including the CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure and are effective to provide reasonable assurance that such information is recorded, processed, summarized and reported within the time periods specified by the SEC's rules and forms.

The Company, including its CEO and CFO, does not expect that the Company's controls and procedures will prevent or detect all error and all fraud. A control system, no matter how well conceived or operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met.

**Changes in Internal Control over Financial Reporting**

In connection with the Company's acquisition of Whistler Blackcomb in October 2016, management is in the process of analyzing, evaluating and, where necessary, implementing changes in internal control over financial reporting. The operations of Whistler Blackcomb will be excluded from management's assessment of internal control over financial reporting as of July 31, 2017.

## PART II OTHER INFORMATION

## ITEM 1. LEGAL PROCEEDINGS

In May 2016, Kirkwood received a Notice of Violation (NOV) from the State of California Central Valley Regional Water Quality Control Board regarding the disposition of asphalt grindings used in parking lot surfacing in and around Kirkwood Creek. We are in the information gathering stage and are cooperating with the Central Valley board staff and the California Department of Fish and Wildlife to satisfactorily resolve the matters identified in the NOV. It is anticipated that this process will continue into calendar year 2017.

In the first quarter of calendar year 2014, we received a Compliance Advisory from the Colorado Department of Public Health & Environment ("CDPHE"), advising of potential violations of the Colorado Air Pollution Prevention and Control Act at Breckenridge. We subsequently conducted voluntary self-audits at each of our four Colorado resorts and continue to cooperate with CDPHE after receipt of additional Compliance Advisories for each of the four resorts. The violations include permitting violations that have now been corrected and we continue to discuss a compliance order with CDPHE to settle the violations. It is anticipated that this process will continue into calendar year 2017.

We do not expect the resolution of the above items to have a material impact on our results of operations or cash flows.

We are a party to various lawsuits arising in the ordinary course of business. We believe that we have adequate insurance coverage and/or have accrued for all loss contingencies for asserted and unasserted matters and that, although the ultimate outcome of such claims cannot be ascertained, current pending and threatened claims are not expected to have a material, individually and in the aggregate, adverse impact on our financial position, results of operations and cash flows.

## ITEM 1A. RISK FACTORS

In addition to the information set forth below and elsewhere in this Form 10-Q, you should carefully consider the factors we previously disclosed in our Annual Report on Form 10-K, filed with the SEC on September 26, 2016, in addition to the risk factors set forth below. These risks could materially and adversely affect our business, financial condition and results of operations.

***We may not realize all of the anticipated financial, marketing and operational benefits of the Whistler Blackcomb acquisition.***

The benefits we expect to achieve as a result of the Whistler Blackcomb acquisition will depend, in part, on our ability to realize anticipated growth opportunities and cost synergies. Our success in realizing these growth opportunities and cost synergies, and the timing of this realization, depends on the successful integration of Whistler Blackcomb's business and operations with our

business and operations. Even if we are able to integrate our business with Whistler Blackcomb's business successfully, this integration may not result in the realization of the full benefits of the growth opportunities and cost synergies we currently expect within the anticipated time frame or at all. For example, we may be unable to eliminate duplicative costs, successfully diversify local tourism at Whistler Blackcomb, achieve growth plans, or effectively increase marketing exposure or guest relationships. Moreover, we anticipate that we will incur substantial expenses in connection with the integration of our business with Whistler Blackcomb's business. While we anticipate that certain expenses will be incurred, such expenses are difficult to estimate accurately, and may exceed current estimates.

Accordingly, the benefits from the Whistler Blackcomb acquisition may be offset by costs incurred or delays in integrating the companies, which could cause our financial assumptions to be inaccurate.

***Exchange rate fluctuations could result in significant foreign currency gains and losses and affect our business results.***

Because the results of Whistler Blackcomb are reported in Canadian dollars, which we will then translate to U.S. dollars for inclusion in our consolidated financial statements, we will be exposed to more significant currency translation risk as a result of the Whistler Blackcomb acquisition. As a result, changes between the foreign exchange rates, in particular the Canadian dollar and the U.S. dollar, affect the amounts we record for our foreign assets, liabilities, revenues and expenses, and could have a negative effect on our financial results.

***Whistler Blackcomb was not subject to Sarbanes-Oxley regulations and, therefore, they may lack the internal controls of a United States public company, which could ultimately affect our ability to ensure compliance with the requirements of Section 404 of the Sarbanes-Oxley Act.***

We recently acquired Whistler Blackcomb which was not previously subject to Sarbanes Oxley regulations and accordingly was not required to establish and maintain an internal control infrastructure meeting the standards promulgated under the Sarbanes-Oxley Act of 2002. The operations of Whistler Blackcomb will be excluded from management's assessment of internal control over financial reporting as of July 31, 2017.

Although management will continue to review and evaluate the effectiveness of our internal controls in light of the acquisition of Whistler Blackcomb, we cannot provide any assurances that there will be no significant deficiencies or material weaknesses in our internal control over financial reporting. Additionally, if we are unable to effectively integrate Whistler Blackcomb into the Company's controls over financial reporting, we may not be able to prevent significant deficiencies or material weaknesses in our internal control over financial reporting, which could have a material adverse effect on our business and our ability to comply with Section 404 of the Sarbanes-Oxley Act.

Other than the risk factors set forth above, there have been no material changes from those risk factors previously disclosed in Item 1A to Part I of the Form 10-K.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

As described elsewhere in this report, on October 17, 2016, the Company acquired all of the outstanding common shares of Whistler Blackcomb. Part of the consideration paid to Whistler Blackcomb shareholders consisted of 3,327,719 Vail Shares and 418,095 Exchangeco Shares. Each Exchangeco Share is exchangeable by the holder thereof for one Vail Share (subject to customary adjustments for stock splits or other reorganizations). In addition, the Company may require all outstanding Exchangeco Shares to be exchanged into an equal number of Vail Shares upon the occurrence of certain events and at any time following the seventh anniversary of the closing of the transaction. While outstanding, holders of Exchangeco Shares will be entitled to cast votes on matters for which holders of Vail Shares are entitled to vote and will be entitled to receive dividends economically equivalent to the dividends declared by the Company with respect to the Vail Shares.

The shares were issued in reliance upon Section 3(a)(10) of the Securities Act of 1933, as amended (the "Securities Act"), which exempts from the registration requirements under the Securities Act any securities that are issued in exchange for one or more bona fide outstanding securities where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court expressly authorized by law to grant such approval. Although exempt from the registration requirements under the Securities Act, such shares are listed and freely tradeable on the New York Stock Exchange.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

None.

**ITEM 6. EXHIBITS**

The following exhibits are either filed herewith or, if so indicated, incorporated by reference to the documents indicated in parentheses, which have previously been filed with the Securities and Exchange Commission.

| Exhibit Number | Description |
|---|---|
| 2.1 | Arrangement Agreement, between Vail Resorts, Inc., 1068877 B.C. Ltd. and Whistler Blackcomb, dated as of August 5, 2016 (Incorporated by reference to Exhibit 2.1 on Form 8-K of Vail Resorts, Inc. filed on August 8, 2016) (File No. 001-09614) |
| 3.1 | Certificate of Designations of Special Voting Preferred Stock (Incorporated by reference to Exhibit 3.1 on Form 8-K of Vail Resorts, Inc. filed on October 17, 2016) (File No. 001-09614) |
| 10.1* | Vail Resorts, Inc. Management Incentive Plan. |
| 10.2 | Amendment to Seventh Amended and Restated Credit Agreement, dated October 14, 2016 (Incorporated by reference to Exhibit 10.1 on Form 8-K of Vail Resorts, Inc. filed on October 17, 2016) (File No. 001-09614) |
| 10.3 | Amended and Restated Credit Agreement and the amendments thereto, dated as of November 12, 2013, among Whistler Mountain Resort Limited Partnership and Blackcomb Skiing Enterprises Limited Partnership, as borrowers, the Guarantors Party thereto, the Financial Institutions named therein, The Toronto-Dominion Bank, as administrative agent, TD Securities, as lead arranger and sole bookrunner, and Royal Bank of Canada, Bank of Montreal, Wells Fargo Bank, N.A., Canadian Branch, and Bank of America, N.A., Canadian Branch, as co-documentation agents. |
| 10.4 | Ski Area Agreement and the amendments thereto, dated as of September 30, 1982, between Her Majesty the Queen in Right of the Province of British Columbia, represented by the Minister of Lands, Parks and Housing, and Whistler Mountain Resort Limited Partnership. |
| 10.5 | Development Agreement for Blackcomb Mountain and the amendments thereto, dated as of May 1, 1979, between Her Majesty the Queen in Right of the Province of British Columbia, represented by the Minister of Lands, Parks and Housing, and Blackcomb Skiing Enterprises Limited Partnership, |
| 31.1 | Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2 | Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32 | Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 101 | The following information from the Company's Quarterly Report on Form 10-Q for the three months ended October 31, 2016 formatted in eXtensible Business Reporting Language: (i) Unaudited Consolidated Condensed Balance Sheets as of October 31, 2016, July 31, 2016, and October 31, 2015; (ii) Unaudited Consolidated Condensed Statements of Operations for the three months ended October 31, 2016 and 2015; (iii) Unaudited Consolidated Condensed Statements of Comprehensive Income for the three months ended October 31, 2016 and 2015; (iv) Unaudited Consolidated Condensed Statements of Stockholders' Equity for the three months ended October 31, 2016 and 2015; (v) Unaudited Consolidated Condensed Statements of Cash Flows for the three months ended October 31, 2016 and 2015; and (vi) Notes to the Consolidated Condensed Financial Statements. |

*Management contracts and compensatory plans and arrangements.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Vail Resorts, Inc.

Date: December 9, 2016 By: /s/ Michael Z. Barkin

Michael Z. Barkin
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Date: December 9, 2016 By: /s/ Ryan H. Siurek

Ryan H. Siurek
Vice President, Controller and
Chief Accounting Officer
(Principal Accounting Officer)

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**Exhibit 10.1**

# Vail Resorts
# Management Incentive Plan
# Grades 33 & Above

**Objective**

The purpose of the Management Incentive Plan (the "Plan") is to reinforce individual employee behaviors that contribute to the mission, values, growth and profitability of Vail Resorts, Inc. and its wholly owned subsidiaries (collectively, the "Company") by:

Rewarding and recognizing performance in one or more of the following areas:

- **Financial -** Financial results at the end of the fiscal year are compared to EBITDA targets determined at the beginning of the fiscal year. EBITDA (Earnings before Interest, Taxes and Depreciation and Amortization excluding stock based compensation) results are consolidated into various divisions of the Company and are defined in the funding section below.
- **Individual -** Individual employee performance, including adherence to the Company's mission and values.

**Effective Dates**

The Plan is effective and will remain in effect until amended or terminated. The Plan Year will run concurrently with the fiscal year under which the employee is governed.

**Eligibility**

All full-time employees of the Company at grade levels 33 and above as identified in the Company's compensation grade structures are eligible to participate in the Plan.

**Target Percentages**

The target bonus percentages for employees are determined by the Compensation Committee in its sole discretion on a yearly basis by the end of the first quarter of each fiscal year and while the attainment of Resort, Mountain, Retail and Lodging EBITDA performance targets are substantially uncertain.

**Target Incentives**

Each employee's target bonus incentive is calculated based on the target bonus percentage of his or her annual salary as of the last day of the measurement period the employee was classified in a Grade 33 position, except where proration is needed as defined in the proration of target incentives section.

**Funding**

The funding at the end of the fiscal year is based on the final EBITDA results or Division Goal Attainment of the Company's business divisions and the eligible employee's incentive target amounts as determined by the Compensation Committee and as defined in Exhibits A and B .

**Division Definitions**

EBITDA Results for each of the Company's business divisions are defined as follows:

- Resort EBITDA results include the EBITDA results for all Mountain resorts, Lodging divisions and Retail divisions combined.
- Retail EBITDA results include all EBITDA results of the Retail division combined.

The funding is based on the EBITDA results of the division where the employee works, the scope of his or her responsibilities and where his or her salary expense is charged.

**For Corporate, Lodging, Mountain and VRDC executives**, the Plan is 100% funded based on Resort EBITDA.

**For Retail executives**, the Plan is 75% funded based on Retail EBITDA and 25% funded based on Resort EBITDA.

The maximum amount that may be earned as an award under the Plan for any Plan year by any one eligible employee shall be $4,000,000.

**Funding Variable**

At each fiscal year-end, the funding will be based on the percentage of EBITDA target achieved. The schedule attached hereto as Exhibit A is used to determine the percent of the target incentive funded by Resort, Mountain, Retail and Lodging EBITDA performance. The Compensation Committee will establish the Resort, Mountain, Retail and Lodging EBITDA performance targets and corresponding funding levels and may amend Exhibit A by the end of the first quarter of each fiscal year and while the attainment of such goals is substantially uncertain. EBITDA results are rounded to the nearest whole percentage using simple rounding.

**Individual Performance Rating Variable**

For all employees excluding the Chief Executive Officer, the target incentive will be influenced based on individual performance. The Chief Executive Officer's total bonus will be equal to, and based solely on, the funded target incentive amount.

Individual performance for all employees participating in the Plan will be determined through the applicable fiscal year performance review process, which will be determined by the Chief Executive Officer. With the exception of promoted employees, the final performance score will determine the incentive payment with higher performing employees receiving larger rewards than their lower performing peers. For those employees promoted into a higher level position, any applicable incentive payments will be calculated by applying the Meets Expectations performance variable to the incentive target for the new position.

**Example 1 Payout:**

- Grade 33 Corporate employee
- $200,000 annual salary
- Target incentive % = 42.5%
- **Target incentive $= $200,000 x 42.5% = $85,000**

- Resort EBITDA results are at 101% of target
- **Resort EBITDA funding = 107.5%**

With Resort EBITDA funding 100%, funded incentive = 107.5% x $85,000 = $91,375.

- Individual performance rating of "Achieves Expectations"
- "Achieves Expectations" = 100% of funded incentive
- $91,375 x 100% = $91,375 payout

**Example 2 Payout:**

- Grade 33 Retail employee
- $225,000 annual salary
- Target incentive % = 42.5%
- **Target incentive $ = $225,000 x 42.5% = $95,625**

- Resort EBITDA results are at 101% of target

- **Resort EBITDA funding = 107.5%**

- Retail EBITDA results are at 102% of target
- **Retail EBITDA funding = 115%**

Resort EBITDA funding = 25%
Resort Funded incentive = (107.5% x 25%) x 95,625 = $25,699
Retail EBITDA funding = 75%
Resort Funded incentive = (115% x 75%) x 95,625 = $82,477
Total Incentive = $25,699 + $82,477 = $108,176

- Individual performance rating of “Achieves Expectations”
- “Exceeds Expectations” = 115% of funded incentive

- $108,176 x 115% = $124,402 payout

Individual performance can multiply the incentive payout by 0% to 130% of the target amount as displayed in Exhibit B.

**Proration for New Hires**

An employee hired into a position eligible for this Plan will receive a prorated incentive for the Plan Year based on the hire date and following schedule. Anyone hired after April 30 will not be eligible to receive an award in that fiscal year, except at the sole discretion of the Compensation Committee.

| Month of Hire | Prorate % |
|---|---|
| *August, September, October* | 100% |
| *November, December, January* | 67% |
| *February, March, April* | 33% |
| *May, June, July* | 0% |

**Proration for Internal Promotions**

The proration calculation for employees who have been promoted into a plan eligible position will be based on number of days in each role and performance rating earned in each position. For the purposes of this plan, a promotion is defined as position change resulting in an increase in grade assignment and individual bonus target percentage.

*Example of Prorated Bonus due to Promotion*

| Role | Base Salary | Target % | Target $ | Funding % | Performance Rating | # of Days In Role | Prorated Payout |
|---|---|---|---|---|---|---|---|
| SVP | $250,000 | 42.5% | $106,250 | 100% | 100% | 92 | $26,781 |
| VP | $225,000 | 35.0% | $78,750 | 100% | 100% | 273 | $58,901 |
| | | | | | | Final Amount | **$85,682** |

**Pro-Ration for Leave of Absence**

Individual incentive determinations for employees who have a paid or unpaid leave of absence (this does not include vacation) in excess of one month during the Plan Year will be prorated to reflect the time on leave.

**Plan Payouts**

Individual incentive determinations calculated in accordance with the terms of this Plan will be paid in cash or pursuant to equity awards granted under the Company's equity compensation plan, or a combination thereof, at the discretion of the Compensation Committee, minus applicable deductions and withholding as required by law, by the close of the first quarter following the previous fiscal year end. Payouts will be rounded to the nearest whole dollar amount.

**Termination of Employment**

Incentive payments under the Plan do not vest until the date Plan payments are made. To be eligible to receive a payment, a participant must be employed by the Company on the date Plan payments are made. Employees whose employment ends prior to the payment date under the Plan for any fiscal year will not be eligible, subject to the discretion of the Compensation Committee. However, if an otherwise eligible employee is not employed as of the date of the payout under the Plan due to death or long-term disability under the Company long-term disability plan, such employee, if he or she would have otherwise received a payout under the Plan but for his or her death or disability, shall be entitled to receive a pro-rated payment for the portion of the fiscal year the employee was actively employed.

If an employee terminates employment and is subsequently rehired, eligibility under this Plan restarts with the employee's rehire date.

**Material Restatement of Financial Results**

In the event that the Board determines there has been a material restatement of publicly issued financial results from those previously issued to the public , the Board will review all incentive payments made to

executive officers on the basis of having met or exceeded specific performance targets and, if such payments would have been lower had they been calculated based on such restated results, the Board will, to the extent permitted by governing law, seek to recoup for the benefit of our company such payments made in excess of the amount that would have been paid based on the restated results. This will apply to all incentive payments made during the three-year period prior to the restatement, beginning with payments earned for the 2012 fiscal year. For purposes of this policy, the term “executive officers” has the meaning given in Rule 3b-7 under the Securities Exchange Act of 1934, as amended, and the term “incentive payments” means bonuses and awards under the Plan.

**Plan Administration, Modification and Discontinuance**

This Plan is administered by the Compensation Committee. The Compensation Committee has authority to interpret the Plan and to make, amend, or nullify any rules and procedures deemed necessary for proper Plan administration, including, but not limited to, performance targets, results and extraordinary events. The EBITDA performance targets and corresponding funding levels shall be adjusted for acquisitions, divestitures, or board imposed unbudgeted expenses in the discretion of the Compensation Committee.

Notwithstanding the foregoing, no Plan payouts will be made until and unless the Compensation Committee has certified that the performance goals and all other material terms have been satisfied. The Compensation Committee has the sole discretion to modify the application of this Plan.

**Continued Employment**

The Plan is not intended to and does not give any employee the right to continued employment with the Company. The Plan does not create a contract of employment with any employee and does not alter the at-will nature of employee’s employment with the Company.

# Exhibit A - EBITDA Funding Matrix

| Percent of the EBITDA Target Obtained for the Division | Percent of Incentive Target Funded- Grade 33+ |
|---|---|
| **<80%** | **0.0%** |
| **80%** | **15.00%** |
| 81% | 16.00% |
| 82% | 17.00% |
| 83% | 18.00% |
| 84% | 19.00% |
| 85% | 20.00% |
| 86% | 21.00% |
| 87% | 22.00% |
| 88% | 23.00% |
| 89% | 24.00% |
| **90%** | **25.00%** |
| 91% | 30.00% |
| 92% | 35.00% |
| 93% | 40.00% |
| 94% | 45.00% |
| **95%** | **50.00%** |
| 96% | 60.00% |
| 97% | 70.00% |
| 98% | 80.00% |
| 99% | 90.00% |
| **100%** | **100.00%** |
| 101% | 107.50% |
| 102% | 115.00% |
| 103% | 122.50% |
| 104% | 130.00% |
| **105%** | **137.50%** |
| 106% | 145.00% |
| 107% | 152.50% |
| 108% | 160.00% |
| 109% | 167.50% |
| **110%** | **175.00%** |
| 111% | 177.50% |
| 112% | 180.00% |
| 113% | 182.50% |
| 114% | 185.00% |
| **115%** | **187.50%** |
| 116% | 190.00% |
| 117% | 192.50% |
| 118% | 195.00% |
| 119% | 197.50% |
| **>=120%** | **200.00%** |

# Exhibit B - Performance Rating Variable

The following table illustrates how an individual's performance rating affects the overall Management Incentive Plan Payout.

| Performance Rating Chart | |
|---|---|
| **Performance Rating** | **% Incentive Influenced** |
| Greatly Exceeds Expectations | 130% |
| Exceeds Expectations | 115% |
| Achieves Expectations | 100% |
| Meets Most Expectations | 70% |
| Meets Some Expectations | 0% |

**C$300,000,000**

# AMENDED AND RESTATED CREDIT AGREEMENT

**WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP,**
**by its general partner, WHISTLER BLACKCOMB HOLDINGS INC.**

and

**BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP,**
**by its general partner, WHISTLER BLACKCOMB HOLDINGS INC.**
as Borrowers

- and -

**THE GUARANTORS PARTY HERETO**

- and -

**THE FINANCIAL INSTITUTIONS NAMED HEREIN**
as Lenders

- and -

**THE TORONTO-DOMINION BANK**

as Administrative Agent

- and -

**TD SECURITIES**
as Lead Arranger and Sole Bookrunner

- and -

**ROYAL BANK OF CANADA**
**BANK OF MONTREAL**
**WELLS FARGO BANK, N.A., CANADIAN BRANCH**
**BANK OF AMERICA, N.A., CANADA BRANCH**
as Co-Documentation Agents

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**CREDIT AGREEMENT**

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Dated as of November 12, 2013

**SCHEDULES**

**Schedules Relating to Accommodations**

| | | |
|---|---|---|
| Schedule 1 | - | Form of Borrowing Notice |
| Schedule 2 | - | Form of Rollover/Conversion Notice |
| Schedule 3 | - | Form of Drawing Notice |
| Schedule 4 | - | Form of Issue Notice |
| Schedule 5 | - | Form of Repayment Notice |
| Schedule 6 | - | Notice Periods and Amounts |
| Schedule 7 | - | Applicable Margins/Applicable Commitment Fees |
| Schedule 8 | - | Form of Compliance Certificate |
| Schedule 9 | - | Assignment and Assumption |
| Schedule 10 | - | Lenders and Commitments |
| Schedule 11 | - | Existing Documentary Credits |

**Disclosure Schedules**

| | | |
|---|---|---|
| Schedule A | - | Jurisdiction of Incorporation; Locations; Etc. |
| Schedule B | - | Litigation |
| Schedule C | - | Location of Business |
| Schedule D | - | Material Permits |
| Schedule E | - | Material Agreements |
| Schedule F | - | Material Leased Real Properties and Crown Tenures |
| Schedule G | - | Owned Real Properties |
| Schedule H | - | Subsidiaries |
| Schedule I | - | Trademarks/Patents, etc. |
| Schedule J | - | Environmental Matters |
| Schedule K | - | Existing Encumbrances |
| Schedule L | - | Intercompany Securities/Instruments |

**AMENDED AND RESTATED**

**CREDIT AGREEMENT**

This **AMENDED AND RESTATED CREDIT AGREEMENT** (the "**Agreement**") dated as of November 12, 2013, among Whistler Mountain Resort Limited Partnership, by its general partner, Whistler Blackcomb Holdings Inc. ("**Whistler LP**"), and Blackcomb Skiing Enterprises Limited Partnership, by its general partner, Whistler Blackcomb Holdings Inc. ("**Blackcomb LP**" and together with Whistler LP, the "**Borrowers**"), each Guarantor from time to time party hereto, each Lender from time to time party hereto, and The Toronto-Dominion Bank, as Administrative Agent.

**RECITALS**

A. The Borrowers, Canadian Imperial Bank of Commerce, as administrative agent, the lenders party thereto and the Loan Parties (as therein defined) entered into a credit agreement dated as of November 9, 2010, as amended, providing for the Existing Credit Facilities.

B. Pursuant to the Agency Resignation and Appointment Agreement, the Administrative Agent became administrative agent in respect of the Existing Credit Facilities.

C. The Borrowers have requested that the Lenders provide the Credit Facility, that the Administrative Agent act as administrative agent in respect of the Credit Facility and that the Existing Credit Facilities be amended and restated to give effect thereto.

D. The Administrative Agent has indicated its willingness to act as the administrative agent, the Lenders have indicated their willingness to provide the Credit Facility, and the Swing Line Lender has indicated its willingness to issue letters of credit, in each case, on the amended terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE 1
## INTERPRETATION

### Section 1.01 Defined Terms

As used in this Agreement, including the recitals hereto, the following terms have the following meanings:

"**Accommodation**" means (i) an Advance made by a Lender on the occasion of any Borrowing; (ii) the creation and purchase of Bankers' Acceptances or the purchase of completed Drafts by a Lender or by any other Person on the occasion of any Drawing; (iii) the creation and issue of Documentary Credits by the Swing Line Lender; and (iv) the making of a Swing Line Advance by the Swing Line Lender (each of which is a "**Type**" of Accommodation).

"**Accommodation Notice**" means a Borrowing Notice, a Drawing Notice or an Issue Notice, as the case may be.

"**Accommodations Outstanding**" means, at any time,

(i) under the Credit Facility, in relation to (a) the Borrowers and all Lenders, the amount of all Accommodations outstanding thereunder at such time made to the Borrowers, and (b) the Borrowers and each Lender, the amount of all Accommodations outstanding thereunder at such time made to the Borrowers by such Lender under its Commitment;

(ii) in respect of Documentary Credits, the Face Amount of all Documentary Credits outstanding at such time issued by the Swing Line Lender to the Borrowers under the Swing Line Commitment; and

(iii) in respect of Swing Line Advances, the amount of all Swing Line Advances outstanding at such time made to the Borrowers by the Swing Line Lender under the Swing Line Commitment.

In determining Accommodations Outstanding, the aggregate amount thereof shall be determined on the basis of (i) the aggregate principal amount of all Advances and the Face Amount of all outstanding BA Instruments (if any) which any applicable Lender has purchased or arranged to have purchased; and (ii) an amount equal to the Face Amount of all Documentary Credits for which any of the Lenders are contingently liable pursuant to Section 5.06(2) and the amount of all Swing Line Advances for which any of the Lenders are contingently liable pursuant to Section 3.06, (and in respect of each Lender, a rateable part of such amount). For purposes of determining amounts of borrowing availability under the Credit Facility and Section 2.05(1), in light of the Credit Facility being expressed in Canadian Dollars, any Accommodation made under the Credit Facility that is denominated in U.S. Dollars (and for purposes of such determinations only) shall be converted into its Equivalent Canadian $ Amount.

"**Acquisition**" means any transaction, or any series of related transactions, consummated after the Closing Date, by which any Person directly or indirectly, by means of a purchase of Equity Securities, amalgamation, merger, purchase of assets, or similar transaction having the same effect as any of the foregoing, (a) acquires any business or all or substantially all of the assets of any other Person engaged in any business, (b) acquires Control of securities of another Person engaged in a business representing more than 50% of the ordinary voting power for the election of directors or other governing body if the business affairs of such Person are managed by a board of directors or other governing body, or (c) acquires Control of more than 50% of the ownership interest in any other Person engaged in any business that is not managed by a board of directors or other governing body.

"**Additional Lender**" has the meaning set forth in Section 2.12(3).

"**Administrative Agent**" means The Toronto-Dominion Bank as Administrative Agent for the Lenders under this Agreement, and any successor appointed pursuant to Section 14.07.

"**Administrative Agent's Account for Payments**" means, for all payments by the Borrowers in Canadian Dollars or U.S. Dollars, as applicable, the following accounts maintained by the Administrative Agent at the Administrative Agent's Branch of Account, to which payments and transfers are to be effected:

(a) in respect of payments in Canadian Dollars:

SWIFT: TDOMCATTTOR

Cdn $ Account No: 0360-01-2301253
Favor: TD Bank Toronto - Corporate Lending
Ref: Borrower name

(b) in respect of payments in US Dollars:

Bank of America - New York
SWIFT: BOFAUS3N
Account No: 6550-826-336
Account with: TD Bank Toronto
TDOMCATTTOR
Favor: TD Bank Toronto - Corporate Lending
Account: 0360-01-2301447
Ref: Borrower name

or any other accounts of the Administrative Agent as the Administrative Agent may from time to time advise the Borrowers and the Lenders in writing.

"**Administrative Agent's Branch of Account**" means the office of the Administrative Agent located at 66 Wellington Street West, 5th Floor, Toronto, Ontario, M5K 1A2, or other office or branch of the Administrative Agent in Canada as the Administrative Agent may from time to time advise the Borrowers and the Lenders in writing.

"**Administrative Questionnaire**" means an administrative questionnaire in a form supplied by the Administrative Agent.

"**Advances**" means the advances made by the Lenders pursuant to Article 3 and "**Advance**" means any one of such Advances. Advances under the Credit Facility shall be denominated in Canadian Dollars or U.S. Dollars. Advances denominated in Canadian Dollars may (in accordance with and subject to Articles 2 and 3) be designated as Canadian Prime Rate Advances, and Advances denominated in U.S. Dollars may (in accordance with and subject to Articles 2 and 3) be designated as LIBOR Advances or U.S. Base Rate Advances. Each of a Canadian Prime Rate Advance, a U.S. Base Rate Advance and a LIBOR Advance is a "**Type**" of Advance.

"**Affiliate**" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

**"Agency Resignation and Appointment Agreement"** means the agency resignation and appointment agreement dated as of the date hereof between Canadian Imperial Bank of Commerce, as resigning administrative agent, the Administrative Agent, as successor Administrative Agent, and Borrowers and other Loan Parties party thereto.

"**Aggregate Commitment**" means, at any time, $300,000,000, as such amount may from time to time be increased pursuant to Section 2.12 or reduced pursuant to the terms hereof.

"**Agreement**" means this credit agreement, as amended, restated, supplemented, modified, renewed or replaced.

"**Annual Business Plan**" means, for any Financial Year, in form reasonably satisfactory to the Administrative Agent, (i) a detailed *pro forma* balance sheet, income statement and cash flow statement and (ii) *pro forma* calculations with respect to the Consolidated Total Leverage Ratio, Consolidated Senior Leverage Ratio (if applicable) and Consolidated Interest Coverage Ratio in respect of the Borrowers and their Subsidiaries, prepared on a combined consolidated basis in accordance with GAAP, in respect of such Financial Year and each Financial Quarter therein and supported by appropriate explanations, notes and information, all as approved by the board of directors of Parent GP in its capacity as general partner of each Borrower.

"**Anti-Terrorism Law**" means any laws relating to terrorism or money laundering, including Executive Order No. 13224, the *USA Patriot Act*, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by the United States Treasury Department's Office of Foreign Asset Control, the *Criminal Code* (Canada), and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

"**Applicable Margins**" means, at any time, subject to the following sentence, the margins in basis points set forth and defined in Schedule 7. In respect of (i) BA Instruments, LIBOR Advances and Documentary Credits, the Applicable Margin shall be the margin referred to in the column "BA Instruments/LIBOR" or "Documentary Credits" as applicable, but in any event shall not be less than 2.50% until delivery by the Borrowers of interim financial statements of the Borrowers and their Subsidiaries, together with a Compliance Certificate, in respect of the Financial Quarter ending March 31, 2014 (the "**Specified Delivery Date**"), and (ii) Canadian Prime Rate Advances and U.S. Base Rate Advances, the Applicable Margin shall be the margin referred to in the column "Canadian Prime Rate/U.S. Base Rate Advances", but in any event shall not be less than 1.50% until the Specified Delivery Date. So long as no Default or Event of Default shall have occurred and be continuing, each Applicable Margin shall be adjusted as of two (2) Business Days after the date the Administrative Agent receives the relevant Compliance Certificate calculating the Consolidated Total Leverage Ratio; provided that, if the Borrowers fail to deliver a Compliance Certificate pursuant to Section 8.01(1)(a)(iii), each Applicable Margin shall be the highest applicable rate set forth in Schedule 7 until two (2) Business Days following the Specified Delivery Date or receipt of such Compliance Certificate, as applicable. Notwithstanding the foregoing, in respect of any BA Instruments or LIBOR Advances outstanding at the effective time of the change in the Applicable Margin determined hereunder (and only in respect of such outstanding BA Instruments or LIBOR Advances at such time and not BA Instruments or LIBOR Advances issued thereafter), such change in the Applicable Margin shall not apply to such outstanding BA Instruments or LIBOR Advances until the expiry of the Interest Period or the contract maturity date applicable thereto, as the case may be.

"**Applicable Percentage**" means with respect to any Lender, the percentage of the Aggregate Commitment represented by such Lender's Commitment. If the Commitments have terminated or expired, the Applicable Percentage shall be the percentage of the total Accommodations Outstanding represented by such Lender's Accommodations Outstanding.

"**Approved Fund**" means any Fund, other than a Fund carrying on a business of purchasing, holding, disposing of or realizing upon distressed or underperforming Debt, that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"**Arranger**" means TD Securities.

"**Assets**" means, with respect to any Person, any property (including real and personal property), assets (including any insurance proceeds) and undertakings of such Person of every kind and wheresoever situate, whether now owned or hereafter acquired (and, for greater certainty, includes any equity or like interest of any Person in any other Person).

"**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent, in substantially the form of Schedule 9 or any other form approved by the Administrative Agent.

"**Attributable Debt**" means, at any date in relation to any capitalized leases, all obligations of such Person as lessee under such capitalized leases, in each case taken at the amount thereof accounted for as liabilities in accordance with GAAP.

"**Authorization**" means, with respect to any Person, any authorization, order, permit, approval, grant, licence, consent, franchise, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Governmental Authority having jurisdiction over such Person.

"**BA Discount Rate**" means, for any Drawing Date, in respect of any Bankers' Acceptances or Drafts to be purchased pursuant to Article 4 by (i) a Lender which is a Schedule I Bank, the average Bankers' Acceptance discount rate for the appropriate term as quoted on Reuters Screen CDOR Page (or such other page as is a replacement page for such Bankers' Acceptances) at 10:00 a.m. (Toronto time), and (ii) any other Lender, the lesser of (x) the actual discount bid rate of such Lenders for Bankers' Acceptances having a term to maturity the same as such Bankers' Acceptances or Drafts and (y) the rate specified in clause (i) plus 0.10%. If the rate specified in clause (i) above is not available as of such time, then the discount rate in respect of such Bankers' Acceptances and Drafts shall mean the discount rate (calculated on an annual basis) quoted by the Administrative Agent at 10:00 a.m. (Toronto time) on such date as the discount rate at which the Administrative Agent would purchase, on the relevant Drawing Date, its own Bankers' Acceptances or Drafts having an aggregate Face Amount equal to and with a term to maturity the same as the Bankers' Acceptances or Drafts to be acquired by the applicable Lenders or other Person on such Drawing Date.

"**BA Equivalent Note**" has the meaning specified in Section 4.03(3).

"**BA Instruments**" means, collectively, Bankers' Acceptances, Drafts and BA Equivalent Notes and, in the singular, any one of them.

"**Bankers' Acceptance**" has the meaning specified in Section 4.01(1).

"**basis point**" means 1/100th of one percent.

"**Beneficiary**" means, in respect of any Documentary Credit, the beneficiary named in such Documentary Credit.

"**Blackcomb LP**" means Blackcomb Skiing Enterprises Limited Partnership, a limited partnership formed under the law of British Columbia as at the date hereof, or Parent GP, as general partner for Blackcomb Skiing Enterprises Limited Partnership, as the context requires, and its permitted successors and assigns.

"**Blackcomb Partnership Agreement**" means the amended and restated agreement of limited partnership dated November 12, 2010 with respect to Blackcomb LP made between Parent GP WB GP, Nippon GP and Nippon Cable Holdings (Canada) Ltd. (formerly named 0878377 B.C. Ltd.).

"**Borrowers**" means collectively, Whistler LP and Blackcomb LP, and each individually is a "Borrower".

"**Borrowers' Account**" means, (i) in respect of Canadian Dollars, each Borrower's Canadian Dollar account, and (ii) in respect of U.S. Dollars, the Borrower's U.S. Dollar account, in each case, the particulars of which shall have been notified to the Administrative Agent by each Borrower.

"**Borrowers' Distributable Cash Amount**" means, for any Measurement Period, (a) the Consolidated EBITDA of the Borrowers and their Consolidated Subsidiaries for such period less, to the extent not already deducted in the calculation of Consolidated EBITDA: (i) Consolidated Income Tax Expense for such period, and (ii) Consolidated Interest Expense to the extent payable in cash during such period, and mandatory debt servicing payments made by the Borrowers during such period, plus (b) the aggregate amount of undistributed and unexpended Borrowers' Distributable Cash Amounts from any prior Measurement Period.

"**Borrowing**" means a borrowing consisting of one or more Advances.

"**Borrowing Notice**" has the meaning specified in Section 3.02(1).

"**Breakage Costs**" means all costs, losses and expenses incurred by any Lender by reason of the breakage of LIBOR contracts, all as set out in a certificate delivered to the Borrower by any Lender entitled to receive such reimbursement.

"**Buildings and Fixtures**" means all plants, buildings, structures, erections, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment) situate on or at the Owned Real Properties and/or Material Leased Real Properties and/or the Crown Real Properties.

"**Business**" means the business of the Loan Parties as conducted on the date hereof including, for greater certainty the operation of the four season mountain resort known as "Whistler Blackcomb" at Whistler, British Columbia and other recreational businesses at or around Whistler, British Columbia.

"**Business Day**" means any day of the year, other than a Saturday, Sunday or other day on which banks are required or authorized to close in Toronto, Ontario and Vancouver, British Columbia and, where used in the context of (i) U.S. Base Rate Advances, and in respect of any payment in U.S. Dollars, is also a day on which banks are not required or authorized to close in New York, New York; and (ii) a LIBOR Advance, is also a day on which banks are not required or authorized to close in New York, New York and dealings are carried on in the London interbank market.

"**Canadian Benefit Plan**" means any plan, fund, program or policy, whether oral or written, formal or informal, funded or unfunded, insured or uninsured, providing employee benefits, including medical, hospital care, dental, sickness, accident, disability, life insurance, pension, retirement or savings benefits, bonus, profit sharing, deferred compensation, incentive

compensation, employment insurance benefits, employee loans, vacation pay, severance or termination pay, under which any Loan Party has any liability with respect to any of its employees or former employees employed in Canada, and includes any Canadian Pension Plan but excludes any plan, fund, program or policy established pursuant to provincial or federal Law.

"**Canadian Dollars**", and "**Cdn. $**" each mean lawful money of Canada.

"**Canadian Pension Plans**" means each pension plan required to be registered under Canadian federal or provincial law that is maintained or contributed to by any Loan Party for its employees or former employees, but does not include the Canada Pension Plan or the Quebec Pension Plan as maintained by the Government of Canada or the Province of Quebec.

"**Canadian Prime Rate**" means, at any time, the rate of interest per annum equal to the greater of (i) the rate which the principal office of the Administrative Agent in Toronto, Ontario then quotes, publishes and refers to as its "prime rate" and which is its reference rate of interest for loans in Canadian Dollars made in Canada to commercial borrowers; and (ii) the average rate for Canadian Dollar bankers' acceptances having a term of one month that appears on the Reuters Screen CDOR Page (or such other page as is a replacement page for such bankers' acceptances) as of 10:00 a.m. (Toronto time) on the date of determination, as reported by the Administrative Agent, plus 1.0% per annum, adjusted automatically with each quoted, published or displayed change in such rate, all without necessity of any notice to the Borrowers or any other Person.

"**Canadian Prime Rate Advance**" means an Advance that bears interest based on the Canadian Prime Rate.

"**Capital Expenditures**" means, in respect of any Person, expenditures made by such Person for the purchase, lease or acquisition of Assets (other than current Assets) required to be capitalized for financial reporting purposes in accordance with GAAP.

"**Capital Lease Obligation**" of any Person means any obligation of such Person to pay rent or other amounts under a lease of property, real or personal, moveable or immoveable, that is accounted for in accordance with GAAP as a capitalized lease.

"**Change in Law**" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Law, (b) any change in any Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any Law by any Governmental Authority. Without limiting the generality of the foregoing, all requests, rules, regulations, guidelines and directives under, or issued in connection with, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* or promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision pursuant to Basel III (or any successor or similar authority or any United States, Canadian or foreign regulatory authority), all interpretations and applications thereof, and any compliance by a lender with any request or directive relating thereto, shall be deemed a "Change in Law" regardless of the date enacted, adopted, applied or issued.

"**Change of Control**" means at any time (a) any Person or group of Persons acting jointly or in concert, other than the Excluded Holders, collectively shall beneficially own capital stock of Parent GP representing more than 50% of the aggregate ordinary voting power represented

by the issued and outstanding capital stock of Parent GP, or (b) Parent GP ceases to own, directly or indirectly, 75% of the partnership interests (that is, the limited partner and general partner Equity Securities) of each of the Borrowers, or (c) Parent GP ceases to be the general partner of each of the Borrowers or (d) a majority of the directors of Parent GP cease to be independent within the meaning of Sections 1.4 and 1.5 of National Instrument 52-110 of the Canadian Securities Administrators.

"**Closing Date**" means November 12, 2013.

"**Collateral**" means the Assets of the Loan Parties and the Limited Recourse Guarantors in respect of which the Administrative Agent or any Lender has an Encumbrance pursuant to a Security Document or in which an Encumbrance is intended to be created in favour of the Administrative Agent or any Lender pursuant to the terms of a Security Document.

"**Commitment**" means, as to all Lenders at any time, the amount specified in the definition of "Aggregate Commitment", and as to any Lender at any time, the amount set forth opposite such Lender's name in Schedule 10 attached hereto under the caption "Commitment", as such amount may be increased or reduced from time to time in accordance with the provision of this Agreement. For greater certainty, the Commitment of each Lender will apply on a *pro rata* basis as between Tranche 1 and Tranche 2 of the Credit Facility.

"**Commitment Fees**" has the meaning assigned to such term in Section 2.07(1).

"**Commitment Increase**" has the meaning set forth in Section 2.12(1).

"**Compliance Certificate**" means a certificate of the Borrowers signed by the respective chief executive officer, chief financial officer or any other senior officer of Parent GP, substantially in the form attached hereto as Schedule 8.

"**Consolidated Debt**" means, at any time, the aggregate amount of all combined consolidated Debt of the Loan Parties and their Subsidiaries, other than the Real Estate Development SPVs, determined on a combined consolidated basis in accordance with GAAP and without duplication as of such time.

"**Consolidated Depreciation and Amortization Expense**" means, for any Measurement Period, depreciation and amortization expense of the Relevant Persons for such period, determined on a combined consolidated basis in accordance with GAAP.

"**Consolidated EBITDA**" means, in respect of a Person and its Subsidiaries or the Loan Parties, as the context requires, (the "**Relevant Persons**") for any Measurement Period, Consolidated Net Income for such period (i) increased by, to the extent deducted in calculating Consolidated Net Income, the sum, without duplication, of (A) Consolidated Interest Expense for such period; (B) Consolidated Income Tax Expense for such period; (C) non-cash items, including Consolidated Depreciation and Amortization Expense, deferred taxes, foreign currency translation adjustments, non-cash losses resulting from marking-to-market the outstanding Hedging Agreements of the Relevant Persons and stock options for such period; (D) Transaction Costs (if any) for such period; and (E) losses on disposal of assets, impairment of goodwill and intangible assets and any extraordinary, non-recurring or unusual non-cash items decreasing Consolidated Net Income for such period; and (ii) decreased by the sum, without duplication, of (A) all cash payments during such period relating to non-cash charges

which were added back in determining EBITDA in any prior period; (B) all gains realized on Dispositions of Real Estate Development Assets during such period; and (C) to the extent included in calculating Consolidated Net Income, the sum of (1) non-cash gains resulting from marking-to-market the outstanding Hedging Agreements of the Relevant Persons and foreign currency translation adjustments, (2) gains on disposal of assets and (3) any extraordinary non-recurring or unusual non-cash items increasing Consolidated Net Income; and (iii) increased by the sum of all dividends or other distributions paid in cash to a Loan Party by a Real Estate Development SPV in such period; all as determined at such time in accordance with GAAP.

For purposes of calculating Consolidated EBITDA for any period pursuant to any determination of the Consolidated Interest Coverage Ratio, Consolidated Total Leverage Ratio and Consolidated Senior Leverage Ratio (if applicable), if during such period (or in the case of calculations determined on a Pro Forma Basis, during the period from the last day of such period to and including the date as of which such calculation is made) a Relevant Person shall have made a Material Disposition or a Material Permitted Acquisition, Consolidated EBITDA will be determined after giving effect to any Pro Forma Adjustments in connection with such Material Permitted Acquisition or Material Disposition.

"**Consolidated Income Tax Expense**" means, for any Measurement Period, the aggregate of all Taxes (including deferred Taxes) based on income of (i) the Loan Parties for such period, determined on a combined consolidated basis in accordance with GAAP, or (ii) any other Person and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP, as the context requires.

"**Consolidated Interest Coverage Ratio**" means, for any Measurement Period, the ratio of (a) Consolidated EBITDA of the Loan Parties for such period to (b) Consolidated Interest Expense for such period.

"**Consolidated Interest Expense**" means for any Measurement Period, all items properly classified as interest expense in accordance with GAAP, minus interest income during such period in accordance with GAAP, (i) for the Loan Parties determined on a combined consolidated basis and (ii) for any other Person and its Subsidiaries determined on a consolidated basis, as the context requires.

For purposes of calculating Consolidated Interest Expense for any period pursuant to any determination of the Consolidated Interest Coverage Ratio, if during such period (or in the case of calculations determined on a Pro Forma Basis, during the period from the last day of such period to and including the date as of which such calculation is made) a Relevant Person shall have made a Material Disposition or a Material Permitted Acquisition, Consolidated Interest Expense will be determined after giving effect to any Pro Forma Adjustments in connection with such Material Permitted Acquisition or Material Disposition.

"**Consolidated Net Income**" means, for any Measurement Period, the net income (loss) for such period of (i) the Loan Parties determined on a combined consolidated basis in accordance with GAAP or (ii) any other Person and its Subsidiaries determined on a consolidated basis in accordance with GAAP, as the context requires.

"**Consolidated Senior Debt**" means, at any time, the aggregate amount of (i) all Debt of the Loan Parties under the Credit Documents, (ii) all Capital Lease Obligations of the Loan Parties

and (iii) all other Debt of the Loan Parties that is secured by an Encumbrance and not subordinated to the Security in favour of the Administrative Agent on behalf of the Lenders, determined on a combined consolidated basis as of such time.

"**Consolidated Senior Leverage Ratio**" means, for any applicable Measurement Period, the ratio of (a) Consolidated Senior Debt as of the last day of the relevant Measurement Period to (b) Consolidated EBITDA of the Loan Parties for such period.

"**Consolidated Subsidiary**" means a Subsidiary of a Borrower, other than a Real Estate Development SPV.

"**Consolidated Total Leverage Ratio**" means, for any Measurement Period, the ratio of (a) Consolidated Debt as of the last day of the relevant Measurement Period to (b) Consolidated EBITDA of the Loan Parties for such period.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "**Controlling**" and "**Controlled**" have corresponding meanings.

"**Credit Facility**" means the revolving credit facility made available to the Borrowers in accordance with Article 2.

"**Credit Documents**" means this Agreement, the BA Instruments, the Documentary Credits, the Security Documents, the Eligible Hedging Agreements, the Fee Letters, Other Secured Agreements, the Guarantees, the Limited Recourse Guarantees, each Province Consent, the Second Lien Intercreditor Agreement (until the Second Lien Repayment Date**)**, certificates and written notices executed by any of the Loan Parties or the Limited Recourse Guarantors and delivered to the Administrative Agent or the Lenders, or both, and all other documents executed and delivered to the Administrative Agent or the Lenders, or both, by any of the Loan Parties or the Limited Recourse Guarantors in connection with the Credit Facility.

"**Crown Tenures**" means, collectively, the Development Agreements and all rights and interests held by any Loan Party in Crown lands used or occupied in the operation of the Business, the current working list of which is set forth in Part 2 of Schedule F, as updated from time to time in accordance with Section 8.01(1)(c), and for certainty includes the interest of any Loan Party in the Buildings and Fixtures on the Crown Real Properties.

"**Crown Real Properties**" means the lands subject to the Crown Tenures.

"**Day Skier Lots**" means the day use parking area located on lands owned by the Resort Municipality of Whistler and designated for use by the Province for parking purposes, used and operated by the Borrowers pursuant to a Whistler Village Day Skier Parking Lot Facility Operating Agreement made as of the 31st day of October, 2008 among the Resort Municipality of Whistler, Whistler LP and Blackcomb LP.

"**Debenture**" has the meaning specified in Section 2.13(1)(d).

"**Debt**" of any Person means, at any time (without duplication), (i) all indebtedness of such Person for borrowed money including borrowings of bankers' acceptances, letters of credit or letters of guarantee; (ii) all indebtedness of such Person for the deferred purchase price of

property or services represented by a note or other evidence of indebtedness to the extent the same would be required to be shown as a liability on a balance sheet prepared in accordance with GAAP; (iii) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person to the extent of the value of such property (other than customary reservations or retention of title under agreements with suppliers entered into in the ordinary course of business); (iv) all obligations of another Person secured by an Encumbrance on any Assets of such Person; (v) all Capital Lease Obligations of such Person; (vi) the aggregate amount at which any Equity Securities in the capital of such Person which are redeemable or retractable at the option of the holder may be retracted or redeemed for cash or indebtedness of the type described in clause (i) above provided all conditions precedent for such retraction or redemption have been satisfied; (vii) all other obligations of such Person upon which interest charges are customarily paid by such Person other than any such obligations incurred in the ordinary course of business of such Person for the purposes of carrying on the same and not evidenced by a note, bond, debenture or other evidence of indebtedness; (viii) the net amount of all obligations of such Person (determined on a marked-to-market basis) under Hedging Agreements; (ix) all Synthetic Debt of such Person; and (x) all Debt Guaranteed by such Person; provided that "Debt" shall not include accrued expenses and current trade payables arising in the ordinary course of business.

"**Debt Guaranteed**" by any Person means the maximum amount which may be outstanding at the relevant time of all Debt which is directly or indirectly guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire, or in respect of which such Person has otherwise assured a creditor or other Person against loss; provided that in circumstances in which less than such amount has been guaranteed by such Person, only the guaranteed amount shall be taken into account in determining such Person's Debt Guaranteed.

"**Default**" means any event or condition that, with the giving of any notice, passage of time, or both, would constitute an Event of Default.

"**Development Agreements**" means (i) the development agreement between Fortress Mountain Resorts Ltd. and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Lands, Parks and Housing, dated as of May 1, 1979 with respect to Blackcomb Mountain (as amended, modified, restated or replaced from time to time as permitted hereunder) and (ii) the development agreement between Whistler Mountain Ski Corporation and Her Majesty the Queen in Right of the Province of British Columbia represented by the Minister of Lands, Parks and Housing, dated September 30, 1982, with respect to Whistler Mountain (as amended, modified, restated or replaced from time to time as permitted hereunder).

"**Disclosed Matters**" means the actions, suits and proceedings and the environmental matters disclosed in Schedule B and Schedule J.

"**Disposition**" means with respect to any Asset of any Person, any direct or indirect sale, lease (where such Person is the lessor of such Asset), assignment, cession, transfer, exchange, conveyance, release or gift of such Asset, including by means of a Sale and Leaseback Transaction, or any reorganization, consolidation, amalgamation or merger of such Person pursuant to which such Asset becomes the property of any other Person; and "**Dispose**", "**Disposal**" and "**Disposed**" have meanings correlative thereto.

"**Documentary Credit**" means a letter of credit (including a standby letter of credit) or a letter of guarantee issued or to be issued by the Swing Line Lender for the account of the Borrowers pursuant to Article 5 and denominated in Canadian Dollars or U.S. Dollars as may be requested by a Borrower and agreed to by the Swing Line Lender, as the same may be amended, supplemented, extended or restated from time to time.

"**Documentary Credit Participation Fee**" means the fee in basis points per annum set forth and defined in Schedule 7.

"**Draft**" means, at any time, (i) a bill of exchange, within the meaning of the *Bills of Exchange Act* (Canada), drawn by a Borrower on a Lender or any other Person and bearing such distinguishing letters and numbers as the Lender or the Person may determine, but which at such time has not been completed as to the payee by the Lender or the Person; or (ii) a depository bill within the meaning of the *Depository Bills and Notes Act* (Canada).

"**Drawing**" means (i) the acceptance and purchase of Bankers' Acceptances by a Lender or by any other Person pursuant to Article 4; or (ii) the purchase of completed Drafts by a Lender or by any other Person pursuant to Article 4.

"**Drawing Date**" means any Business Day fixed for a Drawing pursuant to Section 4.03.

"**Drawing Fee**" means, with respect to each Bankers' Acceptance or Draft drawn by a Borrower and purchased by any Person on any Drawing Date, an amount equal to the Applicable Margin, multiplied by the product of (i) a fraction, the numerator of which is the number of days, inclusive of the first day and exclusive of the last day, in the term of maturity of such Bankers' Acceptance or Draft, and the denominator of which is 365, and (ii) the aggregate face amount of such Bankers' Acceptance or Draft.

"**Drawing Notice**" has the meaning specified in Section 4.03(1).

"**Drawing Price**" means, in respect of each Bankers' Acceptance or Draft purchased by a Lender or any other Person, the result obtained by multiplying (a) the aggregate Face Amount of such Bankers' Acceptance or Draft by (b) the amount (rounded up or down to the fifth decimal place with .000005 being rounded up) determined by dividing one by the sum of one plus the product of (x) the BA Discount Rate, and (y) a fraction the numerator of which is the number of days to maturity of such Bankers' Acceptance or Draft, inclusive of the first day and exclusive of the last day of such term, and the denominator of which is 365.

"**Drawing Proceeds**" means, in respect of any Bankers' Acceptance or Draft purchased by a Lender or any other Person, an amount equal to (i) the Drawing Price in respect of such Bankers' Acceptance or Draft; minus (ii) the applicable Drawing Fee in respect of such Bankers' Acceptance or Draft.

"**Eligible Assignee**" means any Person (other than a natural person, any Loan Party, or any competitor of the Borrowers or their Affiliates identified in writing by the Borrowers to the Administrative Agent (and reasonably acceptable to the Administrative Agent) prior to an assignment), in respect of which any consent that is required by Section 17.01 has been obtained.

"**Eligible Hedging Agreements**" means one or more agreements between the Loan Parties and a Lender or an Affiliate of a Lender (collectively, the "**Hedge Lenders**"), evidenced by

a form of agreement published by the International Swaps and Derivatives Association, Inc. (or other form approved by the Administrative Agent) using the full two-way payment method to calculate amounts payable thereunder and evidencing (i) any interest rate hedge (including any interest rate swap, cap or collar); or (ii) any foreign exchange hedge, provided that, until the Second Lien Repayment Date, the aggregate amount of all Hedging Obligations of the Loan Parties owing to the Hedge Lenders under Eligible Hedging Agreements at any time shall not exceed $5,000,000, and provided further that any such hedging agreements entered into by any Loan Party and any Person that (i) was entered into prior to the date of this Agreement with a Person that as of the date of this Agreement becomes a Lender or (ii) was a Lender at the time such agreement was entered into, shall continue to be an Eligible Hedging Agreement notwithstanding that such Person ceases, at any time, to be a Lender hereunder.

"**Encumbrance**" means any hypothec, mortgage, pledge, security interest, encumbrance, lien, charge or any other arrangement (including a deposit arrangement) or condition that in substance secures payment or performance of an obligation and includes the interest of a vendor or lessor under any conditional sale agreement, capitalized lease or other title retention agreement.

"**Environmental Laws**" means all applicable Laws relating to the environment, occupational health and safety matters or conditions, Hazardous Substances, pollution or protection of the environment, including Laws relating to (i) on-site or off-site contamination; (ii) occupational health and safety relating to Hazardous Substances; (iii) Releases of Hazardous Substances into the environment; and (iv) the manufacture, processing, distribution, use, treatment, storage, transport, disposal or handling of Hazardous Substances, the clean-up or other remediation thereof, and including, without limitation, the *Canadian Environmental Protection Act* (Canada), the *Fisheries Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Migratory Birds Protection Act* (Canada), the *Species at Risk Act* (Canada), the *Hazardous Products Act* (Canada), the *Canada Shipping Act* (Canada) and the *Canada Wildlife Act* (Canada), and any analogous provincial or local statutes.

"**Environmental Liabilities**" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), directly or indirectly resulting from or based upon (a) any Environmental Law or violation thereof, (b) the Loan Parties' generation, use, handling, collection, treatment, storage, transportation, recovery, recycling or disposal of any Hazardous Substances, (c) exposure to any Hazardous Substances, (d) the presence or Release or threatened Release of any Hazardous Substances into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Environmental Permits**" includes all permits, certificates, approvals, registrations, statements, licences, exemptions or other documents having the effect of an authorization issued by any Governmental Authority or pursuant to Environmental Law, to any of the Loan Parties or to the Business and required for the operation of the Business or the use of the Owned Real Properties, Leased Real Properties, Crown Real Properties or other Assets of any of the Loan Parties under Environmental Laws.

"**Equity Securities**" means, with respect to any Person, any and all shares, units, interests, participations, rights in, or other equivalents (however designated and whether voting or non-voting) of, such Person's capital, whether outstanding on the Closing Date or issued after the

Closing Date, including any interest in a partnership, limited partnership or other similar Person and any beneficial interest in a trust, and any and all rights, warrants, options or other rights exchangeable for or convertible into any of the foregoing.

"**Equivalent Canadian $ Amount**" means, at any relevant time on any day and with respect to any amount denominated in U.S. Dollars, the amount of Canadian Dollars which would be required to buy such amount of U.S. Dollars at the Bank of Canada noon rate at such time on such day (as quoted or published by the Bank of Canada).

"**Equivalent U.S. $ Amount**" means, at any relevant time on any day and with respect to any amount denominated in Canadian Dollars, the amount of U.S. Dollars which would be required to buy such amount of Canadian Dollars at the Bank of Canada noon rate at such time on such day (as quoted or published by the Bank of Canada).

"**Event of Default**" has the meaning specified in Section 9.01.

"**Excluded Holders**" means KSL Capital Partners, LLC and its Affiliates.

"**Excluded Taxes**" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of a Loan Party hereunder or under any Credit Document (collectively in this definition, a "Recipient"), (a) taxes imposed on or measured by its net income or capital, and franchise taxes imposed on it (in lieu of or in addition to net income taxes), by Canada (or any political subdivision thereof), or by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or resident or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes or any similar tax imposed by Canada (or any political subdivision thereof), or by any jurisdiction (or any political subdivision thereof) in which the Lender is located; (c) any Taxes, assessments or other governmental charges which would not have been imposed but for the existence of any present or former connection (other than the mere holding of an interest in the facilities or being a beneficiary of any Credit Agreement) between any Recipient and the jurisdiction (or any political subdivision thereof) in which such Taxes, assessments or other governmental charges are paid or payable (whether disputed or not), including, such Recipient being or having been a resident or citizen thereof, being or having been present or engaged in trade or business therein, or having or having had a permanent establishment therein, in each case other than as a result of the mere holding of an interest in the facilities or being a beneficiary under any Credit Agreement (provided that for greater certainty, the exclusion in this clause (c) shall not apply to exclude Taxes under Part XIII of the *Income Tax Act* (Canada) or any successor provisions thereof); (d) Taxes imposed, levied, collected, assessed or withheld by or within Canada (or any political subdivision thereof) with respect to a payment to any Recipient which does not deal at arm's length with the Borrowers or their members within the meaning of the *Income Tax Act* (Canada) at the time of the payment; (e) any Taxes, assessments or other governmental charges which would not have been imposed but for a disposition or deemed disposition by a Recipient of an interest in any Credit Agreement to a person resident in Canada with which such Recipient does not deal at arm's length, all within the meaning of the *Income Tax Act* (Canada) (provided that for greater certainty this clause (e) may apply where its provisions are applicable to exclude Taxes under Part XIII of the *Income Tax Act* (Canada) or any successor provisions thereof) and (f) Taxes imposed, levied, collected, assessed or withheld by or within Canada (or any political subdivision thereof) with

respect to payments made by the Borrowers or their members to the extent that such payments are in respect of services rendered in Canada.

"**Existing Credit Facilities**" means the revolving credit facility in the amount of $15,000,000 and the term loan facility in the amount of $135,000,000 made available to the Borrowers pursuant to the credit agreement dated as of November 9, 2010, between the Borrowers, as borrowers, the lenders and guarantors party thereto and Canadian Imperial Bank of Commerce, as administrative agent, as amended by amending agreements dated as of November 9, 2010 and June 22, 2012.

"**Existing Documentary Credits**" has the meaning specified in Section 5.01(2).

"**Face Amount**" means (i) in respect of a BA Instrument, the amount payable to the holder on its maturity; and (ii) in respect of a Documentary Credit, the undrawn face amount thereof, being the maximum amount which the Swing Line Lender is contingently liable to pay to the beneficiary thereof.

"**Federal Funds Rate**" means for any day, the rate per annum (expressed as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day; provided (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to Administrative Agent, in its capacity as a Lender, on such day on such transactions as determined by Administrative Agent.

"**Fee Letters**" means collectively the fee letter between the Borrowers and Administrative Agent dated September 5, 2013 and the agency fee agreement between the Borrowers and the Administrative Agent dated as of the date hereof, as amended, restated or replaced from time to time.

"**Fees**" means the fees payable by the Borrowers under this Agreement or under any other Credit Document.

"**Financial Officer**" of a Person means the chief financial officer, principal accounting officer, treasurer or controller of that Person.

"**Financial Quarter**" means a period of approximately three consecutive months in each Financial Year ending on December 31, March 31, June 30, and September 30, as the case may be, of such year.

"**Financial Year**" means the financial year of the Borrowers commencing on October 1 of each calendar year and ending on September 30 of the following calendar year.

"**Foreign Lender**" means any Lender that is not resident for income tax or withholding tax purposes under the laws of Canada and that is not otherwise considered or deemed in respect of any amount payable to it hereunder or under any Credit Document to be resident for income tax or withholding tax purposes in Canada by application of the laws of Canada.

"**Fund**" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"**GAAP**" means IFRS applied on a consistent basis; provided, however, that, in the event of a change in GAAP that would affect the computation of any financial covenant, ratio, accounting definition or requirement set forth in this Agreement or any other Credit Document, if the Borrowers or the Majority Lenders shall so request, the Administrative Agent, the Majority Lenders and the Borrowers shall negotiate in good faith, each acting reasonably, to amend such financial covenant or requirement to preserve the original intent thereof in light of such change in GAAP; provided, further, that, until so amended as provided in the preceding proviso, (a) such ratio or requirement shall continue to be computed in accordance with GAAP without regard to such change therein, and (b) the Loan Parties shall furnish to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement, setting forth a reconciliation between calculations of such financial covenant or requirement made before and after giving effect to such change in GAAP.

"**Governmental Authority**" means the government of Canada, the United States or any other nation, or of any political subdivision, whether provincial, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

"**Guarantee**" means the guarantee of each Loan Party and Parent GP set forth in Article 23 hereof and any additional guarantee of a Guarantor in respect of the obligations of the Borrowers under the Credit Documents.

"**Guarantors**" means, collectively, each Borrower, Parent GP, Whistler Blackcomb Employment Corp. (formerly named Apres Enterprises Inc.), Blackcomb Skiing Enterprises Ltd., Whistler Blackcomb General Partner Ltd., Lodging Ovations Corp., WB Land Inc., Whistler/Blackcomb Mountain Employee Housing Ltd., Whistler & Blackcomb Mountain Resorts Limited, WB/T Development Ltd. (formerly named Intrawest/Taluswood Development Ltd.), Crankworx Events Inc., Peak to Creek Lodging Company Ltd., Whistler Heli-Skiing Ltd., Blackcomb Mountain Development Ltd., Garibaldi Lifts Ltd., Whistler Ski School Ltd., Affinity Snowsports Inc., Mr. Whistler's Holdings Inc. and each other entity that becomes a Subsidiary of a Borrower after the Closing Date (other than a Real Estate Development SPV) or provides a guarantee in respect of the obligations of the Borrowers under the Credit Documents after the Closing Date, and each individually is a "**Guarantor**".

"**Hazardous Substance**" means any substance, waste, liquid, gaseous or solid matter, sound, radiation, vibration, fuel, organic or inorganic matter, alone or in any combination which is regulated or designated under any applicable Environmental Laws, including as toxic or as a hazardous waste, a hazardous substance, a hazardous material, a pollutant, a deleterious substance, a contaminant or a pollutant, including petroleum or any derivative thereof or toxic mold or regulated radioactive material.

"**Hedge Lenders**" has the meaning specified in the definition of "**Eligible Hedging Agreements**" herein.

"**Hedging Agreements**" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or Debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, or each relevant transaction under any such agreement, as the context so admits; provided that no phantom stock or similar plan providing for payments to current or former directors, officers, employees or consultants (in their capacities as such) of a Borrower or any of its Subsidiaries shall be a Hedging Agreement and provided further that "**Hedge Agreements**" shall include all Eligible Hedging Agreements.

"**Hedging Obligations**" means, with respect to any Person, the Person's payment obligations under Hedging Agreements calculated on a mark-to-market basis at the date of determination.

"**IFRS**" means International Financial Reporting Standards.

"**Incremental Amendment**" has the meaning set forth in Section 2.12(5).

"**Incremental Commitment Request**" has the meaning set forth in Section 2.12(1).

"**Incremental Commitments**" has the meaning set forth in Section 2.12(1).

"**Incremental Facility Closing Date**" has the meaning set forth in Section 2.12(4).

"**Incremental Lenders**" has the meaning set forth in Section 2.12(3).

"**Indemnified Taxes**" means Taxes other than Excluded Taxes.

"**Instruments**" means (i) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada) or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or (ii) a letter of credit and an advice of credit if the letter or advice states that it must be surrendered upon claiming payment thereunder, or (iii) chattel paper or any other writing that evidences both a monetary obligation and a security interest in or a lease of specific goods, or (iv) documents of title or any other writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee's possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the Person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers, or (v) any document or writing commonly known as an instrument.

"**Intellectual Property**" means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae and customer lists, and documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) mask works, mask work registrations and applications for mask work registrations; (v) designs, design registrations, design registration applications and integrated circuit topographies; (vi) trade names, business names, corporate names, domain names,

website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing; and (vii) computer software and programs (both source code and object code form), all proprietary rights in the computer software and programs and all documentation and other materials related to the computer software and programs.

"**Intercompany Instruments**" means all promissory notes and other Instruments issued by or evidencing an obligation of any Loan Party to another Loan Party.

"**Intercompany Securities**" means (i) all Securities issued by any Loan Party to another Loan Party or any Subsidiary of a Loan Party to a Loan Party and (ii) all Securities issued by a Loan Party to Parent GP.

"**Interest Period**" means, for each LIBOR Advance, a period which commences (i) in the case of the initial Interest Period, on the date the LIBOR Advance is made or converted from another Type of Accommodation, and (ii) in the case of any subsequent Interest Period, on the last day of the immediately preceding Interest Period in respect of a maturing LIBOR Advance, and which ends, in either case, on the day selected by the Borrower in the applicable Borrowing Notice or Rollover/Conversion Notice. The duration of each Interest Period shall be 1, 2 or 3 months (or such shorter period as may be approved by each of the Lenders making the relevant LIBOR Advance), unless the last day of a LIBOR Interest Period would otherwise occur on a day other than a Business Day, in which case the last day of such Interest Period shall be extended to occur on the next Business Day, or if such extension would cause the last day of such Interest Period to occur in the next calendar month, the last day of such Interest Period shall occur on the preceding Business Day.

"**Investments**" means, as applied to any Person (the "investor"), any direct or indirect purchase or other acquisition by the investor of, or a beneficial interest in, Equity Securities of any other Person, including any exchange of Equity Securities for indebtedness, or any direct or indirect loan, advance (other than advances to directors, officers and employees for moving and travel, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by the investor to any other Person, including all indebtedness and accounts receivable owing to the investor from such other Person that did not arise from sales or services rendered to such other Person in the ordinary course of the investor's business, or any direct or indirect purchase or other acquisition of bonds, notes, debentures or other debt securities of, any other Person. The amount of any Investment shall be the original cost of such Investment (or fair market value at the time of transfer of any assets transferred where such Investment is made in kind), plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment minus any amounts (a) realized upon the disposition of assets comprising an Investment (including the value of any liabilities assumed by any Person other than a Loan Party or any Subsidiary in connection with such disposition to the extent the investor is released of the liabilities so assumed), (b) constituting repayments of Investments that are loans or advances or (c) constituting cash returns of principal or capital thereon (including any dividend, redemption or repurchase of equity that is accounted for, in accordance with GAAP, as a return of principal or capital). Notwithstanding the foregoing, any Acquisition will not be considered to be an Investment.

"**Issue**" means an issue of a Documentary Credit by the Swing Line Lender pursuant to Article 5.

"**Issue Date**" has the meaning specified in Section 5.02.

"**Issue Notice**" has the meaning specified in Section 5.02.

"**Judicial Order**" has the meaning specified in Section 5.08(1).

"**Laws**" means all legally enforceable statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, common law, orders, decisions, rulings or awards, or any provisions of the foregoing, binding on the Person referred to in the context in which such word is used; and "**Law**" means any one of the foregoing.

"**Leases**" means, collectively, all leases, subleases, licences, sublicences, and other agreements or rights in respect of the use or occupation of real property that is not Crown land which are used in the operation of the Business from time to time held by any Loan Party, including for certainty the Material Leases and the interest of any Loan Party in the Buildings and Fixtures on the Leased Real Properties.

"**Leased Real Properties**" means the lands demised by the Leases;

"**Lenders**" means, collectively, the financial institutions and other Persons set forth on the signature pages hereof as Lenders, and any assignee thereof pursuant to the provisions of this Agreement upon such assignee executing and delivering an assignment and assumption agreement referred to in Section 17.01(2)(f) to the Borrowers and the Administrative Agent, or any other Person which becomes a Lender party to this Agreement, and in the singular any one of such Lenders.

"**LIBOR Advance**" means an Advance that bears interest by reference to the LIBOR Rate.

"**LIBOR Rate**" means for any Interest Period:

(a) the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate that appears on the page of the LIBOR 01 screen (or any successor thereto) that displays an average British Bankers Association Interest Settlement Rate for deposits in U.S. Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or

(b) if the rate referenced in the preceding subsection (a) does not appear on such page or service or such page or service shall cease to be available, the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate on such other page or other service that displays an average British Bankers Association Interest Settlement Rate (or equivalent rate from any other organization that may succeed the British Bankers Association as the authorized administrator of LIBOR) for deposits in U.S. Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or

(c) if the rates referenced in the preceding subsections (a) and (b) are not available, the rate per annum determined by the Administrative Agent as the rate of interest (rounded upward to the next 1/100th of 1%) at which deposits in U.S. Dollars for delivery on the first day

of such Interest Period in same day funds in the approximate amount of the LIBOR Advance being made, continued or converted by the Borrower and with a term equivalent to such Interest Period would be offered by the Administrative Agent's London branch to major banks in the offshore U.S. Dollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period.

"**Limited Recourse Guarantee**" has the meaning specified in Section 2.13(1)(c).

"**Limited Recourse Guarantors**" means, collectively, each of 0710350 B.C. Ltd., Snowcrest Holdings (Canada) Ltd., Nippon Cable Holdings (Canada) Ltd. (formerly named 0878377 B.C. Ltd.), and Nippon GP and each individually is a "**Limited Recourse Guarantor**".

"**Loan Parties**" means, collectively, (i) the Borrowers, (ii) the Consolidated Subsidiaries and (iii) any Non-Consolidated Subsidiaries which are Guarantors (but, for the avoidance of doubt does not include Parent GP or the Limited Recourse Guarantors), and "**Loan Party**" means any one of them.

"**Majority Lenders**" means, at any time, Lenders whose Commitments at such time, taken together, are greater than 50% of the aggregate amount of the Commitments at such time.

"**Material Adverse Effect**" means a material adverse effect on: (i) the business, operations, financial condition or Assets of the Loan Parties, taken as a whole; (ii) the ability of the Loan Parties taken as a whole to perform their obligations under the Credit Documents; or (iii) the validity or enforceability of the Credit Documents or the rights and remedies of the Administrative Agent and the Lenders thereunder.

"**Material Agreements**" means those agreements (as amended, restated, supplemented, modified, renewed or replaced as permitted hereunder from time to time) of any of the Loan Parties the breach, non-performance or cancellation of which or the failure to renew, termination, revocation or lapse of which could reasonably be expected to have a Material Adverse Effect, and which cannot promptly be replaced by an alternative comparable contract with comparable commercial terms, which agreements as of the Closing Date are listed on Schedule E (as updated from time to time in accordance with this Agreement).

"**Material Crown Real Properties**" means the lands subject to the Material Crown Tenures.

"**Material Crown Tenures**" means the Development Agreements and the Crown Tenures subject to the Development Agreements.

"**Material Disposition**" means any Disposition or series of related Dispositions that involves Assets having a fair value, or consideration received for such Assets, in excess of $10,000,000.

"**Material Leased Real Properties**" means the lands demised by the Material Leases.

"**Material Leases**" means (i) the leases of real property that is not Crown land the particulars of which as at the Closing Date are set forth in Part 1 of Schedule F hereto, and (ii) any lease of real property that is not Crown land entered into after the Closing Date in respect of which any Loan Party is obliged to pay any amounts, including all rents, in excess of $1,000,000 per annum, the particulars of which will be set forth in Part 1 of Schedule F hereto, as updated

from time to time in accordance with Section 8.01(1)(c), and for certainty includes the interest of any Loan Party in the Buildings and Fixtures on the Material Leased Real Properties.

"**Material Owned Real Properties**" means, collectively, (i) the owned real property the particulars of which as at the Closing Date are listed on Part 1 of Schedule G hereto and (ii) any owned real property of any Loan Party acquired after the Closing Date having a fair value or book value of greater than $10,000,000, the particulars of which will be set forth in Part 2 of Schedule G hereto, as updated from time to time in accordance with Section 8.01(1)(c), and for certainty includes the interest of any Loan Party in the Buildings and Fixtures thereon.

"**Material Permits**" means the Authorizations, the breach, non-performance, cancellation or non-availability of which or failure to renew of which could reasonably be expected to have a Material Adverse Effect.

"**Material Permitted Acquisition**" means any Permitted Acquisition which involves consideration in excess of $10,000,000.

"**Maturity Date**" means the date that is the fifth anniversary of the Closing Date, or any subsequent date to which the Maturity Date is extended in accordance with Section 2.11; provided, however, that, if the Second Lien Repayment Date does not occur prior to November 30, 2013 and Tranche 2 is cancelled pursuant to Section 2.02(3), the Maturity Date shall be the date 6 months prior to the maturity date of the Second Lien Senior Notes.

"**Measurement Period**" means, as of any date of determination, the four consecutive Financial Quarters most recently ended.

"**Moody's**" means Moody's Investors Service, Inc.

"**Net Proceeds**" means any one or more of the following:

(a) with respect to any Disposition of Assets by any Loan Party, the net amount equal to the aggregate amount received in cash (including any cash received by way of deferred payment pursuant to a note, receivable, other non-cash consideration or otherwise, but only as and when such cash is so received) in connection with such Disposition, less the sum of (A) the principal amount of any Debt (other than Debt under the Credit Documents or Debt owing to another Loan Party) that is secured by such Assets and that is required to be repaid in connection with such Disposition of Assets, (B) the reasonable fees (including, without limitation, reasonable legal fees), commissions and other out-of-pocket expenses (particulars of which shall be provided to the Administrative Agent upon request) and Taxes incurred, paid or payable by any Loan Party to any Person (other than another Loan Party) in connection with such Disposition;

(b) with respect to the issuance or creation of Debt or Equity Securities, whether private or public, of any Loan Party, the net amount equal to the aggregate amount received in cash (including any cash received by way of deferred advance or installment but only as and when such cash is so received) in connection with such creation or issuance, less the reasonable fees (including without limitation, reasonable legal fees, investment banking fees, accounting fees, consulting fees and placement fees), commissions, printing costs and other out-of-pocket expenses incurred, paid or payable by any Loan Party to any Person (other than

another Loan Party) in connection with such creation or issuance (as evidenced by supporting documentation provided to the Administrative Agent upon request therefor by the Administrative Agent); and

(c) with respect to the receipt of proceeds under any insurance policy (other than business interruption insurance), the net amount equal to the aggregate amount received in cash in connection with such receipt of insurance proceeds and not otherwise reinvested as permitted under this Agreement, less the reasonable fees (including without limitation reasonable legal fees), costs, deductibles and other out-of-pocket expenses (as evidenced by supporting documentation provided to the Administrative Agent upon request therefor by the Administrative Agent) and Taxes incurred, paid or payable by any Loan Party to any Person (other than another Loan Party) in connection with the claim under the insurance policy giving rise to such proceeds,

provided that, in each case, any such fees, commissions or expenses paid to a Related Party may be deducted in determining the Net Proceeds of such claim only to the extent incurred in cash for fair value and otherwise on terms at least as favourable to the Loan Parties as could have been obtained from any Unrelated Party under no compulsion to act.

"**Nippon GP**" means 0891986 B.C. Ltd., a corporation incorporated in the Province of British Columbia and its successors and permitted assigns.

"**Non-Consolidated Subsidiary**" means a Subsidiary of Parent GP that is not a Subsidiary of the Borrowers, but owns property used in, or provides goods and/or services used or comprised in the Business.

"**Non-Consolidated Subsidiary Distributable Cash Amount**" means, for any Non-Consolidated Subsidiary and any Measurement Period, (a) the Consolidated EBITDA of such Non-Consolidated Subsidiary for such period less, to the extent not already deducted in the calculation of Consolidated EBITDA: (i) Consolidated Income Tax Expense of such Non-Consolidated Subsidiary for such period, and (ii) Consolidated Interest Expense of such Non-Consolidated Subsidiary to the extent payable in cash during such period, and mandatory debt servicing payments made by such Non-Consolidated Subsidiary during such period, plus (b) the aggregate amount of undistributed and unexpended Non-Consolidated Subsidiary Distributable Cash Amounts of such of such Non-Consolidated Subsidiary from any prior Measurement Period.

"**Non-Recourse Debt**" means Debt of Parent GP or any Unrestricted Subsidiary in respect of which the holder thereof and any other Person that derives rights thereunder has no recourse to recover the payment or collection thereof, except for recourse against (i) Parent GP on an unsecured basis, save for recourse against Assets of Parent GP that are not Equity Securities of or Debt owing by any Loan Party or Assets used in the Business, (ii) any Unrestricted Subsidiary, (iii) any Assets of any Unrestricted Subsidiary and (iv) any Securities issued by any Unrestricted Subsidiary.

"**Other Secured Agreements**" means all agreements or arrangements (including guarantees) entered into or made from time to time by the Loan Parties in connection with: (a) cash consolidation, cash management and credit card agreements and electronic fund transfer arrangements between the Loan Parties and the Administrative Agent or any Lender or any Affiliate thereof (collectively, "**Service Lenders**"), (b) overdraft arrangements related to such

cash management arrangements between the Loan Parties and any Service Lender, and (c) other similar transactions not made under this Agreement between the Loan Parties and any Service Lender if it is agreed pursuant to a written agreement signed by the Loan Parties and the Administrative Agent that such debts, liabilities and obligations shall be secured; and, for greater certainty, all such agreements and arrangements entered into or made by the Loan Parties with or in favour of any Person at the time that such Person was the "Administrative Agent" or a "**Lender**" hereunder shall not cease to be an Other Secured Agreement if such Person ceases to be the Administrative Agent or a Lender hereunder.

"**Owned Intellectual Property**" has the meaning assigned to such term in Section 7.01(19).

"**Owned Real Properties**" means, collectively, the land and premises owned by the Loan Parties from time to time and the Buildings and Fixtures owned by the Loan Parties thereon.

"**Parent GP**" means Whistler Blackcomb Holdings Inc., a corporation incorporated in the Province of British Columbia as at the date hereof and its successors and assigns as permitted hereunder.

"**Participant**" has the meaning assigned to such term in Section 17.01(5).

"**Partnership Agreements**" means, collectively, the Blackcomb Partnership Agreement and the Whistler Partnership Agreement.

"**Permitted Acquisitions**" means (i) Acquisitions resulting from any transactions permitted by clauses (b) to (c) of Section 8.02(3), and (ii) any other Acquisition by a Borrower or any Subsidiary thereof from any Person, provided that (in the case of any Acquisition described in part (ii) of this definition):

(a) the Person that is the subject of such Acquisition, or the business or line of business acquired, carries on the Business or a business reasonably related thereto, in Canada or the United States;

(b) if such Acquisition is an Acquisition of Equity Securities of any Person, (i) 100% of the Equity Securities of such Person are being acquired pursuant to the Acquisition or (ii) if less than 100% of the Equity Interests of such Person are being acquired pursuant to the Acquisition, the aggregate consideration for such Acquisition shall not exceed $20,000,000 (or the Equivalent U.S. $ Amount) in any Financial Year and $40,000,000 (or the Equivalent U.S. $ Amount) for all such Acquisitions over the term of the Credit Facility;

(c) immediately before and immediately after giving effect to any such Acquisition on a Pro Forma Basis, no Default or Event of Default shall have occurred and be continuing;

(d) after giving effect to such Acquisition on a Pro Forma Basis, the Borrowers will be in compliance with the financial covenants set forth in Section 8.03 as at the date of such Acquisition, such compliance to be based on the most recent Measurement Period reported on pursuant to Section 8.01(1), and at all relevant times during the period of twelve months thereafter (calculated on a Pro Forma Basis and based on the projected performance of such Acquisition for such twelve month period);

(e) the aggregate consideration for all such Acquisitions, including, for the avoidance of doubt, Acquisitions referred to in clause (b)(ii) above, plus the aggregate amount of any Debt owing by any Person that is the subject of such Acquisition at the time of Acquisition, shall not exceed $25,000,000 (or the Equivalent U.S. $ Amount) in the aggregate for all such Acquisitions in any Financial Year and $75,000,000 (or the Equivalent U.S. $ Amount) in the aggregate for all such Acquisitions over the term of the Credit Facility;

(f) the Lenders will have an Encumbrance over the Assets to be acquired, subject only to Permitted Encumbrances (and if such Acquisition is an Acquisition of Equity Securities of any Person, also a guarantee and an Encumbrance over the Assets of such Person, subject only to Permitted Encumbrances, in accordance with Section 2.13), or arrangements satisfactory to the Administrative Agent, acting reasonably, shall have been made for the providing of such guarantee and the obtaining of such Encumbrances, as applicable, within a period not to exceed 30 days following the date of such Acquisition; and

(g) the board of directors of such acquired Person or its selling shareholders in existence at the time such purchase or acquisition is commenced shall have approved such Acquisition,

provided that, in each case, (1) no Default or Event of Default shall have occurred and be continuing immediately before and after giving effect to any such Acquisition and (2) any Acquisition from a Related Party must comply with the restriction imposed under Section 8.02(6).

"**Permitted Debt**" means,

(a) Debt hereunder or under any other Credit Document;

(b) Until the Second Lien Repayment Date, Debt under the Second Lien Senior Notes;

(c) Non-Recourse Debt (i) incurred by Parent GP owing to a Person that is not a Loan Party, or (ii) incurred by Parent GP comprised of unsecured loans or advances to Parent GP permitted under Section 8.02(10)(h);

(d) Debt under unsecured subordinated loans advanced to a Borrower in respect of which the holder of such Debt has entered into an intercreditor and subordination agreement with the Administrative Agent on behalf of the Lenders on market terms reasonably acceptable to the Administrative Agent and the Majority Lenders ("**Subordinated Debt**");

(e) unsecured Debt among the Loan Parties, which Debt is in each case subject to the security interests granted by the applicable Loan Party to the Administrative Agent under the applicable Security Agreement;

(f) Attributable Debt (including any Refinancing Debt arising therefrom) owing to Unrelated Parties in respect of Capital Lease Obligations and purchase money Debt not to exceed in aggregate at any one time outstanding $15,000,000 (or the Equivalent U.S. $ Amount), in each case, incurred by the Loan Parties to finance (i) Capital Expenditures, and (ii) the acquisition, construction, repair, replacement or improvement of fixed or capital assets;

(g) (A) Debt of the Loan Parties arising from the honouring by a bank or other financial institution of a cheque, draft or similar instrument drawn against insufficient funds in the ordinary course of business; and (B) contingent indemnification obligations of the Loan Parties to financial institutions, in each case to the extent in the ordinary course of business and on terms and conditions which are within the general parameters customary in the banking industry, entered into to obtain cash management services or deposit account overdraft protection services (in amount similar to those offered for comparable services in the financial industry) or other services in connection with the management or opening of deposit accounts or incurred as a result of endorsement of negotiable instruments for deposit or collection purposes;

(h) guarantees by any Loan Party of any Debt of another Loan Party expressly permitted to be incurred under this Agreement;

(i) Debt of a Subsidiary of a Borrower acquired after the Closing Date and Debt assumed in connection with the acquisition of Assets, which Debt in each case exists at the time of such acquisition and is not created in contemplation of such event and where such acquisition is permitted by this Agreement (including any Refinancing Debt arising therefrom); provided, (A) no Default or Event of Default shall have occurred and be continuing or would result therefrom, and (B) immediately after giving effect to such acquisition, the assumption and incurrence of any such Debt and any related transactions, the Borrowers shall be in compliance with the financial covenants set forth in Section 8.03 on a Pro Forma Basis, such compliance to be based on the most recent Measurement Period reported on pursuant to Section 8.01(1);

(j) Hedging Obligations of the Borrowers arising under Hedging Agreements entered into in accordance with Section 8.02(17); provided that until the Second Lien Repayment Date the aggregate amount of all Hedging Obligations of the Borrowers owing to Hedge Lenders under Eligible Hedging Agreements at any time shall not exceed $5,000,000 (or the Equivalent U.S. $ Amount);

(k) Debt of a Real Estate Development SPV incurred to finance the development of Real Estate Development Assets (including any Refinancing Debt arising therefrom), provided (i) the holder thereof and any other Person that derives rights thereunder has no recourse to recover the payment or collection thereof, except for recourse against (x) the Real Estate Development SPV, (y) Real Estate Development Assets being so developed, and (z) Parent GP on a Non-Recourse Debt basis, and (ii) the aggregate outstanding amount thereof at no time exceeds $100,000,000 (or the Equivalent U.S. $ Amount); and

(l) Debt of a Loan Party which is not otherwise Permitted Debt; provided that the principal amount of such obligations of the Loan Parties (including any Refinancing Debt arising therefrom) do not, in the aggregate at any time, exceed $20,000,000 (or the Equivalent U.S. $ Amount).

"**Permitted Dispositions**" means

(a) Dispositions of inventory in the ordinary course of business;

(b) any Disposition of Assets from a Loan Party to another Loan Party;

(c) Dispositions of Assets which are obsolete, redundant or of no material economic value;

(d) Dispositions of Assets (which, for the avoidance of doubt, shall include any Equity Securities other than Equity Securities referred to in paragraph (i) of this definition), including in connection with any Sale-Leaseback Transaction, in each Financial Year for fair value resulting in consideration received for such Assets of not more than $25,000,000 (or the Equivalent U.S. $ Amount) in the aggregate for all such Dispositions during such Financial Year, provided that the Net Proceeds thereof are applied in accordance with this Agreement;

(e) Dispositions of Real Estate Development Assets for fair value (i) to a Real Estate Development SPV, subject to compliance with Section 8.02(10)(g), or (ii) to an Unrestricted Subsidiary on terms and conditions no less favourable as could have been obtained from any Unrelated Party under no compulsion to act;

(f) a transaction authorized by Section 8.02(2);

(g) the sale or liquidation of Permitted Investments in the ordinary course of business;

(h) any Disposition for fair value (whether the subject of one transaction or a series of related transactions) the Net Proceeds of which does not exceed $5,000,000 (or the Equivalent U.S. $ Amount);

(i) any Disposition of Assets by Parent GP, except for or in respect of any of the following: (i) Equity Securities in any Loan Party, (ii) any intercompany Debt owing by a Loan Party, (iii) any Assets that are owned by Parent GP in its capacity as general partner of a Borrower or beneficially owned by a Borrower or (iv) any Assets used in the Business (for greater certainty unless, in the case of (iii) and (iv), such a Disposition is otherwise permitted under this definition);

(j) Dispositions of Real Estate Development Assets (in whole or in part) to any Unrelated Party in the ordinary and usual course of developing such Assets;

(k) Dispositions of machinery or equipment for fair value simultaneously with the trade-in or replacement of such machinery or equipment used or useful in the ordinary course of business of and owned by such Person,

provided that, in each case, (1) any Disposition to a Related Party must comply with the restrictions imposed under Section 8.02(6), (2) no Default or Event of Default shall have occurred and be continuing, immediately before and immediately after giving effect to any such Disposition, (3) in the case of a Disposal of Equity Securities in a Non-Consolidated Subsidiary or Consolidated Subsidiary, all, but not less than all, the Equity Securities in such Non-Consolidated Subsidiary or Consolidated Subsidiary shall have been disposed of, (4) save for any partial Disposition pursuant to paragraph (j), each Loan Party obliged to pay any Debt secured by the Asset Disposed (other than any amounts outstanding under the Credit Document or, if applicable, the Second Lien Senior Notes) is released of such Debt on Disposition, and (5) for any partial Disposition pursuant to paragraph (j), all proceeds of the Disposition (after deducting all applicable expenses of the nature described in clause (B) of

paragraph (a) of the definition of "Net Proceeds" required to be paid in relation thereto) are applied to the payment of any Debt secured by the Asset Disposed.

"**Permitted Distributions**" mean:

(a) cash distributions made by the Borrowers on their respective Equity Securities (i) on a quarterly basis or (ii) by way of special distributions of amounts referred to in part (b) of the definition of Borrowers' Distributable Cash Amount, in each case, to Parent GP and the Limited Recourse Guarantors, in their capacity as limited partners of the Borrowers in accordance with the distribution policy of each Borrower and in an amount approved by the board of directors of Parent GP in its capacity as general partner of each Borrower, provided that (x) the aggregate amount of such cash distributions in respect of any Measurement Period does not exceed the Borrowers' Distributable Cash Amount for such Measurement Period, (y) no Default or Event of Default is in existence or would result therefrom and (z) the Borrowers are in compliance with each of the financial covenants set out in Section 8.03 both before and after making such distributions;

(b) cash distributions made by a Non-Consolidated Subsidiary on its Equity Securities by way of special distributions of amounts referred to in part (b) of the definition of Non-Consolidated Subsidiary Distributable Cash Amount to Parent GP, provided that (i) the aggregate amount of such cash distributions in respect of any Measurement Period does not exceed the Non-Consolidated Subsidiary Distributable Cash Amount of such Non-Consolidated Subsidiary for such Measurement Period, (ii) no Default or Event of Default is in existence or would result therefrom and (iii) the Borrowers are in compliance with each of the financial covenants set out in Section 8.03 both before and after making such distributions;

(c) cash distributions by a Consolidated Subsidiary on its Equity Securities to a Borrower or another Consolidated Subsidiary; and

(d) cash distributions by a Subsidiary of a Non-Consolidated Subsidiary to such Non-Consolidated Subsidiary.

"**Permitted Encumbrances**" means, with respect to any Person, the following:

(a) Encumbrances for Taxes, rates, assessments or other governmental charges or levies or for employment insurance, pension obligations or other social security obligations, workers' compensation or vacation pay, the payment of which is not yet due, or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person if either, in the case of such items being contested, (i) adequate reserves have been maintained in accordance with GAAP or (ii) the applicable Encumbrances are not in the aggregate materially prejudicial to the value of the Assets of the Borrowers or their Subsidiaries taken as a whole;

(b) undetermined or inchoate Encumbrances, rights of distress and charges incidental to current operations which have not at such time been filed or exercised, or which relate to obligations not due or payable or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;

(c) (i) reservations, limitations, provisos and conditions expressed in any original grant from any Governmental Authority or (ii) other grant of real or immovable property, or interests therein, which, in the case of this clause (ii), do not materially and adversely affect the use of the affected land for the purpose for which it is used by that Person;

(d) licences, permits, reservations, legal notations, covenants, servitudes, easements, statutory rights-of-way and rights in the nature of easements (including, without limiting the generality of the foregoing, licenses, easements, rights-of-way and rights in the nature of easements for sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) and zoning, land use and building restrictions, by-laws, regulations and ordinances of federal, provincial, regional, state, municipal and other governmental authorities that were not incurred in connection with and do not secure Debt and do not materially impair the use of the affected land for the purpose for which it is used by that Person;

(e) title defects, encroachments or irregularities which are of a minor nature and which in the aggregate do not materially impair the use of the affected property for the purpose for which it is used by that Person;

(f) the right reserved to or vested in any Governmental Authority by the terms of any lease, license, franchise, grant or permit acquired by that Person or by any statutory provision to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;

(g) the Encumbrances resulting from the deposit or pledge of cash or securities in connection with contracts, tenders, bids, leases, government contracts, supply agreements, utilities or expropriation proceedings, or to secure workers' compensation, unemployment insurance, and other social security obligations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and performance bonds and other similar obligations incurred in the ordinary course of business;

(h) the Encumbrances resulting from surety or appeal bonds, costs of litigation when required by Law, liens and claims incidental to current mechanics', warehousemen's, carriers' and other similar liens and public, statutory and other like obligations incurred in the ordinary course of business;

(i) Encumbrances given to a public utility or any Governmental Authority when required by such utility or Governmental Authority in connection with the operations of that Person in the ordinary course of its business;

(j) the Encumbrances created by a judgment of a court of competent jurisdiction, as long as the judgment is being contested diligently and in good faith by appropriate proceedings by that Person and does not result in an Event of Default under Section 9.01(1)(i);

(k) operating leases entered into in the ordinary course of Business;

(l) Encumbrances securing Attributable Debt owing to Unrelated Parties in respect of Capital Lease Obligations permitted hereunder and purchase money Debt permitted

hereunder provided, that, (i) such Encumbrances attach concurrently with or within 120 days after the acquisition, construction, repair, replacement or improvement (as applicable) of the Assets subject to such Encumbrances, and (ii) such Encumbrances do not at any time encumber any Assets other than the Assets financed by such Debt, replacements thereof and additions and accessions to such property and the proceeds thereof;

(m) Encumbrances securing Permitted Debt referred to in paragraph (i) of the definition thereof provided that such Encumbrance shall only extend to the Assets of such acquired Subsidiary and shall not extend to or cover any Assets or Equity Interests of any other Loan Party;

(n) the Encumbrances created by the Security Documents;

(o) until the Second Lien Repayment Date, Encumbrances securing (i) the obligations of the Loan Parties under or in respect of the Second Lien Senior Notes, provided such Encumbrances are subordinated to the Encumbrances created by the Security Documents pursuant to the Second Lien Intercreditor Agreement;

(p) licenses, leases or subleases granted by a Loan Party to another Person for fair value in the ordinary course of business that do not (i) impair the use of the property encumbered thereby by any Loan Party for the purpose for which it is used in the Business or (ii) impair or interfere with the conduct of the Business by any Loan Party, in each case, in any material respect;

(q) Encumbrances solely on any cash earnest money deposit made by that Person in connection with any Permitted Acquisition;

(r) restrictive covenants created under subdivision agreements, site plan control agreements, development agreements, facilities sharing agreements, cost sharing agreements and other similar agreements which do not materially impair the use of the real property subject thereto for the purpose for which it is used by that Person;

(s) unregistered, undetermined or inchoate Encumbrances and charges incidental to construction, maintenance, use or operation, a claim or notice for which shall not at the time have been registered against the applicable Owned Real Properties and of which notice in writing shall not at the time have been given to that Person or the Administrative Agent pursuant to the *Builders Lien Act* (British Columbia) or the comparable statute in any other province in which such Owned Real Properties are located;

(t) Encumbrances or covenants restricting or prohibiting access to or from lands abutting on controlled access highways or covenants affecting the use to which lands may be put; provided, however, that such Encumbrances or covenants do not materially and adversely affect the use of the lands encumbered thereby for the purpose for which it is used by that Person;

(u) Encumbrances in favour of a financial depositary institution arising (i) as a matter of Law or (ii) to the extent that no funds are subject to a present and enforceable claim thereon, under operation of account or credit cardholder agreements entered into the ordinary course of business, in each case, encumbering deposits (including the right of set-off) and

which are within the general parameters of operation of accounts or credit cardholder agreements customary in the banking industry;

(v) the Encumbrances existing on the Closing Date and set forth in Schedule K;

(w) Encumbrances created by Parent GP securing Non-Recourse Debt referred to in paragraph (c) of the definition of Permitted Debt;

(x) Encumbrances over Assets of Real Estate Development SPVs securing Permitted Debt referred to in paragraph (k) of the definition thereof incurred by such Real Estate Development SPV, provided such Encumbrances extend only to such Assets;

(y) Encumbrances which are not otherwise Permitted Encumbrances created in favour of Unrelated Parties; provided that (i) the aggregate amount of obligations secured thereby (including Refinancing Debt arising therefrom) does not at any time exceed $20,000,000 (or the Equivalent U.S. $ Amount) and (ii) such Encumbrances only attach to specifically identified Assets and do not attach generally to all or substantially all of the undertaking and Assets of such Person (such as an Encumbrance in the nature of a floating charge on all or substantially all of the undertaking and Assets of a Person);

(z) other Encumbrances expressly consented to in writing by the Majority Lenders; and

(aa) the modification, replacement, renewal or extension of any Encumbrance permitted by this definition; provided, that the Encumbrance does not extend to any additional Assets other than after-acquired Assets that is affixed or incorporated into the Assets covered by such Encumbrance and proceeds thereof.

"**Permitted Investments**" means investments in:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the Government of Canada or of any Canadian province (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the Government of Canada or of such Canadian province), in each case maturing within one year from the date of acquisition thereof;

(b) commercial paper maturing within 365 days from the date of acquisition thereof and rated, at such date of acquisition, at least "Prime 1" (or the then equivalent grade) by Moody's or "A" (or the then equivalent grade) by S&P or R-1 Low (or the then equivalent grade) by Dominion Bond Rating Service Limited;

(c) certificates of deposit, bankers' acceptances, commercial paper and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of Canada or of any Canadian province having, at such date of acquisition, a credit rating on its non-credit enhanced long-term unsecured Debt of at least "A-" by S&P;

(d) fully collateralized repurchase agreements with a term of not more than 180 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the Government of the United States of America or any U.S. State or territory (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the Government of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(f) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any State, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least "A" by S&P or "A" by Moody's; and

(g) money market funds that (i) comply with the criteria set forth in Rule 2a 7 under the Investment Company Act of 1940, (ii) are rated "AAA" by S&P and "Aaa" by Moody's and (iii) have portfolio assets of at least Cdn. $5,000,000 (or the Equivalent U.S. $ Amount),

provided that (y) each such Investment is redeemable in cash without any discount to the principal amount thereof on less than seven (7) days' notice and (z) no such Investment constitutes asset-backed commercial paper, collateralized debt obligations or similar such Investments.

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Province**" has the meaning specified in Section 2.13(1)(b).

"**Province Consent**" has the meaning specified in Section 2.13(1)(b).

"**PPSA**" means the *Personal Property Security Act* (British Columbia) and the regulations thereunder, as from time to time in effect, provided, however, if attachment, perfection or priority of the Administrative Agent's security interests in any Collateral are governed by the personal property security laws of any jurisdiction other than British Columbia, "PPSA" shall mean those personal property security laws in such other jurisdiction for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

"**Pro Forma Adjustment**" means, for any Measurement Period during which a Material Permitted Acquisition or a Material Disposition occurs, the *pro forma* increase or decrease in Consolidated EBITDA of the Loan Parties arising from the reformulation of Consolidated EBITDA as if such Material Permitted Acquisition or Material Disposition, and all other Material Permitted Acquisitions or Material Dispositions that have been consummated during the period, and any Debt or other liabilities incurred or repaid in connection therewith, had been consummated and incurred or repaid at the beginning of such period (and assuming that such Debt to be incurred bears interest during any portion of the applicable Measurement Period prior to the relevant acquisition at the interest rate which is or would be in effect with respect to such Debt as at the relevant date of determination).

"**Pro Forma Basis**" and "**Pro Forma Compliance**" means, for purposes of calculating compliance with each of the financial covenants set forth in Section 8.03 for each Measurement Period during which a Material Disposition or a Material Permitted Acquisition occurs, that such Material Disposition or Material Permitted Acquisition shall be deemed to have occurred as of the first day of the applicable Measurement Period in such covenant after giving effect to any applicable Pro Forma Adjustments.

"**Real Estate Development Assets**" means real property or any interest therein (a) held by a Loan Party as of the Closing Date, (b) acquired by a Loan Party after the Closing Date from an Unrelated Party or in accordance with Section 8.02(6), or (c) acquired by or transferred to a Real Estate Development SPV in accordance with this Agreement, and in each case in respect of which the Loan Party or Real Estate Development SPV receives, or reasonably expects to receive in the course of development or improvement thereof, the relevant Authorizations to permit the development or improvement of such real property for any residential or commercial purposes, or any combination thereof, relating or complimentary to the Business and, in each case including the buildings, fixtures and all improvements thereon or being developed thereon.

"**Real Estate Development SPV**" means a Subsidiary of a Borrower created after the Closing Date for the purpose of developing real property for commercial or residential purposes (or any combination thereof) relating or complimentary to the Business, and substantially all of the assets of which from time to time consist of Real Estate Development Assets and related personal property.

"**Refinancing**" means the refinancing transactions contemplated by this Agreement.

"**Refinancing Debt**" means, without duplication, Debt that refunds, refinances, extends or all of the proceeds from which are used to repay (in whole or in part) any Permitted Debt but only to the extent that (a) such Refinancing Debt is subordinated to the Debt hereunder at least to the same extent as the Debt being refunded, refinanced or extended, if at all; (b) the principal amount of such Refinancing Debt has a weighted average life to maturity not less than the weighted average life to maturity of the Debt being refunded, refinanced or extended and is scheduled to mature no earlier than the Debt being refunded, refinanced or extended; (c) such Refinancing Debt is in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of (x) the aggregate principal amount (or, if issued with original issue discount, the aggregate accreted value) of the Debt being refunded, refinanced or extended and the amount of any premium reasonably necessary to accomplish such refinancing, (y) the amount of any premiums owed, if any, not in excess of pre-existing prepayment provisions on such Debt being refunded, refinanced or extended, and (z) the amount of customary fees, expenses and costs related to the incurrence of such Refinancing Debt; and (d) such Refinancing Debt is incurred by the same Person or (i) if such Debt is of a Consolidated Subsidiary, by a Borrower or another Loan Party or (ii) if such Debt is Non-Recourse Debt of Parent GP and not of a Borrower, by Parent GP or an Unrestricted Subsidiary, (e) any Refinancing Debt of Non-Recourse Debt must constitute Non-Recourse Debt and (f) any Refinancing Debt of Permitted Debt described in paragraph (k) of the definition of Permitted Debt must also be Permitted Debt described in such paragraph (k).

"**Register**" has the meaning specified in Section 17.01(3).

"**Registered Intellectual Property**" means Intellectual Property that is issued by, registered or filed with, renewed by or the subject of a pending application before any Governmental Authority or Internet domain name registrar.

"**Related Party**" means (i) Parent GP, (ii) an Affiliate of Parent GP that is not a Loan Party or (iii) a director, officer or employee of Parent GP or such Affiliate.

"**Release**" when used as a verb includes release, spill, leak, emit, deposit, discharge, leach, migrate or dispose into the environment and the term "**Release**" when used as a noun has a correlative meaning.

"**Relevant Persons**" has the meaning specified in the definition of Consolidated EBITDA.

"**Remedial Work**" shall mean any investigation, site monitoring, containment, cleanup, removal, restoration, precautionary actions or other remedial work of any kind or nature with respect to the Release of any Hazardous Substances.

"**Repayment Notice**" has the meaning specified in Section 2.09(3).

"**Responsible Officer**" means, with respect to any corporation or other entity, the chairman, the president, any vice president, the chief executive officer, the chief operating officer or the chief financial officer, and, in respect of financial or accounting matters, any Financial Officer of such corporation or other entity; unless otherwise specified, all references herein to a Responsible Officer mean a Responsible Officer of the applicable Borrower.

"**Restricted Payment**" means any payment by a Loan Party (i) of any dividends on any of its Equity Securities, (ii) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retraction, retirement or other acquisition of any of its Equity Securities, or the making by such Loan Party of any other distribution in respect of any of its Equity Securities, (iii) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Debt of such Loan Party ranking in right of payment subordinate to any liability of such Loan Party under the Credit Documents, or (iv) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Debt of such Loan Party to a shareholder of such Loan Party or to an Affiliate of a holder of Equity Securities in such Loan Party, or (v) of any management, consulting or similar fee or any bonus payment or comparable payment, or by way of gift or other gratuity, or any other payment of any nature or kind, to any Related Party or to any director, officer employee or agent of any Related Party.

"**Rollover/Conversion Notice**" has the meaning specified in Section 3.03(3).

"**Sale-Leaseback Transaction**" means any direct or indirect arrangement with any Person or to which any such Person is a party providing for the leasing to any Loan Party of any property, whether owned by the Loan Party as of the Closing Date or later acquired, which has been or is to be sold or transferred by the Loan Party to such Person or to any other Person from whom funds have been, or are to be, advanced by such Person on the security of such property.

"**Schedule I Bank**" means an institution listed on Schedule I of the *Bank Act* (Canada).

"**Second Lien Documents**" means the Second Lien Senior Note Purchase Agreement, the Second Lien Senior Notes, and all guarantees, pledge agreements, security agreements and ancillary documents entered into in connection therewith.

"**Second Lien Intercreditor Agreement**" means the intercreditor agreement dated as of November 9, 2010 between the Administrative Agent on behalf of the Lenders, CPPIB Credit Investments Inc., as agent on behalf of the holders of the Second Lien Senior Notes, and the Borrowers, as amended and restated from time to time.

"**Second Lien Repayment Date**" means the date of repayment in full by the Borrowers of all obligations under or in respect of the Second Lien Senior Notes and the Senior Lien Senior Note Purchase Agreement.

"**Second Lien Senior Note Purchase Agreement**" means the Second Lien Senior Note Purchase Agreement dated as of November 9, 2010 between the Borrowers, as issuers, CPPIB Credit Investments Inc., as agent, and CPPIB Credit Investments Inc., as holder, providing for the issuance and sale of the Second Lien Senior Notes.

"**Second Lien Senior Notes**" means the $126,000,000 senior secured notes issued by the Borrowers pursuant to the Second Lien Senior Note Purchase Agreement.

"**Securities**" means:

(a) a document that is (i) issued in bearer, order or registered form, (ii) of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment, (iii) one of a class or series or by its terms is divisible into a class or series of documents, and (iv) evidence of a share, participation or other interest in property or in any enterprise or is evidence of an obligation of the issuer and includes an uncertificated security; and

(b) a share, participation or other interest in a Person.

"**Security**" has the meaning specified in Section 2.13(1).

"**Security Agreement**" has the meaning specified in Section 2.13(1)(d).

"**Security Documents**" means the agreements described in Section 2.13 and any other security granted to the Administrative Agent on behalf of the Lenders, the Hedge Lenders and the Service Lenders, including, without limitation, pursuant to Section 8.01(8) or Section 8.01(11), as security for the obligations of any of the Loan Parties or the Limited Recourse Guarantors under this Agreement and the other Credit Documents.

"**Service Lenders**" has the meaning specified in the definition of "Other Secured Agreements".

"**S&P**" means Standard and Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"**Subordinated Debt**" has the meaning specified in the definition of "Permitted Debt".

"**Subsidiary**" means, at any time, as to any Person, any corporation, company or other Person, if at such time the first mentioned Person owns, directly or indirectly, Equity Securities or other ownership interests in such corporation, company or other Person having ordinary voting power to elect a majority of the board of directors or persons performing similar functions for such corporation, company or other Person. For the purposes of this Agreement, if the Borrowers together own, directly or indirectly, Equity Securities or other ownership interests in another corporation, company or other Person having ordinary voting power to elect a majority of the board of directors or persons performing similar functions for such corporation, company or other Person, that other corporation, company or other Person shall be deemed to be a Subsidiary of each of the Borrowers.

"**Swing Line Advance**" means an Advance made by the Swing Line Lender for the account of a Borrower.

"**Swing Line Commitment**" means (i) at any time up to the Second Lien Notes Repayment Date, the amount of any Documentary Credits issued by the Swing Line Lender in accordance with Section 5.01(3), and (ii) at any time following the Second Lien Notes Repayment Date $20,000,000, subject to reduction pursuant to Section 5.01(2) and as such amount may otherwise be reduced pursuant to the terms hereof; provided, for greater certainty, that the Swing Line Commitment constitutes part of the Aggregate Commitment.

"**Swing Line Lender**" means The Toronto-Dominion Bank, or any successor Lender that has the Swing Line Commitment.

"**Synthetic Debt**" means, with respect to any Person, without duplication of any clause within the definition of "Debt", all (i) obligations of such Person under any lease that is treated as an operating lease for financial accounting purposes and a financing lease for tax purposes (i.e., a "synthetic lease") and (ii) obligations of such Person in respect of other transactions entered into by such Person that are not otherwise addressed in the definition of "Debt" or in clause (i) above that are intended to function primarily as a borrowing of funds (including, without limitation, any minority interest transactions that function primarily as a borrowing).

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (together with any interest, additions to tax or penalties applicable thereto), and includes all present or future stamp or documentary taxes or any other excise, intangible, mortgage, recording, or property taxes, charges or similar levies arising from any payment made hereunder or under any other Credit Document or from the execution, delivery, registration or enforcement of, or otherwise with respect to, this Agreement or any other Credit Document.

"**Tax Act**" means the *Income Tax Act* (Canada), as amended, and the Regulations promulgated thereunder.

"**Tranche 1**" has the meaning specified in Section 2.02(3).

"**Tranche 2**" has the meaning specified in Section 2.02(3).

"**Tranches**" means, collectively, the Tranche 1 and the Tranche 2 and, in the singular, any one of them.

"**Transaction Costs**" means reasonable fees, costs and expenses incurred in connection with the Refinancing (excluding for greater certainty, interest and other ongoing payment obligations under the Credit Facility and the Second Lien Senior Notes, but including the transaction costs of repaying the Second Lien Senior Notes and the premium payable on the principal amount thereof in connection therewith).

"**Type**" has the meaning specified in the definition of "Accommodation" or "Advance", as the case may be, herein.

"**Unmatured Surviving Obligations**" means indemnification obligations under any Credit Document that are contingent in nature and in respect of which no claim for indemnification has been made by the Administrative Agent or any Lender, nor does the Administrative Agent or any Lender have any reasonable expectation that any such claim will be made.

"**Unrelated Party**" means a Person that is not a Loan Party or a Related Party, or a director, officer, employee, agent or advisor of a Loan Party or a Related Party.

"**Unrestricted Subsidiary**" means a Subsidiary of Parent GP that is not a Loan Party (other than a Real Estate Development SPV).

"**U.S. Base Rate**" means the greater of (i) the rate of interest per annum in effect for such day as publicly announced by the Administrative Agent in Canada from time to time as the reference rate of interest for borrowings in U.S. Dollars by its commercial borrowers in Canada, changing effective on the date of said commercial base rate change specified in such announcement, and (ii) the Federal Funds Rate plus 0.50% per annum. The commercial base rate is not necessarily the lowest rate charged by the Lender acting as the Administrative Agent to its customers.

"**U.S. Base Rate Advance**" means an Advance that bears interest based on the U.S. Base Rate.

"**U.S. Dollars**" **and** "**U.S. $**" mean lawful money of the United States of America.

"**WB GP**" means Whistler Blackcomb General Partner Ltd. (formerly named Intrawest Mountain Resorts Ltd.), a corporation incorporated in the Province of British Columbia and its successors and permitted assigns.

"**Whistler LP**" means Whistler Mountain Resort Limited Partnership, a limited partnership formed under the laws of British Columbia as at the date hereof, or Parent GP, as general partner for Whistler Mountain Resort Limited Partnership, as the context requires, and its successors and permitted assigns.

"**Whistler Partnership Agreement**" means the amended and restated agreement of limited partnership dated November 12, 2010 with respect to the Whistler LP made between Parent GP, WB GP, Nippon GP, Snowcrest Holdings (Canada) Ltd., 0710350 B.C. Ltd. and Nippon Cable Holdings (Canada) Ltd. (formerly named 0878377 B.C. Ltd.).

**Section 1.02 Gender and Number**

Any reference in the Credit Documents to gender includes all genders, and words importing the singular number only include the plural and vice versa.

**Section 1.03 Interpretation not Affected by Headings, etc.**

The provisions of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

**Section 1.04 Currency**

All references in the Credit Documents to dollars or $, unless otherwise specifically indicated, are expressed in Cdn. $.

**Section 1.05 Certain Phrases, etc.**

In any Credit Document (i) (y) the words "**including**" and "**includes**" mean "**including** (or includes) without limitation" and (z) the phrase "**the aggregate of**", "the total of", "**the sum of**", or a phrase of similar meaning means "**the aggregate (or total or sum), without duplication, of**", and (ii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "**to**" and "**until**" each mean "**to (or until) but excluding**".

**Section 1.06 Accounting Terms**

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with GAAP.

**Section 1.07 Non-Business Days**

Whenever any payment is stated to be due on a day which is not a Business Day, such payment shall be made (except as herein otherwise expressly provided in respect of any LIBOR Advance) on the next succeeding Business Day, and such extension of time shall be included in the computation of interest or Fees, as the case may be.

**Section 1.08 Rateable Portion of Accommodations**

References in this Agreement to a Lender's rateable portion of Advances, Drawings, Drafts and Bankers' Acceptances or rateable share of payments of principal, interest, Fees or any other amount, shall mean and refer to a rateable portion or share as nearly as may be rateable in the circumstances, as determined in good faith by the Administrative Agent. Each such determination by the Administrative Agent shall be *prima facie* evidence of such rateable share.

**Section 1.09 Incorporation of Schedules**

The schedules attached to this Agreement shall, for all purposes of this Agreement, form an integral part of it.

**Section 1.10 Control of Equity Securities**

Any reference to "control" when used in the Credit Documents in reference to Equity Securities constituting Collateral shall be interpreted by reference to the *Securities Transfer Act* (British

Columbia) or other relevant Law in effect in the jurisdiction governing the perfection of a security interest in such Collateral.

**Section 1.11 Acquisition or Disposition of Equity Securities**

Wherever in this Agreement a limitation is placed upon the fair value of Assets acquired or Disposed by a Loan Party, an Acquisition or Disposal of Assets that are comprised of Equity Securities in a Loan Party shall be regarded for the purposes of complying with such limitation as the sum of (a) the consideration paid or received for the Equity Securities so acquired or Disposed and (b) the aggregate amount of the Debt of the Loan Party whose Equity Securities are so acquired or Disposed upon completion of such Acquisition or Disposition.

## ARTICLE 2
## CREDIT FACILITY

**Section 2.01 Availability**

(1) Each Lender individually and not jointly and severally agrees, on the terms and conditions of this Agreement, to make Accommodations rateably to the Borrowers in accordance with such Lender's Commitment. The Swing Line Lender agrees, on the terms and conditions of this Agreement, to make Swing Line Advances to the Borrowers and to issue Documentary Credits for the account of the Borrowers in accordance with the Swing Line Commitment.

(2) Accommodations under (i) the Credit Facility, in the case of Advances denominated in Canadian dollars, shall be made available as Canadian Prime Rate Advances or Drawings of BA Instruments on the terms set forth herein and, in the case of Advances denominated in U.S. Dollars, shall be available as U.S. Base Rate Advances or LIBOR Advances on the terms set forth herein, (ii) the Swing Line Commitment shall be made available, in the case of Swing Line Advances denominated in Canadian Dollars, as Canadian Prime Rate Advances and, in the case of Swing Line Advances denominated in U.S. Dollars, U.S. Base Rate Advances, on the terms set forth herein and as Documentary Credits denominated in Canadian Dollars or U.S. Dollars on the terms set forth herein.

(3) The failure of any Lender to make an Accommodation shall not relieve any other Lender of its obligation, if any, in connection with any such Accommodation, but no Lender is responsible for any other Lender's failure in respect of such Accommodation.

**Section 2.02 Commitments and Facility Limits**

(1) The Accommodations Outstanding:

(a) owing to (i) all Lenders shall not, at any time, exceed the Aggregate Commitment, (ii) each Lender, shall not at any time exceed such Lender's Commitment;

(b) owing to the Swing Line Lender shall not, at any time, exceed the Swing Line Commitment; and

(c) owing to all Lenders and the Swing Line Lender in the aggregate shall not, at any time, exceed the Aggregate Commitment.

(2) The Credit Facility shall revolve and, except as otherwise provided herein, no payment under the Credit Facility shall reduce the Commitments. Swing Line Advances shall be available on a revolving basis and, except as otherwise provided herein, no payment of Swing Line Advances or other repayment of Accommodations under the Swing Line Commitment shall reduce the Swing Line Commitment.

(3) Notwithstanding the Aggregate Commitment, Accommodations under the Credit Facility (including the Existing Documentary Credits) shall be limited to an aggregate principal amount of $135,000,0000 ("**Tranche 1**") from the Closing Date until the Second Lien Notes Repayment Date, for the purposes specified in Section 2.03(1). The remaining $165,000,0000 portion of the Credit Facility ("**Tranche 2**") shall be available on and after November 8, 2013 for the purposes specified in Section 2.03(2). To the extent the initial Accommodations under Tranche 2 are not drawn and applied to repay all obligations under and in respect of the Second Lien Senior Notes in full prior to November 30, 2013, Tranche 2 shall terminate and no longer be available and the Aggregate Commitment shall be permanently reduced by a corresponding amount. The Swing Line Commitment (i) shall be nil on the Closing Date; (ii) until the Second Lien Notes Repayment Date shall be limited to the face amount of any Documentary Credits issued in accordance with Section 5.01(3); and (iii) thereafter shall be the amount determined in accordance with the definition thereof.

(4) A conversion from one Type of Accommodation to another Type of Accommodation shall not constitute a repayment, prepayment, novation or new indebtedness.

**Section 2.03 Use of Proceeds**

(1) The Borrowers shall use the proceeds of Accommodations under Tranche 1, (i) together with (to the extent required) the cash on hand of the Borrowers, to repay in full all obligations of the Borrowers under the Existing Credit Facilities (other than the Existing Documentary Credits) and pay fees, commissions and expenses in connection with the Refinancing, and (ii) to finance general corporate purposes of the Borrowers and the other Loan Parties.

(2) The Borrowers shall use the proceeds of the initial Accommodations under Tranche 2 to (i) repay in full all obligations under or in respect of the Second Lien Senior Notes and, if the Second Lien Repayment Date is the same day as the initial drawdown under Tranche 1, to repay the balance of any outstanding obligations under or in respect of the Existing Credit Facilities, and (ii) pay fees, commissions and expenses in connection with such repayment. Subsequent Accommodations under Tranche 2 shall be used by the Borrowers to finance general corporate purposes of the Borrowers and the other Loan Parties.

**Section 2.04 Mandatory Repayments and Reductions of Commitments**

(1) The Borrowers shall repay (subject to Section 9.01) the Accommodations Outstanding under the Credit Facility together with all interest, fees and other amounts owing in connection therewith in full on the Maturity Date.

(2) The Borrowers shall repay (subject to Section 9.01), each Swing Line Advance in accordance with Section 3.06 and on the Maturity Date, and all Accommodations Outstanding in respect of Documentary Credits, together with all interest, fees and other amounts owing in connection therewith, in full on the Maturity Date.

**Section 2.05 Mandatory Repayments**

(1) If at any time by reason of exchange rate fluctuations, the Accommodations Outstanding under the Credit Facility exceed 103% of the Aggregate Commitment, the Borrowers shall, on the third Business Day following such day, repay any Advances in the manner set forth in Section 2.06(1) (but without regard to the minimum amounts specified therein), such that the Accommodations Outstanding under the Credit Facility, after giving effect thereto, do not exceed the Aggregate Commitment at such time.

(2) Each Loan Party shall be required to prepay any Accommodations Outstanding in an amount equal to the Net Proceeds from any Disposition of Assets (other than Permitted Dispositions, except as provided in clause (d) of the definition thereof) by any Loan Party or its Subsidiaries, which amount shall be applied within 5 days of receipt thereof to the repayment of Accommodations outstanding under the Credit Facility in accordance with Section 2.08 hereof; provided that such repayment shall not result in any permanent reduction of the Commitments and Accommodations under the Credit Facility shall thereafter continue to be available, subject to satisfaction of the conditions to Accommodation in Article 6.

(3) Subject to compliance with the terms of the Development Agreements, an amount equal to the Net Proceeds of any property insurance required to be maintained pursuant to Article 8 (which, for certainty, shall not include general liability insurance, business liability insurance or business interruption insurance) received by any Loan Party or any of its Subsidiaries on account of each separate loss, damage or injury to any part of the Collateral in excess of $2,500,000 (or the Equivalent U.S. $ Amount, shall be applied (or to the extent the Administrative Agent or the Lenders are loss payees under any insurance policy, the Administrative Agent is hereby irrevocably directed to apply such Net Proceeds)) to the repayment of Accommodations Outstanding under the Credit Facility in accordance with Section 2.08 hereof; provided that such repayment shall not result in any permanent reduction of the Commitment and Accommodations under the Credit Facility shall thereafter continue to be available, subject to satisfaction of the conditions to Accommodations in Article 6.

(4) If, at any time, the aggregate amount of Accommodations Outstanding by way of Swing Line Advances or Documentary Credits exceeds the Swing Line Commitment, the Borrowers shall promptly repay or cause to be promptly repaid Accommodations outstanding under the Swing Line (by way of repayment of Swing Line Advances,

cash collateralizing outstanding Documentary Credits or otherwise) in an aggregate amount equal to the amount by which the aggregate Accommodations Outstanding by way of Swing Line Advances or Documentary Credits exceeds the Swing Line Commitment at such time.

**Section 2.06 Optional Prepayments and Reductions of Commitments**

(1) The Borrowers may, subject to the provisions of this Agreement, (i) repay without penalty or bonus any Accommodations Outstanding under the Credit Facility; or (ii) reduce the unutilized portion of the Lenders' Commitments under the Credit Facility, in each case, in whole or, subject to the following sentence, in part, upon the number of days' notice to the Administrative Agent specified in Schedule 6 by a notice stating the proposed date and aggregate principal amount of the prepayment or reduction. In such case, the Borrowers shall pay to the applicable Lenders in accordance with such notice, the amount of such repayment or the amount by which the Accommodations Outstanding under the Credit Facility exceed the proposed reduced Commitment, as the case may be. Each partial repayment or reduction shall be in a minimum aggregate principal amount of U.S. $1,000,000 or Cdn. $1,000,000 and in an integral multiple of U.S. $100,000 or Cdn. $100,000. The amount of any Commitment reduction made by the Borrowers pursuant to clause (ii) above shall be permanent and irrevocable and shall permanently reduce the amount of the Credit Facility by such amount and each Lender's Commitment under the Credit Facility shall be rateably reduced.

(2) The Borrowers may, pursuant to this Section 2.06, prepay the amount of any Drawing under the Credit Facility by depositing with the Administrative Agent the Face Amount of such Drawing to be held by the Administrative Agent in an interest bearing account in the name of the applicable Lenders and irrevocably authorizing and directing the Administrative Agent to apply such amount on the maturity date for the relevant Drawing to the repayment of the relevant BA Instrument. Title to the funds held in such account shall pass to the Administrative Agent (for and on behalf of the applicable Lenders) on the date of deposit of such funds with the Administrative Agent and the Borrowers hereby acknowledge and agree that they shall have no legal or beneficial interest in such funds after the date of deposit of such funds in such account. Interest on amounts held on deposit by the Administrative Agent (at such rate as determined by the Administrative Agent, acting reasonably) shall be paid to the Borrowers on the maturity date for the relevant Drawing.

**Section 2.07 Fees**

(1) The Borrowers shall pay to the Administrative Agent, for the rateable benefit of the Lenders, a commitment fee (the "Commitment Fee"), from the Closing Date, in the case of an initial Lender, and otherwise from the effective date specified in the Assignment and Assumption pursuant to which any Eligible Assignee became a Lender, until the Maturity Date, at the rate specified in Schedule 7 (based on the Consolidated Total Leverage Ratio in effect from time to time, but which in any event shall not be less than 0.5625 % until the Specified Delivery Date referred to in the definition of "Applicable Margin") on the average daily amount of the unutilized Commitment of such Lender during such quarter (and, for greater certainty, without regard to any delay in the availability of Tranche 2 of the Credit Facility). The

Commitment Fee will be payable in arrears on the fifth Business Day of each of April, July, October and January and upon any termination of any Lender's Commitment, in each case for the actual number of days elapsed over a 365 day or 366 day year, as applicable.

(2) The Borrowers shall pay an annual administrative fee and other fees to the Administrative Agent in accordance with the Fee Letters.

**Section 2.08 Payments and Accommodations under this Agreement**

(1) Unless otherwise expressly provided in this Agreement, each Borrower shall make any payment required to be made by it to the Administrative Agent or any Lender by depositing the amount of the payment to the relevant Administrative Agent's Account for Payments not later than 1:00 p.m. (Toronto time) on the date the payment is due. The Borrower shall make each such payment (i) in Canadian Dollars, if the Accommodation was originally made in Canadian Dollars and (ii) in U.S. Dollars, if the Accommodation was originally made in U.S. Dollars. Any repayment of a LIBOR Advance not made on the last day of the relevant Interest Period shall be accompanied by payment by the applicable Borrower of any applicable Breakage Costs. The Administrative Agent shall distribute to each applicable Lender, promptly on the date of receipt by the Administrative Agent of any payment, an amount equal to the amount then due each such Lender, and if such distribution is not made on that date, the Administrative Agent shall pay interest on the amount for each day, from the date the amount is received by the Administrative Agent until the date of distribution, at the prevailing interbank rate for late payments.

(2) Unless otherwise expressly provided in this Agreement, the Administrative Agent shall make Accommodations under the Credit Facility and other payments to the Borrowers under this Agreement by crediting the relevant Borrowers' Account (or causing the relevant Borrowers' Account to be credited) with the amount of the payment not later than 3:00 p.m. (Toronto time) on the date the payment is to be made.

(3) The Swing Line Lender shall make Swing Line Advances to the Borrowers by crediting the relevant Borrowers' Account with the amount of such Swing Line Advance not later than 2:00 p.m. (Toronto time) on the date such Swing Line Advance is to be made.

(4) The Borrowers hereby authorize each Lender, if and to the extent any payment owed to such Lender by the Borrowers is not made to the Administrative Agent when due, to charge from time to time any amount due against any or all of the relevant Borrowers' Accounts with such Lender upon notice to the Borrowers.

**Section 2.09 Application of Payments and Prepayments**

(1) Except as provided in Section 2.09(2) below, all amounts received by the Administrative Agent from or on behalf of the Borrowers and not previously applied under and pursuant to this Agreement shall be applied by the Administrative Agent as follows: (i) first, in reduction of the Borrowers' obligation to pay any unpaid interest and any Fees which are due and owing under the Credit Documents; (ii) second, in

reduction of the Borrowers' obligation to pay any expenses, claims or losses referred to in Section 16.01; (iii) third, in reduction of the Borrowers' obligation to pay any amounts due and owing on account of any unpaid principal amount of Advances which are due and owing; (iv) fourth, in reduction of the Borrowers' obligation to pay any other unpaid Accommodations Outstanding which are due and owing; (v) fifth, in reduction of any other obligation of the Borrowers under this Agreement and the other Credit Documents; and (vi) sixth, to the Borrowers or such other Persons as may lawfully be entitled to or directed by the Borrowers to receive the remainder.

(2) The proceeds received by the Administrative Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Administrative Agent of its remedies, and any other funds realized by Administrative Agent during the continuance of an Event of Default, shall be applied, subject to applicable Law, in full or in part, together with any other sums then held by the Administrative Agent pursuant to this Agreement, promptly by the Administrative Agent as follows:

(a) *First*, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to the Administrative Agent and its agents and counsel, and all expenses, liabilities, professional fees, advances made or incurred by the Administrative Agent in connection therewith and all amounts for which the Administrative Agent is entitled to indemnification pursuant to the provisions of any Credit Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(b) *Second*, without duplication of amounts applied pursuant to clause (a) above, to the payment in full in cash of (i) all accrued and unpaid interest under this Agreement and the outstanding principal amount of all Advances and Accommodations Outstanding, (ii) all obligations owing under the Eligible Hedging Arrangements with Hedge Lenders and Other Secured Agreements, and (iii) all other obligations under the Credit Documents, in each case equally and rateably in accordance with the respective amounts thereof then due and owing; and

(c) *Third*, the balance, if any, to the person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns) or as a court of competent jurisdiction may direct.

(3) The Borrowers shall give to the Administrative Agent notice in writing of any mandatory repayment required to be made under the Credit Facility pursuant to Section 2.05 at least five (5) Business Days prior to the date of such repayment and any voluntary repayment to be made under the Credit Facility pursuant to Section 2.06 at least three (3) Business Days prior to the date of such repayment. Each such notice (a "**Repayment Notice**") shall be substantially in the form of Schedule 5, shall be irrevocable and binding upon the Borrowers once given by the applicable Borrower to the Administrative Agent and shall specify the date of such repayment and (if applicable) provide a reasonably detailed calculation of the amount of such repayment.

The Administrative Agent will promptly notify each Lender of the contents of the applicable Borrower's repayment notice and of such Lender's *pro rata* share of the repayment.

**Section 2.10 Computations of Interest and Fees**

(1) All computations of interest shall be made by the Administrative Agent taking into account the actual number of days occurring in the period for which such interest is payable pursuant to Section 3.05, and (i) if based on the Canadian Prime Rate, or the U.S. Base Rate, a year of 365 days or 366 days, as the case may be; or (ii) if based on the LIBOR Rate, on the basis of a year of 360 days.

(2) All computations of Fees shall be made by the Administrative Agent on the basis of a year of 365 or 366 days, as the case may be, taking into account the actual number of days (including the first day but excluding the last day) occurring in the period for which such fees are payable.

(3) For purposes of the *Interest Act* (Canada), (i) whenever any interest or Fee under this Agreement is calculated using a rate based on a number of days less than a full year, such rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate, (y) multiplied by the actual number of days in the calendar year in which the period for which such interest or fee is payable (or compounded) ends, and (z) divided by the number of days comprising such calculation basis; (ii) the principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement; and (iii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

(4) If any provision of this Agreement or of any of the other Credit Documents would obligate a Loan Party to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by such Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by such Lender of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) firstly, by reducing the amount or rate of interest required to be paid to such Lender under the applicable Credit Document, and (2) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to such Lender which would constitute "interest" for purposes of Section 347 of the *Criminal Code* (Canada). Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if a Lender shall have received an amount in excess of the maximum permitted by that section of the *Criminal Code* (Canada), the Loan Party paying the amount shall be entitled, by notice in writing to such Lender, to obtain reimbursement from such Lender in an amount equal to such excess and, pending such reimbursement, such amount shall be deemed to be an amount payable by such Lender to the Loan Party. Any amount or rate of interest referred to in this Section 2.10(4) shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that the applicable Accommodations Outstanding

remain outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the date of this Agreement to the Maturity Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Administrative Agent shall be conclusive for the purposes of such determination.

**Section 2.11 Extension of the Credit Facility**

At any time between 60 and 90 days prior to any anniversary of the Closing Date, provided no Default or Event of Default has occurred and is continuing, the Borrowers may, by written notice to the Administrative Agent, request that the Maturity Date be extended for a further period not to exceed one year from the then applicable Maturity Date. The Administrative Agent shall forthwith notify each Lender of such request. Each Lender may, in its sole discretion, approve or decline such request. If a Lender fails to respond within 30 days of such notice from the Administrative Agent, it shall be deemed to have declined the extension. If the Majority Lenders confirm to the Administrative Agent in writing, not less than 30 days prior to the applicable anniversary date, that such extension is acceptable to them, then the Maturity Date shall be so extended in respect only of the Lenders who have approved the request for extension and the Administrative Agent shall so advise the Borrowers. If a Lender (the "**Declining Lender**") indicates in writing to the Administrative Agent that the proposed extension is unacceptable (or is deemed to have declined the extension), the Administrative Agent shall so advise the Borrowers and the Borrowers shall be entitled, for a period up to, and including, the date which is 90 days prior to the Maturity Date as in effect in respect of such Lender, to propose one or more banks (collectively, the "**Replacement Lender**") which, if not a Lender, shall be acceptable to the Administrative Agent (which acceptance shall not be unreasonably withheld), which Replacement Lender would be prepared to accept an assignment of the Accommodations Outstanding and Commitment under the Credit Facility of the Declining Lender in accordance with Section 17.01(2) hereof and to agree to the extension of the Maturity Date. If, within that time period, the Borrowers are able to propose such Replacement Lender and, if applicable, the Replacement Lender is so acceptable to the Administrative Agent, the Declining Lender shall no later than 30 days prior to the Maturity Date as in effect in respect of such Lender, assign its rights and obligations hereunder to the Replacement Lender in accordance with Section 17.01(2) hereof for a price equal to the principal amount of the Accommodations Outstanding under the Credit Facility of that Declining Lender then outstanding plus accrued interest on the principal amount of and all other amounts payable in respect of all Accommodations Outstanding of, and all fees and all other amounts payable hereunder under the Credit Facility to, that Declining Lender to the date of such assignment (or such lesser amount as the Declining Lender and the Replacement Lender may agree), payable in cash against receipt of such assignment. Upon the assignment of the Accommodations of a Declining Lender to a Replacement Lender having occurred in accordance with this Section 2.11, the Maturity Date of the Credit Facility shall be deemed to have been extended in respect of such Replacement Lender in the manner which would have occurred had such Declining Lender originally confirmed the acceptability of the extension. If no assignment of the Accommodations of a Declining Lender occurs in accordance with this Section 2.11, then the Maturity Date of the Credit Facility in respect the Accommodations of such Declining Lender under the Credit Facility shall not be extended and the Accommodations Outstanding to such Declining Lender under the Credit Facility shall be due and payable in accordance with the provisions of this Agreement on such date and, upon such payment, each such Declining Lender shall cease to be a Lender hereunder and such Lender's Commitment shall be terminated and the Aggregate Commitment reduced accordingly. If the Majority Lenders do

not approve the extension request or if no request for an extension of the Maturity Date is received from the Borrowers, the applicable Maturity Date shall not be extended and all amounts then outstanding under the Credit Facility shall be due and payable to the Administrative Agent for the account of the applicable Lenders on the such date.

**Section 2.12 Incremental Commitments**

(1) The Borrowers may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (an "**Incremental Commitment Request**"), request one or more increases in the amount of the Aggregate Commitment (a "**Commitment Increase**") under the Credit Facility (any such new Commitments, the "**Incremental Commitments**"), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders.

(2) On any Incremental Facility Closing Date on which any Incremental Commitments are effected through the establishment of any Commitment Increase, subject to the satisfaction of the terms and conditions in this Section 2.12, (i) each Incremental Lender shall make its new Commitment available rateably to the Borrowers in an amount equal to its Incremental Commitment and (ii) each Incremental Lender shall become a Lender hereunder with respect to the Incremental Commitment and the Accommodations made pursuant thereto.

(3) Each Incremental Loan Request from the Borrowers pursuant to this Section 2.12 shall set forth the requested amount of the relevant Incremental Commitments. Incremental Commitments may be provided by any existing Lender (but no existing Lender will have an obligation to make any Incremental Commitment), or by any other bank or other financial institution (any such other bank or other financial institution being called an "**Additional Lender**", and each such existing Lender or Additional Lender, the "**Incremental Lenders**"); provided that the Administrative Agent and the Swing Line Lender shall have consented (such consent not to be unreasonably withheld or delayed) to such Lender or Additional Lender providing such Commitment Increases to the extent such consent, if any, would be required under Section 17.01(2) for an assignment of Commitments or Accommodations Outstanding, as applicable, to such Lender or Additional Lender.

(4) The terms of such Incremental Commitments shall be identical to the Commitments. The effectiveness of any Incremental Amendment, and the Incremental Commitments thereunder, shall be subject to the satisfaction on the date thereof (the "**Incremental Facility Closing Date**") of each of the following conditions:

(a) no Event of Default shall have occurred and be continuing or would exist after giving effect to such Incremental Commitments;

(b) each Incremental Commitment shall be in an aggregate principal amount that is not less than Cdn. $5,000,000 or U.S. $5,000,000, as applicable, and shall be in an increment of Cdn. $1,000,000 or U.S. $1,000,000, as applicable (provided that such amount may be less than Cdn. $5,000,000 or

U.S. $5,000,000, as applicable, if such amount represents all remaining availability under the limit set forth in clause (c) of this Section 2.12(4));

(c) the aggregate amount of the Incremental Commitments shall not exceed Cdn. $75,000,000;

(d) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (A) customary legal opinions, board resolutions and officers' certificates substantially consistent with those delivered on the Closing Date and (B) reaffirmation agreements and/or such amendments to the Credit Documents as may be reasonably requested by the Administrative Agent in order to ensure that such incremental Debt is provided with the benefit of the applicable Credit Documents; and

(e) such other conditions as the Borrowers, each Incremental Lender providing such Incremental Commitments and the Administrative Agent shall agree.

(5) Incremental Commitments shall become Commitments (or in the case of an Incremental Commitment to be provided by an existing Lender, an increase in such Lender's applicable Commitment) under this Agreement pursuant to an amendment (an "**Incremental Amendment**") to this Agreement and, as appropriate, the other Credit Documents, executed by the Borrowers, the other Loan Parties, each Incremental Lender providing such Commitments and the Administrative Agent. The Incremental Amendment may effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrowers, to effect the provisions of this Section 2.12(5), without the consent of any Lender or any other Loan Party.

(6) Upon any Incremental Facility Closing Date on which Incremental Commitments are effected, (a) each of the existing Lenders shall assign to each of the Incremental Lenders, and each of the Incremental Lenders shall purchase from each of the existing Lenders, at the principal amount thereof, such interests in the Accommodations Outstanding on such Incremental Facility Closing Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Accommodations will be held by existing Lenders and Incremental Lenders ratably in accordance with their Commitments after giving effect to the addition of such Incremental Commitments, (b) each Incremental Commitment shall be deemed for all purposes a Commitment and each Accommodation made thereunder shall be deemed, for all purposes, an Accommodation and (c) each Incremental Lender shall become a Lender with respect to the Incremental Commitments and all matters relating thereto. The parties hereto hereby agree that the minimum borrowing and repayment requirements in Article 3 of this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence.

**Section 2.13 Security**

(1) The Borrowers shall provide or cause to be provided by the Guarantors or the Limited Recourse Guarantors, as applicable, to the Administrative Agent, for and on behalf of the Lenders and the Hedge Lenders and Service Lenders, as continuing collateral

security for the present and future indebtedness and liability of the Borrowers, the Guarantors and the Limited Recourse Guarantors hereunder and under the other Credit Documents to which they respectively are a party to the Administrative Agent and the Lenders, the following security (the "**Security**"), in form and substance satisfactory to the Administrative Agent, together with any relevant required power of attorney, registrations, filings and other supporting documentation deemed necessary by the Administrative Agent or its counsel to perfect the same or otherwise in respect thereof:

(a) in the case of each Guarantor, a Guarantee, dated as of the Closing Date;

(b) for each Loan Party, one or more security agreements, dated as of the Closing Date, constituting a security interest in all personal property and assets of the Loan Parties (including all contract rights, inventory, accounts, general intangibles, Equity Securities, deposit accounts, Intellectual Property, equipment and proceeds of the foregoing) (each being a "**Security Agreement**") which charge shall be a first priority Encumbrance (subject, if and to the extent applicable, to Permitted Encumbrances), or a confirmation of any such existing security agreement in form and substance satisfactory to the Administrative Agent, together with all consents and authorizations required in connection with the grant of Security including, for greater certainty, the consent of Her Majesty the Queen in Right of the Province of British Columbia, represented by the minister responsible for the *Land Act* (the "**Province**") as required by the Development Agreements (the "**Province Consent**");

(c) in the case of each of the Limited Recourse Guarantors, a limited recourse guarantee in form satisfactory to the Administrative Agent (each being a "**Limited Recourse Guarantee**"), together with a securities pledge agreement in form and substance satisfactory to the Administrative Agent pursuant to which it pledges to the Administrative Agent and the Lenders its respective Equity Securities in the Borrowers, which pledge shall create a first priority Encumbrance (subject, if and to the extent applicable, to Permitted Encumbrances), or in each such case a confirmation of any such existing limited recourse guarantee and securities pledge agreement in form and substance satisfactory to the Administrative Agent;

(d) with respect to all Material Owned Real Properties, Material Crown Tenures and Material Leases, in each case, as of the Closing Date, and within (i) 10 days following the acquisition of any Material Owned Real Property or Material Leases or (ii) 21 days following the acquisition of any Material Crown Tenures (or in the case of (i) or (ii) above such later date as the Administrative Agent may agree in its reasonable discretion, but which shall be no later than 90 days from the date of the acquisition of such Material Owned Real Property, Material Crown Tenures or Material Leases), debentures, mortgages, deeds of trust or deeds to secure Debt in form and substance satisfactory to the Administrative Agent, constituting a charge on such real property interest of the Loan Parties, which charge shall be a first priority Encumbrance (subject, if and to the extent applicable, to any Permitted Encumbrances) on such Material Owned Real Property, Material Crown Tenures or Material Leases

and a floating charge on all other Crown Tenures, Leases and Owned Real Property and other real property Assets of the Loan Parties, or in each case, a confirmation and amendment agreement in respect of any existing debenture (each being a "**Debenture**"); together with:

(i) all consents and authorizations required in connection with the grant of such Security and evidence that counterparts of the Debentures have been duly executed, acknowledged and delivered and are in form suitable for filing, registration or recording in all filing or recording offices that the Administrative Agent may deem necessary in order to create a valid first priority Encumbrance (subject, if and to the extent applicable, to Permitted Encumbrances) on the property described therein in favour of the Administrative Agent for the benefit of the Lenders and that all filing, recording and similar taxes and fees have been paid;

(ii) where required by the Administrative Agent, an opinion from counsel to the Borrowers in form and substance satisfactory to the Administrative Agent, acting reasonably, with respect to the fee simple title of the relevant Loan Parties to the Material Owned Real Property and the registered leasehold title of the relevant Loan Parties to the Material Leased Real Property, in each case, against which the Debentures are to be registered in the British Columbia Land Title Office, and the registration in such Land Title Office, upon such registered fee simple and leasehold titles, of the Form B mortgages in respect of the Debentures and any related fixture filings as a first priority mortgage and charge, subject only to Permitted Encumbrances;

(iii) opinions of local counsel for the Loan Parties in the jurisdiction in which the secured properties are located, with respect to customary matters including the enforceability of the Security Agreement and the Debentures and the validity, creation and perfection of the Encumbrances created thereby, which opinions shall be in form and substance satisfactory to the Administrative Agent; and

(iv) evidence of the insurance required by the terms of this Agreement.

(2) The Borrowers will from time to time at their expense duly authorize, execute and deliver (or cause the applicable Loan Party or Limited Recourse Guarantor to authorize, execute and deliver) to the Administrative Agent such further instruments, control agreements and documents and take such further action as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits granted or intended to be granted to the Administrative Agent by the Credit Documents and of the rights and remedies therein granted to the Administrative Agent, including the filing of financing statements or other documents under any Law with respect to the Encumbrances created thereby. The Loan Parties acknowledge that the Credit Documents have been prepared on the basis of Law in effect on the Closing Date, and that changes to Law may require the execution and delivery of different forms of documentation, and accordingly the Administrative Agent shall have the right

(acting reasonably) to require that the Credit Documents be amended, supplemented or replaced (and the Borrowers shall, or shall cause the applicable Loan Party or Limited Recourse Guarantor to duly authorize, execute and deliver to the Administrative Agent any such amendment, supplement or replacement reasonably requested by the Administrative Agent with respect to any of the Credit Documents) within 30 days of written request therefor (i) to reflect any change in Law, whether arising as a result of statutory amendments, court decisions or otherwise; (ii) to facilitate the creation and registration of appropriate forms of security in applicable jurisdictions; or (iii) to confer upon the Administrative Agent Encumbrances similar to the Encumbrances created or intended to be created by the Credit Documents.

## ARTICLE 3
## CREDIT FACILITY ADVANCES

**Section 3.01 The Advances**

(1) Each Lender individually, and not jointly and severally (or solidarily) agrees, on the terms and conditions of this Agreement, and from time to time prior to the Maturity Date, to make Advances to the Borrowers on any Business Day.

(2) The Swing Line Lender agrees, on the terms and conditions of this Agreement from time to time after the Second Lien Notes Repayment Date until the Maturity Date to make Advances to the Borrowers on any Business Day. Upon the making of any Swing Line Advance by the Swing Line Lender, each Lender hereby irrevocably agrees to purchase from the Swing Line Lender a risk participation in such Swing Line Advance in an amount equal to the product of such Lender's Applicable Percentage of the Credit Facility times the principal amount of such Swing Line Advance upon notice from the Swing Line Lender.

(3) The Administrative Agent shall give each applicable Lender prompt notice of any Borrowing Notice received from a Borrower and of each applicable Lender's rateable portion of any Advance.

(4) Each Borrowing shall consist of the same Types of Advances made to a Borrower on the same day rateably by the relevant Lenders.

**Section 3.02 Procedure for Borrowing.**

(1) Except as provided in Section 3.06 and Section 5.06(2), each Borrowing under the Credit Facility shall be in a minimum amount of (i) Cdn. $1,000,000 and in an integral multiple of Cdn. $100,000 in the case of Canadian Prime Rate Advances and (ii) U.S. $1,000,000 and in an integral multiple of U.S. $100,000 in the case of Borrowings by way of LIBOR Advances or U.S. Base Rate Advances. Each such Borrowing shall be made on the number of days prior notice specified in Schedule 6, given not later than 1:00 p.m. (Toronto time), in each case by the applicable Borrower to the Administrative Agent. Each notice of a Borrowing (a "**Borrowing Notice**") shall be in substantially the form of Schedule 1, shall be irrevocable and binding on the Borrowers once given by the applicable Borrower to the Administrative Agent, and shall specify (i) the requested date of the Borrowing; (ii) the aggregate amount and

currency of the Borrowing; (iii) the Type of Advances comprising the Borrowing; (iv) prior to the Second Lien Notes Repayment Date, the Tranche under which such Advance is requested; and (v) in the case of a LIBOR Advance, the initial Interest Period applicable to such Advance. Upon receipt by the Administrative Agent of funds from the Lenders and fulfilment of the applicable conditions set forth in Article 6, the Administrative Agent will make such funds available to the Borrowers in accordance with Article 2.

**Section 3.03 Conversions and Rollovers Regarding Advances**

(1) Each Advance shall initially be the Type of Advance specified in the applicable Borrowing Notice and shall bear interest at the rate applicable to such Type of Advance (determined as provided in Section 3.05) until (i) in the case of a LIBOR Advance, the end of the initial Interest Period applicable thereto as specified in the applicable Borrowing Notice, (ii) in the case of a Canadian Prime Rate Advance or U.S. Base Rate Advance, the date on which the relevant Type of Advance is repaid in full or is converted to another Type of Advance pursuant to and to the extent permitted by Section 3.03(2).

(2) The Borrowers may elect to (i) convert any Advance (other than a Swing Line Advance) outstanding thereunder to another Type of Accommodation denominated in the same currency available thereunder in accordance with Section 3.03(3) or Section 4.05, as applicable, (x) in the case of a Canadian Prime Rate Advance or U.S. Base Rate Advance, as of any Business Day or (y) in the case of a LIBOR Advance as of the last day of the Interest Period applicable to such LIBOR Advance; or (ii) continue any LIBOR Advance for a further Interest Period, beginning on the last day of the then current Interest Period, in accordance with Section 3.03(3).

(3) Each election to convert from one Type of Advance to another Type of Accommodation or to continue a LIBOR Advance for a further Interest Period shall be made on the number of days prior notice specified in Schedule 6 given, in each case, not later than 1:00 p.m. (Toronto time) by the applicable Borrower to the Administrative Agent. Each such election shall be made by giving a notice (a "**Rollover/Conversion Notice**") substantially in the form of Schedule 2 and shall be irrevocable and binding upon the Borrowers. If a Borrower fails to deliver a Rollover/Conversion Notice to the Administrative Agent for any LIBOR Advance as provided in this Section 3.03(3), such LIBOR Advance shall be converted (as of the last day of the applicable Interest Period) to and thereafter shall be outstanding as a U.S. Base Rate Advance. The Borrower shall not select an Interest Period which conflicts with the definition of Interest Period in Section 1.01 or ends after the Maturity Date.

(4) Upon the occurrence of, and during the continuance of, an Event of Default, the Borrowers shall not have the right to convert Advances into, or to continue (i) LIBOR Advances, and each LIBOR Advance shall convert to a U.S. Base Rate Advance at the end of the applicable Interest Period or (ii) BA Instruments, and each Accommodation outstanding by way of BA Instruments shall convert to a Canadian Prime Rate Advance on the maturity date for the BA Instrument.

**Section 3.04 Circumstances Requiring Floating Rate Pricing**

(1) If a Lender determines acting reasonably in good faith and notifies the Borrower and the Administrative Agent in writing that (i) by reason of circumstances affecting financial markets inside or outside Canada, deposits of U.S. Dollars are unavailable to such Lender; (ii) adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided in the definition of LIBOR Rate; (iii) the making or continuation of any LIBOR Advances has been made impracticable (x) by the occurrence of a contingency (other than a mere increase in rates payable by such Lender to fund the Advances or a decrease in the creditworthiness of such Lender) which adversely affects the funding of the Credit Facility at any interest rate computed on the basis of the LIBOR Rate, or (y) by reason of a change since the date of this Agreement in any Law or in the interpretation thereof by any Governmental Authority which affects such Lender or any relevant financial market and which results in the LIBOR Rate no longer representing the effective cost to such Lender of deposits in such market; or (iv) any change to any Law or in the interpretation or application thereof by any Governmental Authority, has made it unlawful for such Lender to make or maintain or to give effect to its obligations in respect of LIBOR Advances as contemplated hereby, then,

(a) the right of the Borrower to select LIBOR Advances, as the case may be, from such Lender shall be suspended until such Lender determines acting reasonably in good faith that the circumstances causing the suspension no longer exist and such Lender so notifies the Administrative Agent;

(b) if any affected LIBOR Advance is not yet outstanding, any applicable Borrowing Notice shall be suspended until such Lender determines acting reasonably in good faith that the circumstances causing such suspension no longer exist and such Lender so notifies the Administrative Agent; and

(c) if any LIBOR Advance is already outstanding at any time when the right of the Borrower to select LIBOR Advances is suspended, it and all other LIBOR Advances in the same Borrowing with respect to such Lender shall (subject to the Borrower having the right to select the relevant Type of Advance at such time) become a U.S. Base Rate Advance on the last day of the then current Interest Period or applicable thereto (or on such earlier date as may be required to comply with any Law).

(2) The Administrative Agent shall promptly notify the Borrower of the suspension of its right to request a LIBOR Advance from such Lender and of the termination of any such suspension. Upon notice from the Administrative Agent of the suspension of the right to request a LIBOR Advance from such Lender, the Borrower may (i) either replace such Lender with a substitute Lender or Lenders, in which event such Lender shall execute and deliver an Assignment and Assumption in favour of such substitute Lender or Lenders pursuant to Section 17.01(2)(f) in respect of the whole of its Commitments; or (ii) prepay all Accommodations Outstanding of such affected Lender and thereupon reduce such affected Lender's Commitments to nil, all without affecting the Commitments of any other Lenders.

**3.05 Interest on Advances**

The Borrowers shall pay interest on the unpaid principal amount of each Advance made to it, from the date of such Advance until such principal amount is repaid in full, at the following rates per annum:

(1) **Canadian Prime Rate Advances.** If and so long as such Advance is a Canadian Prime Rate Advance and subject to clause (2) below, at a rate per annum equal at all times to the Canadian Prime Rate in effect from time to time plus the Applicable Margin, calculated daily and payable in arrears (i) quarterly, on the fifth Business Day of each of April, July, October and January; and (ii) when such Canadian Prime Rate Advance becomes due and payable in full pursuant to the provisions hereof.

(2) **U.S. Base Rate Advances**. If and so long as such Advance is a U.S. Base Rate Advance and subject to clause (4) below, at a rate per annum equal at all times to the U.S. Base Rate in effect from time to time plus the Applicable Margin, calculated daily and payable in arrears (i) quarterly, on the fifth Business Day of each of April, July, October and January; and (ii) when such U.S. Base Rate Advance becomes due and payable in full pursuant to the provisions hereof.

(3) **LIBOR Advances**. If and so long as such Advance is a LIBOR Advance and subject to clause (4) below, at a rate per annum equal, at all times during each Interest Period for such LIBOR Advance, to the sum of the LIBOR Rate for such Interest Period plus the Applicable Margin, payable on the earliest of (i) on the last day of such Interest Period; and (ii) when such LIBOR Advance becomes due and payable in full pursuant to the provisions hereof.

(4) **Default Interest.** Upon the occurrence and during the continuance of an Event of Default, under Section 9.01(1)(a) or (b) or Section 9.01(1)(j) subject to Law, the Borrowers shall pay interest on its obligations in respect of the Credit Facility ("**Default Interest**") on (i) the unpaid principal amount of each Accommodation Outstanding to each Lender, and the amount of any interest not paid when due, payable in arrears on the dates referred to in clause (1), (2) or (3) above, as applicable, and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on such Accommodation Outstanding pursuant to clause (1), (2) or (3) above, as applicable, above (or the rate of such overdue interest, as applicable), and (ii) the amount of any fee or other amount payable under this Agreement or any other Credit Document to the Administrative Agent or any Lender that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on Canadian Prime Rate Advances pursuant to clause (1) above or U.S. Base Rate Advances pursuant to clause (2) above, as applicable.

**Section 3.06 Swing Line Advances**

(1) Subject to payment of the customary fees and charges of the Swing Line Lender for operation of the applicable accounts, the Swing Line Lender shall provide the Borrowers with a Canadian Dollar and a U.S. Dollar account at the main branch in

Vancouver, British Columbia of the Swing Line Lender. At any time after the Second Lien Notes Repayment Date that the Borrowers would be entitled to obtain Advances under the Credit Facility, the Borrowers shall be entitled to draw cheques or make other debit transactions in Canadian Dollars and US Dollars on its accounts with the Swing Line Lender. The amount of any overdraft in the accounts of the Borrowers at the end of each Business Day, subject to appropriate adjustments, shall be deemed to be a Canadian Prime Rate Advance or a U.S. Base Rate Advance, as applicable to the Borrowers. The credit balance in such accounts at the end of each Business Day, subject to appropriate adjustments, shall be applied by the Swing Line Lender as a repayment of outstanding Swing Line Advances and such accounts shall be reduced accordingly. Except as otherwise specified, Swing Line Advances shall be subject to all the provisions of this Agreement applicable to Canadian Prime Rate Advances or U.S. Base Rate Advances under the Credit Facility.

(2) The aggregate outstanding amount of all Swing Line Advances at any time, together with all Accommodations Outstanding by way of Documentary Credits, shall not exceed the Swing Line Commitment of the Swing Line Lender. No Swing Line Advance or Issue of a Documentary Credit shall be made by the Swing Line Lender if it has received notice that an Event of Default has occurred and is continuing.

(3) Notwithstanding any other provision of this Agreement, the minimum notice requirements and minimum amounts and required multiples for Advances and repayments hereunder shall not apply to Swing Line Advances.

(4) The Administrative Agent shall on the last Business Day of each week, and the Swing Line Lender may, at any time in its sole and absolute discretion, request on behalf of the Borrowers (and the Borrowers hereby irrevocably authorize the Swing Line Lender to so request on its behalf), upon notice to the Administrative Agent by the Swing Line Lender no later than 10:00 a.m. (Toronto time) on the applicable date, in either case, that each Lender make a Canadian Prime Rate Advance or U.S. Base Rate Advance, as applicable, in an amount equal to such Lender's *pro rata* share of the amount of Swing Line Advances made by the Swing Line Lender then outstanding. Such request shall be deemed to be a Borrowing Notice for purposes hereof and shall be made in accordance with the provisions of Section 3.02(1) without regard solely to the minimum amounts specified therein but subject to the satisfaction of the conditions set forth in Section 6.03 (except that the Borrowers shall not be deemed to have made any representations and warranties), and the Administrative Agent shall apply the proceeds of any such Advances in repayment of the Swing Line Advances then outstanding.

(5) If for any reason any Swing Line Advance cannot be refinanced by a Borrowing as contemplated by Section 3.06(4), the request for Canadian Prime Rate Advances or U.S. Base Rate Advances submitted by the Swing Line Lender as set forth in Section 3.06(4) shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Advance and each Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 3.06(4) shall be deemed payment in respect of such participation.

(6) If and to the extent that any Lender shall not have made the amount of its *pro rata* share of such Swing Line Advance available to the Administrative Agent in accordance with the provisions of Section 3.06(4), such Lender agrees to pay to the Administrative Agent forthwith on demand such amount together with interest thereon, for each day from the date of the applicable Borrowing Notice delivered by the Swing Line Lender until the date such amount is paid to the Administrative Agent, for the account of the Swing Line Lender in accordance with prevailing banking industry practice for interbank compensation.

Each Lender's obligation to make Canadian Prime Rate Advances or U.S. Base Rate Advances, or to purchase and fund risk participations in a Swing Line Advance pursuant to this Section 3.06, shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or Event of Default, (iii) whether any of the conditions specified in Article 6 are then satisfied; or (iv) any other occurrence, event or condition, whether or not similar to any of the foregoing. No funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Advances, together with interest as provided herein.

## ARTICLE 4
## BANKERS' ACCEPTANCES

### Section 4.01 Acceptances and Drafts

(1) Each Lender, individually and not jointly and severally (or solidarily), agrees, on the terms and conditions of this Agreement and from time to time on any Business Day prior to the Maturity Date (i) in the case of a Lender which is willing and able to accept Drafts in the form of acceptances ("Bankers' Acceptances"), to accept Drafts and to purchase such Bankers' Acceptances in accordance with Section 4.03(2); and (ii) in the case of a Lender which is unwilling or unable to accept Drafts, to purchase completed Drafts (which have not and will not be accepted by the Lender or any other Lender) in accordance with Section 4.03(2).

(2) Each Drawing shall be in a minimum amount of $1,000,000 and in an integral multiple of $100,000 and shall consist of the acceptance and purchase of Bankers' Acceptances or the purchase of Drafts on the same day, in each case for the Drawing Price, effected or arranged by the applicable Lenders in accordance with Section 4.03 and their respective Lender's Commitment.

(3) If the Administrative Agent determines that the Bankers' Acceptances to be accepted and purchased or Drafts to be purchased on any Drawing (upon a conversion or otherwise) will not be accepted and purchased rateably by the applicable Lenders (or any of their respective Participants) in accordance with Section 4.01(2) and Section 4.03, then the requested Face Amount of Bankers' Acceptances and Drafts shall be increased or reduced to the nearest whole multiple of $1,000 as the Administrative Agent in its sole discretion determines will permit rateable sharing and, if reduced, the amount by which the requested Face Amount shall have been so reduced shall be converted or continued, as the case may be, as a Canadian Prime Rate Advance under the Credit Facility to be made contemporaneously with the Drawing.

**Section 4.02 Form of Drafts**

Each Draft presented by a Borrower shall (i) be in a minimum amount of $1,000,000 and in an integral multiple of $100,000; (ii) be dated the date of the Drawing, and (iii) mature and be payable by the applicable Borrower (in common with all other Drafts presented in connection with such Drawing) on a Business Day which occurs, at the election of such Borrower, approximately one, two, three months or, subject to availability, six months after the Drawing Date and on or prior to the Maturity Date.

**Section 4.03 Procedure for Drawing**

(1) Each Drawing shall be made on notice (a "**Drawing Notice**") given by a Borrower to the Administrative Agent not later than 1:00 p.m. (Toronto time) on the number of days' notice specified in Schedule 6. Each Drawing Notice shall be in substantially the form of Schedule 3, shall be irrevocable and binding on the Borrowers once given by the applicable Borrower to the Administrative Agent and shall specify (i) the requested Drawing Date; (ii) the aggregate Face Amount of Drafts to be accepted and purchased (or purchased, as the case may be); and (iii) the contract maturity date for the Drafts; and (iv) prior to the Second Lien Notes Repayment Date, the Tranche under which such Drawing is requested.

(2) Not later than 2:00 p.m. (Toronto time) on an applicable Drawing Date, each Lender shall complete one or more Drafts in accordance with the Drawing Notice and either (i) accept the Drafts and purchase the Bankers' Acceptances thereby created for the Drawing Price; or (ii) purchase such Drafts for the Drawing Price, and, in each case, pay to the Administrative Agent the Drawing Proceeds in respect of such Bankers' Acceptance or Draft, as the case may be. Upon receipt of the Drawing Proceeds and upon fulfilment of the applicable conditions set forth in Article 6, the Administrative Agent shall make funds available to the applicable Borrower in accordance with Article 2.

(3) Each Borrower shall, at the request of any Lender which has purchased a Draft in accordance with Section 4.01(1)(ii), issue one or more non-interest bearing promissory notes (in form and substance acceptable to the applicable Borrower and such Lender) (each a "**BA Equivalent Note**") dated as of the same date, payable on the same date and in the same Face Amount as, and in exchange for, such Draft.

(4) Bankers' Acceptances purchased by a Lender or Participant may be held by it for its own account until the contract maturity date or sold by it at any time prior to that date in any relevant Canadian market in such Person's sole discretion.

**Section 4.04 Presigned Draft Forms**

(1) Subject to paragraph (2) of this Section 4.04, in order to enable the Lenders to accept and purchase Bankers' Acceptances or complete Drafts in the manner specified in this Article 4, each Borrower shall deliver to each Lender or the Administrative Agent such number of Drafts as it may reasonably request, duly signed on behalf of such Borrower. Each Lender hereby indemnifies each Borrower against any loss or

improper use thereof by such Lender or its agents, will exercise and cause its agents to exercise such care in the custody and safekeeping of Drafts as it would exercise in the custody and safekeeping of similar property owned by it and will, upon request by the Borrowers, promptly advise the Borrowers of the number and designations, if any, of uncompleted Drafts held by it as agent for the Borrowers. The signature of any Responsible Officer of a Borrower on a Draft may be mechanically reproduced and any BA Instrument bearing a facsimile signature shall be binding upon such Borrower as if it had been manually signed. Even if the individuals whose manual or facsimile signature appears on any BA Instrument no longer hold office at the date of its acceptance by the applicable Lender or at any time after such date, any BA Instrument so signed shall be valid and binding upon such Borrower. No Lender shall be liable for its failure to accept a Draft as required hereby if the cause of such failure is, in whole or in part, due to the failure of the applicable Borrower to provide Drafts to such Lender on a timely basis.

(2) Each Borrower hereby irrevocably appoints each applicable Lender as its attorney to sign and endorse on its behalf, manually or by facsimile or mechanical signature, any BA Instrument necessary to enable each such Lender to make Drawings in the manner specified in this Article 4. All BA Instruments signed or endorsed on a Borrower's behalf by a Lender and any rounding by the Administrative Agent pursuant to Section 4.01(3) shall be binding on such Borrower, all as if duly signed or endorsed by such Borrower. Each Lender shall (i) maintain a record with respect to any BA Instrument completed in accordance with this Section 4.04(2), voided by it for any reason, accepted and purchased or purchased or, in the case of a BA Instrument, exchanged for another BA Instrument by it pursuant to this Section 4.04, and cancelled at its respective maturity; and (ii) retain such records in the manner and for the statutory periods provided by Laws which apply to such Lender and make such records available to the Borrowers acting reasonably. On request by a Borrower, the applicable Lender shall cancel and return to the possession of such Borrower all BA Instruments which have been pre-signed or pre-endorsed on behalf of such Borrower and which are held by such Lender and are not required to make Drawings in accordance with this Article 4.

**Section 4.05 Payment, Conversion or Rollover of BA Instruments**

(1) Upon the maturity of a BA Instrument, the applicable Borrower may:

(i) elect to issue a replacement BA Instrument or elect to have all or a portion of the Face Amount of the BA Instrument converted to a Canadian Prime Rate Advance, in each case by giving a Rollover/Conversion Notice in accordance with Section 3.03. Each such election shall be made on the number of days' prior notice specified in Schedule 6 given, in each case, not later than 1:00p.m. (Toronto time) by the applicable Borrower to the Administrative Agent; or

(ii) pay, on or before 1:00 p.m. (Toronto time) on the maturity date for the BA Instrument, an amount in Canadian Dollars equal to the Face Amount of the BA Instrument (notwithstanding that a Lender may be the holder of it at maturity). Any such payment shall satisfy the applicable Borrower's obligations under the BA Instrument to which it relates and (in the case of any Draft accepted by any Lender or Participant) such relevant Lender or

Participant shall then be solely responsible for the payment of the BA Instrument.

(2) If the applicable Borrower fails to pay any BA Instrument when due or issue a replacement in the Face Amount of such BA Instrument pursuant to Section 4.05(1), the unpaid amount due and payable shall be converted to a Canadian Prime Rate Advance made by the Lenders rateably and shall bear interest calculated and payable as provided in Article 3. This conversion shall occur as of the due date and without any necessity for the applicable Borrower to give a Borrowing Notice.

(3) If, by reason of circumstances affecting the money market generally, determined in good faith by the Administrative Agent acting reasonably and in respect of which the Administrative Agent shall have given notice to the Borrowers of the occurrence and particulars thereof, there is no market for Bankers' Acceptances, (i) the right to request a Drawing shall be suspended until the circumstances causing a suspension no longer exist; and (ii) any Drawing Notice which is outstanding shall be deemed to be a Borrowing Notice requesting a Borrowing comprised of Advances.

(4) The Administrative Agent shall promptly notify the Borrowers of the suspension of the right to request a Drawing and of the termination of any such suspension.

## ARTICLE 5
## DOCUMENTARY CREDITS

### Section 5.01 Documentary Credits

(1) The Swing Line Lender agrees, on the terms and subject to the conditions of this Agreement, to issue Documentary Credits under the Swing Line for the account of each Borrower from time to time on any Business Day prior to the Maturity Date (subject to Section 5.01(3) in the period prior to the Second Lien Notes Repayment Date). Upon the issuance of any Documentary Credit by the Swing Line Lender, each Lender hereby irrevocably agrees to purchase from the Swing Line Lender a risk participation in such Documentary Credits in an amount equal to the product of such Lender's Applicable Percentage of the Credit Facility times the principal amount of such Documentary Credits upon notice from the Swing Line Lender.

(2) Schedule 11 identifies the Documentary Credits outstanding under the Existing Credit Facilities at the date hereof and issued by Canadian Imperial Bank of Commerce as the issuing bank (the "**Existing Documentary Credits**"). The Existing Documentary Credits shall be deemed to be Documentary Credits issued and outstanding hereunder as and from the date hereof, until such time as there is a drawing under the Existing Documentary Credits, or the Existing Documentary Credits are returned to Canadian Imperial Bank of Commerce, expire by their terms or Canadian Imperial Bank of Commerce is otherwise released from any further obligations thereunder. For so long as they remain outstanding, (i) the Existing Documentary Credits will be deemed to be Accommodations Outstanding which correspondingly reduce availability under the Swing Line Commitment and the available Commitment of Canadian Imperial Bank of Commerce, (ii) the obligations thereunder will constitute Guaranteed Obligations and will be secured by the Security, and (iii) Canadian Imperial Bank of Commerce

will be deemed to be entitled to the benefits of (and subject to with the corresponding obligations under) Article 5 hereunder as if it were an issuer of Documentary Credits under the Swing Line Commitment.

(3) No Existing Documentary Credit will be renewed, extended or reissued with Canadian Imperial Bank of Commerce and as and from the date hereof all Documentary Credits under the Credit Facility shall be issued solely by the Swing Line Lender. Until the Second Lien Notes Repayment Date, the only Documentary Credits which may be issued hereunder shall be Documentary Credits issued in replacement of Existing Documentary Credits or issued after expiration or cancellation of one more Existing Documentary Credits (and having no greater aggregate face amount than the Existing Documentary Credits so replaced, expired or cancelled).

**Section 5.02 Issue Notice**

Each Issue shall be made on notice (an "**Issue Notice**") given by a Borrower to the Administrative Agent and the Swing Line Lender not later than 1:00 p.m. (Toronto time) on the number of days' notice specified in Schedule 6. The Issue Notice shall be in substantially the form of Schedule 4, shall be irrevocable and binding on the Borrowers once given by the applicable Borrower to the Administrative Agent and the Swing Line Lender, and shall specify (i) the requested date of Issue (the "**Issue Date**"); (ii) the type of Documentary Credit; (iii) the Face Amount and currency of the Documentary Credit; (iv) the expiration date of the Documentary Credit; and (v) the name and address of the Beneficiary.

**Section 5.03 Form of Documentary Credits**

Each Documentary Credit shall (i) be dated the Issue Date; (ii) have an expiration date on a Business Day which occurs not later than the earlier of (x) twelve months, from the Issue Date, and (y) the fifth Business Day prior to the Maturity Date; provided that any such Documentary Credit may provide for automatic renewal thereof for any stated period or periods of up to twelve months in duration in the absence of a timely notice of termination by the issuer of such Documentary Credit, but in any event not later than the Maturity Date unless cash collateralized in the manner set out in Section 5.08(1); (iii) comply with the definition of Documentary Credit; and (iv) be on the standard documentary forms required by the Swing Line Lender.

**Section 5.04 Documentary Credit Reports**

The Swing Line Lender shall, on the date of each issuance, amendment and drawing of a Documentary Credit by it, give the Administrative Agent and the Borrowers written notice of the issuance, amendment or drawing, as applicable, of such Documentary Credit, accompanied by a copy of the Documentary Credit or Documentary Credits issued, amended or drawn.

**Section 5.05 Procedure for Issuance of Documentary Credits**

(1) Not later than 12:00 p.m. (local time at the place of Issue) on an applicable Issue Date, the Swing Line Lender will complete and issue an appropriate type of Documentary Credit (i) dated the Issue Date; (ii) in favour of the Beneficiary; (iii) in a Face Amount and currency equal to the amount referred to in Section 5.02; and (iv) with the maturity date as specified by the applicable Borrower in its Issue Notice.

(2) No Documentary Credit shall require payment against a conforming draft to be made thereunder on the same Business Day upon which such draft is presented, if such presentation is made after 1:00 p.m. (local time at the place of presentation) on such Business Day.

(3) Prior to the Issue Date, the applicable Borrower shall specify a precise description of the documents and the verbatim text of any certificates or the form of any documents to be presented by the Beneficiary which, if presented by the Beneficiary, would require the Swing Line Lender to make payment under the Documentary Credit. The Swing Line Lender may, before the issue of the Documentary Credit and in consultation with the applicable Borrower, require changes in any such document or certificate.

**Section 5.06 Payments of Amounts Drawn**

(1) Within one Business Day following the date of any drawing under a Documentary Credit, the applicable Borrower shall pay to the Swing Line Lender an amount in same day funds equal to the amount so drawn in the currency in which the Documentary Credit is payable.

(2) If the applicable Borrower fails to pay to the Swing Line Lender an amount, in same day funds, equal to the amount of such drawing, then the Swing Line Lender shall be deemed to have made a Swing Line Advance to the applicable Borrower (in Canadian Dollars, in the case of a Documentary Credit denominated in Canadian Dollars, and in US Dollars, in the case of a Documentary Credit denominated in U.S. Dollars) in an amount equal to the amount of such drawing.

(3) With respect to Swing Line Advances deemed to be made pursuant to Section 5.06(2), the applicable interest rate and Applicable Margin for such advances shall be applied until such advances are repaid in full.

(4) All Swing Line Advances deemed made pursuant to Section 5.06(2) shall be refinanced, with other Swing Line Advances, by a Borrowing in accordance with Section 3.06(4). If for any reason any such deemed Swing Line Advance cannot be refinanced by a Borrowing as contemplated by Section 3.06(4), the provisions of Section 3.06(5) regarding participation by each Lender in such Swing Line Advance shall be applicable thereto.

(5) Each Lender shall be required to make the Advances referred to in Section 5.06(4) notwithstanding (i) the amount of the Advance may not comply with the minimum amount required for Borrowings hereunder; (ii) whether any conditions specified in Article 6 are then satisfied; (iii) whether a Default or Event of Default has occurred and is continuing; (iv) the date of such Advance; (v) any reduction in the Aggregate Commitment; and (vi) whether the Aggregate Commitment has been, or, after the making of such Advance, will be, exceeded.

**Section 5.07 Risk of Documentary Credits**

(1) In determining whether to pay under a Documentary Credit, the Swing Line Lender shall be responsible only to determine that the documents and certificates required to be delivered under the Documentary Credit have been delivered and that they comply on their face with the requirements of the Documentary Credit.

(2) The reimbursement obligation of the applicable Borrower under any Documentary Credit shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including (i) any lack of validity or enforceability of a Documentary Credit; (ii) the existence of any claim, set off, defence or other right which any Person may have at any time against a Beneficiary, the Swing Line Lender or any other Person, whether in connection with the Credit Documents and the transactions contemplated therein or any other transaction (including any underlying transaction between the applicable Borrower and a Beneficiary); (iii) any certificate or other document presented with a Documentary Credit proving to be forged, fraudulent or invalid or any statement in it being untrue or inaccurate; (iv) the existence of any act or omission or any misuse of, a Documentary Credit or misapplication of proceeds by the applicable Beneficiary, including any fraud in any certificate or other document presented with a Documentary Credit unless, with respect to the foregoing provisions of this Section 5.07(2), before payment of a Documentary Credit, (x) the applicable Borrower has delivered to the Swing Line Lender a written notice of the fraud together with a written request that it refuse to honour such drawing, (y) the fraud by the Beneficiary has been established to the knowledge of the Swing Line Lender so as to make the fraud clear or obvious to the Swing Line Lender, and (z) in the case of fraud in the underlying transaction between the applicable Borrower and the Beneficiary, the fraud is of such character as to make the demand for payment by the Beneficiary under the Documentary Credit a fraudulent one; or (v) the existence of a Default or Event of Default.

(3) The Swing Line Lender shall not be responsible for (i) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Documentary Credit or the rights or benefits under it or proceeds of it, in whole or in part, which may prove to be invalid or ineffective for any reason; (ii) errors, omissions, interruptions or delays in transmission or delivery of any messages by mail, telecopy or otherwise; (iii) errors in interpretation of technical terms; (iv) any loss or delay in the transmission of any document required in order to make a drawing; and (v) any consequences arising from causes beyond the control of the Swing Line Lender, including the acts or omissions, whether rightful or wrongful, of any Governmental Authority. None of the above shall affect, impair, or prevent the vesting of any of the Swing Line Lenders' rights or powers under this Agreement. Any action taken or omitted by the Swing Line Lender under or in connection with any Documentary Credit or the related certificates, if taken or omitted in good faith, shall not put the Swing Line Lender under any resulting liability to the applicable Borrower, provided that the Swing Line Lender acts in accordance with the standards of reasonable care specified in the Uniform Customs and Practice for Documentary Credits (2007 Revision), ICC Publication 600 (or any replacement publication) or the International Standby Practices ISP98 (ICC Publication No. 590 or later version), as applicable.

**Section 5.08 Repayments**

(1) If the Borrowers are required to repay the Accommodations Outstanding pursuant to Article 9, then the applicable Borrower shall pay to the Administrative Agent an amount equal to the Swing Line Lender's contingent liability in respect of (i) any outstanding Documentary Credit; and (ii) any Documentary Credit which is the subject matter of any order, judgment, injunction or other such determination (a "**Judicial Order**") restricting payment under and in accordance with such Documentary Credit or extending the Swing Line Lender's liability under such Documentary Credit beyond its stated expiration date.

(2) The Swing Line Lender shall, with respect to any Documentary Credit, upon the later of:

(a) the date on which any final and non-appealable order, judgment or other such determination has been rendered or issued either terminating the applicable Judicial Order or permanently enjoining the Swing Line Lender from paying under such Documentary Credit; and

(b) the earlier of (i) the date on which either (x) the original counterpart of the Documentary Credit is returned to the Swing Line Lender for cancellation, or (y) the Swing Line Lender is released by the Beneficiary from any further obligations, and (ii) the expiry (to the extent permitted by any Law) of the Documentary Credit,

pay to the applicable Borrower an amount equal to the amount by which the amount paid to the Administrative Agent pursuant to Section 5.08(1) exceeds the amounts paid by the Swing Line Lender under the Documentary Credit.

**Section 5.09 Fees**

(1) The Borrowers shall pay to the Swing Line Lender its (i) set-up fees, cable charges and other customary miscellaneous charges (as agreed to by the applicable Borrower and the Swing Line Lender in advance) in respect of the issue of Documentary Credits by it and upon the amendment or transfer of each Documentary Credit and each drawing made thereunder; and (ii) documentary and administrative charges for amending, transferring or drawing under, as the case may be, Documentary Credits of a similar amount, term and risk (as agreed to by the applicable Borrower and the Swing Line Lender in advance).

(2) Commencing on the date hereof to the Maturity Date, the Borrowers shall pay to the Administrative Agent for the account of the Swing Line Lender, a Documentary Credit Participation Fee on the daily average of the undrawn Face Amount of each Documentary Credit outstanding under the Swing Line as set forth in Schedule 6. All Documentary Credit Fees will be payable quarterly in arrears on the fifth Business Day of each of April, July, October and January, and upon any termination of any Commitment under the Credit Facility, in each case for the actual number of days elapsed over a year of 365 or 366 days, as applicable.

## ARTICLE 6
## CONDITIONS OF LENDING

### 6.01 Conditions Precedent to the Initial Accommodation

The obligation of each Lender to make its initial Accommodation under Tranche 1 of the Credit Facility on or after the Closing Date is subject to, in addition to the conditions precedent in Section 6.03, the condition that the Administrative Agent and each Lender shall be satisfied with, or the Borrowers shall have delivered to the Administrative Agent, as the case may be, on or before the day of such initial Accommodation, the following in form, substance and dated as of a date satisfactory to the Administrative Agent and its counsel and in such number of copies as may be reasonably requested by the Administrative Agent:

(1) a certified copy of (i) partnership agreements, other charter documents and by-laws (or equivalent governing documents) of each Loan Party and Limited Recourse Guarantor (together with all amendments thereto); (ii) the resolutions of the board of directors (or any duly authorized committee or other governing body thereof) or of the shareholders, as the case may be, of the general partners of the Borrowers and of each other Loan Party and Limited Recourse Guarantor approving the borrowing and other matters provided for in this Agreement and approving the entering into of all other Credit Documents to which they are a party and the completion of all transactions contemplated thereunder (including, where required, the pledge of Equity Securities thereunder); (iii) all other instruments evidencing necessary corporate, company or partnership action of each Loan Party and Limited Recourse Guarantor and of any required Authorization with respect to such matters; and (iv) the names and true signatures of its officers authorized to sign this Agreement and the other Credit Documents manually or by mechanical means;

(2) a certificate of status, compliance, good standing or like certificate with respect to each Loan Party and Limited Recourse Guarantor issued by the appropriate Government Authority in the jurisdiction of its formation;

(3) execution and delivery of this Agreement by each of the parties hereto, including for greater certainty each of (i) the Borrowers, (ii) the Guarantors and (iii) the Lenders, and execution and delivery of all other Credit Documents required to be delivered on the Closing Date pursuant to Section 2.13;

(4) the Lenders shall be reasonably satisfied (i) that there have been no amendments to the terms and conditions of the Second Lien Documents not disclosed to them, and (ii) that no Default or Event of Default (as therein defined) has occurred under the Second Lien Documents or will occur as a result of the entering into of this Agreement and the other Loan Documents or the making of such Advance, in each case as confirmed by an officer’s certificate of a Responsible Officer of the Borrowers;

(5) if the date of the initial Accommodation under Tranche 1 is a date prior to the Second Lien Repayment Date, execution and delivery by the Borrowers and by CPPIB Credit Investments Inc., as agent on behalf of the holders of the Second Lien Senior Notes, of a consent in respect of the Second Lien Intercreditor Agreement in form and substance satisfactory to the Administrative Agent;

(6) evidence of registration, or amendments to existing registration, in the necessary jurisdictions of the Encumbrances or notice thereof in favour of the Administrative Agent on behalf of the Lenders, the Hedge Lenders and the Service Lenders, as required under Law, created by the Security Documents in order to preserve or protect such Encumbrances or other arrangements for effecting such registrations acceptable to the Administrative Agent, together with all searches necessary in connection herewith (which searches shall disclose no Encumbrances on the assets of the Loan Parties or Limited Recourse Guarantors other than Permitted Encumbrances and Encumbrances being discharged as of the Closing Date (or within a mutually agreed upon time after the Closing Date);

(7) upon presentation of an invoice, all Fees and expenses (including the reasonable legal fees and disbursements of Torys LLP and Lawson Lundell LLP, subject to any written agreement between the Arranger and the Borrowers limiting such expenses) then due and payable under the Credit Documents shall have been paid in full (or shall be paid from the proceeds of the initial Accommodation under the Credit Facility) in the applicable currency;

(8) favourable opinions of counsel to the Loan Parties and the Limited Recourse Guarantors in the jurisdiction of formation of such Loan Party or Limited Recourse Guarantors and in each jurisdiction specified by the Administrative Agent as is relevant to confirm, inter alia, corporate existence, good standing, due authorization, execution and enforceability of all Credit Documents, and the validity, creation and perfection of the Encumbrances created by the applicable Credit Documents (including, in respect of title matters and issued share capital matters opined upon in connection with the Existing Credit Facilities, an acknowledgment as to the ability of the Administrative Agent and the Lenders to rely thereon satisfactory in form and substance to the Administrative Agent);

(9) satisfactory evidence that the Administrative Agent (on behalf of the Lenders) shall have a valid and perfected first priority (subject to Permitted Encumbrances) Encumbrances in the Collateral, in each case to the extent required by the terms of the Security Documents (including, where acceptable to the Administrative Agent, pursuant to an assignment of any Security Documents securing the Existing Credit Facilities); provided however, that Assets shall not be required to constitute Collateral if the Administrative Agent shall determine in its reasonable discretion that the costs of obtaining or granting of such Encumbrance or the perfection of such Encumbrance at Law are excessive in relation to the value of the security to be afforded thereby;

(10) (i) audited combined consolidated financial statements of the Borrowers and their Subsidiaries and (to the extent available) unaudited unit financial statements of each Non-Consolidated Subsidiary for the three Financial Years ended on or prior to September 30, 2012, prepared in accordance with GAAP, (ii) unaudited combined consolidated financial statements of the Borrowers and their Subsidiaries and (to the extent available) unaudited unit financial statements of each Non-Consolidated Subsidiary for the nine month period ending June 30, 2013, and (iii) financial forecasts prepared by management of the Borrowers in form reasonably satisfactory to the Administrative Agent;

(11) all documentation and other information required by them under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA Patriot Act (referred to in the definition of Anti-Terrorism Laws);

(12) the Lenders shall be satisfied as to the Borrower's compliance with the financial covenants set out in Section 8.03, determined as of the most recently completed Measurement Period on a *pro forma basis* after giving effect to the Refinancing;

(13) all required governmental and third party approvals and consents in connection with the Credit Facility, the Security and the Refinancing shall have been obtained (without the imposition of any conditions, other than those in favour of the Loan Parties, that are not reasonably acceptable to the Lenders) and shall remain in effect (which, for greater certainty, shall include the consent of the minister of the Province of British Columbia responsible for the *Land Act* with respect to the grant of Security by the Borrowers to the Administrative Agent on behalf of the Lenders, the Hedge Lenders and Service Lenders, on terms and conditions substantially the same as disclosed to the Lead Arranger prior to the Closing Date) and all applicable waiting periods shall have expired without any adverse action being taken by any competent authority;

(14) the Lenders shall be reasonably satisfied that the amount, types and terms and conditions of all insurance maintained by the Parent GP, the Borrowers and the Guarantors satisfy the requirements of Section 8.01(7), and the Lenders shall have received endorsements naming the Administrative Agent for the Lenders, on behalf of the Lenders, as an additional insured or loss payee, as applicable, under all such insurance policies in accordance with that Section;

(15) satisfactory evidence that all amounts owing under the Existing Credit Facilities (other than the Existing Documentary Credits) shall be repaid contemporaneously with the initial Accommodation under Tranche 1 under the Credit Facility, and that all Encumbrances granted in connection therewith shall be released in connection therewith to the extent not assigned to the Administrative Agent, and that after giving effect to the initial Accommodation under Tranche 1, neither the Parent GP, the Borrowers nor any Guarantor shall have any outstanding Debt or preferred stock other than Permitted Debt;

(16) a copy of the existing phase 1 environmental site assessment update of Blackcomb Whistler Mountain dated June 2010 prepared by Environ International Corporation, together with a reliance letter addressed to the Administrative Agent on behalf of the Lenders;

(17) certified true copies of the Development Agreements and all other Material Agreements;

(18) the Parent GP shall be a general partner of each of the Borrowers and shall own limited partnership units representing not less than 74.8% of the partnership interests in each of the Borrowers, in each case free and clear of any Encumbrance except Permitted Encumbrances. All capital stock of the Guarantors (other than Parent GP) shall be

owned by a Borrower or one or more of the Guarantors, in each case free and clear of any Encumbrance except Permitted Encumbrances;

(19) there shall exist no action, suit, investigation or other proceeding pending or threatened in any court or before any arbitrator or governmental or regulatory agency or authority that could reasonably be expected to restrain or materially adversely affect the Refinancing; and

(20) since the audited financial statements of the Borrower dated September 30, 2012 no Material Adverse Effect shall have occurred.

**Section 6.02 Conditions Precedent to Tranche 2 Accommodation**

The obligation of each Lender to make its initial Accommodation under Tranche 2 of the Credit Facility is subject to, in addition to the conditions precedent in Section 6.01 and Section 6.03, the condition that the Administrative Agent and each Lender shall be satisfied with, or the Borrowers shall have delivered to the Administrative Agent, as the case may be, on or before the day of such initial Accommodation, the following:

(1) such initial Accommodation shall be made after November 8, 2013 and prior to November 30, 2013; and

(2) the Lenders shall be satisfied (pursuant to a payout and release letter from the agent under the Senior Lien Senior Note Purchase Agreement) that (i) the Second Lien Senior Notes can be repaid in full subject only to the prepayment premium specified in Section 3.04 of the Second Lien Senior Note Purchase Agreement, and (ii) proceeds of the initial Accommodation under Tranche 2 will be applied to repay in full all obligations under or in respect of, the Second Lien Senior Notes and that all security therefor shall be contemporaneously released.

**Section 6.03 Conditions Precedent to All Accommodations**

(1) The obligation of each Lender to make Accommodations or otherwise give effect to any Accommodation Notice hereunder shall in each case be subject to the conditions precedent that on the date of such Accommodation Notice and Accommodation, and immediately after giving effect thereto, (x) the representations and warranties contained in Article 7 are true and correct in all material respects on and as of such date, all as though made on and as of such date except for those changes to the representations and warranties which have been disclosed to and accepted by the Administrative Agent and the Lenders pursuant to Section 18.01 and any representation and warranty which is stated to be made only as of a certain date (and then as of such date); and (y) no event or condition has occurred and is continuing, or would result from such Accommodation or giving effect to such Accommodation Notice, which constitutes a Default or an Event of Default.

(2) Each of the giving of any Accommodation Notice by a Borrower and the acceptance by a Borrower of any Accommodation shall be deemed to constitute a representation and warranty by the Borrowers that, on the date of such Accommodation Notice or

Accommodation, as the case may be, and after giving effect thereto, the statements set forth in Section 6.02(1) are true and correct.

(3) For the avoidance of doubt, this Section 6.02 shall not apply to conversions or elections in respect of Accommodations under Section 3.03 or Section 4.05.

**Section 6.04 No Waiver**

The making of an Accommodation or otherwise giving effect to any Accommodation Notice hereunder, without the fulfilment of one or more conditions set forth in Section 6.01, Section 6.02 or Section 6.03, as applicable, shall not constitute a waiver of any such condition, and the Administrative Agent and the Lenders reserve the right to require fulfilment of such condition in connection with any subsequent Accommodation Notice or Accommodation.

## ARTICLE 7
## REPRESENTATIONS AND WARRANTIES

**Section 7.01 Representations and Warranties**

Parent GP and the Loan Parties represent and warrant to each Lender and to the Administrative Agent, on the Closing Date and on each other date required by Section 6.03, acknowledging and confirming that each Lender is relying thereon without independent inquiry in entering into this Agreement and providing Accommodations hereunder, that:

(1) **Incorporation and Qualification**. Parent GP and each Loan Party is duly incorporated or formed, continued or amalgamated as the case may be, and validly existing under the laws of the jurisdiction of its organization (which, as of the Closing Date, is set forth in Schedule A), and each is duly qualified, licensed or registered to carry on business under (i) the Laws of the Province of British Columbia and of Canada applicable therein and (ii) all other Laws applicable to it in all jurisdictions in which the nature of its Assets or its business makes such qualification necessary and where failure to be so qualified, licensed, registered in such other jurisdictions could have a Material Adverse Effect.

(2) **Corporate and Partnership Power**. Parent GP and each Loan Party has all requisite corporate, partnership or other power and authority to (i) own and operate its properties and Assets and to carry on the Business carried on by it and any other business as now being conducted by it; and (ii) has all requisite corporate or other power and authority to enter into and perform its obligations under this Agreement and the other Credit Documents to which it is a party.

(3) **Conflict with Other Instruments**. The execution and delivery of the Credit Documents by each of Parent GP and the Loan Parties which is a party thereto and the performance by each of them of its respective obligations thereunder and compliance with the terms, conditions and provisions thereof will not (i) conflict with or result in a breach of any of the material terms, conditions or provisions of (t) its partnership agreement or other constating documents, as applicable, or by-laws, (u) any Law, (v) any Material Agreement or Material Permit, or (w) any judgment, injunction, determination or award which is binding on it; or (ii) result in, require or

permit (x) the imposition of any Encumbrance in, on or with respect to the Assets now owned or hereafter acquired by it (other than pursuant to the Security Documents or which is a Permitted Encumbrance), (y) the acceleration of the maturity of any material Debt binding on or affecting it, or (z) any third party to terminate or acquire any rights materially adverse to Parent GP or the applicable Loan Party under any Material Agreement.

(4) **Authorization, Governmental Approvals, etc**. The execution and delivery of each of the Credit Documents by each of Parent GP and the Loan Parties which is a party thereto and the performance by each of them of its respective obligations hereunder and thereunder have been duly authorized by all necessary corporate, partnership or analogous action and no Authorization, under any Law, with any Governmental Authority, is or was necessary therefor or to perfect the same, except as are in full force and effect, unamended.

(5) **Execution and Binding Obligation**. This Agreement and the other Credit Documents have been duly executed and delivered by each of Parent GP and the Loan Parties which is a party thereto and constitute its legal, valid and binding obligations, enforceable against it in accordance with their respective terms, subject only to any limitation under Laws relating to (i) bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally; and (ii) general equitable principles including the discretion that a court may exercise in the granting of equitable remedies.

(6) **Financial Condition; No Material Adverse Effect**. The Borrowers (i) have furnished to the Administrative Agent on or prior to the Closing Date, the audited combined consolidated financial statements of the Borrowers and their Subsidiaries and (to the extent available) the unaudited unit financial statements of each Non-Consolidated Subsidiary (in each case consisting of balance sheets, income statements and cash flow statements) as of and for the Financial Years ended September 30, 2010, 2011 and 2012 and the unaudited combined consolidated financial statements of the Borrowers and their Subsidiaries and (to the extent available) the unaudited unit financial statements of each Non-Consolidated Subsidiary for the nine month period ended June 30, 2013, and (ii) will have furnished on or prior to the date required by Section 8.01(1)(a), the combined consolidated financial statements of the Borrowers and their Subsidiaries, the consolidated financial statements of Parent GP, and the unit financial statements for each of the required Non-Consolidated Subsidiaries, as of and for the dates and periods specified therein, in each case consisting of balance sheets, income statements and cash flow statements and certified by a Responsible Officer. Such financial statements present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrowers and their Subsidiaries, on a combined consolidated basis, of Parent GP on a consolidated basis, or of such Non-Consolidated Subsidiaries, as applicable, as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the quarterly statements. As of the Closing Date, there has been no event, development or circumstance of which any Loan Party is aware that has had or could reasonably be expected to have a Material Adverse Effect. All information (including that disclosed in all financial statements) pertaining to Parent GP and the Loan Parties other than projections (the "**Information**") that has

been or will be made available to the Lenders or the Administrative Agent by the Borrowers is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made. The projections that have been or will be made available to the Lenders or the Administrative Agent by the Borrowers have been or will be prepared in good faith based upon reasonable assumptions.

(7) **Litigation**. As of the Closing Date, except as disclosed in Schedule B or Schedule J, there are no actions, suits or proceedings (including any Tax-related matter) by or before any arbitrator or Governmental Authority or by any other Person pending against or, to the knowledge of Parent GP or any Loan Party, threatened against or affecting Parent GP or any Loan Party or any of their Subsidiaries (i) that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (ii) that involve this Agreement or any other Credit Document and that is not being contested by Parent GP or the Loan Parties in good faith by appropriate proceedings. Except with respect to the Disclosed Matter(s) and except any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, none of Parent GP and the Loan Parties or their respective Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any Environmental Permit, (ii) to the knowledge of Parent GP or such Loan Party has become subject to any Environmental Liability or (iii) has received written notice of any claim with respect to any Environmental Liability.

(8) **Location of Business**. As of the Closing Date, the only jurisdictions (or registration districts within such jurisdictions) in which Parent GP or any Loan Party has any place of business is as set forth in Schedule C.

(9) **Material Permits**. As of the Closing Date, none of Parent GP and the Loan Parties possesses or is required to possess any Material Permits except as set out in Schedule D and, except as set forth in Schedule D, each of Parent GP and the Loan Parties possesses all Material Permits as may be necessary to properly conduct its respective business. Except as set forth in Schedule D, all Material Permits are (i) in full force and effect, (ii) not subject to any dispute, and (iii) not in default.

(10) **Material Agreements**. As of the Closing Date, none of Parent GP and the Loan Parties is a party or otherwise subject to or bound or affected by any Material Agreement, except as set out in Schedule E. Except as set forth in Schedule E or as otherwise notified to the Administrative Agent in accordance with Section 8.01(1)(c), (i) all Material Agreements are in full force and effect, unamended, (ii) none of Parent GP and the Loan Parties, or to Parent GP's or any Loan Party's knowledge, any other party to any such agreement is in default of any material term or condition thereof of any Material Agreement and (iii) neither Parent GP nor any Loan Party has received any notice from the Province of any intention to terminate any Development Agreement.

(11) **Title to Property**. Parent GP and each Loan Party owns its Assets and, with respect to all Material Owned Real Properties, with good and marketable title thereto, free

and clear of all Encumbrances, except for Permitted Encumbrances. The Assets owned or leased by each of the Loan Parties are sufficient in order for the Business to be carried on as currently conducted. No Loan Party is aware of any claim, event, occurrence or right granted to any other Person, of any kind whatsoever, that has resulted in or would reasonably be expected to result in loss of all or any part of the interest of such Loan Party in any part of their respective property, other than a loss that would not have or would not reasonably be expected to have a Material Adverse Effect.

(12) **Real Property**.

(a) None of Parent GP or the Loan Parties leases any real property or has or possesses any tenures, licenses, rights-of-way or other similar agreements for or with respect to the occupancy or use of any real property which, in each case, is material to the Business, other than the Material Leases, the Development Agreements and the Material Crown Tenures.

(b) None of Parent GP or the Loan Parties owns, directly or indirectly, any immovable or real property other than the Owned Real Property and Buildings and Fixtures placed on the Crown Tenures in accordance with the terms of the Development Agreements (in this Section 7.01(12), the "**Owned Tenant Improvements**").

(c) As of the Closing Date, there is no Owned Real Property except for the Material Owned Real Property.

(d) The Development Agreements, and the Material Crown Tenures, grant the Borrowers sufficient rights in and to all Crown lands which are necessary to carry on the Business as presently conducted.

(e) To the knowledge of the Borrower, all of the Crown Tenures are described in Schedule F hereto.

(f) No Person, other than a Loan Party, has any right to purchase, option to purchase, right of first refusal or other purchase rights with respect to any of the Material Owned Real Properties, Owned Tenant Improvements, Material Leases and Material Crown Tenures that is material to the Business, except as provided for in the Development Agreements or as disclosed in Schedule K.

(g) Each lease, tenure, license or right-of-way or similar agreement for or with respect to real property that is material to the Business to which Parent GP or any of the Loan Parties is a party, including the Material Crown Tenures and the Material Leases, is in good standing in all material respects and all material amounts due and payable thereunder have been paid by Parent GP or the applicable Loan Party except for any such amount, which has been disclosed to the Administrative Agent in writing, the payment obligation in respect of which is in bona fide dispute. There are no Leases which are material to the Business except for the Material Leases and the Material Crown Tenures.

(h) Except as set out in Schedule G, (i) no Loan Party leases, licences or is party to any agreement in respect of occupancy of any material part of any Material Owned Real Properties, Owned Tenant Improvements, Material Leased Real Properties or Material Crown Real Properties, by any other Person except for a Loan Party, in each case, other than Permitted Encumbrances described in paragraph (p) of the definition thereof and (ii) no Person, other than the applicable Loan Party, is using or has any right to use, or is in possession or occupancy of, any material part of any Material Owned Real Property, Owned Tenant Improvements, Material Leased Real Property or Material Crown Real Property, in each case, other than pursuant to a Permitted Encumbrance described in paragraph (p) of the definition thereof.

(i) All material Buildings and Fixtures are in good condition, repair and proper working order as reasonably required for the Business, having regard to their use and age, such material Buildings and Fixtures have been properly and regularly maintained in all material respects and, to the knowledge of the Loan Parties, all such material Buildings and Fixtures are free of structural or inherent defects which could reasonably be expected to materially interfere with or materially impair the use and occupancy of the related Material Owned Real Properties, Material Leased Real Properties or Material Crown Real Properties, in each case, as used in the Business.

(j) Neither the Parent GP nor any Loan Party has received any notification of or has knowledge of any outstanding or incomplete work orders, deficiency notices or other current non-compliance with Applicable Laws relating to any Material Owned Real Properties, Material Leased Real Properties or Material Crown Real Properties, which, in each case, could reasonably be expected to materially interfere with or materially impair the use and occupancy of such Material Owned Real Properties, Material Leased Real Properties or Material Crown Real Properties, as used in the Business.

(k) The current material uses of the Owned Real Properties, Material Leased Real Properties and Material Crown Real Properties are permitted under applicable Laws. No Loan Party has any knowledge of any proposed or pending changes to any zoning, official plan or other similar applicable Laws affecting any Owned Real Properties, Material Leased Real Properties or Material Crown Real Properties which, in each case, would materially interfere with or materially impair the use and occupancy of such Owned Real Properties, Material Leased Real Properties or Material Crown Real Properties, as used in the Business.

(l) No Loan Party has any knowledge of any Buildings and Fixtures that materially encroach on real property not forming part of any of the Owned Real Properties, Material Leased Real Properties or Material Crown Real Properties, and no buildings, structures or other improvements on adjoining lands materially encroach upon any of the Owned Real Properties, Material Leased Real Properties or Material Crown Real Properties.

(m) No Loan Party has any knowledge of any expropriation or condemnation or similar proceeding existing, pending or threatened in writing against any Material Owned Real Property or any part thereof which, in each case, would materially interfere with or materially impair the use and occupancy of any applicable Material Owned Real Properties, as used in the Business.

(n) No Loan Party has received any notice of any defaults, and to the knowledge of the Loan Parties, there are no material outstanding defaults (or events which would constitute a material default with the passage of time or giving of notice or both), under any Permitted Encumbrance affecting any Owned Real Property which, in each case, would materially interfere with or materially impair the use and occupancy of such Owned Real Property, as used and occupied in connection with the Business.

(o) All of the Material Owned Real Properties, Material Leased Real Properties and Material Crown Real Properties have ingress thereto and egress therefrom in compliance in all respects with applicable Law, and such ingress and egress is sufficient and adequate for the operation of the Business. No Loan Party has received notice or is aware of any change or threatened change which would affect the ingress to and egress from any of the Material Owned Real Properties, Material Leased Real Properties and Material Crown Real Properties which, in each case, would materially interfere with or materially impair the use and occupancy of such Material Owned Real Property, Material Leased Real Property and Material Crown Real Property, as applicable, as used and occupied in connection with the Business.

(p) The Loan Parties have all necessary rights, in respect of all of the buildings and other improvements located on or at any of the Material Owned Real Properties, Material Leased Real Properties, Material Crown Real Properties and in respect of the Day Skier Lots, for adequate parking for the operation of the Business, and all parking operations located at such real property are conducted in compliance in all material respects with applicable Law.

(13) **Insurance**. All of the Assets of the Loan Parties and all of the Assets of Parent GP other than Assets that are not required to be pledged or otherwise encumbered in favour of the Administrative Agent and the Lenders under the Credit Document are insured against loss of damage to the extent, and in the manner, described in Section 8.01(7).

(14) **Compliance with Laws**. Parent GP and each Loan Party is in compliance in all material respects with all applicable Laws.

(15) **No Default**. No Default or Event of Default has occurred and is continuing or could result from any Accommodation under this Agreement or from the application of the proceeds therefrom. None of the Loan Parties is in default of any material term or condition of any loan or credit agreement, indenture, mortgage, deed of trust, security agreement or other instrument or agreement evidencing or pertaining to any Debt of any Loan Party, which is outstanding in an aggregate principal amount exceeding $25,000,000 or under any material term or condition of any other Material Agreement

(other than the Development Agreements) and no Loan Party has received any notice from the Province of any intention to terminate any Development Agreement.

(16) **Structure, etc**. Parent GP is a general partner and each of WB GP and Nippon GP is an additional general partner of each of the Borrowers; provided that each of WB GP and Nippon GP is an inactive additional general partner and does not perform any general partner duties with respect to either of the Borrowers. As of the Closing Date, (i) Parent GP and the Limited Recourse Guarantors are the direct beneficial owners of all of the issued and outstanding Equity Securities of the Borrowers in the proportions set out in Schedule H; and (ii) no Person (other than a Loan Party) has any right or option to purchase or otherwise acquire any of the issued and outstanding Equity Securities of any Loan Party. As of the Closing Date, (i) the Borrowers and the Non-Consolidated Subsidiaries have no Subsidiaries other than as identified on Schedule H, and (ii) the direct beneficial owners of all of the Equity Securities of all such Subsidiaries are as set out in Schedule H.

(17) **Labour Matters**. None of the Loan Parties is a party, either directly, voluntarily or by operation of law, to any collective agreement, letter of understanding, letter of intent or other written communication with any bargaining agent, trade union or association which may qualify as a trade union, which would apply to any employees of any Loan Party, except to the extent the same has not had and would not reasonably be expected to have a Material Adverse Effect. There are no outstanding or, to the knowledge of any Loan Party, threatened unfair labour practices, complaints or applications of any kind, including any proceedings which could result in certification of a trade union as bargaining agent for employees of any Loan Party, and there have not been any such proceedings within the last five years, in each case, except to the extent the same has not had and would not reasonably be expected to have a Material Adverse Effect. There are no threatened or apparent union organizing activities involving any of the Loan Parties, except to the extent the same would not reasonably be expected to have a Material Adverse Effect. None of Parent GP or any of the Loan Parties has any labour problems that might affect the value of any of the Loan Parties or lead to an interruption of any of their operations at any location, except to the extent the same would not reasonably be expected to have a Material Adverse Effect.

(18) **Canadian Benefit Plans**. Neither Parent GP nor any Loan Party maintains or contributes to any Canadian Pension Plan. All Canadian Benefit Plans are, and have been, established, registered, administered and funded, where applicable, in all material respects in accordance with the terms of such Canadian Benefit Plans, including the terms of the material documents that support such Canadian Benefit Plans and all applicable Law. To the knowledge of any Loan Party, no event has occurred respecting any Canadian Benefit Plan which would result in the revocation of the registration, if applicable, of such Canadian Benefit Plan. As of the Closing Date, there are no outstanding disputes concerning the assets of any of the Canadian Benefit Plans which could reasonably be expected to have a Material Adverse Effect. No promises of benefit improvements under any of the Canadian Benefit Plans have been made except where such improvement could not reasonably be expected to have a Material Adverse Effect. All employer and employee payments, contributions or premiums required to be made or paid by Parent GP or each Loan Party to the Canadian

Benefit Plans have been made on a timely basis in accordance with the terms of such plans and all Laws.

(19) **Trademarks, Patents, etc.**

(a) Other than Intellectual Property permitted to be used by Parent GP or the Loan Parties from third parties (the "**Licenced Intellectual Property**"), and except as set forth in Schedule I, Parent GP and each Loan Party is the beneficial owner of, with good and marketable title, free of all Encumbrances other than Permitted Encumbrances, all Intellectual Property that is used in and material to the Business (the "**Owned Intellectual Property**"), without any material conflict with the rights of any other Person.

(b) Parent GP and each Loan Party is the registered owner of the Owned Intellectual Property that is Registered Intellectual Property, and such Registered Intellectual Property is (i) currently in compliance in all material respects with any and all formal legal requirements necessary to record and perfect Parent GP's and the Loan Parties' interest therein and the chain of title thereof, and (ii) to the knowledge of Parent GP and the Loan Parties, valid and enforceable.

(c) Parent GP and each Loan Party owns or otherwise has a right to use all Intellectual Property used in and material to the operation of the Business, and there are no other items of Intellectual Property that are material to or necessary for the operation of the Business.

(d) All Owned Intellectual Property that is Registered Intellectual Property as of the Closing Date is identified in Schedule I.

(e) To the knowledge of Parent GP and the Loan Parties, no material claim has been asserted and remains pending by any Person with respect to the use by Parent GP or any Loan Party of any Owned Intellectual Property or challenging the validity or enforceability of any Owned Intellectual Property.

(f) To the knowledge of Parent GP and the Loan Parties, as of the Closing Date there has been no material violation by Parent GP or a Loan Party of the terms and conditions governing such Parent GP's or such Loan Party's use of the Licensed Intellectual Property.

(g) To the knowledge of Parent GP and the Loan Parties no Person is engaging in any activity that infringes, misappropriates or otherwise violates any Owned Intellectual Property in any material respect.

(h) Except as disclosed in Schedule I, to the knowledge of Parent GP and the Loan Parties, the conduct of each Loan Party's business does not infringe, misappropriate or otherwise violate the Intellectual Property rights of any other Person in any material respect.

(20) **Books and Records**. All books and records of Parent GP and each Loan Party and each of its Subsidiaries have been fully, properly and accurately kept and completed in accordance with GAAP (to the extent applicable) in all material respects, and there are no material inaccuracies or discrepancies of any kind contained or reflected therein that could, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

(21) **Tax Liability**. Parent GP and each Loan Party has timely filed or caused to be filed all returns in respect of Taxes and has paid or caused to be paid all Taxes required to have been paid by it (including all installments with respect to the current period) and has made adequate provision for Taxes for the current period (other than Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party has, if required, set aside on its books adequate reserves in accordance with GAAP, or as to which waivers or extensions have been granted by the applicable Governmental Authority) and no tax liens have been filed and, to the knowledge of Parent GP and each Loan Party, no claims are being asserted in writing with respect to any such Taxes, except to the extent that (a) any failure to so file or to make such payment could not reasonably be expected to have a Material Adverse Effect or (b) in the case of any such tax liens or claims, such liens or the assertion of such claims do not materially impair the value, validity or the priority of the security interests of the Lenders in the Collateral.

(22) **Environmental Matters**. Except as disclosed to the Lenders in Schedule J, (i) all property and facilities thereon owned, leased, used or operated by Parent GP or any Loan Party have been, and continue to be, owned, leased, used or operated in compliance in all material respects with all Environmental Laws; (ii) there are no pending or threatened claims, complaints, notices or requests for information with respect to any alleged material violation of any Environmental Law by Parent GP or a Loan Party or potential liability hereunder; (iii) there has been no Release of Hazardous Substances at, on, under or from any property now or previously owned, leased, used or operated by Parent GP or any Loan Party that could reasonably be expected to have a Material Adverse Effect; (iv) the Borrowers have been issued and are in compliance in all material respects with all Environmental Permits; (v) no conditions, facts or circumstances exist at, on or under any property now or previously owned, leased, used or operated by Parent GP or any Loan Party which, with the passage of time, or the giving of notice or both, which could reasonably be expected to give rise to a material Environmental Liability; (vi) neither Parent GP nor any Loan Party is being investigated or prosecuted for alleged non-compliance, or has in the last five years been convicted of material non-compliance with Environmental Laws or Environmental Permits or otherwise settled an investigation or prosecution with respect to the same short of conviction; and (vii) the Borrowers have in effect a management structure and policies and procedures designed to avoid Environmental Liability, maintain compliance with Environmental Laws and their Environmental Permits, and respond in a timely and effective manner in the event of non-compliance therewith or a Release of Hazardous Substances.

(23) **Anti-Terrorism Laws**. None of Parent GP, the Loan Parties or any Affiliate of any Loan Party is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or

avoiding, or attempts to violate, any of the prohibition set forth in any Anti-Terrorism Law.

(24) **Executive Offices & Collateral Locations**. As of the Closing Date, the current location of (i) each chief executive office and principal place of business of Parent GP and each Loan Party, and (ii) the warehouses and premises at which any Assets or Collateral of Parent GP and the Loan Parties is located, are as set forth on Schedule A.

(25) **Debt**. None of Parent GP, the Loan Parties or the Real Estate Development SPVs have any Debt outstanding other than Permitted Debt.

(26) **Securities and Instruments**.

(a) Schedule L sets forth a complete list of Intercompany Securities and Intercompany Instruments, as at the Closing Date.

(b) All Intercompany Securities and Intercompany Instruments owned by the Loan Parties have been, where applicable, duly and validly issued and acquired and, in the case of the Intercompany Securities and to the knowledge of the applicable Loan Parties, (i) are fully paid and non-assessable in the case of Intercompany Securities issued by a Loan Party and (ii) all contributions required to be contributed by the limited partners of the Borrowers to the Borrowers entitling them to their respective limited partnership interests in the Borrowers have been contributed. Schedule H sets out, for each class of such Securities listed in the schedule, the percentage amount that such Securities represent of all issued and outstanding Securities of that class, as at the Closing Date.

(c) Except for the applicable issuer's constating documents (or as contained therein) or as disclosed in Schedule L, (i) no transfer restrictions apply to any Intercompany Securities or Intercompany Instruments listed in Schedule L, and (ii) no shareholder agreements, trust agreements or similar agreements are applicable to any issuer of such Securities and Instruments.

(27) **Perfection of Security Interests**. All filings and other actions necessary to perfect and protect the Encumbrances in the Collateral created under the Security Documents have been duly made or taken and are in full force and effect, and the Security Documents create in favour of the Administrative Agent for the benefit of the Lenders, the Hedge Lenders and the Service Lenders a valid and, together with such filings and other actions, perfected first priority Encumbrance in the Collateral (subject only to Permitted Encumbrances), securing the payment of the obligations secured thereby, and all filings and other actions necessary or desirable to perfect and protect such Encumbrance have been duly taken (other than amendments required to any such registrations in respect of Intellectual Property to reflect the change of administrative agent hereunder).

(28) **Status of Facilities as Senior Indebtedness**. The obligations under the Credit Facility constitute senior unsubordinated obligations of Parent GP, the Borrowers and the other Loan Parties.

(29) **Use of Proceeds**. The Borrowers will use the proceeds of the Credit Facility, and the Swing Line Loans, and will request the issuance of Documentary Credits, solely for the purposes set out in Section 2.03.

(30) **Accuracy of Disclosure**. As of the Closing Date, Parent GP and the Loan Parties have, to the best of their knowledge, disclosed or made available to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which they are subject, and all other matters known to them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other written information furnished by or on behalf of Parent GP or any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Credit Document (in each case as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

**Section 7.02 Survival of Representations and Warranties**

The representations and warranties herein set forth or contained in any certificates or notices delivered to the Administrative Agent and the Lenders pursuant hereto shall not merge in or be prejudiced by and shall survive any Accommodation hereunder and shall continue in full force and effect (as of the date when made or deemed to be made) so long as any amounts are owing by the Borrowers to the Lenders hereunder.

## ARTICLE 8
## COVENANTS OF THE LOAN PARTIES

**Section 8.01 Affirmative Covenants**

So long as any amount owing hereunder remains unpaid or any Lender has any obligation under this Agreement (in each case other than Unmatured Surviving Obligations), and unless consent or waiver is given in accordance with Section 18.01 hereof, the Parent GP and each Loan Party shall:

(1) **Reporting Requirements**. During the term of this Agreement, prepare (where applicable, in accordance with GAAP) and deliver to the Administrative Agent on behalf of the Lenders:

(a) **Financial Reporting**

(i) as soon as practicable and in any event within 45 days of the end of each Financial Quarter of the Borrowers (excluding the fourth Financial Quarter), (A) the interim unaudited combined consolidated financial statements of the Borrowers and their Subsidiaries, (B) the interim unaudited consolidated financial statements of Parent GP, and (C) the interim unaudited unit financial statements of each Non-Consolidated Subsidiary which accounts for a positive or negative contribution of at least $500,000 to Consolidated EBITDA for the

relevant period, in each case, as at the end of such Financial Quarter prepared in accordance with GAAP including, without limitation, a balance sheet, income statement and statement of cash flows, in each case as at the end of and for such Financial Quarter and the then elapsed portion of the Financial Year which includes such Financial Quarter, setting forth in each case in comparative form the figures for the corresponding period or periods of (or in the case of the balance sheet, as at the end of) the previous Financial Year, in each case subject to year-end adjustments and the absence of footnotes;

(ii) as soon as practicable and in any event within 90 days of the end of each Financial Year of the Borrowers, (A) the annual audited combined consolidated financial statements of the Borrowers and their Subsidiaries, (B) the annual audited consolidated financial statements of Parent GP, and (C) the annual unaudited unit financial statements of each Non-Consolidated Subsidiary which accounts for a positive or negative contribution of at least $500,000 to Consolidated EBITDA for the relevant period, in each case, prepared in accordance with GAAP including, without limitation, a balance sheet, income statement and statement of cash flows as at the end of and for such Financial Year (which financial statements of the Borrowers and their Subsidiaries and of Parent GP shall be audited by a nationally recognized accounting firm), setting forth in each case in comparative form the figures for the previous Financial Year;

(iii) (a) concurrently with the delivery of the financial statements contemplated in clause (i) and (ii) above, (1) a Compliance Certificate in respect of such Financial Quarter in the form attached hereto as Schedule 8, (including a reconciliation, in such detail as the Administrative Agent shall reasonably request, of the financial statements of the Borrowers and Parent GP for such Financial Quarter to the calculation of the financial covenants under Section 8.03 reported on pursuant to such Compliance Certificate) and (2) if requested by the Administrative Agent, acting reasonably, a reconciliation of the publicly disclosed financial statements of Parent GP for such Financial Quarter to the financial statements of the Borrowers for such Financial Quarter (provided that if such request is made less than 15 days prior to the date delivery of such reconciliation would otherwise be required hereunder, such reconciliation will be delivered not more than 15 days after such request) and (b) in the case of clause (ii) above, any accountants' letters provided to the Borrowers in connection with the auditing of such financial statements, promptly after receipt of any such letter; and

(iv) as soon as available and in any event within 45 days of the end of each Financial Year of the Borrowers (i) an Annual Business Plan in respect of Parent GP and its Subsidiaries, on a combined consolidated basis, approved by the board of directors of Parent GP in its capacity as general partner of each of the Borrowers for the current Financial Year and

(ii) forecasts prepared by management of each of the Borrowers, in form reasonably satisfactory to the Administrative Agent, consisting of balance sheets, income statements and statements of cash flows for the next two Financial Years, prepared on a consolidated basis.

(b) **Environmental Reporting**. Promptly, and in any event within 15 days after becoming aware of its existence, notify the Administrative Agent, and any Governmental Authority where required by Applicable Law, of any fact, circumstance, condition or occurrence that results in a violation of Environmental Law, the Borrower's Environmental Permits or any Release of Hazardous Substances, which in each case could reasonably be expected to result in material Environmental Liability.

(c) **Additional Reporting Requirements**. Deliver to the Administrative Agent (with sufficient copies for each of the Lenders) (i) as soon as possible, and in any event within five Business Days after Parent GP and any Loan Party becomes aware of the occurrence of each Default or Event of Default, a statement of a Responsible Officer of Parent GP and such Loan Party or any other officer acceptable to the Administrative Agent setting forth the details of such Default or Event of Default and the action which Parent GP and such Loan Party proposes to take or has taken with respect thereto; (ii) together with each Compliance Certificate delivered pursuant to Section 8.01(1)(a)(iii), written notice of any previously undisclosed (a) Subsidiaries of the Loan Parties, (b) Material Agreements and Material Permits of any Loan Party or any material amendment to, termination of (except at full maturity in accordance with its terms) or material default under any previously disclosed Material Agreement or Material Permit, (c) Material Owned Real Properties, Material Leases, Material Crown Tenures or any material amendment to, termination of (except at full maturity in accordance with its terms and without replacement) or material default under any previously disclosed Material Crown Tenure or Material Lease other than, with respect to termination and material defaults, the Development Agreements, which for greater certainty are subject to disclosure pursuant to Section 8.01(1)(c)(vi)), (d) material Owned Intellectual Property, (e) new locations of any material amount of tangible personal property to the extent located in a jurisdiction as to which no effective PPSA financing statement has been filed in favour of the Administrative Agent over the Assets of Parent GP or the applicable Loan Party, and (f) the aggregate amount of Hedging Obligations of the Borrowers owing to Hedge Lenders as at the date of the applicable Compliance Certificate and (g) Investments (whether made in cash or in the form of the transfer of Real Estate Development Assets or other assets) in, acquisitions of Real Estate Development Assets by, and Debt incurred by, any Real Estate Development SPV (with reasonable particulars thereof); (iii) any notice received by Parent GP or any Loan Party of the suspension or cancellation, or the impending suspension or cancellation, of a Material Permit or Material Agreement; (iv) together with each Compliance Certificate delivered pursuant to Section 8.01(1)(a)(iii), an amended Schedule L which shall reflect any Intercompany Securities not listed on Schedule L; (v) as soon as possible, (and in any event within five Business Days after Parent GP or any Loan Party becomes aware

of the same, any agreements, instruments and corporate or other restrictions to which any of Parent GP and the Loan Parties is subject, and all other matters known to Parent GP and the Loan Parties, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect; (v) as soon as possible, and in any event within five Business Days after Parent GP or any Loan Party becomes aware of the same, written notice of any termination of or default under any Development Agreement; (vi) as soon as possible, and in any event within five Business Days after Parent GP or any Loan Party becomes aware of the same, written notice of any actions, suits or proceedings (including any Tax-related matter) by or before any arbitrator or Governmental Authority or by any other Person pending against or threatened against or affecting any Loan Party or any of their Subsidiaries that could reasonably be expected to result in a Material Adverse Effect; and (vii) such other information respecting the condition or operations, of the business of any of the Loan Parties as the Administrative Agent, on behalf of the Lenders, may from time to time reasonably request.

(2) **Existence; Conduct of Business**. Do and cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence (subject only to Section 8.02(2)) and, except to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect, obtain, preserve, renew and keep in full force and effect any and all Material Permits necessary to properly conduct their respective businesses.

(3) **Payment Obligations**. Pay all Tax liabilities as they become due and payable, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, and (b) Parent GP or such Loan Party, as applicable, has, if required, set aside on its books adequate reserves with respect thereto in accordance with GAAP.

(4) **Maintenance of Properties**. Keep and maintain, and cause each Loan Party to keep and maintain, all real and personal property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except to the extent that the failure to do so, individually or in the aggregate, could not be expected to have a Material Adverse Effect.

(5) **Books and Records; Inspection Rights**. Keep, and cause each Loan Party to keep, proper books of record and account in accordance with GAAP including particulars of Intercompany Instruments; and permit any representatives designated by the Administrative Agent on behalf of one or more Lenders, (which, prior to an Event of Default shall be only once per Financial Year) upon reasonable prior notice and during normal business hours, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants; provided, that a representative of the applicable Borrower shall be given the opportunity to be present.

(6) **Compliance with Laws**. Comply in all material respects with (i) all Laws, (ii) all orders of any Governmental Authority applicable to it or its property and (iii) all Material Permits and Material Agreements.

(7) **Insurance**. Maintain, with financially sound and reputable insurers, insurance with respect to the respective properties and business of the Loan Parties and Parent GP, except in the case of Parent GP, properties that are not required to be pledged or otherwise encumbered in favour of the Administrative Agent and the Lenders under the Credit Document against such liabilities, casualties, risks and contingencies and in such types (including business interruption insurance) and amounts as is prudent and customary in the case of Persons engaged in the same or similar businesses and similarly situated and in accordance with any requirement of any Governmental Authority, including as required by the Development Agreements. In the case of any fire, accident or other casualty causing loss or damage to any properties of any Loan Party or Parent GP used in generating cash flow or required by Law, except in the case of Parent GP, properties that are not required to be pledged or otherwise encumbered in favour of the Administrative Agent and the Lenders under the Credit Document, all proceeds of such policies shall be used promptly (a) to repair or replace any such damaged properties, and otherwise shall be used to prepay the Accommodation Outstanding in accordance with Section 2.05(3) if no Event of Default has occurred and is continuing or (b) as directed by the Administrative Agent if an Event of Default has occurred and is continuing. Subject to the Development Agreements, Parent GP and each Loan Party will obtain endorsements to its property insurance policies pertaining to all physical properties in which the Administrative Agent or the Lenders shall have an Encumbrance under the Credit Documents, showing loss payable to the Administrative Agent, as first loss payee, and evidencing that such policies are subject to the standard mortgage clause approved by the Insurance Bureau of Canada (as applicable), and containing provisions that such policies will not be cancelled or materially amended without 30 days prior written notice having been given by the insurance company to the Administrative Agent. The Borrowers shall also cause the Administrative Agent and the Lenders to be shown as additional insured on applicable liability policies of the Loan Parties.

(8) **Additional Loan Parties/Security**. If, at any time after the Closing Date, any Loan Party creates or acquires a new Subsidiary or in some other manner becomes the holder of any Equity Securities of a new Subsidiary, or the Borrowers wish to designate any newly created or newly acquired Non-Consolidated Subsidiary as a Guarantor hereunder:

(a) the applicable Loan Party (or Parent GP, as applicable) will within 30 days of creation or acquisition of a new Subsidiary or designation of a Subsidiary execute and deliver to the Administrative Agent a securities pledge agreement, in form and substance satisfactory to the Administrative Agent, granting a security interest in 100% of the Equity Securities of such new or newly designated Subsidiary owned by such Loan Party;

(b) other than in the case of a Real Estate Development SPV, the applicable Loan Party (or Parent GP, as applicable) will cause such new or newly designated Subsidiary to promptly execute and deliver to the Administrative Agent a Guarantee and security of the nature contemplated by Section 2.13, all in form and substance satisfactory to the Administrative Agent; and

(c) in connection with the execution and delivery of any guarantee, pledge agreement, mortgage, security agreement or analogous document pursuant to this Section, the applicable Loan Party (or Parent GP, as applicable) will, or will cause the applicable Subsidiary to, deliver to the Administrative Agent such corporate resolutions, certificates, legal opinions and such other related documents, including, in respect of Material Owned Real Properties and Material Leased Real Properties, all items set forth in Section 2.13(1)(d) hereof, *mutatis mutandis*, including, but not limited to satisfactory title insurance or a satisfactory title opinion and satisfactory environmental assessment reports and surveys, if available, in each case as shall be reasonably requested by the Administrative Agent, taking into account the overall costs and benefits thereof and the material interests of the Lenders, and consistent with the relevant forms and types thereof delivered on the Closing Date or as shall be otherwise acceptable to the Administrative Agent. Each guarantee, pledge agreement, mortgage, security agreement and any other analogous document delivered pursuant to this Section shall be deemed to be a Security Document from and after the date of execution thereof.

(9) **Further Assurances**. At the cost and expense of the Borrowers, promptly upon reasonable request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error in the execution, acknowledgment, filing or recordation of any Credit Document, and (b) duly execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, conveyances, pledge agreements, mortgages, deeds of trust, trust deeds, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as the Administrative Agent, on behalf of the Lenders, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Credit Documents, (ii) subject Parent GP's or any Loan Party's or any of their Subsidiaries' properties, assets, rights or interests now or hereafter intended to be covered by any of the Security Documents to the Encumbrances of the Security Documents and (iii) perfect and maintain the validity, effectiveness, perfection and priority of any of the Security Documents and any of the Encumbrances intended to be created thereunder.

(10) **Canadian Benefit Plans**.

(a) For each existing, or hereafter adopted, Canadian Benefit Plan, each Loan Party shall in a timely fashion comply with and perform in all material respects all of its obligations under and in respect of such Canadian Benefit Plan, including under any material documents that support such Canadian Benefit Plan and all applicable Laws; provided that all employer or employee payments, contributions or premiums required to be remitted, paid to or in respect of each Canadian Benefit Plan shall be paid or remitted by each applicable Loan Party in a timely fashion in accordance with the terms thereof, any funding agreements and all Laws.

(b) The Borrowers shall deliver to Administrative Agent: (i) if requested by Administrative Agent, acting reasonably, copies of each annual and other

return, report or valuation with respect to each Canadian Pension Plan as filed with any applicable Governmental Authority; (ii) promptly after receipt thereof, a copy of any material direction, order, notice, ruling or opinion that any Loan Party may receive from any applicable Governmental Authority with respect to any Canadian Pension Plan; (iii) notification within thirty (30) days of any changes in benefits provided under any existing Canadian Benefit Plan, or the establishment of any new Canadian Benefit Plan, or the commencement of contributions to any such plan to which the Loan Parties were not previously contributing where such change, establishment or commencement increases the cost to the Loan Parties by an amount in excess of $1,000,000 per annum; and (iv) if any increase in liabilities or decrease in the value of assets under any Canadian Benefit Plan increases the funding obligations of the Loan Parties by an amount in excess of $1,000,000 per annum, notification within thirty (30) days of such increase in funding obligations.

(11) **Securities and Instruments**.

(a) If any Intercompany Securities owned by Parent GP or a Loan Party are now or at any time become evidenced, in whole or in part, by uncertificated securities registered or recorded in records maintained by or on behalf of the issuer thereof in the name of a clearing agency or a custodian or of a nominee of either, Parent GP or the applicable Loan Party will notify the Administrative Agent in writing of such Securities and, at the request and option of the Administrative Agent, (i) to the extent applicable under Law, cause an appropriate entry to be made in the records of the clearing agency or custodian (if there is such an agency or Person) or the applicable securities register, as applicable, to record the interest of the Administrative Agent or its nominee (if the Administrative Agent or such nominee is a member of such clearing agency) or otherwise as the Administrative Agent may reasonably direct in such Securities created pursuant to the Security Documents or (ii) cause the Administrative Agent to have control over such Securities.

(b) During the continuance of an Event of Default, if any Securities (other than Intercompany Securities) owned by Parent GP or a Loan Party are evidenced, in whole or in part, by uncertificated securities registered or recorded in records maintained by or on behalf of the issuer thereof in the name of a clearing agency or a custodian or of a nominee of either, Parent GP or the applicable Loan Party will notify the Administrative Agent in writing of such Securities (unless such notice previously has been given) and, at the request and option of the Administrative Agent, (i) cause an appropriate entry to be made in the records of the clearing agency or custodian, as applicable, to record the interest of the Administrative Agent or its nominee (if the Administrative Agent or such nominee is a member of such clearing agency) or otherwise as the Administrative Agent may reasonably direct in such Securities created pursuant to the Security Documents or (ii) cause the Administrative Agent to have control over such Securities.

(c) If Parent GP or any Loan Party acquires ownership of any Intercompany Securities, Parent GP or such Loan Party will notify the Administrative Agent

in writing within 15 days after such acquisition and provide the Administrative Agent with a revised Schedule L recording the acquisition and particulars of such Securities in accordance with Section 8.01(c)(f)(iv). Upon request by the Administrative Agent, Parent GP or such Loan Party will promptly deliver to and deposit with the Administrative Agent, or cause the Administrative Agent to have control over, all such Securities as security for the obligations of Parent GP or the applicable Loan Party pursuant to this Agreement and the other Credit Documents to which Parent GP or such Loan Party is party.

(12) **Compliance with Environmental Laws**. (i) Comply and cause all lessees and other Persons operating or occupying its properties to comply with, and use and operate all of its facilities and properties in compliance with, all applicable Environmental Laws and Environmental Permits in all material respects; (ii) obtain and renew all Environmental Permits necessary for its operations and properties to comply with all applicable Environmental Laws and Environmental Permits and remain in compliance thereof; (iii) handle all Hazardous Substances in compliance with all applicable Environmental Laws in all material respects, and (iv) if any Remedial Work is required pursuant to any Environmental Laws, including through an order or direction of a Governmental Authority, as a result of, or in connection with, any Release, suspected Release, or threatened Release, the Borrowers shall commence at their sole expense the performance of, or cause to be commenced, and thereafter diligently prosecute to completion, the performance of all such Remedial Work. All Remedial Work shall be performed under the supervision of a consulting engineer approved in advance in writing by the Administrative Agent, which approval shall not be unreasonably withheld.

(13) **Performance of Material Agreements**. Perform and observe in all material respects all terms and provisions of each Material Agreement to be performed or observed by it and maintain each such Material Agreement in full force and effect.

(14) **Cash Management Arrangements**. Within 120 days of the Closing Date, either (i) arrange for all if its bank accounts to be held solely with the Administrative Agent or (ii) cause any financial institutions at which accounts are held (other than Lenders) to enter into control agreements in customary form in favour of the Administrative Agent.

**Section 8.02 Negative Covenants**

So long as any amount owing hereunder remains unpaid or any Lender has any obligation under this Agreement (in each case other than Unmatured Surviving Obligations), and unless consent or waiver is given in accordance with Section 18.01(1) hereof, neither the Parent GP nor any Loan Party shall:

(1) **Debt**. Create, incur, assume or suffer to exist any Debt other than Permitted Debt or permit any Real Estate Development SPV to create, incur, assume or suffer to exist any Debt other than Permitted Debt.

(2) **Encumbrances**. Create, incur, assume or suffer to exist any Encumbrance on any of its Assets, other than Permitted Encumbrances, or permit any Real Estate Development SPV to create, incur, assume or suffer to exist any Encumbrance on any of its Assets, other than Permitted Encumbrances.

(3) **Fundamental Changes.** Except as otherwise expressly permitted pursuant to this Agreement, (i) merge into or amalgamate or consolidate with any other Person, or permit any other Person to merge into or amalgamate or consolidate with it or (ii) sell (other than in respect of a Permitted Disposition), transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its Assets, or all or any of the Equity Securities of any of the Loan Parties (in each case, whether now owned or hereafter acquired), or (iii) liquidate, dissolve or be wound up (any Person surviving from any transaction referred to in clause (i), any Person to whom Assets or Equity Interests are transferred in any transaction referred to in clause (ii) and any Person into whom a Loan Party is liquidated, dissolved or wound up in any transaction referred to in clause (iii), herein referred to as a "**Successor**" and any transaction referred to in any of clauses (i), (ii) and (iii), herein referred to as a "**Consolidation**", and "**Consolidate**" shall have a correlative meaning); provided that, if at the time of any such Consolidation and immediately after giving effect thereto no Default or Event of Default shall have occurred and be continuing and the validity, enforceability, effect, perfection and ranking of the Security is not adversely affected thereby (taking into account the requirements of subclauses (a)(i), (ii) and (vii) and the final provision of this Section 8.02(3)):

(a) Parent GP may merge into, or amalgamate or consolidate with another Person (including an Unrestricted Subsidiary) that is not a Loan Party, so long as prior to or contemporaneously with the consummation of such merger, amalgamation or consolidation:

(i) the Successor will be bound by or have expressly assumed all of the covenants and obligations of Parent GP under the Credit Documents to which it is a party;

(ii) such Credit Documents will be valid and binding obligations of the Successor, enforceable against the Successor and entitling the Administrative Agent and the Lenders, as against the Successor, to exercise all of their rights under the Credit Documents;

(iii) the Successor will not be bound by any Debt other than Permitted Debt;

(iv) written notice of such merger, amalgamation or consolidation has been given to the Administrative Agent at least 30 days prior thereto;

(v) the Successor shall own all or substantially all of the business and Assets of the Parent GP upon the occurrence of such merger, amalgamation or consolidation;

(vi) the Successor is a corporation with limited liability or a limited partnership, in each case, governed (as to corporate or partnership matters) by the federal laws of Canada or the laws in force in a province of Canada;

(vii) such merger, amalgamation or consolidation shall be on such terms and shall be carried out in such manner as to preserve and not to impair any of (A) the validity, enforceability, effect, perfection and ranking of the Security to which the Parent GP is a party or (B) the rights and powers of the Administrative Agent and the Lenders under any Credit Documents, in each case as determined by the Administrative Agent, acting reasonably, and having regard to the rights of the Administrative Agent and the Lenders afforded by this Section 8.02(3)(a), including the right to request and receive documents from and legal opinions with respect to the Successor, as set forth above; and

(viii) such merger, amalgamation or consolidation shall not result in the Assets of the Successor being subject to any Encumbrances other than Permitted Encumbrances;

(b) any Loan Party may Consolidate with or into any other Loan Party; provided that the Successor is a Borrower or a Loan Party; and

(c) any wholly-owned Subsidiary of any Loan Party, other than a Real Estate Development SPV, may Consolidate with or into such Loan Party so long as the Successor is that Loan Party;

provided further that (i) any Successor of any Loan Party (other than a Loan Party acquired after the Closing Date governed by the laws of the United States (or any State thereof)) is a corporation with limited liability or a limited partnership, in each case, governed (as to corporate or partnership matters) by the federal laws of Canada or the laws in force in a province of Canada; and (ii) each Successor referred to in this Section 8.02(3) shall also execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents (including legal opinions of counsel to the Successor), if any, as the Administrative Agent may reasonably request.

(4) **Carry on Business**. Engage in any business other than (i) with respect to each Loan Party, the Business and businesses reasonably ancillary and related thereto and (ii) with respect to the Parent GP only, (A) the business of acting as general partner of the Borrowers in accordance with the terms of the Partnership Agreements and this Agreement, (B) the business of providing goods and services and the lease of real property to the Borrowers and the other Loan Parties required to carry on the Business and (C) other businesses similar to the Business and businesses reasonably related thereto. Neither WB GP nor Nippon GP shall carry on any business except to act as additional general partner of the Borrowers in accordance with the terms of the Partnership Agreements. A Loan Party and a Real Estate Development SPV may engage in the real estate development business, subject to the Investment limitations imposed by Section 8.02(10)(g), the Debt limitations imposed by Section 8.02(1) and the Encumbrance limitation imposed by Section 8.02(2).

(5) **Disposal of Assets**. Dispose of any Assets to any Person, other than Permitted Dispositions.

(6) **Transactions with Related Parties**. Except for Parent GP, dispose of any Assets to, or purchase, lease or otherwise acquire any Assets from, or enter into any agreement with, or make any payment to or engage in any other transaction or arrangement with, any Related Party except:

(a) Restricted Payments permitted under Section 8.02(8);

(b) the payment of all fees and expenses related to the Refinancing;

(c) Dispositions of Assets referred to in subparagraphs (a), (c), (d), (g), (h) and (k) of the definition of Permitted Dispositions; provided that (i) each of the conditions set out in the proviso at the end of such definition is complied with, (ii) such Dispositions are made for fair value paid in cash and otherwise on terms and conditions at least as favourable to the Loan Parties as could have been obtained from any Unrelated Party under no compulsion to act, (iii) the aggregate consideration for all such Dispositions made over the entire term of the Credit Facility may not exceed $15,000,000, and (iv) if any such Disposition (whether in a single transaction or a series of related transactions) is of Assets the fair value of which is in excess of $5,000,000, such Disposition has been approved by the board of directors of Parent GP (or any duly authorized committee or other governing body thereof);

(d) Permitted Acquisitions of (x) Assets comprising Collateral before such acquisition from Parent GP (other than Equity Securities in a Borrower) the aggregate consideration to be paid for which, for all such Acquisitions made over the entire term of the Credit Facility, does not exceed $10,000,000 or (y) Assets not constituting Collateral before such acquisition; provided in any case that (i) the terms and conditions upon which such Assets are acquired, including the aggregate consideration to be paid therefor, are at least as favourable to each of the Loan Parties party to such Acquisition as could have been obtained from any Unrelated Party under no compulsion to act and (ii) the aggregate consideration for which, does not exceed $10,000,000 in the aggregate for all such Acquisitions in any Financial Year and $30,000,000 for all such Acquisitions over the term of the Credit Facility;

(e) Permitted Dispositions of Real Estate Development Assets pursuant to paragraph (e) of the definition of Permitted Dispositions;

(f) any acquisition, agreement or other transaction or arrangement, other than a Disposition, Acquisition or Restricted Payment (except for fair value consideration to be paid in connection with such agreement, transaction or arrangement), which would not otherwise be prohibited by the terms of this Agreement if entered into with any Unrelated Party, for fair value and otherwise on terms and conditions at least as favourable to the Loan Parties as could have been obtained from any Unrelated Party under no compulsion to act; provided that if the aggregate fair value of the consideration to be paid by or the services to be provided by any Loan Party in connection with any such agreement, transaction or arrangement (whether in a single transaction or a series of related transactions) exceeds $5,000,000, such agreement, transaction or arrangement

has been approved by the board of directors of Parent GP (or any duly authorized committee or other governing body thereof).

(7) **Restrictive Agreements**. Directly or indirectly enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party or Parent GP to create, incur or permit to exist any Encumbrance upon any of its Assets, except, in the case of Parent GP, upon Assets that are not required to be pledged or otherwise encumbered in favour of the Administrative Agent and the Lenders under the Credit Documents and Assets that are not used in the Business, (b) the ability of such Loan Party to pay dividends or other distributions with respect to any Equity Securities or with respect to, or measured by, its profits or (ii) to make or repay loans or advances to any Loan Party or (iii) to provide a guarantee of any Debt of any Loan Party, (c) the ability of any Loan Party to make any loan or advance to the other Loan Parties, or (d) the ability of any Loan Party to sell, lease or transfer any of its property to any other Loan Party; provided that the foregoing shall not apply to (i) restrictions and conditions existing on the Closing Date identified on Schedule K (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (ii) customary restrictions and conditions contained in agreements relating to the sale of a Loan Party pending such sale, provided such restrictions and conditions apply only to the Loan Party that is to be sold and such sale is permitted hereunder; (iii) any agreement in effect at the time such Loan Party becomes a Loan Party, so long as such agreement was not entered into in contemplation of such Person becoming a Loan Party; (iv) any Encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the agreements or other arrangements referred to in clauses (i) through (iii) above; provided that such Encumbrances or restrictions are no more restrictive than those contained in such agreements and arrangements prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; and (v) restrictions, conditions and Encumbrances required or imposed by the Province or affected first nations groups in any amendment, modification, renewal, restatement or replacement of the Development Agreements, provided the same, individually or in the aggregate, (a) would not reasonably be expected to be materially adverse to the interests of the Lenders hereunder or under any of the other Credit Documents, (b) shall not impair (A) the validity, enforceability, effect, perfection and ranking of the Security to which any Loan Party is a party or (B) in any material respect the rights of the Administrative Agent and the Lenders under the Province Consent with respect to each Development Agreement.

(8) **Restricted Payments**. Except for Parent GP, declare, make or pay or agree to declare, make or pay, directly or indirectly, any Restricted Payment, except:

(a) Permitted Distributions;

(b) the declaration and payment of dividends with respect to the Equity Securities of a Borrower payable solely in additional Equity Securities to current holders of those Equity Securities;

(c) payment of fees (including directors' fees and other fees for services), reimbursement of expenses, indemnity payments, insurance premiums, salaries, wages, bonuses and other amounts to directors, officers and employees of any Loan Party that are not directors, employees or offices of any Related Party in the ordinary course of business in a commercially reasonable amount;

(d) Restricted Payments by any Loan Party to another Loan Party; and

(e) payment of fees (including directors' fees and other fees for services), reimbursement of expenses, indemnity payments, insurance premiums, salaries and wages, bonuses and other amounts to directors, officers and employees of Parent GP or any Related Party, which do not exceed $5,000,000 in the aggregate per annum.

(9) **Permitted Debt Payments**. Pay any amount on account of Permitted Debt except (a) until the Second Lien Repayment Date, regularly scheduled payments in respect of the Second Lien Senior Notes and payment of fees (including upfront fees, commitment fees, agency fees and reasonable costs and expenses incurred in connection therewith), subject to the terms of the Second Lien Intercreditor Agreement relating thereto, (b) repayment in full of all obligations (including prepayment premium) under or in respect of the Second Lien Senior Notes on the Second Lien Repayment Date, subject to satisfaction of the conditions precedent in Section 6.02 and (c) so long as no Default or Event of Default is then in existence or would otherwise arise therefrom, regularly scheduled payments in respect of other Permitted Debt (subject, in the case of any Subordinated Debt, to the subordination terms thereof).

(10) **Investments**. Except for Parent GP, purchase, hold or acquire (including pursuant to any amalgamation with any Person that was not a wholly-owned Subsidiary prior to such amalgamation), any Equity Securities, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, guarantee any obligations of, or make or permit to exist any Investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any Assets of any other Person, except:

(a) Investments (i) by a Borrower or Consolidated Subsidiary in the Equity Securities of any Consolidated Subsidiary or (ii) a Non-Consolidated Subsidiary in the Equity Securities of a Subsidiary of such Non-Consolidated Subsidiary which is a Loan Party;

(b) unsecured loans or advances made by a Loan Party to another Loan Party, provided such loans or advances are subject to the security interests granted by the applicable Loan Party to the Administrative Agent under the applicable Security Agreement;

(c) Investments acquired pursuant to a Permitted Acquisition under Section 8.02(11), to the extent that such Investments were in existence on the date of such Permitted Acquisition and were not acquired in contemplation thereof;

(d) Investments in joint ventures (whether made in cash or in kind) the initial value or amount of such Investments which, when aggregate with the initial value or amount of all other such Investments made pursuant to this paragraph (d) and all Permitted Acquisitions made pursuant to clause (b)(ii) of the definition of Permitted Acquisitions does not exceed $20,000,000 in any Financial Year and $40,000,000 for all such Investments and Acquisitions over the term of the Credit Facility;

(e) the Loan Parties may acquire and hold receivables, accounts, notes receivable, chattel paper, payment intangibles and prepaid accounts owing to them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(f) the Loan Parties may acquire and own Investments (including obligations evidencing Debt) received in connection with the settlement of accounts in the ordinary course of business or in connection with the bankruptcy or reorganization of suppliers or in settlement of delinquent obligations of, and other disputes with, suppliers arising in the ordinary course of business of the Loan Parties;

(g) Investments by a Loan Party in a Real Estate Development SPV (whether made in cash or in the form of the transfer of Real Estate Development Assets or other assets); provided the initial value or amount of such Investments, when aggregated with the initial value or amount of all other such Investments in Real Estate Development SPVs made pursuant to this paragraph (g), does not exceed Cdn.$75,000,000 over the term of the Credit Facility;

(h) loans or advances made by a Loan Party to Parent GP required because of timing differences to fund the payment of general and administrative expenses of Parent GP pending receipt of funds from its operations (including payment of Permitted Distributions); provided that the aggregate outstanding amount at any time of all such loans and advances (including any Refinancing Debt arising therefrom) at no time exceeds $7,500,000; and

(i) Permitted Investments.

(11) **Acquisitions**. Except for Parent GP, make any Acquisition other than a Permitted Acquisition.

(12) **Subsidiaries**. Except for Parent GP or pursuant to Permitted Acquisitions referred to in clause (b)(ii) of the definition of Permitted Acquisitions or Investments referred to in Section 8.02(10)(d), create any Subsidiary unless such Subsidiary is a wholly-owned Subsidiary.

(13) **Canadian Pension Plan Compliance**. (a) Terminate any Canadian Pension Plan in a manner, or take any other action with respect to any Canadian Pension Plan, which would reasonably be expected to have a Material Adverse Effect, (b) fail to make full payment when due of all amounts which, under the provisions of any Canadian Pension Plan, agreement relating thereto or Law, any Loan Party is required to pay as

contributions thereto, (c) contribute to or assume an obligation to contribute to, or permit any Loan Party (other than any Loan Party acquired as a result of a Permitted Acquisition) to contribute to or assume an obligation to contribute to, any defined benefit pension plan or "multi-employer plan" as such terms are defined in the *Pension Benefits Standards Act* (British Columbia), or (d) acquire an interest in any Person if such Person sponsors, maintains or contributes to, or at any time in the six-year period preceding such acquisition has sponsored, maintained, or contributed to any defined benefit pension plan or "multi-employer plan" as such terms are defined in the *Pension Benefits Standards Act* (British Columbia).

(14) **Amendments**. Amend or allow any amendments to its or any of its Subsidiaries' constating documents, partnership agreement or by-laws (or other governing documents) which are adverse in any material respect to the Lenders' interests hereunder or the Encumbrances arising under or created by the Security Documents (which for greater certainty would include any amendment that results in the ability to issue uncertificated limited partnership interest in either Borrower); or allow any amendments to, or grant any waivers in respect of, any Material Agreement, which amendment or waiver (a) could reasonably be expected to have a Material Adverse Effect, or (b) with respect to the Development Agreements, would result in reducing the term of either Development Agreement.

(15) **Change of Auditors**. Change its auditors other than to a nationally recognized accounting firm or as otherwise agreed between the Borrowers and the Administrative Agent.

(16) **Accounting Changes; Changes in Financial Year**. (a) Make or permit, or permit any of its Subsidiaries to make or permit, any material change in accounting policies or reporting practices, except as required or permitted by GAAP, or (b) change its Financial Year.

(17) **Speculative Transactions**. Engage in or enter into any Hedging Agreement, except in the normal course of business and not for speculative purposes.

(18) **Change of Corporate Name or Location**. Change or permit any of its Subsidiaries that are Loan Parties to change (a) its incorporated name, or if not a corporation, its name as it appears in official filings in the jurisdiction of its organization, (b) its chief executive office or principal place of business (unless such change is within the same jurisdiction), (c) the type of entity that it is, and (d) its jurisdiction of incorporation or organization, in each case without at least ten (10) days prior written notice to the Administrative Agent, and unless any action reasonably requested by the Administrative Agent in connection with any Encumbrances in favour of the Administrative Agent in any Collateral is completed or taken within such time period as is requested by the Administrative Agent, acting reasonably, and in any event within the time period required to maintain the perfection and ranking of the applicable Security. Without limiting the foregoing, neither Parent GP nor the Borrowers shall, nor shall it permit any Loan Party to, change its name, identity or corporate or organizational structure in any manner that could reasonably be expected to make any financing statement filed in connection herewith or any other Credit Document seriously misleading within the meaning of section 43 of the PPSA (or any comparable

provision then in effect) except upon prior written notice to the Administrative Agent, and unless any reasonable action requested by Administrative Agent (such request not to be unreasonably delayed) in connection therewith, including to continue the perfection of any Encumbrances in favour of the Administrative Agent in any Collateral, is completed or taken within such time period as is requested by the Administrative Agent, acting reasonably, and in any event within the time required to maintain the perfection and ranking of the applicable Security.

(19) **Amendment to Second Lien Senior Notes**. Amend, modify or change in any manner (i) any term of the Second Lien Senior Notes or the Second Lien Senior Note Purchase Agreement at any time prior to the Second Lien Repayment Date, except as permitted by the Second Lien Intercreditor Agreement, or (ii) any material term or condition of any agreement relating to other Subordinated Debt in a manner that is materially adverse to the Loan Parties or would materially impair the rights or interests of the Administrative Agent or the Lenders.

(20) **Sale-Leaseback Transactions**. Except for Parent GP, or in connection with a Permitted Disposition referred to in paragraph (d) of the definition thereof, enter into any Sale-Leaseback Transaction.

(21) **Issuance of Equity Securities**. In the case of the Borrowers, issue any Equity Securities after the Closing Date except (i) to the Parent GP or a Limited Recourse Guarantor, or (ii) pursuant to a management or employee share ownership plan, and provided that any Equity Securities are pledged to the Administrative Agent on behalf of the Lenders (on a limited recourse basis with respect to management or employees or a Limited Recourse Guarantor) pursuant to Security Documents, together with any related agreements, deliveries and registrations reasonably required by the Administrative Agent, which are in form and substance satisfactory to the Administrative Agent.

(22) **Compliance with Second Lien Senior Notes**. Comply with all of the terms, conditions and covenants applicable to the Second Lien Senior Notes as specified in the Second Lien Note Purchase Agreement until the Second Lien Repayment Date, as fully as if such provisions were set out herein.

**Section 8.03 Financial Covenants**

So long as any amount owing hereunder remains unpaid or any Lender has any obligations under this Agreement, and unless consent is given in accordance with Section 18.01 hereof, the Borrowers shall:

(a) **Consolidated Total Leverage Ratio**. Maintain, as at the end of each Financial Quarter for the Measurement Period then ended, a Consolidated Total Leverage Ratio of not greater than 4.00:1.00.

(b) **Consolidated Senior Leverage Ratio.** Maintain, as at the end of each Financial Quarter until the Second Lien Notes Repayment Date for the Measurement Period then ended, a Consolidated Senior Leverage Ratio of not greater than 2.25:1.00.

(c) **Consolidated Interest Coverage Ratio**. Maintain, as at the end of each Financial Quarter for the Measurement Period then ended, a Consolidated Interest Coverage Ratio of not less than 2.0:1.00.

## ARTICLE 9
## EVENTS OF DEFAULT

**Section 9.01 Events of Default**

(1) If any of the following events (each an "**Event of Default**") shall occur and be continuing:

(a) any Loan Party shall fail to pay any principal amount of the Accommodations Outstanding when such amount becomes due and payable; provided that if such failure to pay relates to a technical failure of a banking institution, wire transfer or other intrabank payment system or similar technical failure, such failure to pay shall not constitute an Event of Default if the same does not continue for more than one (1) Banking Day;

(b) any Loan Party shall fail to pay any interest, Fees or any other amounts owing hereunder or under any of the Credit Documents or in connection herewith when the same become due and payable, and such failure shall remain unremedied for (i) three Business Days after the due date therefor (in the case of regularly scheduled payments) and (ii) three Business Days after written notice thereof is given by the Administrative Agent to the relevant Loan Party specifying such default and requiring such Loan Party to remedy or cure the same (in the case of any other such payments);

(c) any representation or warranty made or confirmed by the Borrowers, Parent GP or any other Loan Party or a Limited Recourse Guarantor in this Agreement or any other Credit Document shall prove to have been untrue in any material respect when made or confirmed and such misrepresentation, if capable of being remedied, is not so remedied within 30 days after the Administrative Agent notifies the Borrowers of the same;

(d) Parent GP or any Loan Party shall fail to perform, observe or comply with any of the covenants contained in Section 8.01(2) (as it relates to corporate existence of any Loan Party), Section 8.02 or Section 8.03, or any Limited Recourse Guarantor shall fail to perform, observe or comply with any of the covenants contained in Sections 7.1.1, Section 7.2.1 and Section 7.2.3 and of any Limited Recourse Guarantee;

(e) Parent GP or any Loan Party or Limited Recourse Guarantor shall fail to perform or observe any other term, covenant or agreement contained in any Credit Document to which it is a party (other than a covenant or agreement whose breach or default in performance is elsewhere in this Section 9.01 specifically dealt with) and such failure shall remain unremedied for 30 days after the Administrative Agent notifies the Borrower of the same;

(f) the Administrative Agent receives a notice from the Province pursuant to the Province Consent in respect of the Province's intent to terminate any Development Agreement;

(g) a Loan Party shall fail to pay the principal, premium or interest (or in the case of obligations under Hedging Agreements, other required payment) on any Debt (excluding any Debt hereunder) which is outstanding in an aggregate principal amount exceeding (or, in the case of obligations under Hedging Agreements, in respect of which the net obligations of such Person, determined on a marked to market basis, exceed) $25,000,000 (or the Equivalent U.S. $ Amount), when such amount becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist, and shall continue after the applicable grace period, if any, specified in any agreement or instrument relating to any such Debt, if the effect of such event or condition is to accelerate (or, in the case of obligations under Hedging Agreements, require a termination payment) or permit the acceleration of (or termination payment in respect of) such Debt; or any such Debt shall be declared to be due and payable in accordance with its terms prior to the stated maturity thereof;

(h) any one or more writs of execution or similar process is enforced or levied upon Assets having an aggregate value of $25,000,000 (or the Equivalent U.S. $ Amount) or more, net of any amounts covered by an enforceable contract of insurance, any Loan Party or Parent GP (except, in the case of Parent GP upon Assets that are not required to be pledged or otherwise encumbered in favour of the Administrative Agent and the Lenders under the Credit Document) and remains undischarged, unvacated and unstayed for a period (for each action) of 30 days and, in any event, later than five Business Days prior to the date of any proposed sale thereunder, provided that, during such period, such process is in good faith disputed by such Loan Party;

(i) any one or more judgments or orders for the payment of money in aggregate in excess of $25,000,000 (or the Equivalent U.S. $ Amount) net of any amounts available for the satisfaction of such judgments or orders pursuant to an enforceable contract of insurance, shall be rendered against any Loan Party and the same shall remain undischarged, unvacated, unstayed and unbonded pending appeal for a period of 30 consecutive days from the entry thereof;

(j) any Loan Party (i) fails to generally pay its debts as such debts become due and payable or commits an act of bankruptcy; (ii) admits in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or (iii) institutes or has instituted against it any proceeding seeking (w) the possession, foreclosure, seizure, retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of its Assets, (x) to adjudicate it bankrupt or insolvent, (y) any liquidation, winding-up, reorganization (in each case, other than as specifically permitted hereunder), arrangement (other than as specifically permitted hereunder),

adjustment, protection, relief or composition of it or its debts under any Law relating to bankruptcy, insolvency, reorganization, incorporation law or relief of debtors including any plan of compromise or arrangement or other similar corporate proceeding involving or affecting its creditors, or (z) the entry of an order for relief or the appointment of a receiver, trustee, interim receiver, receiver and manager, liquidator, custodian, sequestrate or other similar official for it or for any substantial part of its Assets, and in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 30 days, or any of the relief sought in such proceeding (including the entry of an order for relief against it or the appointment of a receiver, trustee, interim receiver, receiver and manager, liquidator, custodian, sequestrate or other similar official for it or for any substantial part of its Assets) shall be granted;

(k) any of the Credit Documents executed and delivered by Parent GP or any Loan Party or a Limited Recourse Guarantor shall cease to be in full force and effect, or the validity, effect, perfection or priority of any Security shall cease to have, or be determined by an court of competent jurisdiction not to have, the validity, effect, perfection or priority contemplated by the Credit Documents and in each case, such failure shall remain unremedied for 10 Business Days after the Administrative Agent notifies the Borrowers of the same;

(l) the validity of any of the Credit Documents or the applicability thereof to the Accommodations or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed by or on behalf of Parent GP or any Loan Party or a Limited Recourse Guarantor; or

(m) there shall occur a Change of Control;

then, the Administrative Agent may, and shall at the request of the Majority Lenders, by written notice to the Borrowers (i) terminate the Lenders' obligations to make further Accommodations under the Credit Facility; and (ii) (at the same time or at any time after such termination) declare the principal amount of all outstanding Advances, an amount equal to the Face Amount of each Bankers' Acceptance, purchased Draft and issued Documentary Credit and all interest and Fees accrued thereon and all other amounts payable under this Agreement in respect of the Credit Facility to be immediately due and payable, without presentment, demand, protest or further notice of any kind (except as required by Law), all of which are hereby expressly waived by the Borrowers; provided that, upon the occurrence of an Event of Default under clause (j) above, the Lender's obligations to make further Accommodations under the Credit Facility shall automatically terminate and all outstanding Advances, an amount equal to the Face Amount of each Bankers' Acceptance, purchased Draft and issued Documentary Credit and all interest and Fees accrued thereon and all other amounts payable under this Agreement in respect of the Credit Facility shall become immediately due and payable, with any presentment, demand, protest or notice of any kind from the Administrative Agent or any Lender.

**Section 9.02 Remedies Upon Demand and Default**

(1) Upon a declaration that the Accommodations Outstanding under the Credit Facility are immediately due and payable pursuant to Section 9.01, the Administrative Agent shall at the request of, or may with the consent of, the Majority Lenders, commence such legal action or proceedings as it, in its sole discretion, may deem expedient, including the commencement of enforcement proceedings under the Security Documents or any other security granted by the Borrowers, Parent GP or any other Loan Party or a Limited Recourse Guarantor to the Administrative Agent or the Lenders, or both, all without any additional notice, presentation, demand, protest, notice of dishonour, entering into of possession of any of the Assets, or any other action or notice (except as required by Law), all of which Parent GP and the Loan Parties hereby expressly waive.

(2) The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Credit Documents are cumulative and are in addition to and not in substitution for any other rights or remedies. Nothing contained herein or in the Security Documents or any other security hereafter held by the Administrative Agent on behalf of the Lenders, the Hedge Lenders and the Service Lenders, with respect to the indebtedness or liability of the Borrowers, Parent GP, any other Loan Party or a Limited Recourse Guarantor to the Administrative Agent and the Lenders, or any part thereof, nor any act or omission of the Administrative Agent or the Lenders with respect to the Security Documents, the Collateral or such other security, shall in any way prejudice or affect the rights, remedies and powers of the Administrative Agent and the Lenders hereunder or under the Security Documents or such Collateral.

## ARTICLE 10
## YIELD PROTECTION

**10.01 Increased Costs.**

(1) **Increased Costs Generally**. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Accommodations made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for (i) Indemnified Taxes covered by Section 10.02 and (ii) the imposition, or any change in the rate, of any Excluded Tax payable by such Lender; or

(c) impose on any Lender or the London interbank market for the relevant currency any other condition, cost or expense affecting this Agreement or Accommodations made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Accommodation (or of maintaining its obligation to make any such Accommodation), or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then upon request of such Lender, the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(2) **Capital Requirements**. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitment of such Lender or the Accommodations made by such Lender, to a level below that which such Lender or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of its holding company with respect to capital adequacy), then upon demand, the Borrowers will pay to such Lender such additional amount or amounts as will reasonably compensate such Lender or its holding company for any such reduction suffered.

(3) **Certificates for Reimbursement**. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (1) or (2) of this Section ("**Additional Compensation**"), including a description of the event by reason of which it believes it is entitled to such compensation, and supplying reasonable supporting evidence (including, in the event of a Change in Law, a photocopy of the Law evidencing such change) and reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrowers shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof. In the event the Lender subsequently recovers all or part of the Additional Compensation paid by the Borrowers, it shall promptly repay an equal amount to the Borrowers. The obligation to pay such Additional Compensation for subsequent periods will continue until the earlier of termination of the Accommodation or the Commitment affected by the Change in Law, change in capital requirement or the lapse or cessation of the Change in Law giving rise to the initial Additional Compensation. A Lender shall make reasonable efforts to limit the incidence of any such Additional Compensation and seek recovery for the account of the Borrowers upon the Borrowers' request at the Borrowers' expense, provided such Lender in its reasonable determination suffers no appreciable economic, legal, regulatory or other disadvantage. Notwithstanding the foregoing provisions, a Lender shall only be entitled to rely upon the provisions of this Section 10.01 if and for so long as it is not treating the Borrowers in any materially different or in any less favourable manner than is applicable to any other customers of such Lender, where such other customers are bound by similar provisions to the foregoing provisions of this Section 10.01 and, in any event, in respect of a period not exceeding 90 days prior the delivery of notice in respect of any Change in Law, unless such Change in Law is retroactive or is retroactive in effect.

(4) **Delay in Requests**. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, except that the Borrowers shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than 90 days prior to the date that such Lender notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the 90-day period referred to above shall be extended to include the period of retroactive effect thereof.

**Section 10.02 Taxes**

(1) **Payments Subject to Taxes**. If any Loan Party, the Administrative Agent or any Lender is required by Law to deduct or pay any Indemnified Taxes in respect of any payment by or on account of any obligation of a Loan Party hereunder or under any other Credit Document, then (i) the sum payable shall be increased by that Loan Party when payable as necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section) the Administrative Agent or Lender, as the case may be, receives an amount equal (which for the purposes of this Agreement, shall be treated as additional interest) to the sum it would have received had no such deductions or payments been required, (ii) the Loan Party shall make any such deductions required to be made by it under Law and (iii) the Loan Party shall timely pay the full amount required to be deducted to the relevant Governmental Authority in accordance with Law.

(2) **Payment of other Taxes by the Borrowers**. Without limiting the provisions of paragraph (i) above, the Borrowers shall, to the extent that such Tax is payable by such Borrower, timely pay any stamp or documentary taxes or any other excise, intangible, mortgage, recording, or property taxes, charges or similar levies arising from any payment made hereunder or under any other Credit Document or from the execution, delivery, registration or enforcement of, or otherwise with respect to, this Agreement or any other Credit Document.

(3) **Indemnification by the Borrowers**. The Borrowers shall indemnify the Administrative Agent and each Lender, within 30 days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent or such Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto (except to the extent that such penalties, interest and expenses arise from gross negligence or wilful misconduct of the Administrative Agent or such Lender), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. In the event the Administrative Agent or a Lender subsequently recovers by obtaining a refund, credit or otherwise, all or part of the payment made under this Section paid by the Borrowers, it shall promptly repay an equal amount (including any interest paid

by the Governmental Authority) to the Borrowers. The Administrative Agent and each Lender shall make reasonable efforts to limit the incidence of any payments under this Section and seek recovery for the account of the Borrowers upon the Borrowers' request at the Borrowers' expense, provided the Administrative Agent or such Lender, in its reasonable determination, suffers no appreciable economic, legal, regulatory or other disadvantage, and further provided that nothing in this Section shall require a Lender to disclose any Tax returns of such Lender or any other Tax information which such Lender deems to be confidential.

(4) **Evidence of Payments**. As soon as practicable after any payment of Indemnified Taxes by a Loan Party to a Governmental Authority, the Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment satisfactory to the Administrative Agent, acting reasonably.

**Section 10.03 Mitigation Obligations: Replacement of Lenders**

(1) **Designation of a Different Lending Office**. If any Lender requests compensation under Section 10.01, or requires the Borrowers to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 10.02, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Accommodations hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender (with the prior consent of the Borrowers), such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 10.01 or Section 10.02, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) **Replacement of Lenders**. If any Lender requests compensation under Section 10.01, if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 10.02, if any Lender's obligations are suspended pursuant to Section 10.04, or if any Lender defaults in its obligation to fund Accommodations hereunder, then the Borrowers may either, at their sole expense and effort, upon 10 days' notice to such Lender and the Administrative Agent: (i) repay all outstanding amounts due to such affected Lender (or such portion which has not been acquired pursuant to clause (ii) below) and thereupon such Commitment of the affected Lender shall be permanently cancelled and the Aggregate Commitment shall be permanently reduced by the same amount and the Commitment of each of the other Lenders shall remain the same; or (ii) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Article 17), all of its interests, rights and obligations under this Agreement and the related Credit Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers pay the Administrative Agent the assignment fee specified in Section 17.01(2)(f);

(b) the assigning Lender receives payment of an amount equal to the outstanding principal of its Accommodations Outstanding and participations in disbursements under Documentary Credits, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Credit Documents (including any breakage costs of the assigning Lender);

(c) in the case of any such assignment resulting from a claim for compensation under Section 10.01 or payments required to be made pursuant to Section 10.02, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with Law.

No Lender shall be required to make any such assignment or delegation if, prior thereto, as a result of a waiver or consent by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

(3) **Exemptions or Reductions of Withholding Tax.** Any Lender or the Administrative Agent that is entitled to an exemption from or reduction of withholding Tax under the law or treaty of the jurisdiction (or any political subdivision thereof) in which the Borrowers are located, with respect to the payment of any obligations shall, on the Borrowers' reasonable request, deliver to the Borrowers, at the time or times prescribed by applicable Law, such properly completed and executed documentation prescribed by applicable Law or reasonably requested by the Borrowers as will permit the payments of such obligations to be made without withholding or at a reduced rate.

**Section 10.04 Illegality**

If the terms of this Agreement, any obligation hereunder, or any agreement related thereto become unlawful in any jurisdiction, then, on notice thereof by a Lender to the Borrowers through the Administrative Agent, any obligation of such Lender with respect to the activity that is unlawful shall be suspended until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if conversion would avoid the activity that is unlawful, convert any Accommodations, or take any necessary steps with respect to any Documentary Credit in order to avoid the activity that is unlawful. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

## ARTICLE 11
## RIGHT OF SETOFF

**Section 11.01 Right of Setoff.**

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of the Borrowers or any Guarantor now or hereafter existing under this Agreement or any other Credit Document to such Lender, irrespective of whether or not such Lender has made any demand under this Agreement or any other Credit Document and although such obligations of the Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each of the Lenders and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers' lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the Borrowers and the Administrative Agent after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application. If any Affiliate of a Lender exercises any rights under this Section 11.01, it shall share the benefit received in accordance with Section 12.01 as if the benefit had been received by the Lender of which it is an Affiliate.

## ARTICLE 12
## SHARING OF PAYMENTS BY LENDERS

**Section 12.01 Sharing of Payments by Lenders**

(1) If any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains any payment or other reduction that might result in such Lender receiving payment or other reduction of a proportion of the aggregate amount of its Accommodations and accrued interest thereon or other obligations hereunder greater than its *pro rata* share thereof as provided herein, then the Lender receiving such payment or other reduction shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Accommodations Outstanding and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Accommodations Outstanding and other amounts owing them, provided that:

(a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest;

(b) the provisions of this Section shall not be construed to apply to (x) any payment made by any Loan Party pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration

for the assignment of or sale of a participation in any of its Accommodations or participations in disbursements under a Documentary Credit to any assignee or participant, other than to any Loan Party or any Affiliate of a Loan Party (as to which the provisions of this Section shall apply); and

(c) the provisions of this Section shall not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Borrowers to such Lender that do not arise under or in connection with the Credit Documents, (x) any payment made in respect of an obligation that is secured by a Permitted Encumbrance or that is otherwise entitled to priority over the Borrowers' obligations under or in connection with the Credit Documents, (y) any reduction arising from an amount owing to a Loan Party upon the termination of derivatives entered into between the Loan Party and such Lender, or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.

(2) The Loan Parties consent to the foregoing and agree, to the extent they may effectively do so under Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim and similar rights of Lenders with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

## ARTICLE 13
## ADMINISTRATIVE AGENT'S CLAWBACK

### Section 13.01 Administrative Agent's Clawback

(1) **Funding by Lenders; Presumption by Administrative Agent**. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to the Administrative Agent such Lender's share of such advance, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable advance available to the Administrative Agent, then the applicable Lender shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Accommodation included in such advance. If the Lender does not do so forthwith, the Borrowers shall pay to the Administrative Agent if notified in writing by the Administrative Agent within 3 Business Days of the applicable Lender failing to make available its applicable share of such advance, such corresponding amount with interest thereon at the interest rate applicable to the advance in question. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that has failed to make such payment to the Administrative Agent.

(2) **Payments by Borrowers; Presumptions by Administrative Agent**. Unless the Administrative Agent shall have received notice from the applicable Borrower prior to the date on which any payment is due to the Administrative Agent for the account of any Lender hereunder that the applicable Borrower will not make such payment, the Administrative Agent may assume that the applicable Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute the amount due to the Lenders. In such event, if the applicable Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation.

## ARTICLE 14
## AGENCY

### Section 14.01 Appointment and Authority

Each of the Lenders hereby irrevocably appoints the Administrative Agent to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. Without limiting any of the forgoing, until the Second Lien Repayment Date, all actions and powers exercisable by the Administrative Agent under the Second Lien Intercreditor Agreement shall be exercise as directed in writing by the Majority Lenders other than those actions and powers that are administrative in nature.

### Section 14.02 Rights as a Lender

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any Affiliate thereof as if such Person were not the Administrative Agent and without any duty to account to the Lenders.

### Section 14..03 Exculpatory Provisions

(1) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Credit Documents), but the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or Law; and

(c) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrowers or any of its Affiliates that is communicated to or obtained by the person serving as the Administrative Agent or any of its Affiliates in any capacity.

(2) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as is necessary, or as the Administrative Agent believes in good faith is necessary, under the provisions of the Credit Documents) or (ii) in the absence of its own gross negligence or wilful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing the Default or Event of Default is given to the Administrative Agent by any Loan Party or a Lender.

(3) Except as otherwise expressly specified in this Agreement, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document or (v) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**Section 14.04 Reliance by the Administrative Agent**

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In

determining compliance with any condition hereunder to the making of an Accommodation that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Accommodation or the issuance of such Documentary Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**Section 14.05 Indemnification of the Administrative Agent**

Each Lender severally agrees to indemnify the Administrative Agent and hold it harmless (to the extent not reimbursed by the Borrowers) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Credit Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Administrative Agent's gross negligence or wilful misconduct.

**Section 14.06 Delegation of Duties**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-Administrative Agents appointed by the Administrative Agent from among the Lenders (including the Person serving as Administrative Agent) and its respective Affiliates. The Administrative Agent and any such sub-Administrative Agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and other provisions of this Agreement for the benefit of the Administrative Agent shall apply to any such sub-Administrative Agent and to the Related Parties of the Administrative Agent and any such sub-Administrative Agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**Section 14.07 Replacement of Administrative Agent**

(1) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrowers. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right, with (provided no Event of Default has occurred and is continuing) the prior consent of the Borrowers, to appoint a successor, which shall be a Lender having an office in Toronto, Ontario or an Affiliate of any Lender with an office in Toronto. The Administrative Agent may also be removed at any time by the Majority Lenders upon 30 days' notice to the Administrative Agent and the Borrowers as long as the Majority Lenders, with the prior consent of the Borrowers, appoint and obtain the acceptance of a successor within such 30 days, which shall be a Lender having an office in Toronto, or an Affiliate of any Lender with an office in Toronto.

(2) If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, with the prior consent of the Borrowers (such consent not to be unreasonably withheld or

delayed), on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications specified in Section 14.07(1), provided that if the Administrative Agent shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Administrative Agent as provided for above in the preceding paragraph.

(3) Upon a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Administrative Agent, and the former Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided in the preceding paragraph). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the termination of the service of the former Administrative Agent, the provisions of this Article 14 and of Article 16 shall continue in effect for the benefit of such former Administrative Agent, its sub-Administrative Agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Administrative Agent was acting as Administrative Agent.

**Section 14.08 Non-Reliance on Administrative Agent and Other Lenders**

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Affiliates and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Affiliates and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

**Section 14.09 Collective Action of the Lenders**

Each of the Lenders hereby acknowledges that to the extent permitted by Law, any collateral security and the remedies provided under the Credit Documents to the Lenders are for the benefit of the Lenders (including the Hedge Lenders and the Service Lenders) collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Administrative Agent upon the decision of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Credit Documents). Accordingly, notwithstanding any of the provisions contained herein or in any

collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder or exercise of remedies (including, without limitation the exercise of any right of set-off, rights on account of any banker's lien or similar claim or other rights of self-help or any right to credit bid debt) but that any such action shall be taken only by the Administrative Agent with the prior written agreement of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Credit Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Administrative Agent to the extent requested by the Administrative Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Administrative Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Administrative Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders. The provisions of this Section 14.09 are for the sole benefit of the Administrative Agent and the Lenders and shall not afford any right to, or constitute a defence available to, any Loan Party.

## ARTICLE 15
## NOTICES: EFFECTIVENESS; ELECTRONIC COMMUNICATION

**Section 15.01 Notices, etc.**

(1) **Notices Generally**. Except as provided in paragraph (2) below, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers specified on the signature pages to this Agreement or, if to a Lender, to it at its address or telecopier number specified in the Register or, if to a Loan Party other than a Borrower, in care of a Borrower.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a Business Day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (ii) below, shall be effective as provided in said paragraph (2).

(2) **Electronic Communications**. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including Intralinks) pursuant to procedures approved by the Administrative Agent and, in the case of the use of any web platform (such as Intralinks) reasonably acceptable to the Borrowers, provided that the foregoing shall not apply to notices to any Lender if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's

receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

Each Loan Party hereby acknowledges and agrees that Lenders may only wish to receive, whether through the electronic communication or otherwise, Public Information with respect to any Loan Party or any of its Subsidiaries and each Loan Party further agrees that it will identify and conspicuously mark any information, data or materials delivered to the Administrative Agent, whether pursuant to the terms of any Loan Document or otherwise, that consists solely of Public Information as "PUBLIC".

(3) **Change of Address, Etc**. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

## ARTICLE 16
## EXPENSES; INDEMNITY: DAMAGE WAIVER

### Section 16.01 Expenses; Indemnity; Damage Waiver

(1) **Costs and Expenses**. Each Loan Party shall pay (i) all reasonable out-of-pocket expenses incurred by the Arranger, the Swing Line Lender or the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of one set of counsel per applicable jurisdiction for the Administrative Agent, in connection with the syndication of the credit facilities (including, but not limited to, expenses related to Intralinks and ClearPar) provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent or any Lender, including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Credit Documents, including its rights under this Section, or in connection with the Accommodations issued hereunder, including all such reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Accommodations.

(2) **Indemnification by the Loan Parties**. Each Loan Party shall indemnify, jointly and severally, each of the Administrative Agent, the Swing Line Lender, the Arranger, each Lender, and each Affiliate, director, officer, employee, agent and advisor of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and

related expenses, including the reasonable costs and fees of any counsel for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any Accommodation or the use or proposed use of the proceeds therefrom (including any refusal by the Swing Line Lender to honour a demand for payment under a Documentary Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Documentary Credit), (iii) any actual or alleged presence or Release of Hazardous Substances on or from any property owned or operated by any Loan Party, or any Environmental Liabilities related in any way to any Loan Party, (iv) any breach of the representations and warranties in Section 7.01(22) or the covenants in Section 8.01(12) or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by a Loan Party and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee or any Related Party thereof.

(3) **Reimbursement by Lenders**. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under paragraph (1) or (2) of this Section to be paid by it to the Administrative Agent (or any sub-Administrative Agent thereof), the Swing Line Lender or any Affiliate of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-Administrative Agent), the Swing Line Lender or such Affiliate, such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-Administrative Agent) in its capacity as such, or against any Affiliate of any of the foregoing acting for the Administrative Agent (or any such sub-Administrative Agent) in connection with such capacity.

(4) **Waiver of Consequential Damages, Etc**. To the fullest extent permitted by Law, no party hereto shall assert, and each party hereto hereby waives, any claim against any other party hereto or any Indemnitee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Accommodation or the use of the proceeds thereof. No party hereto or any Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby.

(5) **Payments**. All amounts due under this Section shall be payable promptly after demand therefor. A certificate of the Administrative Agent, the Swing Line Lender or any Affiliate setting forth the amount or amounts owing to the Administrative Agent, the Swing Line Lender, Lender or a sub-Administrative Agent or any other Indemnitee, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrowers shall be conclusive absent manifest error.

## ARTICLE 17
## SUCCESSORS AND ASSIGNS

### Section 17.01 Successors and Assigns

(1) **Successors and Assigns Generally**. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lenders, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (2) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (5) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (7) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (5) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(2) **Assignments by Lenders**. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Accommodations Outstanding at the time owing to it); provided that:

(a) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Accommodations Outstanding at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Accommodations Outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Accommodations Outstanding of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if the "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than Cdn. $5,000,000 (or the Equivalent U.S. $ Amount), unless the

Administrative Agent and the Borrowers otherwise consent to a lower amount (such consent not to be unreasonably withheld or delayed);

(b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Accommodations Outstanding or the Commitment assigned;

(c) any assignment must be approved by the Swing Line Lender (such approval not to be unreasonably withheld or delayed) unless the Person that is the proposed assignee is itself already a Lender;

(d) any assignment must be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed);

(e) any assignment must be approved by the Borrowers (such approval not to be unreasonably withheld or delayed) unless (i) the proposed assignee is itself already a Lender, an Affiliate of a Lender, or an Approved Fund or (ii) an Event of Default shall have occurred and be continuing; and

(f) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of Cdn. $3,500 (other than in the case of multiple contemporaneous assignments by a Lender to an Affiliate of a Lender, or Approved Funds, in which case only one such fee shall be payable), which fee shall not be for the account of the Loan Parties, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (3) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement with respect to the interest assigned and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Credit Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Article 10 and Article 16, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrowers or a new Accommodation to the Borrowers.

(3) **Register**. The Administrative Agent shall maintain at one of its offices in Toronto, Ontario a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Accommodations Outstanding owing to, each Lender

pursuant to the terms hereof from time to time (the "**Register**"). The Administrative Agent shall promptly enter such information in the Register upon receipt of each Assignment and Assumption delivered to it in compliance with paragraph (2) above, which entries shall be conclusive, absent manifest error, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(4) **Limitations upon Assignee Rights**. Except in the case of an assignment made during the continuance of an Event of Default, no assignee shall be entitled to receive any greater payment under Section 10.01 and Section 10.02 than the applicable Lender would have been entitled to receive with respect to the Commitments and Accommodations assigned to such assignee, unless such assignment is made with the Borrowers' prior written consent.

(5) **Participations**. Any Lender may at any time, without the consent of, or notice to the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural person, a Loan Party or any Affiliate of a Loan Party) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Accommodations Outstanding owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clause (2) or (3) of Section 18.01 that directly affects such Participant. Any payment by a Participant to a Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrowers or a new Accommodation to the Borrowers.

Subject to paragraph (6) of this Section, and to the extent permitted by Law, each Participant shall be entitled to the benefits of Article 10 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (2) of this Section, provided such Participant agrees to be subject to Article 12 as though it were a Lender.

(6) **Limitations upon Participant Rights**. A Participant shall not be entitled to receive any greater payment under Section 10.01 and Section 10.02, than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with each Borrower's prior written consent.

(7) **Certain Pledges**. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, but no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

## ARTICLE 18
## AMENDMENTS AND WAIVERS

**Section 18.01 Amendments and Waivers**

(1) Subject to paragraphs (2), (3), (4) and (5), no acceptance, amendment or waiver of any provision of any of the Credit Documents, nor consent to any departure by a Borrower or any other Person from such provisions, shall be effective unless in writing and approved by the Majority Lenders. Any acceptance, amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

(2) Only written acceptances, amendments, waivers or consents signed by all affected Lenders shall (i) increase a Lender's Commitment or extend the expiry date of a Lender's Commitment; (ii) subject any Lender to any additional obligation; (iii) reduce the principal or amount of, or interest on, directly or indirectly, any Accommodation Outstanding or any Fees; or (iv) postpone any date fixed for any payment of principal of, or interest on, any Accommodation Outstanding or any Fees.

(3) Only written acceptances, amendments, waivers or consents signed by all Lenders shall (i) change the percentage of the Aggregate Commitment or the number or percentage of Lenders required for the Lenders, or any of them, or the Administrative Agent to take any action; (ii) permit any termination of all or any substantial part of the guarantees required hereunder or the Security Documents or release all or any substantial part of the guarantees or the Collateral subject to the Security Documents unless in the case of (a) a Guarantor, all or substantially all of the Equity Securities of such Guarantor are sold or otherwise disposed of in a transaction permitted by this Agreement or (b) the Collateral is sold or transferred as permitted by this Agreement; (iii) change the definition of Majority Lenders, or (iv) amend Section 18.01(2) or (3).

(4) Only written acceptances, amendments, waivers or consents signed by the Administrative Agent, in addition to the Majority Lenders, shall affect the rights or duties of the Administrative Agent under the Credit Documents.

(5) Only written acceptances, amendments, waivers or consents signed by the Swing Line Lender, in addition to the Majority Lenders, shall affect the rights or duties of such Lender in its capacity as Swing Line Lender under the Credit Documents.

(6) In the event that any Lender (a "**Non-Consenting Lender**") fails to consent to any proposed amendment, modification, termination, waiver or consent with respect to any provision hereof or of any other Credit Document that requires the unanimous approval of all of the Lenders or the approval of all of the Lenders directly affected

thereby, in each case in accordance with the terms of this Section, the Borrowers shall be permitted to replace such Non-Consenting Lender with a replacement financial institution satisfactory to the Administrative Agent and the Swing Line Lender, so long as the consent of the Majority Lenders shall have been obtained with respect to such amendment, modification, termination, waiver or consent; provided that (i) such replacement does not conflict with any Law, (ii) the replacement financial institution shall purchase, at par, all Accommodations and other amounts owing to the Non-Consenting Lender pursuant to the Credit Documents on or prior to the date of replacement, (iii) the replacement financial institution shall approve the proposed amendment, modification, termination, waiver or consent, (iv) the Non-Consenting Lender shall be obligated to make such replacement in accordance with the provisions of Section 17.01 (provided that the Borrowers shall be obligated to pay the registration and processing fee referred to in Section 17.01(2)(f)), (v) until such time as such replacement shall be consummated, the Borrowers shall pay to the Non-Consenting Lender all additional amounts (if any) required pursuant to Article 10, (vi) the Borrowers shall provide at least three (3) Business Days' prior notice to the Non-Consenting Lender, and (vii) any such replacement shall not be deemed to be a waiver of any rights that the Borrowers, the Administrative Agent or any other Lender shall have against the Non-Consenting Lender. In the event any Non-Consenting Lender fails to execute the agreements required under Section 17.01 in connection with an assignment pursuant to this Section, the Borrowers may, upon two (2) Business Days' prior notice to the Non-Consenting Lender, execute such agreements on behalf of the Non-Consenting Lender, and each such Lender hereby grants to the Borrowers (and to any of them) an irrevocable power of attorney (which shall be coupled with an interest) for such purpose.

(7) Notwithstanding anything to the contrary in this Section 18.01, if at any time on or before the date that is thirty (30) days following the Closing Date, the Administrative Agent and the Borrowers shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Credit Documents, then the Administrative Agent and the Loan Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Majority Lenders within five (5) Business Days following receipt of notice thereof.

**Section 18.02 Judgment Currency.**

(1) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due to a Lender in any currency (the "**Original Currency**") into another currency (the "**Other Currency**"), the parties agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, such Lender could purchase the Original Currency with the Other Currency on the Business Day preceding the day on which final judgment is given or, if permitted by Law, on the day on which the judgment is paid or satisfied.

(2) The obligations of the Borrowers in respect of any sum due in the Original Currency from it to any Lender under any of the Credit Documents shall, notwithstanding any

judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Lender of any sum adjudged to be so due in the Other Currency, the Lender may, in accordance with normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Lender in the Original Currency, the Borrowers agree, as a separate obligation and notwithstanding the judgment, to indemnify the Lender against any loss, and, if the amount of the Original Currency so purchased exceeds the sum originally due to the Lender in the Original Currency, the Lender shall remit such excess to the Borrowers.

**Section 18.03 Releases.**

(1) Upon the Disposition of any item of Collateral of any Loan Party in accordance with the terms of the Credit Documents to any Person, other than another Loan Party, the Administrative Agent will, at the applicable Loan Party's request and expense, promptly execute and deliver to such Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the Security in accordance with the terms of the Credit Documents, and, in the case of any Disposition or any transfer involving the sale of any Guarantor (to the extent permitted by the Credit Documents), a release of such Loan Party from its obligations under the Guarantee and any other Credit Documents to which it is a party.

(2) Upon the Disposition of any item of Collateral that Parent GP is permitted to Dispose pursuant to paragraph (i) of the definition of "Permitted Dispositions", the Administrative Agent will, at Parent GP's request and expense, promptly execute and deliver to Parent GP such documents as Parent GP may reasonably request to evidence the release of such item of Collateral from the Security in accordance with the terms of the Credit Documents.

(3) Upon the grant of any Permitted Encumbrance permitted by paragraph (w) of the definition of "Permitted Encumbrances", the Administrative Agent will, at Parent GP's request and expense, promptly execute and deliver to Parent GP such documents as Parent GP may reasonably request to evidence the release of the Assets so encumbered from the Security or a subordination of the Security over such Assets in accordance with the terms of the Credit Documents if such release or subordination is a requirement of the Person granted such Permitted Encumbrance.

(4) Upon the transfer by any Loan Party of any Real Estate Development Assets to a Real Estate Development SPV permitted by paragraph (j) of the definition of "Permitted Dispositions", the Administrative Agent will, at the applicable Loan Party's request and expense, promptly execute and deliver to such Loan Party such documents as such Loan Party may reasonably request to evidence the release of such Real Estate Development Assets from the Security.

## ARTICLE 19
## GOVERNING LAW; JURISDICTION; ETC.

**Section 19.01 Governing Law; Jurisdiction; Etc.**

(1) **Governing Law**. This Agreement shall be governed by, and construed in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable in that Province.

(2) **Submission to Jurisdiction**. Each Loan Party irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the Province of British Columbia, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Credit Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Nothing contained in this Agreement or in any other Credit Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Credit Document against any Loan Party or its properties in the courts of any jurisdiction.

(3) **Waiver of Venue**. Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Credit Document in any court referred to in paragraph (2) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Law, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

## ARTICLE 20
## WAIVER OF JURY TRIAL

**Section 20.01 Waiver of Jury Trial**

Each party hereto hereby irrevocably waives, to the fullest extent permitted by Law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or any other Credit Document or the transactions contemplated hereby or thereby (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, administrative agent or attorney of any other person has represented, expressly or otherwise, that such other Person would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement and the other Credit Documents by, among other things, the mutual waivers and certifications in this Section.

## ARTICLE 21
## COUNTERPARTS; INTEGRATION; EFFECTIVENESS; ELECTRONIC EXECUTION

**Section 21.01 Counterparts; Integration; Effectiveness; Electronic Execution**

(1) **Counterparts; Integration; Effectiveness**. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when it has been executed by the Administrative Agent and when the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by sending a scanned copy by electronic mail shall be as effective as delivery of a manually executed counterpart of this Agreement.

(2) **Electronic Execution of Assignments**. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Law, including Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Transactions Act* (British Columbia) and other similar federal or provincial laws based on the Uniform Electronic Commerce Act of the Uniform Law Conference of Canada or its Uniform Electronic Evidence Act, as the case may be.

## ARTICLE 22
## TREATMENT OF CERTAIN INFORMATION: CONFIDENTIALITY

**Section 22.01 Treatment of Certain Information: Confidentiality**

(1) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to it, its Affiliates and its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives to the extent necessary to administer or enforce this Agreement and the other Credit Documents (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required by any regulatory authority having jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Laws or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (B) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to

the Borrowers and their respective obligations, (g) with the prior written consent of the Borrowers, (h) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section by such Person or its Affiliates or actually known to such Person or its Affiliates or (B) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than a Loan Party or Limited Recourse Guarantor. If the Administrative Agent or any Lender is requested or required to disclose any Information (other than by any bank examiner) pursuant to or as required by Laws or by a subpoena or similar legal process, the Administrative Agent or such Lender, as applicable, shall use its reasonable commercial efforts (to the extent permitted by Law) to provide the Borrowers with notice of such requests or obligation in sufficient time so that the Borrowers may seek an appropriate protective order or waive the Administrative Agent's, or such Lender's, as applicable, compliance with the provisions of this Section, and the Administrative Agent and such Lender, as applicable, shall, to the extent reasonable, co-operate with the Borrowers in the Borrowers obtaining any such protective order.

(2) For purposes of this Section, "**Information**" means all information received from any Loan Party or Limited Recourse Guarantor relating to any Loan Party, Limited Recourse Guarantor or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information in accordance with its internal policies. In addition, the Administrative Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), it being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.

(3) In addition, and notwithstanding anything herein to the contrary, the Administrative Agent may provide to Loan Pricing Corporation and/or other recognized trade publishers information concerning the Borrowers and the Credit Facility established herein of the nature customarily provided to Loan Pricing Corporation and/or other recognized trade publishers of such information for general circulation in the loan market.

(4) Each Lender that is subject to the requirements of the *USA Patriot Act* (referred to in the definition of Anti-Terrorism Laws) hereby notifies the Borrowers that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the names and addresses of the Borrowers and other information that will allow such Lender to identify the Borrowers in accordance with the Act.

## ARTICLE 23
## GUARANTEE

**Section 23.01 Guarantee.**

To induce the Administrative Agent and the Lenders to execute and deliver this Agreement and to make or maintain the Accommodations, and in consideration thereof, each Guarantor hereby, jointly and severally, and irrevocably and unconditionally, guarantees to the Administrative Agent and the Lenders, the Service Lenders and the Hedge Lenders (the Administrative Agent, the Lenders, the Service Lenders and the Hedge Lenders are collectively, the "**Guaranteed Parties**" and each a "**Guaranteed Party**"), due and punctual payment and performance to the Guaranteed Parties upon written demand made in accordance with the terms of this Agreement of all debts, liabilities and obligations of or owing by each Borrower to any Guaranteed Party at any time and from time to time, present and future, direct and indirect, absolute and contingent, matured or not, arising from this Agreement or any other Credit Document, and all amendments, restatements, replacements, renewals, extensions, or supplements and continuations thereof, and whether each Borrower is bound alone or with another or others, and whether as principal or surety, and including without limitation, all liabilities of each Borrower arising as a consequence of its failure to pay or fulfil any of such debts, liabilities and obligations (collectively, the "**Guaranteed Obligations**").

**Section 23.02 Indemnity.**

In addition to the guarantee specified in Section 23.01, each Guarantor agrees to, jointly and severally, indemnify and save each Guaranteed Party harmless from and against all costs, losses, expenses and damages it may suffer as a result or consequence of either Borrower's default in the performance of any of the Guaranteed Obligations, any of the Guaranteed Obligations being or becoming void, voidable or unenforceable or ineffective against either Borrower, or any inability by any Guaranteed Party to recover the ultimate balance due or remaining unpaid to such Guaranteed Party in respect of the Guaranteed Obligations, including without limitation, legal fees incurred by or on behalf of any Guaranteed Party resulting from any action instituted on the basis of this Guarantee.

**Section 23.03 Payment and Performance.**

(1) Subject to Section 23.04 if any Borrower fails or refuses to punctually make any payment or perform its Guaranteed Obligations, each Guarantor shall unconditionally render any such payment or performance upon demand in accordance with the terms of this Guarantee.

(2) Nothing but payment and satisfaction in full of the Guaranteed Obligations shall release any Guarantor from its obligations under this Guarantee, except where expressly contemplated by this Agreement in connection with a disposition or transfer of such Guarantor in a transaction permitted by this Agreement.

**Section 23.04 Continuing Obligation.**

The only condition necessary as a condition of each Guarantor honouring its obligations under this Guarantee shall be a written demand by the Administrative Agent following the occurrence of an Event of Default which is continuing. This Guarantee shall be a continuing guarantee, shall cover all the Guaranteed Obligations, and shall apply to and secure any ultimate balance due or remaining unpaid to any Guaranteed Party. This Guarantee shall continue to be binding regardless of:

(a) whether any other Person or Persons (an "**Additional Guarantor**") shall become in any other way responsible to any Guaranteed Party for or in respect of all or any part of the Guaranteed Obligations;

(b) whether any such Additional Guarantor shall cease to be so liable;

(c) the enforceability, validity, perfection or effect of perfection or non-perfection of any security interest securing the Guaranteed Obligations, or the validity or enforceability of any of the Guaranteed Obligations; or

(d) whether any payment of any of the Guaranteed Obligations has been made and where such payment is rescinded or must otherwise be returned upon the occurrence of any action or event, including the insolvency or bankruptcy of any Loan Party or otherwise, all as though such payment had not been made.

**Section 23.05 Guarantee Unaffected.**

This Guarantee shall not be determined or affected, or the Guaranteed Parties' rights under this Guarantee prejudiced by, the termination of any Guaranteed Obligations by operation of Law or otherwise, including without limitation, the bankruptcy, insolvency, dissolution or liquidation of any Loan Party, any change in the name, business, powers, capital structure, constitution, objects, organization, directors or management of any Loan Party, with respect to transactions occurring either before or after such change. This Guarantee is to extend to the liabilities of the Person or Persons for the time being and from time to time carrying on the business now carried on by any Loan Party, notwithstanding any reorganization of any Loan Party or the amalgamation of any Loan Party with one or more other corporations (in this case, this Guarantee shall extend to the liabilities of the resulting corporation and the term "Guarantor" shall include such resulting corporation) or any sale or disposal of any Loan Party's business in whole or in part to one or more other Persons and all of such liabilities shall be included in the Guaranteed Obligations. Each Guarantor agrees that the manner in which the Guaranteed Parties may now or subsequently deal with any other Loan Party or any security (or any collateral subject to the security) or other guarantee in respect of the Guaranteed Obligations shall have no effect on any Guarantor's continuing liability under this Guarantee and such Guarantor irrevocably waives any rights it may have in respect of any of the above.

**Section 23.06 Waivers.**

Each Guarantor waives each of the following, to the fullest extent permitted by Law:

(1) any defence based upon:

(a) the unenforceability or invalidity of all or any part of the Guaranteed Obligations, or any security or other guarantee for the Guaranteed Obligations or any failure of any Guaranteed Party to take proper care or act in a commercially reasonable manner in respect of any security for the Guaranteed Obligations or any collateral subject to the security, including in respect of any disposition of the Collateral or any set-off of any Loan Party's bank deposits against the Guaranteed Obligations;

(b) any act or omission of a Loan Party or any other Person, including the Guaranteed Parties, that directly or indirectly results in the discharge or release

of a Loan Party or any other Person or any of the Guaranteed Obligations or any security for the Guaranteed Obligations; or

(c) any Guaranteed Party's present or future method of dealing with any Loan Party, any Additional Guarantor or any security (or any collateral subject to the security) or other guarantee for the Guaranteed Obligations;

(2) any right (whether now or hereafter existing) to require any Guaranteed Party, as a condition to the enforcement of this Guarantee including, without limitation, any indemnity provided for herein:

(a) to accelerate any of the Guaranteed Obligations or proceed and exhaust any recourse against a Loan Party or any other Person;

(b) to realize on any security that it holds;

(c) to marshal the assets of such Guarantor or any other Loan Party; or

(d) to pursue any other remedy that such Guarantor may not be able to pursue itself and that might limit or reduce such Guarantor's burden;

(3) presentment, demand, protest and notice of any kind including, without limitation, notices of default and notice of acceptance of this Guarantee;

(4) any rights of subrogation or indemnification which it may have until the obligations of the Loan Parties under the Credit Documents and the Eligible Hedging Agreements have been paid in full.

(5) all suretyship defences and rights of every nature otherwise available under Ontario Law and the Laws of any other jurisdiction; and

(6) all other rights and defences (legal or equitable) the assertion or exercise of which would in any way diminish the liability of such Guarantor under this Guarantee.

**Section 23.07 Guaranteed Parties' Right to Act.**

Each Guaranteed Party has the right to deal with any Guarantor, the documents creating or evidencing the Guaranteed Obligations and the security (or any collateral subject to the security) now or subsequently held by any Guaranteed Party (including without limitation, all modifications, extensions, replacements, amendments, renewals, restatements, and supplements to such documents or security) as such Guaranteed Party may see fit, without notice to any Guarantor and without in any way affecting, relieving, limiting or lessening such Guarantor's liability under this Guarantee. Without limitation, each Guaranteed Party may:

(1) grant time, renewals, extensions, indulgences, releases and discharges to any Guarantor;

(2) take new or additional security (including without limitation, other guarantees) from any Guarantor;

(3) discharge or partially discharge any or all existing security;

(4) elect not to take security from any Guarantor or not to perfect security;

(5) cease or refrain from, or continuing to, giving credit or making loans or advances to any Guarantor;

(6) accept partial payment or performance from any Guarantor or otherwise waive compliance by any Guarantor with the terms of any of the documents or security;

(7) assign any such document or security to any Person or Persons;

(8) deal or dispose in any manner (whether commercially reasonably or not) with any security (or any collateral subject to the security) or other guarantee for the Guaranteed Obligations; or

(9) apply all dividends, compositions and moneys at any time received from any Guarantor or others or from the security upon such part of the Guaranteed Obligations as each Guaranteed Party deems appropriate.

**Section 23.08 Assignment and Postponement.**

All indebtedness and liability, present and future, of each Loan Party to each Guarantor are hereby assigned to the Administrative Agent on behalf and for the benefit of the Guaranteed Parties and postponed to the Guaranteed Obligations, and, following the occurrence of an Event of Default that is continuing, all monies received by any Guarantor in respect thereof shall be received in trust for the Guaranteed Parties and forthwith upon receipt thereof shall be paid over to the Administrative Agent on behalf and for the rateable benefit of the Guaranteed Parties; provided that, for the avoidance of doubt, absent the continuance of an Event of Default, this Section 23.08 shall not prohibit or restrict payments and repayments by or to any Guarantor to the extent otherwise permitted by this Agreement.

**Section 23.09 Action or Inaction.**

Except as otherwise provided at Law, no action or omission on the part of any Guaranteed Party in exercising or failing to exercise its rights under this Article 23 or in connection with or arising from all or part of the Guaranteed Obligations shall make any Guaranteed Party liable to any Guarantor for any loss occasioned to such Guarantor. No loss of or in respect of any security received by any Guaranteed Party from any other Loan Party or others, whether occasioned by any Guaranteed Party's fault or otherwise, shall in any way affect, relieve, limit or lessen any Guarantor's liability under this Guarantee.

**Section 23.10 Guaranteed Parties' Rights.**

The rights and remedies provided in this Section are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights or remedies provided by Law.

**Section 23.11 Demand.**

The Administrative Agent may make demand in writing to any Guarantor at any time and from time to time after the occurrence of and during the continuance of an Event of Default, each such written demand to be accepted by such Guarantor as complete and satisfactory evidence of the amount of the Guaranteed Obligations to be paid by such Guarantor absent manifest error. Each Guarantor shall pay to the Administrative Agent such amount or amounts payable under this Guarantee promptly upon such written demand.

**Section 23.12 No Representations.**

Each Guarantor acknowledges that this Guarantee has been delivered free of any conditions and that there are no representations which have been made to such Guarantor affecting such Guarantor's liability under this Guarantee except as may be specifically embodied in this Guarantee and agrees that this Guarantee is in addition to and not in substitution for any other guarantee(s) held or which may subsequently be held by or for the benefit of any Guaranteed Party.

**[Remainder of page left intentionally blank.]**

4545 Blackcomb Way,
Whistler, BC V0N 1B4
Attention: David B. Brownlie
Facsimile: 604-938-7527

**WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Borrower

By: /s/ Jeremy Black
Jeremy Black
Senior Vice President and Chief Financial Officer

4545 Blackcomb Way,
Whistler, BC V0N 1B4
Attention: David B. Brownlie
Facsimile: 604-938-7527

**BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Borrower

By: /s/ Jeremy Black
Jeremy Black
Senior Vice President and Chief Financial Officer

For Borrowing Notices, Drawdown Notices, Rollover/Conversion Notices, Issue Notices and Repayment Notices:

**THE TORONTO-DOMINION BANK**, as Administrative Agent

By: /s/ Feroz Haq

Feroz Haq
Vice President, Loan Syndications - Agency

The Toronto-Dominion Bank, as Agent
TD North Tower
77 King Street West, 25th Floor
Toronto, ON M5K 1A2

Attention:Vice President, Loan Syndications-Agency
Facsimile:416-982-5535

For all other notices:

The Toronto-Dominion Bank, as Agent
TD Bank Tower
66 Wellington Street West, 9th Floor
Toronto, ON M5K 1A2

Attention:Vice President, Loan Syndications-Agency
Facsimile:416-944-6976

**THE TORONTO-DOMINION BANK**, as Lender

By: /s/ Frazer Scott

Frazer Scott
Managing Director

By: /s/ Ben Montgomery

Ben Montgomery
Director

**BANK OF AMERICA, N.A., CANADA BRANCH**

By: /s/ Jason Hoogenboom

Jason Hoogenboom
Senior Vice President

By: _____

**BANK OF MONTREAL**

By: /s/ Jerry Kaye

Jerry Kaye
Director

By: _____

**WELLS FARGO BANK, N.A., CANADIAN BRANCH**

By: /s/ Chris Sheppard

Chris Sheppard
Vice President Relationship Manager

By: _____

**ROYAL BANK OF CANADA**

By: /s/ Baljit Mann

Baljit Mann
Authorized Signatory

By: /s/ Glen Barisoff

Glen Barisoff
Authorized Signatory

**CANADIAN IMPERIAL BANK OF COMMERCE**

By: /s/ Hedayat Nasoody

Hedayat Nasoody
Director

By: /s/ Joshua Picov

Joshua Picov
Executive Director

**CAISSE CENTRALE DESJARDINS**

By: /s/ Oliver Sumugod

Oliver Sumugod
Vice President

By: /s/ Pierre R. Tremblay

Pierre R. Tremblay
Managing Director

**HSBC BANK CANADA**

By: /s/ Curtis Standerwick

Curtis Standerwick
Assistant Vice President
Commercial Banking

By: /s/ Douglas Brandes

Douglas Brandes
Vice President
Commercial Banking

**RAYMOND JAMES FINANCE COMPANY OF CANADA LTD**

By: /s/ Cormac Maclochlainn

Cormac Maclochlainn
Vice President, Corporate Banking

By:

**WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**WHISTLER BLACKCOMB HOLDINGS INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**WHISTLER & BLACKCOMB MOUNTAIN RESORTS LIMITED**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**PEAK TO CREEK LODGING COMPANY LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**BLACKCOMB MOUNTAIN DEVELOPMENT LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**GARIBALDI LIFTS LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**WHISTLER BLACKCOMB EMPLOYMENT CORP.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**WHISTLER/BLACKCOMB MOUNTAIN EMPLOYEE HOUSING LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**WHISTLER SKI SCHOOL LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**CRANKWORX EVENTS INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**WHISTLER HELI-SKIING LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**LODGING OVATIONS CORP.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**WB LAND INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**WHISTLER BLACKCOMB GENERAL PARTNER LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**WB/T DEVELOPMENT LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**BLACKCOMB SKIING ENTERPRISES LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**AFFINITY SNOWSPORTS INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**MR. WHISTLER'S HOLDINGS INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black

Senior Vice President and Chief Financial Officer

**FIRST AMENDING AGREEMENT**

**THIS FIRST AMENDING AGREEMENT** is dated as of October 30, 2014 (this "**Amendment**") and is entered into between Whistler Mountain Resort Limited Partnership, by its general partner, Whistler Blackcomb Holdings Inc. ("**Whistler LP**"), and Blackcomb Skiing Enterprises Limited Partnership, by its general partner, Whistler Blackcomb Holdings Inc. ("**Blackcomb LP**" and together with Whistler LP, the "**Borrowers**"), the guarantors party hereto, each lender party hereto, and The Toronto-Dominion Bank, as administrative agent (the "**Agent**");

**WHEREAS** the Borrowers, the lenders from time to time party thereto (the "**Lenders**"), the guarantors from time to time party thereto (the "**Guarantors**") and the Agent are parties to an Amended and Restated Credit Agreement dated as of November 12, 2013 (the "**Credit Agreement**");

**AND WHEREAS** the Borrowers have requested that the Lenders agree to certain amendments to the Credit Agreement;

**AND WHEREAS** the Lenders have agreed to consent to the amendments subject to the terms and conditions contained herein;

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows:

## ARTICLE 1
## INTERPRETATION

Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement.

## ARTICLE 2
## AMENDMENTS TO CREDIT AGREEMENT

Subject to the satisfaction of each of the conditions set forth in this Amendment, and in reliance on the representations, warranties and agreements contained in this Amendment, the Credit Agreement is hereby amended as follows:

### 2.1 Definition of Maturity Date

Section 1.01 of the Credit Agreement is hereby amended by deleting the definition of "Maturity Date" in its entirety and replacing it with the following:

> ""**Maturity Date**" means November 12, 2019, or any subsequent date to which the Maturity Date is extended in accordance with Section 2.11."

### 2.2 Additional Definitions

Section 1.01 of the Credit Agreement is hereby amended by adding the following definitions in alphabetical order:

""**WAC**" means Whistler Alpine Club Inc., a company incorporated pursuant to the laws of the Province of British Columbia, and its successors and permitted assigns."

""**WAC Members**" means the members of a private club program established and operated by WAC."

""**WAC Membership Deposits**" means the initial contribution by WAC Members to WAC on account of membership fees evidenced by way of 30-year interest-free unsecured loans, which loans shall only be repayable by way of replacement membership contributions, and the proceeds of which shall be applied to fund construction costs of the club facilities and other start-up expenses of WAC's private club program, together with any refinancings of such loans provided that the aggregate principal amount thereof is not increased and such loans remain unsecured, non-interest bearing and subordinated to the same extent as the loans refinanced."

**2.3 Definition of Consolidated Interest Expense**

Section 1.01 of the Credit Agreement is hereby amended by deleting the first paragraph of the definition of "Consolidated Interest Expense" and replacing it with the following:

""**Consolidated Interest Expense**" means for any Measurement Period, all items properly classified as interest expense in accordance with GAAP, minus interest income during such period in accordance with GAAP, (i) for the Loan Parties determined on a combined consolidated basis and (ii) for any other Person and its Subsidiaries determined on a consolidated basis, as the context requires; provided that: (a) for purposes of calculating the Consolidated Interest Coverage Ratio, (i) the portion of Permitted Distributions to the Limited Recourse Guarantors that is presented as a finance expense in the financial statements of the Borrowers, (ii) any portion of finance expense attributable to WAC Membership Deposits, and (iii) any portion of finance expense attributable to prepayment premiums relating to repayment of the Second Lien Notes on the Second Repayment Date, shall be excluded from Consolidated Interest Expense; and (b) for purposes of calculating the Borrower's Distributable Cash Amount, (i) the portion of Permitted Distributions to the Limited Recourse Guarantors that is presented as a finance expense in the financial statements of the Borrowers, (ii) any portion of finance expense attributable to WAC Membership Deposits, and (iii) any portion of finance expense attributable to prepayment premiums relating to repayment of the Second Lien Notes which was not paid in cash on or about the Second Repayment Date, shall be excluded from Consolidated Interest Expense."

**2.4 Definition of Debt**

Section 1.01 of the Credit Agreement is hereby amended by deleting the proviso following clause (x) of the definition of "Debt" and replacing it with the following:

"provided that, "Debt" shall not include accrued expenses and current trade payables arising in the ordinary course of business, or, solely for purposes of the calculation of "Consolidated Debt" and "Consolidated Senior Debt", Debt in respect of WAC Membership Deposits, and the guarantees made by the Borrowers to WAC Members in respect of WAC Membership Deposits."

**2.5 Definition of Permitted Debt**

Section 1.01 of the Credit Agreement is hereby amended by making the following changes to the definition of "Permitted Debt":

(a) deleting the period at the end of clause (l) thereof and replacing it with a semi colon; and

(b) adding the following new clauses (m) and (n) thereto:

"(m) Debt in respect of WAC Membership Deposits in an aggregate principal amount of up to $30,000,000; provided such Debt is by its terms unsecured, non-interest bearing, not subject to any covenants (other than a covenant to repay at maturity), events of default or acceleration provisions, not subject to any repayment or redemption obligation on the part of WAC or its Affiliates prior to the expiry of the 30 year term thereof and is evidenced by a promissory note substantially in the form approved by the Agent from time to time; and

(n) guarantees by the Borrowers to WAC Members in respect of WAC Membership Deposits; provided that, there shall only be recourse to the Borrowers under such guarantees if the construction of the WAC club facilities is not completed in the manner and on the timeframe specified and such guarantees shall terminate after construction of the WAC club facilities is complete."

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES

**3.1 Representations and Warranties**

Each of the Parent GP and the Loan Parties represents and warrants that the representations and warranties contained in Section 7.01 of the Credit Agreement continue to be true and correct as if made on and as of the date hereof except for those changes to the representations and warranties which have been disclosed to and accepted by the Agent and the Lenders pursuant to section 18.01 of the Credit Agreement and any representation and warranty which is stated to be made only as of a certain date (and then as of such date). Each of the Parent GP and the Loan Parties further represents and warrants that:

(a) no Default or Event of Default has occurred and is continuing;

(b) it has all requisite corporate, partnership or other power and authority to enter into and perform its obligations under this Amendment;

(c) the execution, delivery and performance of this Amendment has been duly authorized by all corporate, partnership or other analogous actions required and this Amendment has been duly executed and delivered by it, and constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, subject only to any limitations under Laws relating to (i) bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally; and (ii) general equitable principles including the discretion that a court may exercise in granting of equitable remedies; and

(d) the execution and delivery of this Amendment and the performance of its obligations hereunder and compliance with the terms, conditions and provisions hereof, will not (i) conflict with or result in a breach of any of the material terms, conditions or provisions of (a) its partnership

agreement or other constating documents, as applicable, or by-laws, (b) any Law, (c) any Material Agreement or Material Permit, or (d) any judgment, injunction, determination or award which is binding on it; or (ii) result in, require or permit (x) the imposition of any Encumbrance in, on or with respect to the Assets now owned or hereafter acquired by it (other than pursuant to the Security Documents or which is a Permitted Encumbrance), (y) the acceleration of the maturity of any material Debt binding on or affecting it, or (z) any third party to terminate or acquire any rights materially adverse to Parent GP or the applicable Loan Party under any Material Agreement.

## ARTICLE 4
## CONFIRMATION OF SECURITY

### 4.1 Confirmation of Security Documents

Each of the Parent GP, the Borrowers and the other Loan Parties hereby acknowledges and confirms that each Security Document to which it is a party:

(a) is and shall remain in full force and effect in all respects, notwithstanding the amendments and supplements to the Credit Agreement made pursuant to this Agreement, and has not been amended, terminated, discharged or released;

(b) constitutes a legal, valid and binding obligation of the undersigned, enforceable against the undersigned in accordance with its terms; and

(c) shall, together with that portion of the Security constituted thereby, continue to exist and apply to all of the Guaranteed Obligations and other obligations of the undersigned including, without limitation, any and all obligations, liabilities and indebtedness of the undersigned pursuant to Accommodations or otherwise outstanding under the Credit Agreement and the other Credit Documents to which it is a party.

### 4.2 Nature of Acknowledgments

The foregoing acknowledgments and confirmations (i) are in addition to and shall not limit, derogate from or otherwise affect any provisions of the Credit Agreement or the other Credit Documents, and (ii) do not serve as an acknowledgment by any of the Lenders or the Administrative Agent that, in the event of a future change to the constitution of any Loan Party, any material change to the terms of the Credit Agreement or the other Credit Documents or any other change of circumstances, a similar acknowledgment and confirmation need be entered into.

### 4.3 Further Assurances

The parties hereto shall from time to time do all such further acts and things and execute and deliver all such documents as are required in order to effect the full intent of and fully perform and carry out the terms of this Agreement.

## ARTICLE 5
## CONDITIONS

The effectiveness of this Amendment is subject to the satisfaction of the following conditions precedent:

(a) the Agent shall have received copies of this Amendment duly executed by all parties hereto;

(b) the Agent shall have received, on behalf of the Lenders, payment in full from the Borrowers of a consent and extension fee in the amount of 0.125 % on the amount of their respective Commitments of each Lender under the Credit Facility;

(c) each of the Borrowers shall have delivered to the Agent evidence of the corporate or partnership authority of each such party to execute, deliver and perform its obligations under the Amendment, and, as applicable, all other agreements and documents executed by such party in connection therewith, all in form and substance satisfactory to the Agent and the Lenders;

(d) no Default or Event of Default shall have occurred and be continuing; and

(e) all representations and warranties set out in the Credit Documents and this Amendment shall be true and correct as if made on and as of the date hereof except for those changes to the representations and warranties which have been disclosed to and accepted by the Agent and the Lenders pursuant to section 18.01 of the Credit Agreement and any representation and warranty which is stated to be made only as of a certain date (and then as of such date).

## ARTICLE 6
## MISCELLANEOUS

### 6.1 Benefits

This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

### 6.2 References to the Credit Agreement

Each reference to the Credit Agreement in any of the Credit Documents (including the Credit Agreement) shall be deemed to be a reference to the Credit Agreement, as amended by this Amendment.

### 6.3 Governing Law

This Amendment and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

### 6.4 Credit Document

This Amendment shall be a Credit Document.

**6.5 Limited Effect**

Except as expressly provided herein, all of the terms and provisions of the Credit Agreement are and shall remain in full force and effect and are hereby ratified and confirmed by the Borrowers.

**6.6 Counterparts**

This Amendment may be executed in any number of counterparts, including by facsimile or portable document format, each of which shall be deemed to be an original.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first above written.

**WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Borrower

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Borrower

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**THE TORONTO-DOMINION BANK**, as
Administrative Agent

By: /s/ Feroz Haq

Feroz Haq
Vice President, Loan Syndications - Agency

By:

**THE TORONTO-DOMINION BANK**, as Lender

By: /s/ Ben Montgomery
Ben Montgomery
Director

By: /s/ Chris Sfikas
Chris Sfikas
Vice President

**BANK OF AMERICA, N.A., CANADA BRANCH**, as Lender

By: /s/ Rahim Kabani
Rahim Kabani
Senior Vice President
Senior Credit Products Officer

By: _____

**BANK OF MONTREAL**, as Lender

By: /s/ Jerry Kaye
Jerry Kaye
Director

By: _____

**WELLS FARGO BANK, N.A., CANADIAN BRANCH**, as Lender

By: /s/ Rowena Gill
Rowena Gill
Vice President
Relationship Manager

By: /s/ [illegible]

**ROYAL BANK OF CANADA**, as Lender

By: /s/ Baljit Mann
Baljit Mann
Authorized Signatory

By: /s/ Glen Barisoff
Glen Barisoff
Authorized Signatory

**CANADIAN IMPERIAL BANK OF COMMERCE**, as Lender

By: /s/ [illegible]

By: /s/ [illegible]

**CAISSE CENTRALE DESJARDINS**, as Lender

By: /s/ Oliver Sumugod
Oliver Sumugod
Vice President

By: /s/ Pierre R. Tremblay
Pierre R. Tremblay
Managing Director

**HSBC BANK CANADA**, as Lender

By: /s/ Cutis Standerwick
Cutis Standerwick
Assistant Vice President, Corporate Banking

By: /s/ Todd Patchell
Todd Patchell
Vice President, Corporate Banking

**RAYMOND JAMES FINANCE COMPANY OF CANADA LTD.**, as Lender

By: /s/ Cormac Maclochlainn
Cormac Maclochlainn
Vice President, Corporate Banking

By:

**WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**WHISTLER BLACKCOMB HOLDINGS INC.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**WHISTLER & BLACKCOMB MOUNTAIN RESORTS LIMITED**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**PEAK TO CREEK LODGING COMPANY LTD.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**BLACKCOMB MOUNTAIN DEVELOPMENT LTD.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**GARIBALDI LIFTS LTD.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**WHISTLER BLACKCOMB EMPLOYMENT CORP.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**WHISTLER/BLACKCOMB MOUNTAIN EMPLOYEE HOUSING LTD.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**WHISTLER SKI SCHOOL LTD.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**CRANKWORX EVENTS INC.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**WHISTLER HELI-SKIING LTD.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**LODGING OVATIONS CORP.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**WB LAND INC.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**WHISTLER BLACKCOMB GENERAL PARTNER LTD.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**WB/T DEVELOPMENT LTD.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**BLACKCOMB SKIING ENTERPRISES LTD.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**AFFINITY SNOWSPORTS INC.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**MR. WHISTLER'S HOLDINGS INC.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**WHISTLER ALPINE CLUB INC.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**WB LAND (CREEKSIDE SNOW SCHOOL) INC.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**1016332 B.C. LTD.**, as Guarantor

By: /s/ Jeremy Black

Name: Jeremy Black
Title: SVP & CFO

**1016563 B.C. LTD.**, as Guarantor

By: /s/ Michael Birch

Name: Michael Birch
Title: Director

**SECOND AMENDING AGREEMENT AND WAIVER**

**THIS SECOND AMENDING AGREEMENT AND WAIVER** is dated as of October 14, 2016 (this "**Agreement**") and is entered into between Whistler Mountain Resort Limited Partnership ("**Whistler LP**"), by its general partner, Whistler Blackcomb Holdings Inc. (the "**Parent GP**"), and Blackcomb Skiing Enterprises Limited Partnership ("**Blackcomb LP**" and together with Whistler LP, the "**Borrowers**"), by its general partner, Parent GP, the guarantors party hereto, each lender party hereto, and The Toronto-Dominion Bank, as administrative agent (the "**Administrative Agent**");

**WHEREAS** the Borrowers, the guarantors from time to time party thereto (the "**Guarantors**"), the lenders from time to time party thereto (the "**Lenders**"), and the Administrative Agent are parties to an Amended and Restated Credit Agreement dated as of November 12, 2013, as amended by a First Amending Agreement dated as of October 30, 2014 (as further amended, restated, amended and restated, supplemented, extended or otherwise modified from time to time, the "**Credit Agreement**");

**AND WHEREAS** 1068877 B.C. Ltd. ("**Exchangeco**"), a wholly-owned subsidiary of Vail Resorts, Inc. ("**Vail**"), Vail and Parent GP entered into an arrangement agreement dated as of August 5, 2016, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, pursuant to which the parties agreed, subject to the terms and conditions set forth therein (including approval by the shareholders of Whistler GP), that Vail will acquire, through ExchangeCo, one hundred percent of the capital stock of Parent GP pursuant to a plan of arrangement under the *Business Corporations Act* (British Columbia) (the "**Transaction**");

**AND WHEREAS** the Transaction has been approved by the shareholders of Parent GP;

**AND WHEREAS** the Transaction, once consummated, will constitute a Change of Control under the Credit Agreement, and the occurrence of a Change of Control is an Event of Default pursuant to Section 9.01(m) of the Credit Agreement;

**AND WHEREAS** the Borrowers have requested that the Lenders waive the Event of Default that will arise from completion of the Transaction (the "**Change of Control Event of Default**");

**AND WHEREAS** promptly upon completion of the Transaction, Parent GP and Exchangeco will be amalgamated and, pursuant to such amalgamation (the "**Post-Transaction Amalgamation**"), the successor entity (the "**Successor**") will be called 1068877 B.C. Ltd., and will, by operation of law, be bound by all of the covenants and obligations of Parent GP under the Credit Documents to which it is a party;

**AND WHEREAS** pursuant to Section 8.02(3)(a) of the Credit Agreement, the Post-Transaction Amalgamation is permitted so long as, prior to or contemporaneously with the consummation of such amalgamation, a number of conditions are satisfied, including without limitation, that written notice of such amalgamation has been given to the Administrative Agent at least 30 days prior thereto (the "**Advance Notice Condition - Amalgamation**");

**AND WHEREAS** the Borrowers have represented to the Administrative Agent that each of the conditions set forth in Section 8.02(3)(a) of the Credit Agreement will be satisfied prior to or contemporaneously with the Post-Transaction Amalgamation with the sole exception of the Advance Notice Condition - Amalgamation;

**AND WHEREAS** the Borrowers have requested that the Lenders agree to waive the Advance Notice Condition - Amalgamation in connection with the Post-Transaction Amalgamation;

**AND WHEREAS** in connection with or promptly following the Post-Closing Amalgamation, the Successor will, no more than 5 Business Days after the Post-Transaction Amalgamation, change its name to Whistler Blackcomb Holdings Inc. (together, the "**Post-Transaction Name Change**");

**AND WHEREAS** pursuant to Section 8.02(18) of the Credit Agreement, the Post-Transaction Name Change is permitted so long as, prior to such name change being made, the Agent has been given not less than 10 days written notice thereof (the "**Advance Notice Condition - Name Change**");

**AND WHEREAS** the Borrowers have requested that the Lenders agree to waive the Advance Notice Condition - Name Change in connection with the Post-Transaction Name Change;

**AND WHEREAS** the Borrowers have also requested that the Lenders agree to certain amendments to the Credit Agreement;

**AND WHEREAS** the Lenders have agreed to waive the Change of Control Event of Default, the Advance Notice Condition - Amalgamation and the Advance Notice Condition - Name Change, and consent to the amendments, in each case, subject to the terms and conditions contained herein;

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows:

## ARTICLE 1
## INTERPRETATION

Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement.

## ARTICLE 2
## AMENDMENTS TO CREDIT AGREEMENT

Subject to completion of the Transaction and to the satisfaction of each of the conditions set forth in this Agreement, and in reliance on the representations, warranties and agreements contained in this Agreement, the Credit Agreement is hereby amended as follows:

### 2.1 Definition of Consolidated EBITDA

Section 1.01 of the Credit Agreement is hereby amended by making the following changes to the definition of "Consolidated EBITDA":

(a) deleting the word "and" at the end of clause (D) thereof;

(b) deleting the period at the end of clause (E) thereof and replacing it with a semicolon followed by the word "and";

(c) adding the following new clause (F) thereto:

"(F) fees, costs and expenses incurred in connection with the acquisition of Parent GP by Vail Resorts, Inc."

**2.2 Definition of Excluded Holders**

Section 1.01 of the Credit Agreement is hereby amended by deleting the definition of "Excluded Holders" in its entirety and replacing it with the following:

""**Excluded Holders**" means Vail Resorts, Inc. and its Affiliates."

**2.3 Definition of GAAP**

Section 1.01 of the Credit Agreement is hereby amended by adding the following sentence to the end of the definition of "GAAP":

"Upon written notice to the Administrative Agent, the Borrowers may elect to prepare their financial statements in accordance with U.S. GAAP and such election shall be treated as a "change in GAAP" under the foregoing provisos of this definition."

**2.4 Definition of Maturity Date**

Section 1.01 of the Credit Agreement is hereby amended by deleting the definition of "Maturity Date" in its entirety and replacing it with the following:

""**Maturity Date**" means November 12, 2021, or any subsequent date to which the Maturity Date is extended in accordance with Section 2.11."

**2.5 Section 8.02(16) Change of Financial Year**

Section 8.02(16) of the Credit Agreement is hereby amended by deleting the period at the end of clause (b) thereof and replacing it with a semicolon followed by:

"provided, however, that the Borrowers may, upon written notice to the Administrative Agent, change their Financial Year to a financial year beginning on August 1 of each calendar year and ending on July 31 of the following calendar year or to any other financial year reasonably acceptable to the Administrative Agent, subject to agreement between the Borrowers and the Administrative Agent on any adjustments to this Agreement that are necessary to reflect such change in financial year (with the intention of maintaining ongoing testing of the financial covenants and other requirements in a manner that preserves the original intent thereof in light of such change to the Financial Year), and the Borrowers and the Administrative Agent are hereby authorized by the Lenders to make any such adjustments hereto as they agree upon."

## ARTICLE 3
## WAIVER

Subject to Article 6 below, the Lenders hereby waive (a) the Change of Control Event of Default, provided that the foregoing waiver is limited solely to and shall be effective only with respect to the Change of Control Event of Default, (b) compliance with the Advance Notice Condition - Amalgamation, provided that the foregoing waiver is limited solely to and shall be effective only with respect to the Post-Transaction Amalgamation, and (c) compliance with the Advance Notice Condition - Name Change, provided that the foregoing waiver is limited solely to and shall be effective only with respect to the Post-Transaction Name Change.

## ARTICLE 4
## REPRESENTATIONS AND WARRANTIES

### 4.1 Representations and Warranties

Each of the Parent GP and the Loan Parties represents and warrants that the representations and warranties contained in Section 7.01 of the Credit Agreement continue to be true and correct as if made on and as of the date hereof except for those changes to the representations and warranties which have been disclosed to and accepted by the Administrative Agent and the Lenders pursuant to section 18.01 of the Credit Agreement and any representation and warranty which is stated to be made only as of a certain date (and then as of such date). Each of the Parent GP and the Loan Parties further represents and warrants that:

(a) no Default or Event of Default has occurred and is continuing;

(b) it has all requisite corporate, partnership or other power and authority to enter into and perform its obligations under this Agreement;

(c) the execution, delivery and performance of this Agreement has been duly authorized by all corporate, partnership or other analogous actions required and this Agreement has been duly executed and delivered by it, and constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, subject only to any limitations under Laws relating to (i) bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally; and (ii) general equitable principles including the discretion that a court may exercise in granting of equitable remedies; and

(d) the execution and delivery of this Agreement and the performance of its obligations hereunder and compliance with the terms, conditions and provisions hereof, will not (i) conflict with or result in a breach of any of the material terms, conditions or provisions of (a) its partnership agreement or other constating documents, as applicable, or by-laws, (b) any Law, (c) any Material Agreement or Material Permit, or (d) any judgment, injunction, determination or award which is binding on it; or (ii) result in, require or permit (x) the imposition of any Encumbrance in, on or with respect to the Assets now owned or hereafter acquired by it (other than pursuant to the Security Documents or which is a Permitted Encumbrance), (y) the acceleration of the maturity of any material Debt binding on or affecting it, or (z) any third party to terminate or acquire any rights materially adverse to Parent GP or the applicable Loan Party under any Material Agreement.

## ARTICLE 5
## CONFIRMATION OF SECURITY

### 5.1 Confirmation of Security Documents

Each of the Parent GP, the Borrowers and the other Loan Parties hereby acknowledges and confirms that each Security Document to which it is a party:

(a) is and shall remain in full force and effect in all respects, notwithstanding the amendments and supplements to the Credit Agreement made pursuant to this Agreement, and has not been amended, terminated, discharged or released;

(b) constitutes a legal, valid and binding obligation of the undersigned, enforceable against the undersigned in accordance with its terms; and

(c) shall, together with that portion of the Security constituted thereby, continue to exist and apply to all of the Guaranteed Obligations and other obligations of the undersigned including, without limitation, any and all obligations, liabilities and indebtedness of the undersigned pursuant to Accommodations or otherwise outstanding under the Credit Agreement and the other Credit Documents to which it is a party.

**5.2 Nature of Acknowledgments**

The foregoing acknowledgments and confirmations (i) are in addition to and shall not limit, derogate from or otherwise affect any provisions of the Credit Agreement or the other Credit Documents, and (ii) do not serve as an acknowledgment by any of the Lenders or the Administrative Agent that, in the event of a future change to the constitution of any Loan Party, any material change to the terms of the Credit Agreement or the other Credit Documents or any other change of circumstances, a similar acknowledgment and confirmation need be entered into.

**5.3 Further Assurances**

The parties hereto shall from time to time do all such further acts and things and execute and deliver all such documents as are required in order to effect the full intent of and fully perform and carry out the terms of this Agreement.

## ARTICLE 6
## CONDITIONS

The effectiveness of this Agreement is subject to the satisfaction of the following conditions precedent:

(a) the Administrative Agent shall have received copies of this Agreement duly executed by all parties hereto;

(b) the Administrative Agent shall have received, on behalf of the Lenders, payment in full from the Borrowers of a consent and extension fee in the amount of C$305,000 on the amount of their respective Commitments of each Lender under the Credit Facility;

(c) each of the Borrowers shall have delivered to the Administrative Agent evidence of the corporate or partnership authority of each such party to execute, deliver and perform its obligations under the Agreement, and, as applicable, all other agreements and documents executed by such party in connection therewith, all in form and substance satisfactory to the Administrative Agent and the Lenders;

(d) no Default or Event of Default shall have occurred and be continuing; and

(e) all representations and warranties set out in the Credit Documents and this Agreement shall be true and correct as if made on and as of the date hereof except for those changes to the representations and warranties which have been disclosed to and accepted by the Administrative Agent and the Lenders pursuant to section 18.01 of the Credit Agreement and

any representation and warranty which is stated to be made only as of a certain date (and then as of such date).

## ARTICLE 7
## MISCELLANEOUS

### 7.1 Benefits

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

### 7.2 References to the Credit Agreement

Each reference to the Credit Agreement in any of the Credit Documents (including the Credit Agreement) shall be deemed to be a reference to the Credit Agreement, as amended by this Agreement.

### 7.3 Governing Law

This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

### 7.4 Credit Document

This Agreement shall be a Credit Document.

### 7.5 Limited Effect

Except as expressly provided herein, all of the terms and provisions of the Credit Agreement are and shall remain in full force and effect and are hereby ratified and confirmed by the Borrowers.

### 7.6 Counterparts

This Agreement may be executed in any number of counterparts, including by facsimile or portable document format, each of which shall be deemed to be an original.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

**WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Borrower

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Borrower

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**THE TORONTO-DOMINION BANK**, as
Administrative Agent

By: /s/ Feroz Haq

Feroz Haq
Director, Loan Syndications - Agency

By:

**THE TORONTO-DOMINION BANK**, as Lender

By: /s/ Frazer Scott

Frazer Scott
Managing Director

By: /s/ Ben Montgomery

Ben Montgomery
Director

**BANK OF AMERICA, N.A., CANADA BRANCH**,
as Lender

By: /s/ Rahim Kabani

Rahim Kabani, SVP

**BANK OF MONTREAL**, as Lender

By: /s/ Doug Mills

Doug Mills
Managing Director

By: /s/ Michelle Duncan

Michelle Duncan
Director, Corporate Finance Division

**WELLS FARGO BANK, N.A., CANADIAN BRANCH**, as Lender

By: /s/ Ben Rough

Ben Rough
VP

**ROYAL BANK OF CANADA**, as Lender

By: /s/ William Chiu

William Chiu
Authorized Signatory

**CANADIAN IMPERIAL BANK OF COMMERCE**,
as Lender

By: /s/ Michael Scott

Michael Scott
Authorized Signatory

By: /s/ Jurgen van Vuuren

Jurgen van Vuuren
Authorized Signatory

**CAISSE CENTRALE DESJARDINS**, as Lender

By: /s/ Oliver Sumugod

Oliver Sumugod
Director

By: /s/ Matt van Remmen

Matt van Remmen
Managing Director

**HSBC BANK CANADA**, as Lender

By: /s/ Todd Patchell

Todd Patchell
Vice President, Corporate Banking

By: /s/ Reid Hamilton

Reid Hamilton
Assistant Vice President, Corporate Banking

**RAYMOND JAMES FINANCE COMPANY OF CANADA LTD.**, as Lender

By: /s/ Cormac Maclochlainn

Cormac Maclochlainn
Vice President, Corporate Banking

**WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP**, by its general partner, **WHISTLER BLACKCOMB HOLDINGS INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**WHISTLER BLACKCOMB HOLDINGS INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**WHISTLER & BLACKCOMB MOUNTAIN RESORTS LIMITED**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**PEAK TO CREEK LODGING COMPANY LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**BLACKCOMB MOUNTAIN DEVELOPMENT LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**GARIBALDI LIFTS LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**WHISTLER BLACKCOMB EMPLOYMENT CORP.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**WHISTLER/BLACKCOMB MOUNTAIN EMPLOYEE HOUSING LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**PEAK TO CREEK HOLDINGS CORP.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**WB LAND INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**WHISTLER BLACKCOMB GENERAL PARTNER LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**WHISTLER SKI SCHOOL LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**CRANKWORX EVENTS INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**WHISTLER HELI-SKIING LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**WB/T DEVELOPMENT LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
SVP & CFO

**BLACKCOMB SKIING ENTERPRISES LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
SVP & CFO

**AFFINITY SNOWSPORTS INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
SVP & CFO

**WHISTLER ALPINE CLUB INC.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
SVP & CFO

**WB LAND (CREEKSIDE SNOW SCHOOL) INC.**,
as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**SUMMIT SKI LIMITED**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**1016563 B.C. LTD.**, as Guarantor

By: /s/ Jeremy Black

Jeremy Black
Chief Financial Officer

**Exhibit 10.4**

# SKI AREA AGREEMENT

# AGREEMENT

BETWEEN:

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

AND

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

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

BETWEEN:

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

AND

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 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 .imitation 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 at 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 [illegible] 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 VP 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 it 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 [illegible] common shares without par value of which [illegible] 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 | Number and Class of Shares |
|---|---|
| Hastings West Investments Ltd. | 61,904 common |
| Morell Enterprises Ltd. | 19,048 common |
| Canarim Holdings Ltd. | 19,048 common |

(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 | Gilbert C. Bradner |
| Kenneth P. Tolmie | Alan D. Laird |
| Frank Barker | Peter C. Alder |
| Peter M. Brown | William F. Sirett |
| John McLernon | |

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 or 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 or 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 tor 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 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(l)(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 at 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 [illegible] 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 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 falls 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 ski area operator in the Resort Area;

(g) if any floating charge granted by Whistler over the 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 or 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 on 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 or termination.

13.07 If the Province wishes to accept an offer solicited under this Article and the bid price specified in it 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 or 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) 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 Red 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, 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;

(ii) the rights under the Mineral Act of holders or owners of subsisting claims, [illegible] post claims other interest in or that affect, the land acquired or held under that Act or under any prior or subsequent enactment of the Province of British Columbia of like effect;

(iii) rights of holders or owners under subsisting licences or permits issued under the Petroleum and Natural Gas Act, or under any prior or subsequent enactment of the Province of British Columbia of like effect, to enter on, use and occupy the land for any purpose authorized by the Act, or the licence, permit or other authority issued under it or any prior or subsequent enactment of the Province of British Columbia to like effect;

(iv) any statutory right-of-way that burdens the Crown Land.

14.07 Where a parcel of Crown Land has been identified under section 14.03 (b) for the development of an Independent Recreation Facility in a Base Area, the instrument conveying that parcel to Whistler shall contain

(a) A restrictive covenant in form satisfactory to the Province prohibiting the land described in it from being subdivided or used for any purpose other than construction, operation and maintenance of the Independent Recreation Facility;

(b) a condition that the fee simple estate is conveyed for so long as the land described in it is used tar the purpose of constructing, maintaining and operating the Independent Recreation Facility.

14.08 Section 14.06 (a) and (b) applies to an instrument conveying Crown Land to Whistler under section 14.07.

14.09 Whistler shall execute and deliver to the Province all instruments and assurances that may be necessary to implement the provisions of section 14.07.

4.10 Notwithstanding section 14.04 (d), if a Development Scheme delivered by Whistler under section 14.04 (b) (i) does not comply with the subdivision and zoning by-laws of the Resort Municipality of Whistler, Whistler may elect to purchase the land described in the Subdivision Scheme at the price referred to in section 14.02 on the tenth anniversary of the reference date of this agreement.

14.10 If Whistler wishes to make an election under section 14.10, it shall

(a) do so by delivering written notice of its election to the Province; and

(b) pay the purchase price of the land to the Province;

not later than 30 days after the tenth anniversary of the reference date of this agreement.

## ARTICLE XV - TRANSFERS AND ENCUMBRANCES

15.01 Subject to section 15.04, Whistler shall not sell, convey, transfer, or otherwise dispose of its Interest or any tart of its Interest without the prior written consent of the Province.

15.02 The Province shall not unreasonably refuse to consent to the sale, conveyance, transfer, or disposition under section 15.01 so long as the purchaser, assignee, or transferee, in the opinion of the Province, has the financial capacity and proven management abilities and business experience to develop, operate and maintain the Recreation Improvements in accordance with industry standards for similar developments in British Columbia, this agreement and the Whistler Master Plan.

15.03 Section 15.01 does not apply to a transfer, sale or disposition referred to in section 12.02 or that does not constitute a default under section 12.01 (j) but in such event:

(a) Whistler shall give written notice of the transfer, sale or disposition to the Province;

(b) this agreement and the Tenures shall be assigned by Whistler to the partnership or limited partnership; and

(c) the Province shall consent to the assignments referred to in section 15.03 (b).

15.04 Whistler shall neither assign this agreement or its rights under it nor mortgage, pledge, charge, assign, or otherwise encumber its Interest or any part of it as security for a debt obligation without, in either case, the written consent of the Province which consent the Province shall not unreasonably refuse so long as the party to whom the Interest or any part of it is assigned, mortgaged, pledged, charged or otherwise encumbered, will, in exercising its remedies, have no greater rights than Whistler.

ARTICLE XVI - RENEWAL

16.01 Whistler may, at four year intervals, beginning on the 30th anniversary of the reference date of this agreement, but not after the 47th anniversary of that date, apply to the Province for a renewal of this agreement and the Tenures.

16.02 So long as Whistler is not in default under this agreement or the Tenures, the Province shall, within 180 days after the application under section 16.01, make a written offer to Whistler to renew this agreement on terms and conditions that are consistent with the Provincial Ski Area Policy then in effect.

16.03 Whistler shall have a period of six months from the receipt of the Renewal Offer to accept the renewal of this agreement and the Tenures on the terms and conditions contained in it.

16.04 If Whistler declines to accept the renewal of this agreement and the Tenures on the terms and conditions contained in a Renewal Offer within the time specified in section 16.03, the Province shall at any time after the 47th anniversary of the reference date of this agreement be at liberty to enter into an arrangement with any other person for the right to purchase and operate the Recreation Improvements and develop the Base Areas but in so doing the Province shall not, for a period of five years after 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 most recent Renewal Offer without first offering a renewal of this agreement and the Tenures to Whistler on those terms and conditions.

16.05 Where the Province makes an offer to Whistler under section 16.04, the offer shall, unless accepted by Whistler within six months after it is made, be deemed to have been withdrawn and no longer open for acceptance whether or not notice of the withdrawal is given.

16.06 An agreement entered into by the Province with another person under section 16.04 shall not, so far as it relates to the purchase and operation of Recreation Improvements and the purchase and development of the Base Areas, come into force until the expiration or earlier termination of this agreement.

16.07 If Whistler fails to give notice to the Province of its intention to renew prior to the 47$^{th}$ anniversary of the reference date of this agreement, the Province may at any time thereafter negotiate with any other person for the right to purchase and operate the Recreation Improvements and purchase and develop the Base Area.

## ARTICLE XVII - CONTROLLED RECREATION AREA

17.01 Subject to this agreement, the Province grants to Whistler the exclusive use, occupation and control of the Controlled Recreation Area and all authority, rights, and privileges incidental thereto including without limitation the following rights:

(a) to establish a ski area boundary within the Controlled Recreation Area for the purpose of delineating the area or areas within such boundary operated and controlled by Whistler as a ski area and in which its Recreation Improvements are located and to designate such boundary by notices, posted signs, fences or otherwise;

(b) to control, regulate and direct the movement and activities of skiers and all other persons within the Controlled Recreation Area at all times and upon such terms and conditions as Whistler may determine in its discretion;

(c) to regulate the access and entry of all persons to the Controlled Recreation Area at all times and upon such terms and conditions as Whistler may determine in its discretion;

(d) to evict persons from the Controlled Recreation Area;

(e) to regulate the use and movement of vehicles of any nature whatsoever within the Controlled Recreation Area and at all times and upon such terms and conditions as Whistler may determine in its discretion;

(f) to regulate the landing of aircraft within the Controlled Recreation Area at all times and upon such terms and conditions as Whistler may determine in its discretion.

17.02 Whistler may exercise the authority, rights and privileges set out in section 17.01 in any manner it may determine in its discretion provided that nothing contained in this agreement shall confer on Whistler the authority to arrest or detain any person.

17.03 Whistler shall use reasonable effort to ensure that skiers and other persons permitted by it to use the Controlled Recreation Area:

(a) do not enter into areas within the Controlled Recreation Area that are in Whistler's opinion unsafe due to existing or potential hazards; and

(b) do not carry on activities within the Controlled Recreation Area that are prohibited under the Land Act;

provided that this section shall not impose on Whistler any obligation to make safe any area or areas within the Controlled Recreation Area or to remove any existing hazards within such areas except to the extent it is required to do so under its operating covenants set forth in Schedule "I".

17.04 Whistler's duty of care to persons entering the Controlled Recreation Area and its liability arising from its use, occupation and control of the Controlled Recreation Area shall not exceed that of an occupier under the Occupiers Liability Act.

## ARTICLE XVIII - COVENANTS OF THE PROVINCE

18.01 The Province shall:

(a) not grant to any person, corporation, municipality, governmental agency or Crown corporation title to or any right to use, occupy, lease or acquire in any manner whatsoever any part of the Resort Area or, subject to the existing Timber Licenses Numbers 8080P, 8090P, the area designated on page one of Schedule "A" as "Area for Further Expansion of Resort Area", without the written consent of Whistler;

(b) assure to Whistler vehicular access to

(i) the north side Lift system above the North Side Base,

(ii) the land owned by the Province above the Gondola Base,

(iii) such other access to the Resort Area that may be necessary.

18.02 The Province shall not, without the prior written consent of Whistler, divulge, reveal, make known or deliver to any person, firm or corporation, or publish or otherwise disclose

(a) the Financial Information or any other financial statement, balance sheet or financial report required to be delivered by Whistler to the Province under this agreement;

(b) this agreement or any provision of it.

18.03 The Province shall not permit employee access to the information referred to in section 18.02 (a) except to

(a) employees who are senior governmental employees; and

(b) professional consultants retained by the Province who undertake to maintain the confidentiality thereof.

## ARTICLE XIX - ARBITRATION

19.01 In the event a dispute arises between the parties concerning

(a) whether or not a Renewal Offer made by the Province to Whistler under Article XVI is consistent with the Provincial Ski Area Policy in effect at the time the Renewal Offer is made; or

(b) the amount of the Appraised Market Value of a Recreation Improvement under Article XIII;

either party may refer the matter in dispute to a single arbitrator for determination pursuant to the Arbitration Act.

19.02 Notwithstanding the Arbitration Act

(a) the costs of the reference and the award shall be borne equally by the parties;

(b) the arbitrator shall only have jurisdiction to determine the matter referred to him under section 19.01 and shall not have any power to award damages or grant interim or permanent orders for equitable relief.

19.03 Where a dispute is referred to an arbitrator under this Article, each party shall have the right to

(a) representation by counsel;

(b) introduce written and oral evidence;

(c) submit written argument;

(d) insist upon transcripts of oral proceedings;

(e) reasons for judgment;

(f) pre-arbitration proceedings by way of discovery of witnesses and documents; and

(g) the examination of witnesses under oath.

ARTICLE XX - MISCELLANEOUS

20.01 Whistler and the Province shall perform such further acts and execute all further documents as may be required from time to time to give effect to the intent to this agreement.

20.02 If any term, covenant or condition of this agreement or the application of it to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this agreement or the application of that term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this agreement shall be valid and enforced to the fullest extent permitted by law.

20.03 Nothing in this agreement constitutes Whistler the agent, joint venturer or partner of the Province, or gives Whistler any authority or power to hind the Province in any way.

20.04 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 and any condition or cause beyond the reasonable control of whistler other than natural reasons, Whistler is delayed in performing any obligation under this agreement, then the time for completion of performance of that obligation shall be extended by a period of time equal to the period of time of the delay so long as

(a) Whistler gives written notice to the Province within 30 days after the commencement of the delay setting forth the nature of it and a revised development schedule; and

(b) Whistler diligently attempts to remove the delay,

20.05 For the purpose of section 20.04, the inability of Whistler to obtain financing or the funds necessary for the construction of a Recreation Improvement is not a cause beyond the reasonable control of Whistler.

20.06 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 contemplated herein.

20.07 Any notice required to be given by either party to the other shall be deemed to be well and sufficiently given if mailed by prepaid registered mail in Canada or delivered at the address of the other as follows:

(a) to the Province:

Regional Director,
Ministry of Lands, Parks and Housing
4240 Manor Street,
Burnaby, British Columbia V5G 1B2

(b) to Whistler:

602– 325 Howe Street,
Vancouver, B.C.
V6C 1[illegible]

or at such address as the other may from time no direct in writing, and any such notice shall be to have been received if delivered on the day delivery, and if mailed, 48 hours after the time of mailing except in the case of mail interruption in which case actual receipt is required.

## ARTICLE XXI - INTERPRETATION

21.01 In this agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

21.02 The headings of Articles are inserted for convenience of reference only and shall not be construed as forming part of this agreement.

21.03 In the event of any inconsistency between the terms and conditions of any Tenure and this agreement, this agreement applies.

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

SIGNED, SEALED AND DELIVERED on behalf of Her Majesty the Queen in right of the Province of British Columbia by a duly authorized representative of the Minister of Lands, Parks and Housing in the presence of:

/s/ J. P. MALCOLM McAVITY
J.P. Malcolm McAvity
Barrister & Solicitor
Ministry of Attorney General

/s/ John Johnston

The Common Seal of Whistler Mountain Ski Corporation was hereunto affixed in the presence of:

/s/ [illegible]

Authorized Signatory

/s/ [illegible]

Authorized Signatory

THIS AGREEMENT dated for reference the 31st day of March, 1988, but actually executed the [illegible] day of February, 1989.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the Minister Responsible for Crown Lands, Parliament Buildings, Victoria, British Columbia V8V 1X4,

(hereinafter called the “Province”)

OF THE FIRST PART

AND:

WHISTLER MOUNTAIN SKI CORPORATION, incorporation 4339160, a Company duly organized under the laws of British. Columbia and having its registered office at 2000 700 West Georgia Street, Vancouver, British Columbia V7Y 1A8,

(hereinafter called “WMSC”)

OF THE SECOND PART

WITNESS THAT WHEREAS:

A. The Province and Galway Enterprises (1980) Ltd., amalgamation 4221462 (formerly called. Whistler Mountain Ski Corporation) (hereinafter called “Galway”) entered into an agreement dated for reference the 30th day of September, 1982 (the “Development Agreement”);

B. Galway assigned the Development Agreement, any Tenure (as defined in the Development Agreement) and its Interest (as defined in the Development Agreement) to WMSC pursuant to an assignment agreement (the “Assignment”) dated March 23, 1988;

C. The prior written consent of the Province was required to the Assignment; and

D. The Province provided its consent to the Assignment pursuant to a consent dated March 23, 1988 subject to the condition that WMSC enter into an assignment and assumption agreement in the form attached thereto.

E. On March 31, 1988 all the shares in the capital of WMSC were sold to Marin Investments Limited and Bartrac Holdings Ltd. which sale was consented to by the Province pursuant to a consent dated March 31, 1988 subject to the condition that WMSC execute a modification agreement as described therein; and

F. The parties now wish to enter into this agreement in order to satisfy the conditions set forth in the consents ‘described in Recitals D and E hereto.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged by both the Province and WMSC, the parties agree as follows:

ARTICLE 1 ASSUMPTION

1.01 WMSC covenants and agrees to assume and be bound by all terms, conditions, obligations and agreements of Galway under the Development Agreement and any Tenures issued thereunder.

ARTICLE II CONSENT

2.01 The Province hereby consents to the execution and delivery by Galway of the Assignment.

ARTICLE III WARRANTIES AND REPRESENTATION OF GALWAY

3.01 WMSC warrants and represents to the Province that:

(a) WMSC:

(i) is a corporation duly formed under the laws of the Province of British Columbia and has filed all necessary documents under such law and has complied with all requirements of the Company Act (British Columbia);

(ii) has the 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 proceedings; and

(iii) 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 wherein:

(I) the authorized capital of WMSC is 51,000,000 shares of which 30,000,000 are preferred shares with a par value of $1.00 each and 1,000,000 are common shares without par value;

(II) the following Companies are the only beneficial owner of shares in the capital of WMSC of the number and class set opposite its name, free and clear of all liens, charges, options and encumbrances;

| Name | Number and Class of Shares |
|---|---|
| Whistler Mountain Holdings Limited | 100,011 common shares without par value |
| Bartrac Holdings Ltd. | 10,235.000 Series 1 Preferred shares with a par value of $1.00 each |
| Marin Investments Limited | 10,235,000 Series 1 Preferred shares with a par value of $1.00 each |

(III) there are no outstanding securities of WMSC 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 the company; and

(IV) the directors and officers of the WMSC are as follows:

Directors

Frank D. Barker
Charles E. Young
W. Maurice Young

Officers:

W. Maurice Young President and Chief Executive Officer
David F. Balfour Vice-President Finance & Administration and Secretary
A.W. (Sandy) Boyd Vice-President, Guest Services
Werner Defilla Vice-President, Food and Beverage
Robert Dufour Vice-President, Marketing
Jane MacPhail Vice-President, Sports Shop

(b) Whistler Mountain Holdings Limited:

(i) is a corporation duly formed under the laws of the Province of British Columbia and has filed all necessary. documents under such law and has complied with all requirements of the Company Act (British Columbia);

(ii) has the 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 proceedings; and

(iii) 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 wherein:

(I) the. following companies are the only beneficial owners of shares in the capital of Whistler Mountain Holdings Limited, free and clear of all liens, charges, options and encumbrances:

Name

Marin Investments Limited

Bartrac Holdings Ltd.

(II) there are no outstanding securities of Whistler Mountain Holdings Limited 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 the company; and

(III) the directors of Whistler Mountain Holdings Limited are as follows:

Directors

Frank Barker

Charles E. Young

(c) Marin Investments Limited:

(i) is a corporation duly formed under the laws of the Province of British Columbia and has filed all necessary documents under such law and has complied with all requirements of the Company Act (British Columbia);

(ii) has the 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 proceedings; and

(iii) 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 wherein:

(I) Mary Margaret Young, her spouse, her former spouse and her heirs are the only beneficial owners of voting shares in the capital of Marin Investments Limited; and

(II) the directors and officers of Karin Investments Limited are as follows:

Directors:
Charles E. Young
Frederick M. Young
Julia Mary Young
Mary M. Young

Rory B. Young
W. Maurice Young

Officers:

Charles E. Young, President
Julia Mary Young, Secretary
W. Maurice Young, Chairman/C.E.O.

(d) Bartrac Holdings Ltd.:

(i) is a corporation duly formed under the laws of the Province of British Columbia and has filed all necessary documents under such law and has complied with all requirements of the Company Act (British Columbia);

(ii) has the 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 proceedings; and

(iii) 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 wherein:

(I) Joanne E. Barker, her spouse, her former spouses and her heirs are the only beneficial owners of voting shares in the capital of Bartrac Holdings Ltd.; and

(II) the directors and officers of Bartrac Holdings Ltd. are as follows:

Directors:

Frank D. Barker
Geoffrey J. Barker
Joanne E. Barker
William T. Barker

Officers:

Joanne E. Barker Chairman of the Board and President
William T. Barker Vice-Chairman of the Board and Secretary
Frank D. Barker Vice-President, Finance
Geoffrey J. Barker Vice-President, Properties

(e) All of the persons mentioned above are the only beneficial owners of an interest in WMSC and such interest is free and clear of all liens, charges, options and encumbrances; and

(f) There are no outstanding agreements which may give another person an interest in WMSC except as expressly provided above.

ARTICLE IV AMENDMENTS TO DEVELOPMENT AGREEMENT

4.01 The Province and WMSC agree that the Development Agreement is hereby amended as follows:

(a) by deleting subsection 12.01 and substituting therefore the following:

"(i) if, without the consent of the Province:

(I) more than 50% of the issued and outstanding voting shares in the capital of Whistler cease to be owned directly or indirectly by either Marin Investments Limited ("Marin") or Bartrac Holdings Ltd. ("Bartrac") individually or both of them together; or

(II) 100% of the issued and outstanding voting shares in the capital of Marin cease to be beneficially owned by one or of by a group comprising all or some of Mary Margaret Young, her spouse, children, grandchildren or other heirs and their respective spouses or former spouses; or

(III) 100% of the issued and outstanding voting shares in the capital of Bartrac cease to be beneficially owned by one of or by a group comprising all or some of Joanne E. Barker, her spouse, children, grandchildren or other heirs and their respective spouses or former spouses;"

(b) by deleting subsection 12.01(j) and substituting therefore the following:

"(j) if, without the Consent of the Province, Whistler is amalgamated with another company or is reorganized and Marin Investments Limited and/or Bartrac Holdings Ltd. do not acquire directly or indirectly through Whistler Mountain Holdings Limited at least 51% of the issued and outstanding voting shares in the capital of the amalgamated or reorganized company;"

(c) by deleting section 12.02 and substituting therefore the following:

"12.10(k) does not apply where Whistler transfers, sells or disposes of its Interest to a partnership or limited partnership in which;

(a) either Marin Investments Limited ("Marin") and Bartrac Holdings Ltd. ("Bartrac") is a partner; or

(b) Whistler Mountain Holdings Limited is a partner, provided either one or both of Marin and Bartrac owns 51% of the issued and outstanding shares of Whistler Mountain Holdings Limited, and pursuant to the partnership agreement Marin and Bartrac or either of them, either directly or indirectly through Whistler Mountain Holdings Limited control the business and affairs of the partnership.";

(d) by renumbering section 12.03 as section 12.05;

(e) by adding as section 12.03 the following:

"12.03 Section 12.01(i)(II) does not apply if Marin then holds directly or indirectly less than 50% of the issued and outstanding voting shares in the capital of Whistler provided that Bartrac then holds directly or indirectly more than 50% of the issued and outstanding voting shares in the capital of Whistler.";

(f) by adding as section 12.04 the following:

"12.04 Section 12.01(i)(III) does not apply if Bartrac then holds directly or indirectly less than 50% of the issued and outstanding voting shares in the capital of Whistler provided that Marin. then holds directly or indirectly more than 50% of the issued and outstanding voting shares in the capital of Whistler."; and

(g) by deleting subsection 20.07(b) and substituting therefore the following:

"(b) to Whistler:

2100 Pacific Centre South
P.O. Box 10021
700 West Georgia Street
Vancouver, B.C.
V7Y IA8".

4.02 Except as expressly amended by this agreement, the Development Agreement continues in full force and effect.

ARTICLE V MISCELLANEOUS

5.01 This Agreement shall enure to the benefit of the parties hereto and their respective successors and assigns.

5.02 This Agreement may not be assigned by WMSC except in accordance with the provisions of the Development Agreement.

5.03 This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

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

| | | |
|---|---|---|
| SIGNED, SEALED AND DELIVERED by the Minister Responsible for Crown Lands or his duly authorized representative on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:<br><br>/s/ [illegible] | ) | /s/ [illegible] |
| The Common Seal of WHISTLER MOUNTAIN SKI CORPORATION was hereunto affixed in the presence of:<br><br>/s/ [illegible]<br><br>Authorized Signatory<br><br>/s/ [illegible]<br><br>Authorized Signatory | ) | (C/S) |

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 2nd day of January, 1990.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister.

(the “Province”)

OF THE FIRST PART

AND:

WHISTLER MOUNTAIN SKI CORPORATION, (Incorporation No, 339160) a Company organized under the laws of British Columbia, having its registered and records office at 2000 - 700 West Georgia Street, British Columbia, V7Y 1A8

(“Whistler”)

OF THE SECOND PART

WHEREAS:

A. The Province and Whistler entered into an Agreement (the “Development Agreement”) dated the 30th day of September, 1982 in respect of the operation and development of ski facilities on whistler Mountain, British Columbia;

B. The Development Agreement has been amended by the agreement in writing between the parties and dated March 31, 1988:

C. The parties have agreed to further amend the Development Agreement with respect to the purchase and development of the Base Areas (as that term is defined in the Development Agreement) on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid by Whistler to the Province (the receipt and sufficiency of which is hereby acknowledged) the parties covenant and agree as follows:

1. The Development Agreement is hereby amended as follows:

   (a) by adding to Section 1.01 the following definitions:

      (i) “Crown Lot” means the land legally described as Lot A. Except part in Plan 22955, District Lot 4977, Group 1, New Westminster District, Plan 25703 and shown outlined in red on the plan attached hereto as Schedule “K”;

(ii) “Crown Lot Access Road” means the road shown outlined in yellow. across the Crown Lot on the plan attached as Schedule “K” or, in the event the Resort Municipality of Whistler. does not approve development of the Crown Lot in accordance with the preliminary scheme of subdivision outlined in Schedule “K”, then at some other location across the Crown Lot as may be agreed by both parties;

(iii) “Crown Lot Services” means the road and service connections. for the Crown Lot along with the Crown Lot Access Road set out and identified in Schedule “K” or, in the event the Resort Municipality of Whistler does not approve development of the Crown Lot in accordance with the preliminary scheme of subdivision outlined in Schedule -4”, then the road and service connections set out and identified in Schedule “K” shall be installed and constructed consistent with the revised location of the crown Lot Access Road;

(iv) “Lot 1” means the land legally described as Parcel Identifier 016-312-805, Lot 1, District Lot. 4979, Group 1, New Westminster District, Plan 22955; and shown outlined in red on the plan attached as Schedule “V;

(v) “Site. 4” means that parcel of land shown on Schedule “B” under the designation Site 4 and which is further described in Table 2.02 of Schedule “C”;

(vi) “Site A” means collectively Lot 1, Site 3 and Site 4; and

(vii) “Remainder of Site A” means collectively Site 3 and Site 4;

(b) by deleting the definition of “Base Areas” in Section 1.01 and substituting therefor the following:

“Base Areas” means:

(i) any area designated as such in Schedule “B” except any parts of such Base Areas owned by Whistler;

(ii) Lot 1; and

(iii) any other areas designated as Base Areas in an amendment to the Whistler Master Plan;

(c) by deleting the definition of “Site” in Section 1.01 and substituting therefor the following:

“Site” means any one of Sites 1, 2, 3, 4, 5, 6, A and Lot 1;

(d) by deleting Section 14.02(a) and substituting therefor the following:

"14.02.(a) Sites 1, 2, A, S 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 A - $130,000 subject to Sections 14.12, 14.13 and 14.14
Site 5 - $212,000
Site 6 - $92,000; and";

(e) by deleting from Section 14.03(a) the phrase "Site 3" and substituting therefor the phrase "Site A";

(f) by adding to Article XIV the following:

"14.12 Notwithstanding Section 14.03(a) but otherwise in accordance with the balance of Article XIV, whistler shall be entitled to purchase Site A from the Province in two phases as follows:

(a) Lot 1 for the purchase price of $130,000 on or before December 31, 1990; and

(b) provided that Whistler:

(i) completes the purchase Lot 1; and

(ii) completes its obligations pursuant to. Section 14.13.

the Remainder of Site A for the sum of $1.00.

14.13 Following the completion of the purchase by whistler of Lot 1 but prior to the earlier

(a) the conveyance of the Remainder of Site A to Whistler; or

(b) commencement of development of the Crown Lot by the Province or its assignee.

Whistler shall, to the reasonable satisfaction of the Province, construct and install at its sole cost and expense the Crown Lot Access Road and the Crown Lot Services, or provide a letter of credit to the Province or its assignee in the amount of $553,000.

14.14 Prior to the conveyance of the Remainder of Lot A to Whistler the Province or its assignee in their sole discretion may elect to develop the Crown Lot and in which case Whistler may construct and install the Crown Lot Access Road and the. Crown Lot Services in accordance with Section 14.13 not later than:

(a) 150 days following receipt by whistler of the Province's or its assignee's written notice of the election pursuant to this Article; or

(b) July 31 next following receipt by Whistler of the Province's or its assignee's written notice of the election pursuant to this Article in the event such notice is received during the period November 1 until March 1 in the year next following.

Whistler shall within 30 days of receipt of the notice indicate in writing to the Province or its assignee whether or not it intends to construct and install the Crown Lot Access Road and the Crown Lot Services.

14.15 If Whistler:

(a) elects not to construct and install the Crown Lot Access Road or the Crown Lot Services pursuant to Section 14.14;

(b) fails to provide notice of its intention pursuant to Section 14.14; or

(c) fails to complete the construction and installation of the Crown Lot Access Road or the Crown Lot Services to the reasonable satisfaction of the Province,

the Province or its. assignee may, but it is under no obligation to do so, construct and install or complete the. construction and installation as the case may be. of the Crown Lot Access Road and the Crown Lot Service and in which case the cost and expense for constructing and installing or completing the construction and installation of the Crown Lot Access Road and the Crown Lot Services including 'a reasonable allowance for administrative overhead shall be the purchase price for the Remainder of Lot A. The purchase price for the Remainder of Lot A shall not exceed $553.000.00 provided the Resort Municipality of Whistler approves development of the Crown Lot in accordance with the preliminary scheme of subdivision outlined in 'Schedule "V'. All records pertaining to the cost of constructing and installing the Crown Lot Access. Road and the Crown Lot Services shall be provided to Whistler.

14.16. Whistler covenants and agrees that the cost and expense of constructing and installing the Crown Lot Access Road: or the Crown Lot Services shall not be recovered from the Province or its assignee- pursuant to the Municipal Act the Resort Municipality of Whistler Act or otherwise.

14.17 The Province covenants and agrees that any development of the Crown Lot by it or its assignee will not physically effect the ability of Whistler to develop or access the Remainder of Lot A.";

(g) by amending Schedule "C", Table 1.02 by deleting the phrase "1, 2, 3, 5 and 6" opposite Base Area Phase I and substituting therefor the phrase "1, 2, A, 5 and 6";

(h) by amending Schedule "C", Table 2.01 as follows:

(i) by adding Lot 1 as a new Site and inserting the following information in the corresponding columns set out in Table 2.01:

"Lot 1; Lot 1, D.L. 4979, Plan 22955; Gondola Area; 1.479;"; and

(ii) by deleting the phrase “(maintenance area)” from Site 4;

(i) by amending Schedule “C”, Table 2.02 as follows:

(i) by adding Lot 1 as a new Site and inserting the following information in the corresponding columns set out in Table 2.02:

“Lot 1; Lot 1, D.L. 4979, Plan 22955: Single Family Residential: 1.479;”; and

(ii) by deleting the phrase “Maintenance Area” opposite Site 4 and substituting therefor the phrase “Single Family Residential”; and

(j) by attaching as Schedule “J” and Schedule “K” to the Development Agreement the schedules attached hereto as Appendix “i” and “ii” respectively.

2. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

3. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

4. This Agreement shall enure to the benefit of and be binding upon the successors and Assigns of the parties hereto.

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

| | | |
|---|---|---|
| SIGNED, SEALED AND DELIVERED by a duly authorized representative of the Ministry of Crown Lands on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:<br>/s/ [illegible]<br>Name<br>401-4603 Kingsway<br>Address<br>Burnaby, B.C.<br>Manager, Development and Marketing, Ministry of Crown Lands<br>Occupation | ) | /s/ [illegible] |
| THE COMMON SEAL OF WHISTLER MOUNTAIN SKI CORPORATION was hereunto affixed in the presence of:<br>/s/ [illegible]<br>Title: President<br>/s/ [illegible]<br>Title: Director | ) | C/S |

**AMENDMENT TO DEVELOPMENT AGREEMENT**

This Agreement made as of the 14th day of March, 1997

BETWEEN:

HER MAJESTY THE MEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Environment, Lands and Parks

(the "Province")

OF THE FIRST PART

AND:

WHISTLER MOUNTAIN SKI CORPORATION, a company organized under the laws of British Columbia and having an office at Suite 800 - 200 Burrard Street, Vancouver, British Columbia V6C 3L6

("Whistler")

OP THE SECOND PART

WHEREAS:

A. The Province and Galway Enterprises (1980) Ltd. (Inc. No. 221462) ("Galway"), then named Whistler Mountain Ski Corporation, entered into a Ski Area Development Agreement dated for reference the 30th day of September, 1982 (the "Original Development Agreement") in respect of the development of skiing facilities on Whistler Mountain, British Columbia;

B. Galway assigned the Original Development Agreement to Whistler (then Inc. No. 339160 and now amalgamated to Inc. No. 474031) by assignment agreement dated March 23, 1988 and Whistler assumed the obligations of Galway pursuant to the Original Development Agreement;

C. The Original Development Agreement has been amended by agreements in writing between the parties dated March 31, 1988 and January 2, 1990 (the Original Development Agreement as amended is hereafter referred to as the "Development Agreement"); and

D. The parties hereto have agreed to further amend the Development Agreement on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the sum of One Dollar ($1.00) and other good and valuable consideration now paid by Whistler to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. The Province and Whistler agree that the Development Agreement is amended as follows:

(a) by amending section 1.01 thereof by adding the following immediately after the definition of “Hiking Trail” on page 4:

““Holdings” means Whistler Mountain Holdings Limited;”;

(b) by amending section 1.01 thereof by adding the following immediately after the definition of “Interest” on page 5:

““Intrawest” means Intrawest Corporation;”;

(c) by amending section. 1.01 thereof by adding the following immediately after the definition of “Parking Facility” on page 5:

“ “Partnership” means a British Columbia limited partnership that may be formed for the purpose of acquiring,, owning and operating Whistler’s Interest as contemplated in section 15.05 and in compliance with paragraphs 12.01(i)(iii) and 12.01(i)(v);”;

(d) by amending Article VII thereof by adding the following immediately after section 7.02:

“7.03 Whistler will at least once each year and from time to time at the written request of the Minister, provide the Minister with such detail as the Minister may reasonably require as to the identity of the holders of voting shares in Whistler, Holdings, and Intrawest and, if the Interest has been assigned to the Partnership as permitted by section 15.05, the identity of the holders of limited partnership interests in the Partnership.

7.04 Whistler will cause Intrawest to take reasonable steps to provide the Minister with 30 days prior notice of the issuance or transfer of voting shares in Intrawest which would result in a change in voting control of Intrawest and provide the Minister with such detail as the Minister may reasonably require as to the identity of the party or parties who will acquire voting control of Intrawest, provided that a failure by Intrawest to so notify the Minister as a result of an honest error on the part of Intrawest or circumstances beyond the control of Intrawest shall not constitute a default under this agreement as long as Intrawest promptly advises the Minister thereof upon becoming aware of such error or circumstances.”;

(e) by amending subsection 12.01(e) thereof by adding at the end the words “(except by a mortgagee consented to by the Province pursuant to section 15.04)”;

(f) by amending subsection 12.01(g) thereof by adding at the end the words “(except for enforcement by a mortgagee consented to by the Province pursuant to section 15.04)”;

(g) by amending subsection 12.01(h) thereof by adding at the end the wards “(except where the other party is a mortgagee consented to by the Province pursuant to section 15.04)”;

(h) by deleting subsections 12.01(i) and (j) thereof and substituting therefore the following:

"(i) if, without the consent of the Province:

(i) Intrawest ceases to be the registered and beneficial owner of 100% of the issued and outstanding voting shares of Holdings; or

(ii) Holdings ceases to be the registered and beneficial owner of at least 50% of the issued and outstanding voting shares of Whistler,

provided that the foregoing shall not apply if Whistler is amalgamated or reorganized in compliance with subsection 12.01 (j.1) and, provided that Intrawest may at any time elect to eliminate the participation of Holdings in the chain of ownership contemplated above so long as:

(iii) if Holdings is eliminated then it shall be a Default if, without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold, Intrawest ceases to be the registered and beneficial owner of at least 50% of the issued and outstanding voting shares of Whistler;

(j) if the Interest has been assigned to the Partnership as permitted by section 15.05 then if:

(i) Intrawest ceases to beneficially own, directly or indirectly, at least 50% of the value of the Partnership; or

(ii) the sole general partner of the Partnership ceases to be Whistler;

(j.1) if without the consent of the Province, Whistler is amalgamated with another company or is reorganized and Intrawest does not acquire or at any time thereafter ceases to hold, directly or indirectly, the beneficial ownership of at least 50% of the issued and outstanding voting shares in the capital of the amalgamated or reorganized company;";

(i) by deleting section 12.02 thereof and substituting therefore the following:

"12.02 Subsection 12.01(k) does not apply where Whistler transfers, sells or disposes of its Interest to the Partnership as permitted under section 15.05.";

(j) by amending section 15.01 thereof by adding immediately after the words "Subject to section 15.04" in line one thereof the words "and 15.05";

(k) by amending section 15.04 thereof by adding at the beginning thereof the words "Subject to section 15.05,"; and

(l) by amending Article XV thereof by adding immediately after section 15.04, the following:

"15.05 Whistler may assign its Interest to the Partnership upon the Partnership delivering to the Minister a covenant in favour of the Province to observe and perform all of the obligations of Whistler under this agreement. In such event, reference to the corporate entity of Whistler in this agreement shall thereafter be deemed to refer to the Partnership, other than references to Whistler contained in subsections 7.03 and 12.01(i).".

2. The Province and Whistler acknowledge and agree that reference to "12.01" in line one of subsection 4.01(a) of the Amendment to Development Agreement dated March 31, 1988 was intended to be and is hereby deemed to mean "12.01(i)".

(a) Whistler:

(i) is a corporation duly formed under the laws of the Province of British Columbia and has filed all necessary documents under such law and has complied will all requirements of the Company Act (British Columbia);

(ii) has the 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 proceedings; and

(iii) 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 wherein:

(I) the authorized capital of Whistler is 51,000,000 shares of which 50,000,000 are Preferred shares with a par value of $1.00 each of which 32,970 are designated as Series 1 Preferred shares and 1,000,000 are Common shares without par value;

(II) the following company is the only beneficial owner of shares in the capital of Whistler of the number and class set opposite its name, free and clear of all liens, charges, options and encumbrances other than in favour of The Toronto-Dominion Bank:

| Name | Number and Class of Shares |
|---|---|
| Whistler Mountain Holdings Limited | 100,021 common shares without value par |

(III) 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; and

(IV) the directors and officers of Whistler axe as follows:

Directors:

Joseph S. Houssian
Hugh R. Smythe
Daniel O. Jarvis
Douglas J. Forseth

Officers:

| | |
|---|---|
| Joseph S. Houssian | Chairman |
| Douglas J. Forseth | President |
| Daniel O. Jarvis | Executive Vice President and Chief Financial Officer |
| Hugh R. Smythe | Executive Vice President |
| John Currie | Vice President |
| Ross J. Meacher | Corporate Secretary |
| David Blaiklock | Treasurer |
| Norma Rattray | Controller; and |

(b) Whistler Mountain Holdings Limited:

(i) is a corporation duly formed under the laws of the Province of British Columbia and has filed all necessary documents under such law and has complied with all requirements of the Company Act (British Columbia); and

(ii) is a non-reporting company and is in good standing with respect to the Ming of returns in the office of the Registrar of Companies of British Columbia wherein:

(I) the following company is the only beneficial owner of shares in the capital of Whistler Mountain Holdings Limited, free and clear of all liens, charges, options and encumbrances other than in favour of The Bank of Nova Scotia:

Name

Intrawest Corporation

(II) there are no outstanding securities of Whistler Mountain Holdings Limited 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 Mountain Holdings Limited; and

(III) the directors of Whistler Mountain Holdings Limited are as follows:

Directors:

Joseph S. Houssian
Daniel O. Jarvis
Hugh R. Smythe.

4. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

5. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

6. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

SIGNED by a duly authorized representative of the MINISTER OF ENVIRONMENT, LANDS AND PARKS on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ S. Blair Paterson
Name

1001 Douglas Street, Victoria, B.C. V8V 1X4
Address

Barrister & Solicitor, Ministry of Attorney General
Occupation

/s/ [illegible]
Authorized Representative of the Minister of Environment, Lands and Parks

WHISTLER MOUNTAIN SKI CORPORATION

Per: /s/ [illegible]

Per:_____

**AMENDMENT TO DEVELOPMENT AGREEMENT**

This Agreement made as of the 31st day of October, 1997

BETWEEN:

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

(the "Province")

OF THE FIRST PART

INTRAWEST RESORT CORPORATION, a company amalgamated under the laws of Canada and having an office at Suite 800 - 200 Burrard Street, Vancouver, British Columbia, V6C 3L6

("IRC")

OF THE SECOND PART

WHEREAS:

A. The Province and Galway Enterprises (1980) Ltd. (Inc. No. 221462) ("Galway"), then named Whistler Mountain Ski Corporation, entered into a Ski Area Development Agreement dated for reference the 30th day of September, 1982 (the "Original Development Agreement") in respect of the development of skiing facilities on Whistler Mountain, British Columbia;

B. Galway assigned the Original Development Agreement to Whistler Mountain Ski Corporation ("WMSC") (then Inc. No. 339160 and subsequently amalgamated to Inc. No. 474031) by assignment agreement dated. March 23, 1988 and WMSC assumed the obligations of Galway pursuant to the Original Development Agreement;

C. The Original Development Agreement has been amended by agreements in writing dated March 31, 1988, January 2, 1990 and March 14, 1997 (the Original Development Agreement as amended is hereafter referred to as the "Development Agreement");

D. Effective October 31, 1997, WMSC amalgamated pursuant to the provisions of the Canada Business Corporation Act with Whistler Mountain Holdings Limited, Intrawest Resort Corporation, Blackcomb Mountain Properties Ltd., Blackcomb Skiing Enterprises Ltd., IW Resorts Ltd. and Mont Ste. Marie (1984) Inc. and continued as one corporation under the name Intrawest Resort Corporation; and

E. The parties hereto have agreed to further amend the Development Agreement on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and other good and valuable consideration (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. The Province and IRC agree that the Development Agreement is amended as follows:

(a) by amending section 1.01 thereof by deleting the definition of “Holdings”; -

(b) by amending section 1.01 thereof by deleting the definition of “Intrawest” and replacing it with the following:

“ “Intrawest” means Intrawest Corporation, a company amalgamated under the laws of British Columbia under number 200486;”

(c) by amending section 1.01 thereof by adding the following immediately after the definition of “Intrawest”:

““IRC” means Intrawest Resort Corporation, a company amalgamated under the laws of Canada under number 343030-8;”;

(d) by amending section 1.01 thereof by deleting the definition of “Partnership” and replacing it with the following:

““Partnership” means Whistler Mountain Resort Limited Partnership, a British Columbia limited partnership registered under number 223832-97; “;

(e) by amending section 7.03 thereof by deleting “Whistler” in line one and the words “Whistler, Holdings,” in line five and replacing them in each case with “IRC”;

(f) by deleting subsections 12.01(i), (j) and (j.1) thereof and substituting therefore the following:

“(i) if, without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold, Intrawest ceases to be the registered and beneficial owner of at least 50% of the issued and outstanding voting shares of IRC;

(j) if the Interest has been assigned to the Partnership as permitted by section 15.05 then if, without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold:

(i) Intrawest ceases to beneficially own, directly or indirectly, at least 50% of the value of the Partnership; or

(ii) IRC ceases to be the sole general partner of the Partnership;

(j.1) if, without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold, IRC is amalgamated with another company or is reorganized and Intrawest does not acquire or at any time thereafter ceases to hold, directly or indirectly, the beneficial

ownership of at least 50% of the issued and outstanding voting shares in the capital of the amalgamated or reorganized company;";

(g) by amending section 15.05 thereof by deleting the words ", other than references to Whistler contained in subsections 7.03 and 12.01(j)"; and

(h) by deleting subsection 20.07(b) thereof and substituting therefore the following:

"(b) to Whistler:

Intrawest Resort Corporation
Suite 800 - 200 Burrard Street
Vancouver, British Columbia V6C 3L6

Attention: President".

2. IRC warrants and represents to the Province that as of the date of this Agreement:

(a) IRC:

(i) is a corporation duly amalgamated under the Canada Business Corporations Act (the "CBCA"), has not been discontinued or dissolved under such Act and has sent to the Director under the CBCA all documents required to be sent to him under the CBCA;

(ii) will, within 30 days after the date hereof, be duly registered as an extra-provincial corporation under the laws of the Province of British Columbia, and be in good standing with respect to the filing of returns;

(iii) has the 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; and

(iv) is a non-reporting company wherein:

(I) the authorized capital of IRC is an unlimited number of common shares which are designated as Common shares;

(II) the following company is the only beneficial owner of shares in the capital of IRC of the number and class set opposite its name, free and clear of all liens, charges, options and encumbrances other than in favour of The Bank of Nova Scotia:

| Name | Number and Class of Shares |
|---|---|
| Intrawest Corporation | 10,514,848 Common shares |

(III) there are no outstanding securities of MC 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 IRC; and

(IV) the directors and officers of IRC are as follows:

Directors:

Joseph S. Houssian
Hugh R. Smythe
Daniel O. Jarvis

Officers:

| | |
|---|---|
| Joseph S. Houssian | Chairman of the Board |
| Daniel O. Jarvis | Executive Vice President and Chief Financial Officer |
| Hugh R. Smythe | President |
| John E. Currie | Senior Vice President, Financing and Taxation |
| David Blaiklock | Corporate Controller |
| Ross J. Meacher | Corporate Secretary |
| Dough J. Forseth | Vice President |
| David B. Brownlie | Vice President |
| Charles Blier | Vice President |
| Graham R. Wood | Vice President. |

3. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

4. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

5. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

SIGNED by a duly authorized representative of the MINISTER OF ENVIRONMENT, LANDS AND PARKS on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ Pat Shea
Name

10470 152 Street, Surrey B.C.
Address

Regional Director's Assistant
Occupation

[illegible]
Authorized Representative of the Minister of Environment, Lands and Parks

INTRAWEST RESORT CORPORATION

Per: /s/ [illegible]

Per: /s/ [illegible]

**CONSENT AND AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS AGREEMENT dated September 14, 1999

BETWEEN:

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

(the "Province")

OF THE FIRST PART

AND:

WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP, a limited partnership created under the laws of British Columbia having an office at 4545 Blackcomb Way, Whistler, British Columbia, VON 1B4

(the "Partnership")

OF THE SECOND PART

AND:

INTRAWEST RESORT CORPORATION, a corporation amalgamated under the Canada Business Corporations Act having an office at Suite 800 - 200 Burrard Street, Vancouver, British Columbia, V6C 3L6

("IRC")

OF THE THIRD PART

AND:

INTRAWEST CORPORATION, a British Columbia company having an office at Suite 800 - 200 Burrard Street, Vancouver, British Columbia, V6C 3L6

("Intrawest")

OF THE FOURTH PART

WHEREAS:

A. The Province and Galway Enterprises (1980) Ltd. (Inc. No. 221462) ("Galway"), then named Whistler Mountain Ski Corporation, entered into a Ski Area Development Agreement dated for reference the 30th day of September, 1982 (the "Original Development Agreement") in respect of the development of skiing facilities on Whistler Mountain, British Columbia;

B. Galway assigned the Original Development Agreement to Whistler Mountain Ski Corporation ("WMSC") (then Inc. No. 339160 and subsequently amalgamated to Inc.

No. 474031) by assignment agreement dated March 23;.1988 and WMSC assumed the obligations of Galway pursuant to the Original Development Agreement;

C. The Original Development Agreement has been amended by agreements in writing dated March 31, 1988, January 2, 1990, March 14, 1997 and October 31, 1997 (the Original Development Agreement as amended is hereafter referred to as the "Development Agreement");

D. Effective October 31, 1997, WMSC amalgamated with Whistler Mountain Holdings Limited, Intrawest Resort Corporation, Blackcomb Mountain Properties Ltd., Blackcomb Skiing Enterprises Ltd., IW Resorts Ltd. and Mont Ste. Marie (1984) Inc. and continued as one corporation under the name "Intrawest Resort Corporation" pursuant to the provisions of the *Canada Business Corporations Act* (the "CBCA");

E. By a Contribution Agreement dated December 23, 1997, IRC assigned all of its rights under the Development Agreement and the Tenures (as defined therein) to the Partnership, and by an Assignment and Assumption Agreement dated as of December 23, 1997, the Partnership assumed all of the obligations of IRC under the Development Agreement;

F. IRC is a wholly-owned subsidiary of Intrawest and is the general partner of the Partnership;

G. It is proposed that pursuant to the provisions of the CBCA the winding-up of IRC into its parent Intrawest (the "Winding-Up") be approved and implemented prior to the end of September 1999 and that in the course of the Winding-Up all the property of IRC be distributed to Intrawest and all the liabilities and obligations of IRC be assumed by Intrawest;

H. Upon, in the course of, and as a consequence of, the Winding-Up:

(i) Intrawest will, *inter alia*, become the general partner of the Partnership in substitution for IRC;

(ii) all of the property of IRC will become the property of Intrawest;

(iii) Intrawest will assume and become liable for all of the obligations and liabilities of IRC, including, without limitation, any and all obligations and liabilities of IRC under the Development Agreement and the Tenures; and

(iv) IRC will be dissolved after all elements of the Winding-Up have been completed;

I. To facilitate the completion of the Winding-Up and the dissolution of IRC it is necessary that IRC be released and discharged from all of its obligations and liabilities, including, without limitation, any and all obligations and liabilities of IRC under the Development Agreement and the Tenures; and

J. The consent of the Province is required to Intrawest becoming the general partner of the Partnership in substitution for IRC and to the release and discharge of IRC from all of its obligations and liabilities under the Development Agreement and the. Tenures and in connection with the giving of such consent and release the parties hereto have agreed to further amend the Development Agreement as hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby agree as follows:

1. The Province hereby:

   (a) consents to Intrawest becoming the general partner of the Partnership in substitution for IRC in the course of the Winding-Up; and

   (b) acknowledges, confirms and agrees that effective upon Intrawest becoming the general partner of the Partnership in substitution for IRC in the course of the Winding-Up, IRC will be released and discharged from any and all obligations and liabilities under the Development Agreement and the Tenures including, without limitation, any and all obligations and liabilities of IRC thereunder as general partner of the Partnership.

2. Intrawest hereby acknowledges, confirms and agrees that effective upon Intrawest becoming the general partner of the Partnership in substitution for IRC in the course of the Winding-Up, Intrawest will be liable for any and all obligations and liabilities of IRC under the Development Agreement and the Tenures, including, without limitation, any and all obligations of IRC thereunder as general partner of the Partnership.

3. Effective upon Intrawest becoming the general partner of the Partnership in substitution for IRC in the course of the Winding-Up, the Province and the Partnership agree that the Development Agreement is hereby amended as follows:

   (a) by adding to section 1.01 the following definitions:

   “Acquisition Control” means, in respect of any person, such person becoming the beneficial owner, directly or indirectly, of Voting Shares which carry more than 50% of the combined voting power of the outstanding Voting Shares that such purpose beneficial ownership will take into account and will include beneficial ownership within the meaning of section 1(4) of the *Securities Act* (British Columbia) in effect on August 31, 1999);

   “Voting Shares” means securities of Intrawest of any class or classes which ordinarily have voting power for the election of directors of Intrawest, whether at all times or only so long as no senior class of securities of Intrawest has such voting power by reason of any contingency;”:

   (b) by deleting from section 1.01 the following definition:

““IRC” means Intrawest Resort Corporation. a company amalgamated under the laws of Canada under number 343030-8;”:

(c) by deleting section 7.03 and replacing it with the following:

“7.03 The Partnership will at any time and from time to time at the written request of the Minister, provide to the Minister a list of the registered holders of shares in the capital of Intrawest and a list of the holders of limited partnership units in the Partnership.”;

(d) by deleting section 7.04 and replacing it with the following:

“7.04 In the event that there is an Acquisition of Control by any person, the Partnership will notify the Minister of such Acquisition of Control promptly after the later of the occurrence of such Acquisition of Control or the Partnership becoming aware of such Acquisition of Control and provide the Minister with such detail as is available to the Partnership as the Minister may reasonably request as to the identity of such person.”;

(e) by deleting subsections 12.01(i), (j) and (j.1) and replacing them with the following:

“(i) intentionally deleted;

(j) if without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold:

(i) Intrawest ceases to beneficially own, directly or indirectly, at least 50% of the value of the Partnership; or

(ii) Intrawest ceases to be the sole general partner of the Partnership or to have the sole authority to manage the business of the Partnership;”;

(f) by deleting sections 12.02 and 15.03;

(g) by adding “Article III and” to the last line of section 15.05 immediately before the word “subsections”; and

(h) by deleting subsection 20.07(b) and replacing it with the following:

“(b) to the Partnership:

c/o Intrawest Corporation
Suite 800 - 200 Burrard Street
Vancouver, British Columbia
V6C 3L6

Attention: Corporate Secretary”.

4. Intrawest hereby warrants and represents to the Province that as of the date of this Agreement:

(a) Intrawest:

(i) is a corporation duly amalgamated, validly existing and in good standing under the *Company Act* (British Columbia);

(ii) has the 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; and

(iii) is a reporting company; and

(b) the directors and officers of Intrawest are as follows:

Directors:

R. Thomas M. Allan
Joe S. Houssian
Daniel O. Jarvis
David A. King
Gordon H. MacDougall
Paul M. Manheim
Paul A. Novelly
Gary Raymond
Bernard A. Roy
Khaled C. Sifri
Hugh R. Smythe
Nicholas C. Villiers

Officers:

| | |
|---|---|
| Joseph S. Houssian | Chairman, President and Chief Executive Officer |
| Daniel O. Jarvis | Executive Vice President and Chief Financial Officer |
| Gary L. Raymond | Executive Vice President, Development and Acquisitions |
| Hugh R. Smythe | President, Resort Operations Group |
| James J. Gibbons | President, Intrawest Resort Club Group |
| Michael F. Coyle | Senior Vice President, Marketing |
| John E. Currie | Senior Vice President, Financing and Taxation |
| David Blaiklock | Vice President and Corporate Controller |
| Ross J. Meacher | Corporate Secretary |

5. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

6. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

7. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

SIGNED by British Columbia Assets and Land Corporation, an authorized representative of the MINISTER OF ENVIRONMENT, LANDS AND PARKS on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ Patricia E. Smith
Name

[illegible]
Address

[illegible]
Occupation

/s/ [illegible]
British Columbia Assets and Land Corporation, an authorized representative of the Minister of Environment, Lands and Parks

WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP by its general partner INTRAWEST RESORT CORPORATION whose Corporate Seal was hereunto affixed in the presence of:

By: /s/ [illegible]

Title: Senior Vice President

C/S

The Corporate Seal of INTRAWEST RESORT CORPORATION was hereunto affixed in the presence of:

By: /s/ [illegible]

Title: Senior Vice President

C/S

The Common Seal of INTRAWEST CORPORATION was hereunto affixed in the presence of:

By: /s/ [illegible]

Title: Senior Vice President, Financing and Taxation

C/S

**CONSENT AND AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS AGREEMENT dated as of November 27, 2001

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Sustainable Resource Management

(the "Province")

OF THE FIRST PART

AND:

WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP, a limited partnership formed under the laws of British Columbia having an office at 4545 Blackcomb Way, Whistler, British Columbia, VON 1B4

(the "Partnership")

OF THE SECOND PART

AND:

INTRAWEST CORPORATION, a British Columbia company having an office at Suite 800 - 200 Burrard Street, Vancouver, British Columbia, V6C 3L6

("Intrawest")

OF THE THIRD PART

WHEREAS:

A. The Province and Galway Enterprises (1980) Ltd. (Inc. No. 221462) ("Galway"), then named Whistler Mountain Ski Corporation, entered into a Ski Area Development Agreement dated for reference the 30th day of September, 1982 (the "Original Development Agreement") in respect of the development of skiing facilities on Whistler Mountain, British Columbia;

B. Galway assigned the Original Development Agreement to Whistler Mountain Ski Corporation ("WMSC") (then Inc. No. 339160 and subsequently amalgamated to Inc. No. 474031) by assignment agreement dated March 23, 1988 and WMSC assumed the obligations of Galway pursuant to the Original Development Agreement;

C. The Original Development Agreement has been amended by agreements in writing dated March 31, 1988, January 2, 1990, March 14, 1997, October 31, 1997 and September 14, 1999, respectively (the Original Development Agreement as amended is hereafter referred to as the "Development Agreement");

D. Effective October 31, 1997, WMSC amalgamated with Whistler Mountain Holdings Limited, Intrawest Resort Corporation, Blackcomb Mountain Properties Ltd., Blackcomb Skiing Enterprises Ltd., IW Resorts Ltd. and Mont Ste. Marie (1984) Inc. and continued as one corporation under the name "Intrawest Resort Corporation" ("IRC") pursuant to the provisions of the *Canada Business Corporations Act* (the "CBCA");

E. By a Contribution Agreement dated December 23, 1997, IRC assigned all of its rights under the Development Agreement and the Tenures (as cleaned therein) to the Partnership, and by an Assignment and Assumption Agreement dated as of December 23, 1997, the Partnership assumed all of the obligations of IRC under the Development Agreement;

F. At the time of the assignment referred to in Recital E, IRC was the general partner of the Partnership;

G. IRC was wound-up into its parent Intrawest with the consent of the Province pursuant to the provisions of the CBCA (the "Winding-Up") and in the course of, and as a consequence of, the Winding-Up, Intrawest became the sole general partner of the Partnership in substitution for IRC;

H. It is proposed that Intrawest Mountain Resorts Ltd. ("IMRL"), a British Columbia company and a wholly-owned subsidiary of Intrawest, become an additional general partner of the Partnership; and

I. The consent of the Province is required to IMRL becoming an additional general partner of the Partnership; and

J. The parties hereto have agreed to amend the Development Agreement to include provisions with respect to IMRL and to otherwise amend the terms and conditions thereof, in each case as hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby agree as follows:

1. The Province hereby consents to IMRL becoming an additional general partner of the Partnership.

2. Effective upon IMRL becoming an additional general partner of the Partnership, the Province and the Partnership agree that the Development Agreement is amended as follows:

   (a) by adding to section 1.01 thereof the following definition:

   ""IMRL," means Intrawest Mountain Resorts Ltd., a company incorporated under the laws of British Columbia under number 636020;";

(b) by deleting subsection 12.01(j) thereof and replacing it with the following:

"(j) if without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold:

(i) Intrawest ceases to beneficially own, directly or indirectly, at least 50% of the value of the Partnership;

(ii) so long as IMRL is a general partner of the Partnership, Intrawest ceases to be the registered and beneficial owner of all of the issued and outstanding voting shares of IMRL;

(iii) Intrawest ceases to be a general partner of the Partnership other than as a result of the bankruptcy of Intrawest;

(iv) the general partner or general partners, as the case may be, of the Partnership cease to have the sole authority to manage the business of the Partnership; or

(v) any other person is admitted as a general partner of the Partnership.";

(c) by deleting sections 12.03 and 12.04 thereof and replacing them with the following:

"12.03 Intentionally deleted.

12.04 Intentionally deleted."; and

(d) by replacing the reference to the Arbitration Act in each of section 19.01 and section 19.02 thereof with a reference to the Commercial Arbitration Act.

3. Intrawest hereby warrants and represents to the Province that as of the date of this Agreement:

(a) IMRL:

(i) is a corporation duly incorporated, validly existing and in good standing under the Company Act (British Columbia); and

(ii) is a wholly-owned subsidiary of Intrawest;

(b) the directors and officers of IMRL are as follows:

Directors:

Joe S. Houssian
Daniel O. Jarvis

Officers:

| | |
|---|---|
| Joseph S. Houssian | President |
| Daniel O. Jarvis | Vice President |
| John E. Currie | Vice President |
| Ross J. Meacher | Corporate Secretary |

4. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

5. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement and these presents shall be read together and shall be construed as one instrument.

6. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

SIGNED AND DELIVERED by British Columbia Assets and Land Corporation, an authorized representative of the MINISTER OF SUSTAINABLE RESOURCE MANAGEMENT on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ Maxine Davie
Name

200, 10428-153rd Street, Surrey, BC V3R 1E1
Address

Commissioner for taking Affidavits for British Columbia
Occupation

/s/ [illegible]
British Columbia Assets and Land Corporation, an authorized representative of the Minister of Environment, Lands and Parks

WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP by its general partner, INTRAWEST RESORT CORPORATION whose common seal was hereunto affixed in the presence of:

By: /s/ [illegible]

Title: Senior Vice President, Financing and Taxation

C/S

The Common Seal of INTRAWEST CORPORATION was hereunto affixed in the presence of:

By: /s/ [illegible]

Title: Senior Vice President, Financing and Taxation

C/S

**CONSENT AND AMENDMENT TO DEVELOPMENT AGREEMENT - WHISTLER**

THIS AGREEMENT dated as of November 5, 2010

BETWEEN:

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

(the "**Province**")

OF THE FIRST PART

AND:

**WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP**, a limited partnership formed under the laws of British Columbia (No. 223632-97) having an office at 4545 Blackcomb Way, Whistler, British Columbia, VON 1B4

(the "**Partnership**")

OF THE SECOND PART

AND:

**INTRAWEST ULC**, an Alberta unlimited liability company (Alberta Corporate Access Number 201277835) registered in British Columbia under number A0069356 and having an office at Suite 710 - 375 Water Street, Vancouver, British Columbia, V6B 5C6

("**Intrawest**")

OF THE THIRD PART

AND:

**WHISTLER BLACKCOMB HOLDINGS INC.**, a corporation continued under the Business Corporations Act (British Columbia) under number C0894119 and having an office at 4545 Blackcomb Way, Whistler, British Columbia, VON 1B4

("**W/B Holding**s")

OF THE FOURTH PART

WHEREAS:

A. The Province and Galway Enterprises (1980) Ltd. (Inc. No. 221462) ("**Galway**"), then named Whistler Mountain Ski Corporation, entered into a Development Agreement (the "**Original Development Agreement**") dated for reference the 30th day of September, 1982 in respect of the development of skiing facilities on Whistler Mountain, British Columbia;

B. Galway assigned the Original Development Agreement to Whistler Mountain Ski Corporation ("**WMSC**") (then Inc. No. 339160 and subsequently amalgamated to Inc. No. 474031) by assignment agreement dated March 23, 1988 and WMSC assumed the obligations of Galway pursuant to the Original Development Agreement;

C. The Original Development Agreement has been amended by agreements in writing dated March 31, 1988, October 16, 1992, January 2, 1990, March 14, 1997, October 31, 1997, September 14, 1999 and November 27, 2001, respectively (the Original Development Agreement, as amended from time to time, is herein referred to as the "**Development Agreement**");

D. In furtherance of the Development Agreement, the Province has issued to the operator thereunder certain leases, licences and rights of way (such leases, licences and rights of way, as amended and in effect from time to time, are herein referred to as the "**Tenures**");

E. Effective October 31, 1997, WMSC amalgamated (the "**WMSC Amalgamation**") with Whistler Mountain Holdings Limited, Intrawest Resort Corporation, Blackcomb Mountain Properties Ltd., Blackcomb Skiing Enterprises Ltd., IW Resorts Ltd. and Mont Ste. Marie (1984) Inc. and continued as one corporation under the name "Intrawest Resort Corporation" ("**IRC**") pursuant to the provisions of the *Canada Business Corporations Act* (the "**CBCA**");

F. By a Contribution Agreement dated December 23, 1997, IRC assigned all of its rights under the Development Agreement and the Tenures to the Partnership, and by an Assignment and Assumption Agreement dated as of December 23, 1997, the Partnership assumed all of the obligations of IRC under the Development Agreement;

G. At the time of the assignment referred to in Recital F, IRC was the general partner of the Partnership;

H. Effective September 26, 1999, IRC was wound-up into its parent Intrawest Corporation with the consent of the Province pursuant to the provisions of the CBCA (the "**Winding-Up**") and in the course of, and as a consequence of, the Winding-Up, Intrawest Corporation became the general partner of the Partnership in substitution for IRC;

I. Effective November 28, 2001, Intrawest Mountain Resorts Ltd. ("**IMRL**"), a British Columbia company (Incorporation No. BC0636020), a wholly-owned subsidiary of Intrawest Corporation, become an additional general partner of the Partnership;

J. Effective October 27, 2006, Intrawest Corporation amalgamated (the "**Intrawest Amalgamation**") with Wintergames Acquisition ULC and continued as one corporation under the name "Intrawest ULC" (defined as "Intrawest" herein) pursuant to the provisions of the *Business Corporations Act* (Alberta) and upon the Intrawest Amalgamation, Intrawest became general partner of the Partnership;

K. Under the terms of the Development Agreement certain matters require the prior consent of the Province (where the context requires herein, a reference to the Province shall be deemed to include any minister or other public official from whom consent is required

under the terms of the Development Agreement) and Intrawest has applied to the Province for its consent in connection with the transactions described in Schedule A to this Agreement (the "**Transactions**"); and

L. The parties hereto enter into this Agreement to set out the terms and conditions relating to the Province's consent to the Transactions as contemplated by the Development Agreement and to amend the Development Agreement to reflect the new interests in the Partnership as a consequence of the Transactions, as hereinafter set forth.

THEREFORE, in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

1. Consent of the Province. The Province hereby consents to the Transactions in accordance with the consent requirements imposed by the Development Agreement and the *Land Act*. The Partnership, Intrawest and W/B Holdings acknowledge and agree that such consent and this Agreement do not:

   (a) constitute a consent, authorization or approval of or to the Transactions for the purpose of any other enactment or as may be required by any other Provincial governmental authority; or

   (b) waive or restrict any rights or remedies of the Province under the Development Agreement in respect of any matter other than the Transactions that are the subject of such consent and this Agreement.

2. Confirmations. Intrawest and the Partnership confirm to the Province and W/B Holdings as set out in the following paragraph 2(a) and the Province confirms to Intrawest, the Partnership and W/B Holdings as set out in the following paragraphs 2(b), (c) and (d):

   (a) the Partnership has not made, and is not aware of, any assignment of the Development Agreement or any Tenure except as set out in the Recitals hereto and except for in connection with security in respect of which the security holder has given a full release and discharge of its interest;

   (b) the Province has not given its consent to any assignment concerning the Development Agreement or any Tenure except as set out in the Recitals hereto and except for consents to security in respect of which the Province has received confirmation of the full release and discharge thereof;

   (c) as of the date of this Agreement, the Province has not given to the Partnership any notice of default or other similar notice in respect of which it has asserted the right to terminate or to commence proceedings to terminate the Development Agreement or any Tenure; and

   (d) as of the date of this Agreement, the Province is not aware of any outstanding Event of Default (as defined in the Development Agreement) or failure to comply with the terms of the Development Agreement in respect of which it proposes to

commence any proceedings in respect of the Development Agreement or any Tenure.

3. Ratification and Amendments to Development Agreement. Effective as of the date of the completion of the Transactions (the "**Effective Date**"):

(a) the Partnership makes the ratification, affirmation and confirmation set out in Schedule B hereto; and

(b) the Development Agreement is amended as set out in Schedule B hereto.

The Partnership will give the Province written notice of the occurrence of the Effective Date forthwith upon the occurrence thereof.

4. Representations and Warranties re: W/B Holdings. Intrawest and W/B Holdings represent and warrant to the Province that:

(a) as of the date of this Agreement W/B Holdings:

(i) is a corporation duly continued under the *Business Corporations Act* (British Columbia) (the "**BCBCA**") under number C0894119, has not been discontinued or dissolved under the BCBCA and has sent to the Director under the BCBCA all documents required to be sent to the Director under the BCBCA;

(ii) has the 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; and

(iii) is a corporation wherein:

A. the authorized capital of W/B Holdings is as follows:

a) an unlimited number of common shares; and

b) an unlimited number of preferred shares;

B. the following person is the only legal and beneficial owner of shares in the capital of W/B Holdings and is the holder of the number and class set opposite such person's name, free and clear of all liens, charges, options and encumbrances:

| Name | Number and Class of Shares |
|---|---|
| Graham Savage | 1 common share |

C. there are no outstanding securities of W/B Holdings 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 W/B Holdings;

D. the directors and officers of W/B Holdings are as follows:

Directors:

William (Bill) Jensen
Wesley Edens
Jonathan Ashley
John Furlong
Graham Savage
Scott Hutcheson
Cam Neely
Russell Goodman

Officers:

William (Bill) Jensen - Chairman and Chief Executive Officer
David Brownlie - President and Chief Operating Officer
Kevin Smith - Executive Vice President, Chief Financial Officer and Corporate Secretary
Doug Forseth - Senior Vice President, Operations
Stuart Rempel - Senior Vice President, Marketing and Sales; and

(b) they presently expect that upon the Effective Date Intrawest will own approximately 30% of the issued shares in the capital of W/B Holdings and the balance of the issued shares in the capital of W/B Holdings will be owned by other persons pursuant to the public offering referred to in Schedule A, and W/B Holdings agrees to provide to the Province forthwith after the Effective Date such updated information as to the share ownership of W/B Holdings as may be reasonably required by the Province.

5. Representations and Warranties re: Second Additional General Partner. The Partnership hereby represents and warrants to the Province that as of the date of this Agreement 0891986 B.C. Ltd.:

(a) is a corporation duly incorporated, validly existing and in good standing under the *Business Corporations Act* (British Columbia); and

(b) is directly or indirectly wholly-owned and controlled by Nippon Cable Co., Ltd. ("**Nippon Cable**"), an existing limited partner in the Partnership, or by Nippon Cable and its affiliates.

6. Ratification and Affirmation. The parties hereto hereby ratify and affirm the Development Agreement, as modified hereby, and agree that the Development Agreement continues in full force and effect.

7. Execution and Delivery of this Agreement. This Agreement may be executed and delivered in counterparts and by fax, email or other electronic means.

8. Binding Effect. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have duly 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 an authorized representative of the Minister of Natural Resource Operations in the presence of:<br><br>/s/ T. L. Nykyforyk<br>Name<br><br>Lawyer<br>Occupation | ) | /s/ [illegible]<br>Authorized representative of the Minister of Natural Resource Operations |
| WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP by its general partner, INTRAWEST ULC whose corporate seal was hereunto affixed in the presence of:<br><br>By: /s/ [illegible]<br><br>Title:_____ | ) | C/S |
| The Corporate Seal of INTRAWEST ULC was hereunto affixed in the presence of:<br><br>By: /s/ [illegible]<br><br>Title:_____ | ) | C/S |
| The Corporate Seal of WHISTLER BLACKCOMB HOLDINGS INC. was hereunto affixed in the presence of:<br><br>By: /s/ [illegible]<br><br>Title:_____ | ) | C/S |

**Exhibit 10.5**

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

and

FORTRESS MOUNTAIN RESORTS LTD.

# DEVELOPMENT AGREEMENT

# BLACKCOMB MOUNTAIN

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# DEVELOPMENT AGREEMENT

THIS AGREEMENT dated for reference the 1st day of May, 1979.

BETWEEN:

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

(hereinafter called the “Province”)

AND:

FORTRESS MOUNTAIN RESORTS LTD., a company continued under the laws of Canada and registered extra-provincially in the Province of British Columbia, having an office at 2600 - 700 West Georgia Street, in the City of Vancouver, in the Province of British Columbia

(hereinafter called “Fortress”)

W H E R E A S :

A. By proposal call made September, 1976 as amended on or about April 27, 1978, the Province called for proposals with respect to ski-recreation development on certain Crown lands situate on Blackcomb Mountain, in the Province of British Columbia.

B. Upon reviewing proposals received, including the proposal submitted by Fortress dated September l, 1978, Fortress was selected by the Province to carry out the development on the terms and conditions herein contained and subject to obtaining all necessary governmental approvals.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreements herein contained, the parties hereto covenant, agree, represent and promise as follows:

## ARTICLE 1

## DEFINITIONS

In this Agreement and in the Schedules hereto unless the context otherwise requires:

1.01 "Architect or Engineer" means the architect or engineer appointed by Fortress from time to time to whose appointment the Minister has no reasonable objection;

1.02 "Aspen" means Aspen Skiing Corporation, a corporation incorporated under the laws of the State of Delaware;

1.03 "Auditor" means a national firm of independent chartered accountants carrying on business in the Province of British Columbia;

1.04 "Base Area" means the area at the base of Blackcomb Mountain, as shown outlined in green on Schedule “B” hereto as it may be amended from time to time as provided in Article 5.08 herein together with any part of the lands shown as parcel A, B or C of Part II of Schedule “B” acquired by Whistler Land Co. from the Province;

1.05 "Capital Budget" for Phase I means the capital budget for completion of Phase I, which is estimated to be as set forth in Part IV of Schedule “C” hereto;

1.06 "Cumulative Capacity" of a Phase means the number set out in the third column of the chart on the first page of Part III of Schedule “C” hereto with respect to that Phase;

1.07 "Day Skier Facility" means the day skier facility to be built on the area shown outlined in yellow on the Third Schedule to Schedule “F” hereto and marked “Day Skier Facility”;

1.08 "Day Skier Visits" means the total number of people (exclusive of employees and agents of Fortress) in a particular day which 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;

1.09 "Designated Area" means the area shown outlined in red on Schedule “B” hereto, as it may be amended from time to time as provided in Article 5.08 herein;

1.10 "FBDB" means Federal Business Development Bank;

1.11 "Foreign Investment Review Act" means the Foreign Investment Review Act of Canada (S.C. 1973-74, c.46 and amendments thereto);

1.12 "Fortress Proposal" means the “Blackcomb Mountain Development Proposal” submitted by Fortress to the Province and dated September 1, 1978;

1.13 "Gross Revenue" means the entire amount of receipts or receivables of Fortress or any other party for the right to use the Lifts or parking facilities as provided in paragraph (u) of Schedule “E” hereto, including without limitation the amount paid by the user of the Lifts for a day ticket, pass for a fixed period, season or other pass and the amount paid by the user of the parking facilities. If the right to use the Lifts or the parking facilities is included in a package, there shall be included in Gross Revenue that portion of the package price which represents the lift ticket or parking charge component thereof, provided that in no event shall such lift ticket or parking charge component be less than an amount equal to the percentage of the package price that the regular price of the lift ticket or parking charge is to the total of the regular prices for all components included in the package. Provided however that uncollectable receivables written off by Fortress in accordance with generally accepted accounting principles shall be deducted from Gross Revenue in the fiscal year on which they are written off. Any subsequent recoveries of such receivables shall be included in Gross Revenue in the fiscal year in which they are recovered;

1.14 "Improvement" means any Lift (including the Lift Terminal Facility, pylons, cables, gondolas, chairs, equipment and machinery used exclusively in connection therewith), building, structure, road, parking area, ski slope, trail, facility, clearing or other work of a physical character carried out in, under, on or above the Designated Area, Base Area or the Town Centre pursuant to this Agreement;

1.15 "Land Act" means the Land Act of British Columbia (S.B.C. 1970, c.17 and amendments thereto);

1.16 "Land Use Contract" means the contract for the development of the Base Area between Whistler, Whistler Land Co. and Fortress adopted by Whistler on January 8, 1979 and registered in the Vancouver Land Registry Office on January 11, 1979 under No. G2520 as it may from time to time be amended;

1.17 "Lift" means a ski lift to be constructed pursuant to this Agreement;

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

1.19 "Maintenance Facility" means the maintenance facility to be built on the area shown outlined in yellow on the Third Schedule to Schedule “F” hereto and marked “Maintenance Facility”;

1.20 "Minister" means the member of the Executive Council of the Province of British Columbia from time to time charged with the administration of the Land Act and includes any person authorized by the Province or the Minister to grant any approvals or carry out any acts to be granted or carried out by the Minister under the Land Act or this Agreement;

1.21 "Mountain Development Plan" means the conceptual master plan for the total development of the Designated Area (including the construction of Improvements referred to herein in the Base Area and the Town Centre) into a high quality recreational ski area as part of a destination resort prepared in accordance with Articles 5.02, 5.03 and 5.04. The present Mountain Development Plan is attached hereto as Schedule “F”;

1.22 "Option" means that particular agreement between Fortress and Whistler Land Co. registered in the Vancouver Lane Registry Office under No. G2518 and G25l9;

1.23 "Phase" means all the work to be completed by Fortress in a particular stage of the development as set forth in Schedule “C” hereto;

1.24 "Phase I" means the work described in Part IV of Schedule “C” hereto;

1.25 "Prohibited Uses" means uses of the Designated Area prohibited pursuant to Section 58 of the Land Act and includes uses to be prohibited by the Order-in-Council referred to in Article 4.02(b);

1.26 "Provincial Ski Area Policy" means the policy (if any) of the Province in effect from time to time governing ski areas;

1.27 "Right-of-Way Lands" means lands within the Base Area or the Town Centre over which the Province at any time and from time to time has a right-of-way from Whistler Land Co. for an Improvement;

1.28 "SAOT Formula" means the Skier At One Time Formula described in Schedule “E” of the Land Use Contract;

1.29 "Season" means the period commencing on the fourth Thursday in November in any year (American Thanksgiving) and continuing for the next following 149 days;

1.30 "Substantial Completion" as applied to any Improvement means the condition arrived at, as certified by the Architect or Engineer, when the same has been completed in accordance with the design, plans and specifications for such Improvement and is in a condition of presentable appearance and appropriate and available for use and operation with the exception of minor deficiencies which do not interfere with such appearance, use and operation and as applied to any Phase means the Substantial Completion of all Improvements in that Phase;

1.31 "Town Centre" means the town centre of Whistler located approximately as shown outlined in brown on Schedule “D” hereto and more particularly described as Block B of District Lot 3020 and District Lots 1902 and 3865, Group 1, New Westminster District;

1.32 "Utilization" with respect to a Season means the aggregate of the Day Skier Visits during the Season divided by 150 and with respect to Weekdays mean the aggregate of the Day Skier Visits on Weekdays during a Season divided by the number of weekdays during that Season and with respect 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;

1.33 "Weekdays" means clays other than Weekends and Holidays;

1.34 "Weekends and Holidays" means Saturday, Sunday, statutory holidays in British Columbia, the third Monday in February (George Washington’s birthday), the fourth Thursday in November (American Thanksgiving) and days in which public schools in British Columbia are not required to be open pursuant to the Public Schools Act and regulations thereunder;

1.35 "Whistler" means the Resort Municipality of Whistler, a resort municipality incorporated under the laws of the Province of British Columbia; and

1.36 "Whistler Land Co." means Whistler Village Land Co. Ltd., a company incorporated under the laws of the Province of British-Columbia.

## ARTICLE 2

## STATEMENT OF OBJECTIVES

2.01 Objective. It is the intention of the Province and Fortress that Fortress will develop the Designated Area and construct the Improvements in accordance with high quality industry standards into a recreational ski area as part of a destination resort with approximately fourteen chair lifts, three restaurants and various auxilliary facilities and services to be operated over a season of approximately 150 days per year and accommodating approximately 13,000 skiers per day based on the SAOT Formula of all levels of skier skill and will also provide facilities suitable for general recreation of the type contemplated in paragraph (k) of Schedule “E” hereto.

2.02 Development Phases. It is proposed that the development will be carried out in ten phases as set forth herein, Phase to commence forthwith and be completed by December 1, 1980 and to include four triple chair lifts, one surface beginner lift, two mountain restaurants and the capacity to accommodate at least 3,900 skiers.

## ARTICLE 3

## REPRESENTATIONS OF FORTRESS

Fortress represents and warrants as follows:

3.01 Good Standing. Fortress is a company continued .and in good standing with respect to the filing of returns under the Canada Business Corporations Act;

3.02 Registered in British Columbia. Fortress is registered extra-provincially in British Columbia and is in good standing with respect to the filing of returns in the Office of the Registrar of Companies of British Columbia;

3.03 Capacity and Authority. Fortress has all Corporate capacity and authority necessary to enable it to enter into this Agreement and to carry out its obligations under this Agreement and has capacity to hold lands in British Columbia and to be the recipient of a disposition of Crown lane's under the Land Act;

3.04 Shareholdings. Each of Aspen and FBDB is the registered and beneficial owner of one-half of each class of issued and outstanding shares in the capital of Fortress and no person has any option or right to acquire any of the shares held by FBDB or Aspen or any of the unissued shares in the capital of Fortress other than pursuant to the pre-emptive rights contained in the Articles of Continuance of Fortress dated October 27, 1978;

3.05 Financial Information. The financial information set forth in Appendix "E" of the Fortress Proposal was prepared in accordance with generally accepted accounting principles applied on a basis consistent with previous years, was true and correct in every particular on September 1, 1978 and presents fairly and accurately the financial condition and position of Fortress, Aspen and FBDB as at September 1, 1978 and the results of their operations to that date;

3.06 Changes Affecting Financial Information. Since September 1, 1978, there have been no material adverse changes in the financial position or condition of Aspen or FBDB;

3.07 Management. Aspen has undertaken to provide Fortress with all management and technical expertise necessary for Fortress to carry out its obligations under this Agreement; and

3.08 Feasibility. Fortress has reviewed the terrain and weather conditions in the Designated Area, the Bylaws of Whistler, the plans for the Town Centre and the Community Plan for Whistler, and has conducted all other studies necessary to permit it to assess the feasibility of the development as contemplated herein.

## ARTICLE 4

## CONDITIONS OF AGREEMENT

4.01 Documents to be delivered by Fortress. Prior to or contemporaneously with the execution of this Agreement, Fortress will deliver the following to the Minister:

(a) Security Bond. A $10,000 security bond in form satisfactory to the Minister or a certified cheque payable to the Minister in the amount of $10,000, to be used as provided in Article 9 herein.

(b) Financial Plan. A financial plan for financing the Capital Budget of Phase I.

(c) Undertakings. Undertakings to Fortress and the Province in the form set forth in Schedule "I" from each of FBDB and Aspen to contribute to Fortress by way of equity or shareholder's loan not less than twenty (20%) per cent of the Capital Budget to a maximum of $2,000,000 each as needed for Phase I and not to permit Fortress to repay such amounts, whether by dividend, repurchase or redemption of shares or otherwise, until after Substantial Completion of Phase I.

(d) Security Deposit. An irrevocable undertaking of FBDB in the form set forth in Schedule "J" to pay up to $820,000, as security for the due performance by Fortress of its obligations hereunder in Phase I, which undertaking will be dealt with as provided in Article 9 herein.

(e) Right-of-Way Application. An application under the Land Act for a grant of right-of-way substantially in the form of Schedule "H" over each parcel of land outlined in red on Schedule "F" hereto (except Lift 9 alternate) and over which Fortress is to construct an Improvement that is a Lift, Lift Terminal Facility or a water, sewer, power or telephone line.

(f) Lease Application. An application under the Land Act for a lease substantially in the form of Schedule "G" of each parcel of land outlined in, blue on Schedule "F" hereto and within which Fortress is to construct improvements which, in accordance with the Mountain Development Plan, will be a building (other than a Lift Terminal Facility), parking area, water system, septic tank or water disposal system.

4.02 Conditions Precedent. Notwithstanding anything herein in this Agreement to the contrary, this Agreement shall not take effect unless the Province has by 10 o'clock in the evening on Wednesday the 9th of May, 1979 delivered the following documents to Fortress or Fortress has prior to that time waived the necessity to receive all or some of said documents:

(a) Directive. A copy of a directive pursuant to Section 13 1- of the Land Act in the form attached hereto as Schedule "A" certified by the Minister;

(b) Orders-in-Council. A certified copy of;

(i) An Order-in-Council made pursuant to Section 58 of the Land Act in substantially the same form as set forth in Schedule "K" hereto;

(ii) An Order-in-Council pursuant to Sections 18 and 37 of the Land Act in substantially the same form as set forth in Schedule "L" hereto.

(c) Lease and Right of Way Applications Approved. A letter from the Regional Land Manager of the Land Management Branch of the Province approving the lease and right-of-way applications referred to in Article 4.01 (e) and (f) and confirming that the leases and rights-of-way will be granted by June 15, 1979.

4.03 Grant of Approved Leases and Rights-of-Way. The Province covenants that any leases or rights-of-way approved by the letter from the Regional Land Manager referred to in Article 4.02(c) above will be issued by June 15, 1979.

**ARTICLE 5**

**DEVELOPMENT**

5.01 Obligations of Fortress. Fortress will, at its own expense and subject to the terms hereof, carry out the development and operation of the Designated Area and other areas on which Improvements will be located in the manner and on the terms and conditions set forth herein and will provide all labour, materials, supplies, services and all Improvements necessary to carry out the development and operation to high quality industry standards of a recreational ski area as part of a destination resort.

5.02 Changes to the Mountain Development Plan. Any material changes hereafter made by Fortress to the Mountain Development Plan will be submitted to the Minister for approval, which approval will not be unreasonably withheld. Fortress shall not construct any Lift, restaurant, ski slope or other significant Improvement unless shown on the Mountain Development Plan attached as Schedule “F” hereto or an amended Mountain Development Plan approved by the Minister.

5.03 Amending the Mountain Development Plan. Fortress will continually review and re-evaluate the Mountain Development Plan in accordance with its planning for the development of Blackcomb Mountain, changing technology and changing public requirements and will, subject to Article 5.02 hereof, modify, alter and amend the Mountain Development Plan from time to time as may be necessary in the circumstances in conformity with the design and development criteria in Schedule “C” hereto, showing

conceptually and by accompanying schedules all of the work required to carry out all the Phases and in particular:

(a) The approximate location of each Lift, restaurant, ski slope and other significant Improvement;

(b) The estimated time of commencement and completion of each Phase in the next ensuing five year period and a more detailed one year construction plan; and

(c) Brief specifications for each Lift, restaurant and other significant Improvement.

5.04 Location of Lift 14. Fortress agrees that the location of Lift 14 shown on the Mountain Development Plan when constructed will not physically encroach on the existing Olympic ski run on Whistler Mountain and Fortress covenants that the said Lift and its trail system when constructed will not impede skier access from Whistler Mountain to the Town Centre.

5.05 Obligation of Fortress to Carry Out Improvements. Fortress will complete the Improvements in Phases in the following manner:

(a) Fortress will carry out all Improvements necessary or required to complete Phase I on or before December 1st, 1980;

(b) Upon completion of Phase I, Fortress will commence and carry out all of the Improvements necessary or required for each subsequent Phase until all Phases have been completed, provided however that Fortress will not be obliged to construct all of the Improvements required or necessary for any succeeding Phase after Phase I until the following criteria have occurred:

(i) The obligation to proceed from any Phase in Phases I to IV inclusive to the next succeeding Phase will occur when the Utilization for that Phase

on Weekdays is thirty-five percent (35%) and on Weekends and Holidays is eighty percent (80%) of the Cumulative Capacity of that Phase, and

(ii) The obligation to proceed from any Phase in Phases V to IX inclusive to the next succeeding Phase will occur when the Utilization for a Season for that Phase is sixty percent (60%) of the Cumulative Capacity of that Phase.

(c) Notwithstanding Article 5.05(b) and provided there is not any material default by Fortress under the Land Use Contract, the obligation of Fortress to proceed from a completed Phase to the next succeeding Phase shall be suspended for so long an Fortress is prevented from carrying out any further development in the Base Area, in respect of which BU's (as defined in the Land Use Contract) have been earned under the Land Use Contract, as a result of the Whistler Approving Officer failing to approve an application for subdivision, prepared in compliance with the Municipal Act, Land Registry Act (or similar legislation) and regulations thereunder, the Land Use Contract and the applicable Whistler By-laws, upon the grounds set out in section 96 of the Land Registry Act or any similar section in any replacement legislation, and such subdivision plan remains unapproved or is not ordered deposited after Fortress has diligently and in good faith taken or caused to be taken all action reasonable and appropriate in the circumstances to obtain approval or a deposit order of the subdivision plan including appealing the decision of the Approving Officer in the manner provided by law;

(d) Fortress will not without the consent of the Minister, which consent will not be unreasonably withheld, commence any Improvements in a Phase unless all the Improvements in all preceding Phases have been completed; and

(e) Notwithstanding Articles 5.05(b) and (d), Fortress will carry out the construction of Lift No. 5 when the criteria in sub-paragraph (b)(4) of Part IV of Schedule "C" hereto have been met.

5.06 Manner of Carrying out Improvements. In carrying out the Improvements, Fortress will:

(a) Carry out all Improvements pursuant to this Agreement in a diligent and workmanlike manner substantially in accordance with the Mountain Development Plan and the design and development criteria in Schedule "C";

(b) Do all acts and things required by, and carry out all construction and complete all Improvements in accordance with, the provisions of applicable statutes, by-laws, orders and regulations of the Province, Whistler and other public authorities, whether federal, provincial or municipal, including without limitation the National Building Code and other codes applicable to the Improvements; and

(c) Keep and maintain at its cost and expense all Improvements in good order and condition and structurally sound. All repairs will be in all respects of a standard at least substantially equal in quality of material and workmanship to the original material and work in and on the Improvements and will meet the requirements of municipal and other public authorities.

5.07 Location of Improvements. All Improvements when constructed will be located within the Designated Area, Right-of-Way Lands or lands conveyed to the Province except ski slopes and trails, the Day Skier Facility and the Maintenance Facility and certain

Improvements in the Town Centre described in paragraph (c) of Part III of Schedule “C” hereto.

5.08 Improvements Outside the Designated Area.

(a) Conveyance of Parking Areas. Prior to construction of any Improvement which will be a parking area all or part of which is located outside the Designated Area, Fortress will convey or cause to be conveyed to the Province without cost to the Province the lands outside the Designated Area on which the parking area will be located, free and clear of any liens, charges and encumbrances except the Land Use Contract, the Covenant (as defined in the Land Use Contract), exceptions and reservations contained in the original Crown grant and utility rights-of-way and easements. Provided however that if Fortress has applied under the Land Act for a lease for such parking area on those lands, the conveyance will be conditional upon the grant by the Province of the lease in accordance with Article 6 herein.

(b) Amending the Designated Area. Except for conveyances in Article 5.08(a), if Fortress desires for any reason to include within the Designated Area any portion of the Base Area, the Province will accept a conveyance of such portion without cost to the Province and, if the Minister so directs pursuant to Section 13 of the Land Act, extend the boundaries of the Designated Area to include such portion provided that:

(i) The portion has been subdivided from the Base Area in accordance with applicable laws and regulations; and

(ii) The portion is free and clear of any liens, charges and encumbrances except the Land Use Contract, the Covenant (as defined in the Land Use

Contract), exceptions and reservations contained in the original Crown grant and utility rights-of-way and easements and has no improvements or works constructed thereon other than Improvements.

(c) Ski Slopes and Trails. Not later than twelve (12) months after Substantial Completion of any ski slope or trail constructed by Fortress all or part of which is located outside the Designated Area or within such extended period of time as the Minister may allow, Fortress will prepare and deliver to the Province a final survey plan encompassing the lands outside the Designated Area actually occupied by the ski slope or trail. The survey plan will be prepared in accordance with the instructions issued from time to time by the Surveyor-General under the appropriate legislation governing such survey.

5.09 Approval of Plans

(a) Prior to construction of any Improvement that is to be a restaurant or other building, including a building comprising part of a Lift Terminal Facility, Fortress will submit to the Minister for his approval a copy of the plans and specifications for such restaurant or other building showing in reasonable detail the nature and purpose of such Improvement, which approval will not be unreasonably withheld if the plans and specificiations are substantially in accordance with this Agreement and in particular the Mountain Development Plan.

(b) Prior to construction of any Improvement for which a lease has been granted, Fortress will submit to the Minister for his approval, which approval will not be unreasonably withheld, a plan showing the final location of the Improvement and

the boundaries of the lands within the lease reasonably required for the operation, maintenance and intended use of such Improvement.

(c) Prior to construction of any Improvement for which a right-of-way has been granted, Fortress will submit to the Minister for his approval, which approval will not be unreasonably withheld, a plan showing the final location of such Improvement within the right-of-way.

(d) The Improvements referred to in Article 5.09 will be constructed substantially in accordance with the plans approved by the Minister as aforesaid.

5.10 Access

(a) To Parking Areas. Fortress covenants to provide or cause to be provided reasonable public access by way of road to each parking area required hereunder, the access to be as determined by Fortress and approved by the Minister, such approval not to be unreasonably withheld.

(b) To Lifts. Fortress covenants to provide or cause to be provided reasonable public access in accordance with Article 5.10(c) having a width of not less than ten feet from a reasonably close parking area to the bottom of each of Lifts 2, 6, 7, and 9, the access to be as determined by Fortress and approved by the Minister, such approval not to be unreasonably withheld.

(c) Survey. As soon as possible after Substantial Completion of each of Lifts 2, 6, 7, and 9, and in any event within twelve months thereafter, Fortress will determine the location of the access required under Article 5.10(b). At the request of the Province, the access will be surveyed by the Province at its expense and Fortress subject to its right to do so pursuant to the Option will at the expense of the

Province cause the surveyed area to be dedicated or conveyed to the Province, free and clear of any liens, charges and encumbrances except the Land Use Contract, the Covenant (as defined in the Land Use Contract), exceptions and reservations contained in the original Crown grant and utility rights-of-way and easements. Provided however that if Fortress has applied under the Land Act for a right-of-way for the access, the dedication or conveyance will be conditional upon the grant by the Province of the right-of-way in accordance with Article 6 herein.

(d) Ski Slopes and Trails. Fortress covenants to provide or cause to be provided reasonable public access for skiers by way of ski slopes and trails from the Designated Area to the bottom of all Lifts, the access to be as determined by Fortress and approved by the Minister, such approval not to be unreasonably withheld. At the request and expense of the Province, Fortress subject to its right to do so pursuant to the Option will dedicate or convey or cause to be dedicated or conveyed to the Province the access, free and clear of any liens, charges and encumbrances except the Land Use Contract, the Covenant (as defined in the Land Use Contract) and exceptions and reservations contained in the original Crown grant.

## ARTICLE 6

## TENURE

6.01 Survey. Not later than twelve (12) months after Substantial Completion of construction of any Improvement for which a lease or right-of-way has been granted or within such extended period of time as the Minister may allow, Fortress will prepare a final survey plan as follows:

(a) For any Improvement for which a right-of-way has been granted, the survey plan shall encompass those lands within the right-of-way reasonably required for such Improvement which will unless the approval of the Minister is first had and obtained, encompass not more than a strip of lands 50 feet in perpendicular width lying between lines parallel to and situated such number of feet as may be designated by Fortress from each side of the centre line of such Improvement and shown in the survey plan;

(b) For any Improvement for which a lease has been granted, the survey plan will encompass those lands within the lease actually occupied by such Improvement and all appurtenances thereto or such larger area as the Minister may have approved pursuant to Article 5.09(b).

The survey plan will be prepared in accordance with the instructions issued from time to time by the Surveyor-General under the appropriate legislation governing such survey.

6.02 Finalizing the Tenure.

(a) Upon acceptance of the survey plan by the Surveyor-General, Fortress will affix the accepted survey plan to the appropriate grant of right-of-way or lease for the Improvement described in such survey plan and thereafter the survey plan so

attached will in all respects establish, govern and define the land forming the subject matter of such grant of right-of-way or lease and any surplus lands shall be released and discharged from the rights therein granted.

(b) If the survey plan includes lands outside the Designated Area, the subject matter of the lease or right-of-way will not include those lands until conveyed to the Province or until the lands are within the Right-of-Way Lands in which case the rights given by the Province to Fortress will be limited by and be subject to the terms of the right-of-way from Whistler Land Co. to the Province.

6.03 Amending the Right-of-Way. If the location of any right-of-way from Whistler Land Co. to the Province is altered to a location agreed by Fortress, the Province and Whistler Land Co., such agreement not to be unreasonably withheld, by any of those parties to correspond with the development and servicing of the Town Centre, any corresponding right-of-way from the Province to Fortress will be similarly altered.

6.04 Duration of Tenure. Each lease or right-of-way issued to Fortress hereunder shall commence on the date of issuance and shall terminate on May 1, 2029.

6.05 Obligation. Notwithstanding Article 5.05, Fortress is not obliged to construct an Improvement constituting a Lift, Lift Terminal Facility or a building unless:

(a) the tenure in respect of that part of the Improvement in the Designated Area or on Right-of-Way Lands or on lands conveyed to the Province shall have been granted (provided the necessary application therefor has been made by Fortress); and

(b) the time from the date Fortress becomes obliged under Article 5.05 to construct the Improvement to the expiry of the term of tenure is at least twenty years; provided however that the Minister may, in his discretion, issue a new right-of-

way and lease in substitution for each right-of-way and lease issued hereunder for a term of twenty years and otherwise on the same terms as the original right-of-way or lease, in which case Fortress shall construct the Improvement. The original rights-of-way and leases will automatically terminate upon the issuance of such substitute rights-of-way and leases.

6.06 Right-of-Way Lands. The Province covenants as follows;

(a) forthwith after execution to provide Fortress with a copy of each right-of-way to the Province from Whistler Land Co. in respect of which a corresponding right-of-way is granted to Fortress hereunder;

(b) to cure within a reasonable time any default of the Province under such right-of-way from Whistler Land Co. described in Article 6.06(a); and

(c) not to amend any right-of-way from Whistler Land Co. described in Article 6.06(a) without the prior consent of Fortress, such consent not to be unreasonably withheld.

## ARTICLE 7

## COVENANTS OF FORTRESS

Fortress covenants as follows:

7.01 Compliance with Laws. Fortress will comply with all laws applicable to the construction, operation and maintenance of a ski-recreation area and Improvements in the Designated Area;

7.02 Environmental Impact. Without restricting the generality of Article 7.01, Fortress will use all reasonable efforts to minimize the adverse environmental impact of the development contemplated herein and will comply in all material respects with the environmental requirements set forth in Schedule "D" hereto;

7.03 Standards of Operation. Fortress will operate the Designated Area in accordance with high quality industry standards of operation for a recreation ski area as part of a destination resort and will, without limiting the generality of the foregoing, comply with all its operating covenants set forth in Schedule "E" hereto;

7.04 Management. Aspen will provide all management and technical expertise necessary for Fortress to carry out its obligations under this Agreement;

7.05 Insurance.

(a) At its expense, Fortress will 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 contracts on all Improvements in an amount not less than 100% of the full replacement cost thereof (but which may exclude foundations and permit a reasonable

deductible having due regard to the net worth from time to time of Fortress):

(ii) comprehensive public liability insurance in respect of claims for personal injury, death or property damage arising out of any one occurrence and in respect of liability assured under Article 13.03 of this Agreement, to an amount not less than [illegible] which amount shall be adjusted from time to time in keeping with amounts customarily carried by prudent operators of similar ski areas in Canada, and which policy may permit a reasonable deductible amount having due regard to the net worth from time to time of Fortress; and

(iii) such other insurance as would be maintained by a prudent operator at 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 (fixed wing or otherwise);

(b) Fortress will cause each such policy to provide as follows:

(i) the Province will be a named insured under the policy;

(ii) the insurer will be prevented from exercising any rights of subrogation against the Province;

(iii) the policy will afford protection to the Province in respect of cross-liability between the Province and Fortress; and

(iv) the coverage under the policy will not be cancelled or any provisions changed or deleted unless 30 days' prior written notice is given to the Minister by the insurer;

(c) Fortress will provide the Minister from time to time upon request with proof that all premiums under the policies have been paid and that the policies are in full force and effect containing the above terms;

(d) All proceeds of the insurance referred to in Article 7.05(a)(i) will be dealt with as follows:

(i) the proceeds will be used for the repair or rebuilding of Improvements damaged or destroyed by the hazard insured against;

(ii) any excess of such insurance proceeds over the amount required to make good such damage or destruction will belong to Fortress and be paid to it; and

(iii) the proceeds will be payable to Fortress or its mortgage creditor as their interests may appear and when received by Fortress or its mortgage creditor will be held in trust for Fortress and the Province (with any interest which may accrue thereon) to be dealt with in accordance with this Article 7.05(d);

(e) Fortress will procure from each mortgage creditor an agreement with the Province that the insurance proceeds will be dealt with as herein provided, notwithstanding any default under such creditor's mortgage; and

(f) Fortress will not assign or otherwise alienate any proceeds payable under any such insurance except subject to the terms of this Article 7.05.

7.06 Taxes. Fortress will pay when due all taxes, rates, assessments, levies or dues against tenures granted under Article 6 and all Improvements constructed or installed and all business and operations of Fortress conducted hereunder.

## ARTICLE 8

## FEES

8.01 Fees. In consideration of the development rights granted herein and as rental for all leases and rights-of-way granted hereunder, Fortress will pay to the Province:

(a) for leases and rights-of-way issued prior to January 1, 1981, an initial fee of $100 per annum or any part thereof for each lease or right-of-way issued hereunder payable in advance on the date of issuance and on January 1, 1980;

(b) a minimum fee (hereinafter called the “Minimum Fee”) of $4,500 per annum payable in advance on January 1, 1981 and on January 1 in each and every year thereafter during the term of this Agreement; and

(c) a percentage fee (hereinafter called the “Percentage Fee”) of two percent (2%), or such other percentage determined in accordance with Article 8.02, of the Gross Revenue of Fortress calculated in respect of each fiscal year of Fortress, less the Minimum Fee prorated over the fiscal year.

8.02 Review of Percentage. The percentage of the Percentage Fee will be reviewed by the Province on December 1, 1990 and on each tenth anniversary of that date and the Province may at each such reviewing increase the percentage by such amount as it may determine but no increase shall be more than one-half of one percent (1/2%) and no increase will be so large as to cause the percentage to be greater than that charged by the Province under any Provincial Ski Area Policy then in effect.

8.03 Gross Revenue. Within ninety (90) days after the end of each fiscal year, Fortress will provide the Province with a detailed statement of Gross Revenue during the fiscal year

audited by the Auditor of Fortress together with payment of the Percentage Fee as required by Article 8.01.

8.04 Fiscal Year. Fortress will give notice in writing to the Province of its fiscal year and any changes therein. No fiscal year of Fortress will exceed twelve (12) months.

8.05 Books, Audit. The Province will 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 Fortress pertaining to Gross Revenue upon reasonable notice at reasonable times.

8.06 Fees under the Land Act. The fees provided in Article 8.01 are in addition to the fees provided in the Land Act or regulations thereunder in effect from time to time in respect of the processing of applications for the grant of leases and rights-of-way over Crown land.

## ARTICLE 9

## SECURITY DEPOSIT/SECURITY BOND

9.01 Security Deposit. Subject to Article 9.02, the obligation of FBDB under the undertaking described in Article 4.01(d) will be released as follows:

(a) twenty-five percent (25%) upon receipt by the Minister of a certificate from the Architect or Engineer that twenty-five percent (25%) of Phase I is in a state of Substantial Completion;

(b) twenty-five percent (25%) upon receipt by the Minister of a certificate from the Architect or Engineer that fifty percent (50%) of Phase I is in a state of Substantial Completion;

(c) twenty-five percent (25%) upon receipt by the Minister of a certificate from the Architect or Engineer that seventy-five percent (75%) of Phase I is in a state of Substantial Completion; and

(d) the balance 60 days after receipt by the Minister of a certificate from the Architect or Engineer that all of Phase I is in a state of Substantial Completion.

The said undertaking shall be returned to Fortress immediately following FBDB being released from any obligation thereunder as herein provided.

9.02 Use of Security Deposit on Default. The Minister may at any time call upon FBDB pursuant to its undertaking under Article 4.01 (d) to reimburse the Province for all payments, costs and expenses incurred by the Province or the Minister to cure any Default, as hereinafter defined, by Fortress in the performance of its obligations under this Agreement with respect to Phase I.

9.03 Security Bond. Subject to Article 9.04, the security bond described in Article 4.01(a) will be returned to Fortress upon termination of this Agreement.

9.04 Use of Security Bond on Default. The Minister may use the security bond for all payments, costs and expenses incurred by the Minister or the Province to cure any Default by Fortress under this Agreement.

## ARTICLE 10

## TRANSFERS AND ENCUMBRANCES

10.01 Disposing. Except as provided in Article 10.02, Article 12.02(b) and Article 12.05, Fortress will not sell, assign, transfer or otherwise dispose of any of its rights under or interest in this Agreement, any lease or right-of-way granted hereunder or any Improvements or the business or operations of Fortress in connection therewith (which specifically excludes any business or operation of Fortress arising from the Option) (collectively its "Interest") except on a sale, assignment, transfer or other disposition of all its Interest with the prior consent in writing of the Minister, which consent will not be unreasonably withheld if:

(a) Fortress is compelled by a governmental authority of Canada to dispose of its Interest or the disposition is made after December 1, 1984 and

(b) the party acquiring the Interest is at least fifty percent (50%) owned by a party which is not a non-eligible person within the meaning of the Foreign Investment Review Act, is a high quality developer, manager and operator of a destination ski area, is of good financial standing and reputation, and enters into an agreement with the Province to perform all the obligations of Fortress under this Agreement and under the leases and rights-of-way granted hereunder.

10.02 Encumbrances. Fortress will not mortgage, pledge, charge or otherwise encumber its Interest or any part thereof without the prior consent in writing of the Minister, which consent will not be unreasonably withheld. Any party to whom any of the Interest is mortgaged, pledged, charged or otherwise encumbered will be bound by the terms and

conditions of this Agreement and the leases and rights-of-way and in exercising its remedies will have no greater rights than Fortress.

10.03 Liens. Fortress will conduct any construction or other work done by it so as to minimize the possibility of any claim of lien against any part of its Interest and, if any such claim of lien be created, will forthwith take all necessary steps to have the same discharged unless the claim of lien is being contested in good faith and Fortress has taken steps to ensure that the claim will not subject any of its Interest to sale or forfeiture.

## ARTICLE 11

## EVENTS OF DEFAULT

## REMEDIES

11.01 Events of Default. It is an event of default (a "Default") if any of the following shall occur:

(a) Fortress fails to pay any amounts payable under Article 8 herein within fifteen days after notice that such payment is due;

(b) Fortress fails to observe or perform or keep any of its other covenants and obligations under this Agreement or any lease or right-of-way granted hereunder and fails to commence in good faith the curing of such failure as soon as the nature of the failure requires it to be cured and in any event within thirty days after the Province has in writing demanded the curing thereof, or following such commencement fails, within a reasonable time thereafter having due regard to the nature and extent of such failure, to prosecute to completion with diligence and continuity the curing thereof;

(c) Fortress fails to take reasonable action to prevent or defend diligently any action or proceeding in relation to its Interest or any part thereof for seizure, execution or attachment or which claims possession, sale, foreclosure, the appointment of a receiver or receiver-manager of its assets (except by a mortgagee approved pursuant to Article 10.02), forfeiture or termination and such failure continues for thirty days after the Province has in writing demanded that the same be taken or fails to successfully defend any such action or proceeding;

(d) Fortress has a decree or order entered by a court of competent jurisdiction adjudging it bankrupt or insolvent or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of it under any applicable law relating to bankruptcy or insolvency or appointing a receiver or a trustee of its assets under the “Bankruptcy Act” or decreeing or ordering the winding-up or liquidation of its affairs, institutes proceedings to be adjudicated a bankrupt or insolvent or consents to the institution of bankruptcy or insolvency proceedings against it or files a petition or answer or consent seeking reorganization or release under any applicable laws relating to bankruptcy or insolvency or consents to the filing of any such petition or consents to the appointment of a receiver or receiver-manager (except by a mortgagee approved pursuant to Article 10.02) or makes an assignment for the benefit of creditors or otherwise acknowledges its insolvency;

(e) Fortress ceases to carry on its business;

(f) At any time for a period of more than thirty days the Chairman of the Board of Directors of Fortress is not a Canadian citizen;

(g) Without the prior consent of the Minister, FBDB ceases to be the registered and beneficial owner of fifty percent (50%) of each class of the issued and outstanding shares of Fortress except as a result of a sale or transfer to a person who is not a non-eligible person within the meaning of the Foreign Investment Review Act or a public offering in Canada;

(h) Aspen ceases to be the registered and beneficial owner of fifty percent (50%) of each class of the issued and outstanding shares of Fortress without the prior consent of the Minister, which consent will not be unreasonably withheld if:

(i) Aspen is compelled in law by a governmental authority of Canada to dispose of the shares or the disposition is made after the later of the Substantial Completion of Phase I and December 1, 1984; and

(ii) the party acquiring the shares is a high quality developer, manager and operator of destination ski areas, is of good financial standing and reputation, and the party enters into an agreement with Fortress and the Province covenanting to provide technical and management expertise to Fortress in connection with the performance of its obligations under this Agreement; or

(i) Aspen ceases to provide technical and management expertise to Fortress in connection with the performance of its obligations under this Agreement unless the party acquiring its shares in Fortress is a high quality developer, manager and operator of a destination ski area who has covenanted with Fortress and the Province to provide such expertise.

11.02 Remedies. In the event of a Default, the Province nay do any of one or more of the following:

(a) Pursue any remedy available to it in law or in equity, it being acknowledged by Fortress that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for Default;

(b) Take all actions in its own name or in the name of Fortress as may reasonably be required to cure the Default, in which event subject to Article 11.04, all payments, costs and expenses incurred therefor shall be payable by Fortress to the Province on demand;

(c) Terminate this Agreement and any lease or right of way granted hereunder;

(d) Appoint a receiver or receiver-manager as set out in Article 11.03 hereof; or

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

11.03 Appointment of a Receiver or Receiver-Manager. In the event of a Default, the Province may by instrument in writing appoint a receiver or receiver-manager of the Interest or any part thereof and may remove the receiver or receiver-manager so appointed and appoint another in his stead and the following provisions will take effect:

(a) Any such receiver or receiver-manager may carry on the business and operations of Fortress or any part thereof;

(b) Any such receiver or receiver-manager may, with the consent of the Minister in writing, borrow money for the purpose of carrying on the business and operations of Fortress (subject to the limitation in Article 11.04) or for the maintenance of the Improvements or any part or parts thereof or for other purposes approved by the Minister and any amounts so borrowed, together with interest thereon, shall form a charge upon the Interest and all revenues derived from the business and operations of Fortress in connection therewith;

(c) The Minister may from time to time fix reasonable remuneration for every such receiver or receiver-manager and direct the payment thereof out of revenues

derived from the business and operations of Fortress in connection with the Designated Area;

(d) Every such receiver or receiver-manager will, so far as concerns responsibility for his acts, be deemed the agent of Fortress, and the Minister and the Province will not be in any way responsible for any misconduct or negligence of any receiver or receiver-manager and Fortress hereby agrees to indemnify and hold harmless the Minister and the Province from any action of such receiver or receiver-manager.

Provided however that if a mortgagee approved pursuant to Article 10.02 appoints a receiver or receiver-manager of any part of the Interest, then so long as that receiver or receiver-manager is so appointed the Province will remove any receiver or receiver-manager appointed by it hereunder for such part and will not appoint any receiver or receiver-manager except the one appointed by the said mortgagee.

11.04 Lift, Buildings, Ski Slopes.

(a) If at any time Fortress:

(i) commits a Default by failing to construct or commence construction of a Lift, building or ski slope which it is obliged to construct, and

(ii) notifies the Province in writing immediately after the time it becomes obliged to commence construction, and in any event prior to commencing construction, that it will not so construct because, in the bona fide opinion of Fortress, the construction of such Lift, building or ski slope is economically unfeasible as part of its development and operation of the Designated Area as contemplated hereunder and its development of the

Ease Area for reasons other than the financial position or condition of Fortress and Fortress states in the notice the reasons for such opinion;

then the amount which can he recovered by the Province under Article 11.02(b) if it cures the Default by constructing the Lift, building or ski slope and the amount which can be expended by any receiver or receiver-manager under Article 11.03 to construct the Lift, building or ski slope is limited to $820,000 for a Lift, building or ski slope required to he constructed in Phase I and is limited to $500,000 for a Lift, building or ski slope required to be constructed in any subsequent Phase.

(b) No Affect on Other Remedies. The limitations provided in Article 11.04(a) do not in any way affect or limit the right of the Province to exercise any other remedy it may have as a result of the Default, including without limitation the rights set forth in Article 11.02(a), (c) and (d) and the right to use the security bond in accordance with Article 9.04 or affect or limit the right of Province with respect to any other Default.

## ARTICLE 12

## IMPROVEMENTS

12.01 Definitions. For the purposes of this Article:

(a) "Removable Improvements" means all Lifts within the Designated Area, the Right-of-Way Lands or lands conveyed to the Province and all machinery, equipment, cables, chairs, gondolas, towers and pylons used exclusively in connection therewith, and any Improvements in the Designated Area, the Right-of-Way Lands or lands conveyed to the Province which are in the nature of tenant's fixtures and would by Common law be removable by a tenant upon the expiry of a term of years;

(b) "Depreciated Book Value" of any Removable Improvement or Structural Improvement means the lesser of the depreciated value of such Removable Improvement or Structural Improvement on the books of Fortress as of the date of termination of this Agreement and the depreciated value of such Removable Improvement or Structural Improvement on that date calculated in accordance with generally accepted accounting principles consistently applied in other comparable North American ski area operations based upon the useful life of such Removable Improvement or Structural Improvement, which for Removable Improvements will not exceed twenty years and for Structural Improvements will not exceed thirty years;

(c) "Net Realizable Value" means the price at which a Removable Improvement could be sold on the date of termination of this Agreement in an arm's length transaction to a purchaser who would be responsible for removing the Removable

Improvement from the Designated Area, transporting it to its place of use and carrying out any cleanup consequent upon its removal;

(d) "Structural Improvements" means Improvements in the Designated Area on Right-of-Way Lands or on lands conveyed to the Province which are buildings (including the water and sewer systems in connection therewith), ski-bridges, power lines or telephone lines, except those parts thereof which are Removable Improvements;

(e) "Structural Improvement Value" means the fair market value of a Structural Improvement on the date of termination of this Agreement assuming that the purchaser will have a lease or right-of-way for the Structural Improvement and the land upon which the Structural Improvement is situate on the same terms as that granted to Fortress for the uses contemplated by this Agreement except that the term would be from the date of termination of this Agreement until May 1, 2029.

12.02 Ownership of Improvements.

(a) All Improvements in the Designated Area, exclusive of Removable Improvements, shall be and remain the property of the Province absolutely.

(b) The Removable Improvements shall not be removed during the term of this Agreement except for the purpose of repair or replacement in accordance with the normal requirements of a maintenance program.

(c) Upon termination of this Agreement by effluxion of time, all Removable Improvements shall vest in and become the property of the Province absolutely unless the Province shall, by notice in writing given to Fortress not less than six

months prior to the termination of this Agreement, elect not to retain title to the Removable Improvements in which event Fortress shall remove the Removable Improvements by the end of the second summer next following the date of termination and shall leave the Designated Area in a neat and tidy condition and make good any damage caused by such removal.

12.03 Right to Purchase Removable Improvements. If this Agreement is terminated other than by effluxion of time, all Removable Improvements shall remain in place within the Designated Area for a period of two years or such shorter period as the Province may in writing specify, and during such period the following provisions shall apply:

(a) The Province may purchase all of the Removable Improvements for an amount equal to the Net Realizable Value of such Removable Improvements, less any sums then owed by Fortress to the Province.

(b) If the Province or any person permitted by the Province uses the Removable Improvements or any of them for commercial purposes, the Province shall purchase the Removable Improvements so used for an amount equal to the Net Realizable Value thereof, less any sums then owed by Fortress to the Province.

(c) If the Province permits a new operator to operate the Designated Area and negotiates with such operator a price for the Removable Improvements to be used by such operator that exceeds the Net Realizable value thereof, Fortress shall be entitled to such excess payable on the same terms upon which the Province is paid for the Removable Improvements up to the Depreciated Bock Value thereof, less any sum then owed by Fortress to the Province.

(d) Upon the expiry of such period, Fortress shall remove any Removable Improvements not purchased hereunder, shall leave the place occupied by such Removable Improvements in a neat and tidy condition and shall make good any damage caused by such removal; provided however that Fortress shall have until the end of the second summer following the expiry of such period to do so.

12.04 Payment for Structural Improvements. If this Agreement is terminated other than by effluxion of time, then the following provisions shall apply:

(a) If the Province or any person permitted by the Province uses the Structural Improvements or any of them for commercial purposes, the Province shall purchase the Structural Improvements so used for an amount equal to the Structural Improvement Value thereof, less any sums then owed by Fortress to the Province.

(b) If the Province permits a new operator to operate the Designated Area and negotiates with such operator a price for the Structural Improvements to be used by such operator that exceeds the Structural Improvement Value thereof, Fortress shall be entitled to such excess payable on the same terms upon which the Province is paid for the Structural Improvements up to the Depreciated Book Value thereof, less any sums then owed by Fortress to the Province.

12.05 Option to Purchase. The Province has the option, exercisable at any time by notice in writing to Fortress given within the period of six months after the date of termination of this Agreement, to purchase from Fortress its interest in the Day Skier Facility or the Maintenance Facility or both at the fair market Value thereof payable within ninety days after the exercise of the option. If Fortress builds the Day Skier Facility or the

Maintenance Facility on lands other than those shown outlined in yellow on the Third Schedule to Schedule “F”, the option shall be amended to cover the lands upon which they are situate and lands reasonably required for their use with an area not greater than that shown outlined in yellow on the Third Schedule to Schedule “F”. Forthwith after Fortress acquires an interest in the lands on which the Day Skier Facility and the Maintenance Facility will be situate, it will execute and deliver to the Province in registerable form an option to purchase those lands on the terms set forth above.

12.06 Arbitration. If the Province and Fortress are unable to agree upon the Depreciated Book Value of any Removable Improvement or Structural Improvement, the Net Realizable Value of any Removable Improvement, the Structural Improvement Value of any Structural Improvement or the fair market value of the Day Skier Facility or the Maintenance Facility, either party may refer such determination to arbitration by a single arbitrator in accordance with the provisions of the Arbitration Act of British Columbia.

## ARTICLE 13

## GENERAL

13.01 Further Acts. Fortress and the Province will perform such further acts and execute such further documents as may be required from time to time to give proper effect to the intent of this Agreement.

13.02 Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenantor condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

13.03 Indemnity. Fortress will indemnify and save harmless the Minister and the Province from and against all claims, damages, costs, losses, expenses, actions and suits caused by or arising out of or in connection with, whether directly or indirectly, the activities carried out by Fortress including any matter or thing permitted or omitted (whether negligent or otherwise) by Fortress, its agents, sub-contractors or employees unless due to any act of commission of the Province or of any person for whom the Province is in law responsible or any failure of the Province to comply with its contractual obligations hereunder.

13.04 Relationship of the Parties. Fortress is an independent contractor for the purpose of performing its obligations under this Agreement and nothing herein contained will constitute Fortress the agent, joint venturer or partner of the Province nor give Fortress any authority or power to bind the Province in any way.

13.05 Force Majeure. 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 and any condition or cause beyond the reasonable control of Fortress other than financial reasons, Fortress is delayed in performing any obligation hereunder then the time for completion of the performance of that obligation will be extended by a period of time equal to the period of time of the delay provided that Fortress gives written notice to the Province within thirty days after the commencement of the delay setting forth the nature of the delay and a revised development schedule and provided Fortress assiduously attempts to remove the delay.

13.06 Public Funds. This Agreement does not impose any obligations, express or implied, on the Province to use public funds for the construction or maintenance of any part of the Designated Area or the development thereof or anything ancillary thereto.

13.07 Grant. No grant will be required to be made pursuant to the provisions of this Agreement after the expiration of 21 years less one day after the death of the last survivor of all the descendants of His Late Majesty King George V living at this date.

13.08 Notice. Any notice required to be given hereunder by either party to the other will be deemed to have been well and sufficiently given if mailed by prepaid registered mail in Canada or delivered at the address of the other hereinafter set forth:

If to Fortress:

Fortress Mountain Resorts Ltd.
c/o Farris, Vaughan, Wills & Murphy
Barristers & Solicitors
P.O. Box 10026, Pacific Centre
700 West Georgia Street

Vancouver, B.C. Y7Y 1B3
ATTN: C.F. Murphy, Es1.

With a copy if mailed to:

Aspen Skiing Corporation
P.O. Box 1248
Aspen, Colorado 81611

If to the Province:

The Minister
(as herein defined)
Parliament Buildings
Victoria, B.C.
V8V 1x4

or 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 upon the day of delivery, and if mailed forty-eight hours after the time of mailing except in the case of mail interruption in which case actual receipt is required.

13.09 Interpretation.

(a) This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

(b) The headings in this Agreement form no part of this Agreement and shall be deemed to have been inserted for convenience only.

(c) All sums of money referred to in this Agreement shall be in Canadian dollars.

13.10 Benefit and Binding. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns except that this Agreement shall only enure to the benefit of permitted successors and assigns of Fortress.

13.11 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the development of the Designated Area.

13.12 Legislation. Any reference in the Agreement to a statute includes a reference to any statute amending such statute or passed in substitution therefor.

13.13 Term. The term of this Agreement is from the date hereof until the later of May 1, 2029 and the date of termination of the leases or rights-of-way granted pursuant to Article 6.

13.14 Survival of Article 12. The provisions of Article .12 shall survive and continue to be in effect after the termination of this Agreement.

IN WITNESS WHEREOF the parties have duly executed this Agreement on the 9th day of May, 1979.

The Corporate Seal of FORTRESS MOUNTAIN RESORTS LTD. was hereunto affixed in the presence of:

/s/ [illegible]

General Manager

SIGNED, SEALED AND DELIVERED for the Minister of Lands, Parks and Housing in the presence of:

/s/ [illegible]

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

/s/ [illegible]

for the Minister of Lands, Parks and Housing

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made the 1st day of September, 1981.

BETWEEN:

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

(hereinafter called the "Province")

OF THE FIRST PART

AND:

FORTRESS MOUNTAIN RESORTS LTD., a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia and having an office at 2600 - 700 West Georgia Street, in the City of Vancouver, in the Province of British Columbia

(hereinafter called "Fortress")

OF THE SECOND PART

WHEREAS:

A. The Province and Fortress entered into an Agreement (hereinafter called the "Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain in the Province of British Columbia.

B. Each of the Federal Business Development Bank and the Aspen Skiing Corporation (hereinafter called "Aspen") is the registered and beneficial owner of fifty percent (50%) of each class of the issued and outstanding shares of Fortress.

C. Sections 11.01(h) and (i) of the Development Agreement provide that an event of default by Fortress will have occurred if Aspen ceases to be the registered and beneficial owner of fifty percent (50%) of each class of the issued and outstanding shares of Fortress without the prior consent of the Province or if Aspen ceases to provide technical and management expertise to

Fortress, in connection with the performance of its obligations under the Development Agreement unless the party acquiring Aspen's shares in Fortress is a high quality developer, manager and operator, of destination ski area who has covenanted with Fortress and the Province to provide such expertise.

D. By a letter of undertaking dated the 4th day of May, 1979 addressed to Fortress, Aspen undertook to provide Fortress with all management and technical expertise necessary for it to carry out the terms and conditions of the Development Agreement.

E. It is proposed that:

(a) Aspen be merged with Twentieth Century-Fox Film Corporation (hereinafter called "Fox");

(b) Fox be merged with TCF Intermediate Company, Inc. (a Delaware Corporation wholly owned by TCF holdings, Inc., a Delaware Corporation which is wholly owned by Marvin Davis and his family and by Richco Holdings, B.V., a Netherlands Corporation. At the date hereof voting control of TCF Holdings, Inc. is held by Marvin Davis and his family and it is contemplated that fifty percent (50%) of the voting control of TCF Holdings, Inc. will be provided to the said Richco Holdings B.V.) and immediately following such merger TCF Intermediate Company, Inc. will change its name to Twentieth Century-Fox Film Corporation (hereinafter called "New Fox");

(c) One-half (1/2) of the assets which were owned by Aspen immediately prior to its merger with Fox including Aspen's aforesaid shares in Fortress be sold by New Fox to Urban Diversified Properties, Inc. (a wholly owned affiliate of Aetna Life And Casualty Company) and thereafter transferred to the "Aspen Skiing

Company", a partnership in which a fifty percent (50%) interest is held by each of Urban Diversified Properties, Inc. and New Fox;

(d) The remaining one-half (1/2) of aforesaid Aspen assets be transferred to the Aspen Skiing Company by New Fox;

(e) The Aspen Skiing Company partnership will deliver to the Province and Fortress an undertaking in the form of undertaking set cut in Schedule "A" hereto within the time specified in paragraph 4 hereof.

F. Fortress has requested the Province to consent to the transfer of Aspen's shares in Fortress to the Aspen Skiing Company partnership and to amend the Development Agreement so that an event of default will not occur when the assets of Aspen are transferred to the Aspen Skiing Company partnership.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants hereinafter contained and the sum of One Dollar ($1) now paid by Fortress to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby as follows:

1. The Province hereby:

(a) acknowledges that the mergers contemplated in Recital E hereof will not constitute an event of default by Fortress under the Development Agreement; and

(b) consents to the transfer of Aspen's shares in Fortress to the Aspen Skiing Company partnership as provided in Recital E hereof.

2. Fortress and the Province agree to delete Section 1.02 of the Development Agreement and to substitute the following therefor:

"1.02 "Aspen" means the Aspen Skiing Company, a partnership in which a fifty percent (50%) interest is held by Urban Diversified Properties, Inc. (a wholly owned affiliate of

Aetna Life And Casualty Company) and Twentieth Century-Fox Film Corporation (a Delaware corporation owned by TCF Holdings, Inc., a Delaware corporation whose shares are equally held by Marvin Davis and his family and Richco Holdings, B.V., a Netherlands corporation)."

3. The Amendment to the Development Agreement set forth in Section, 2 herein shall take effect with respect to:

(a) Section 11.01(h) of the Development Agreement concurrently with the transfer of Aspen's shares in Fortress to the Aspen Skiing Company partnership;

(b) Section 11.01(i) of the Development Agreement concurrently with the transfer of Aspen's assets to the Aspen Company partnership, so that as a result of such transfer of shares and assets an event of default by Fortress pursuant to the Development Agreement will not occur.

4. Fortress covenants and agrees that a Default (as that term is used in the Development Agreement) will have occurred under the Development Agreement if:

(a) either New Fox or Urban Diversified Properties, Inc. transfers Aspen's shares in Fortress other than as provided for in Recital E hereof; or

(b) Fortress has not delivered the undertaking referred to in Recital E(e) hereof to the Province within ninety (90) days after the transfer of Aspen's shares in For-tress as contemplated in Recital E hereof has been completed.

5. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement and these presents shall be read together and shall be construed as one instrument.

6. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

The corporate seal of FORTRESS MOUNTAIN RESORTS LTD. was hereunto affixed in the presence of:

/s/ [illegible]

(c/s)

SIGNED, SEALED AND DELIVERED for the Minister of Lands, Parks and Housing in the presence of:

/s/ [illegible]

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

/s/ [illegible]

For the Minister of Lands, Parks and Housing

# AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as at the 10th day of December, 1982.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PRO-VINCE OF BRITISH COLUMBIA, as represented by the Minister of Lands, Parks and Housing

(hereinafter called the "Province")

OF THE FIRST PART

AND:

FORTRESS MOUNTAIN RESORTS LTD., a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia and having an office at 2600 - 700 West Georgia Street, in the City of Vancouver, in the Province of British Columbia

(hereinafter called "Fortress")

OF THE SECOND PART

WHEREAS:

A. The Province and Fortress entered into an Agreement (hereinafter called the "Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain in the Province of British Columbia.

B. The Development Agreement was amended by an agreement in writing between the parties dated the 1st day of September, 1981.

C. Each of the Federal Business Development Bank and the Aspen Skiing Company, a partnership (hereinafter called "Aspen") in which a fifty percent (50%) interest is held by each of Urban Diversified Properties, Inc. (hereinafter called "Diversified") and Twentieth Century-Fox Film Corporation, is the registered and beneficial owner of fifty percent (50%) of each class of the issued and outstanding shares of Fortress.

D. Sections 11.01(h) and (i) of the Development Agreement provide that an event of default by Fortress will have occurred if Aspen ceases to be the registered and beneficial owner of fifty percent (50%) of each class of the issued and outstanding shares of Fortress without the prior consent of the Province or if Aspen ceases to provide technical and management expertise to Fortress in connection with the performance of its obligations under the Development Agreement unless the party acquiring Aspen's shares in Fortress is a high quality developer, manager and operator of destination ski area who has covenanted with Fortress and the Province to provide such expertise.

E. By a letter of undertaking dated the 4th day of May, 1979 addressed to Fortress, Aspen undertook to provide Fortress will all management and technical expertise necessary for it to carry out the terms and conditions of the Development Agreement.

F. It is proposed that:

(a) Diversified assign part of its interest in Aspen to JMB Realty, Inc. (hereinafter called "JMB") prior to December 31, 1982 and that immediately thereafter JMB assign such interest to Urban Investment and Development Co. (hereinafter called "Investment"); and

(b) Diversified will sometime in the future assign the balance of its interest in Aspen to Investment.

G. Each of Diversified and Investment is either an affiliate or subsidiary (as those terms are defined in the Company Act (British Columbia)) of Aetna Life and Casualty Company.

H. Fortress has requested the Province to consent to the proposals set forth in Recital F and to amend the Development Agreement so that an event of default will not occur as a result of the completion of the transactions contemplated in either paragraph (a) or (b) of Recital F hereof.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants hereinafter contained and the sum of One Dollar ($1) now paid by Fortress to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. The Province hereby:

    (a) acknowledges and agrees that notwithstanding anything in the Development Agreement to the contrary Fortress, will not be in default under the Development Agreement as a result of the completion of the transactions contemplated in either paragraph (a) or (b) of Recital F hereof and

    (b) consents to the transactions set forth in Recital F hereof.

2. Fortress and the Province agree to delete Section 1.02 of the Development Agreement and to substitute the following therefor:

    "1.02 "Aspen" means the Aspen Skiing Company, a partner-ship in which a fifty percent (50%) interest is held by each of:

    (a) Twentieth Century-Fox Film Corporation (a Delaware corporation wholly owned by TCF Holdings, Inc., a Delaware corporation whose shares are equally held by Marvin Davis and his family and Richco Holdings, B.V., a Netherlands corporation), and

    (b) Urban Diversified Properties Inc. and/or Urban Investment and Development Co. which companies are either a subsidiary or an affiliate (as those terms are defined in the Company Act (British Columbia) as it existed on the 10th day of December, 1982) of Aetna Life and Casualty Company.

3. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement and these presents shall be read together and shall be construed as one instrument.

4. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

| | | |
|---|---|---|
| The Corporate Seal of FORTRESS MOUNTAIN RESORTS LTD. was hereunto affixed in the presence of: | ) | |
| | ) | c/s |
| /s/ [illegible] | ) | |
| SIGNED, SEALED AND DELIVERED for the Minister of Lands, Parks and Housing in the presence of: | ) | |
| /s/ [illegible] | ) | /s/ [illegible] |

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 23rd day of December, 1983.

BETWEEN:

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

(hereinafter called the "Province")

OF THE FIRST PART,

AND:

FORTRESS MOUNTAIN RESORTS LTD., a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia and having an office at 2600 - 700 West Georgia Street, in the City of Vancouver, in the Province of British Columbia,

(hereinafter called "Fortress")

OF THE SECOND PART.

WHEREAS:

A. The Province and Fortress entered into an Agreement (hereinafter called the "Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain in the Province of British Columbia.

B. The Development Agreement was amended by agreements in writing between the parties dated the 1st day of September, 1981 and the 10th day of December, 1982.

C. Each of the Federal Business Development Bank and the Aspen Skiing Company, a partnership (hereinafter called "Aspen") in which a fifty percent (50%) interest is held jointly by Urban Diversified Properties, Inc. and Urban Investment and Development co. (hereinafter jointly called "Urban") and a fifty percent (50%) interest is held by Twentieth Century Fox Film

Corporation to the registered and beneficial owner of fifty (50%) percent of each class of the issued and outstanding shares of Fortress.

D. Sections 11.01(h) and (i) of the Development Agreement provide that an event of default by Fortress will have occurred if Aspen ceases to be registered and beneficial owner of fifty (50%) percent of each class of the issued and outstanding shares of Fortress without the prior consent of the Province or if Aspen ceases to provide technical and management expertise to Fortress in connection with the performance of its obligations under the Development Agreement unless the party acquiring Aspen's shares in Fortress is a high quality developer, manager and operator of destination ski area who has covenanted with Fortress and the Province to provide such expertise.

E. By a letter of undertaking dated the 14th day of September, 1981 addressed to Fortress and the Province, Aspen undertook to provide Fortress with all management and technical expertise necessary for it to carry out the terms and conditions of the Development Agreement.

F. It is proposed that prior to January 1, 1984, Urban assign its interest in Aspen to MKDG II, a partnership between MD Company (a partnership consisting of certain immediate members of the Marvin Davis family and certain trusts for certain members thereof), TJK Company (a sole proprietorship carried on by Thomas J. Klutznick), 3M Investment Company (a partnership consisting of certain immediate members of the Myron M. Miller family and certain trusts for certain members thereof) and GSG Company (a partnership consisting of certain immediate members of the Gerald S. Gray family and certain trusts for certain members thereof).

G. Fortress has requested the Province to consent to the assignment contemplated in Recital F and to amend the Development Agreement as hereinafter provided.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of One Dollar ($1) and other good and valuable consideration now paid by Fortress to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. The Province hereby

   (a) acknowledges and agrees that notwithstanding anything in the Development Agreement to the contrary Fortress will not be in default under the Development Agreement as a result of the assignment contemplated in Recital F hereof; and

   (b) consents to the assignment set forth in Recital F hereof.

2. Fortress and the Province agree to delete Section 1.02 of the Development Agreement and to substitute the following therefor:

   "1.02 "Aspen" means the Aspen Skiing Company, a partnership in which a fifty percent (50%) interest is held by each of:

   (a) Twentieth Century-Fox Film Corporation (a Delaware corporation wholly owned by TCF Holdings, Inc., a Delaware corporation whose shares are equally held by Marvin Davis and his family and Richco Holdings, B.V., a Netherlands corporation), and

   (b) MKDG II, a partnership between MD Company (a partnership consisting of certain immediate members of the Marvin Davis family and certain trusts for certain members thereof), TJK Company (a sole proprietorship carried on by Thomas J. Klutznick), 3M Investment Company (a partnership consisting of certain immediate members of the Myron M. Miller family and certain trusts for certain members thereof) and GSG Company (a partnership consisting of certain immediate members of the Gerald S. Gray family and certain trusts for certain members thereof)."

3. This Agreement shall take effect concurrently with the completion of the assignment contemplated in Recital F hereof.

4. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement and these presents shall be read together and shall be construed as one instrument.

5. This Agreement shall enure to the benefit of and be binding upon the successors and assign of the parties hereto.

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

The Corporate Seal of FORTRESS MOUNTAIN RESORTS LTD. was hereunto affixed in the presence of:

c/s

/s/ [illegible]

SIGNED, SEALED AND DELIVERED the duly authorized representative of the Minister of Lands, Parks and Housing on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ [illegible]

/s/ [illegible]

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 7th day of June, 1984.

BETWEEN:

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

(hereinafter called the "Province")

OF THE FIRST PART,

AND:

FORTRESS MOUNTAIN RESORTS LTD., a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia and having an office at 2600 - 700 West Georgia Street, in the City of Vancouver, in the Province of British Columbia,

(hereinafter called "Fortress")

OF THE SECOND PART.

WHEREAS:

A. The Province and Fortress entered into an Agreement (hereinafter called the "Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain in the Province of British Columbia.

B. The Development. Agreement was amended by agreements in between the parties dated the 1st day of September, 1981, the 10th day of December, 1982 and the 23rd day of December, 1984.

C. Each of the Federal Business Development Bank and the Aspen Skiing Company (a partnership (hereinafter called "Aspen") in which a fifty percent (50%) interest is held by each of MKDG II, a partnership, and Twentieth Century-Fox Film Corporation) is the registered and

beneficial owner of fifty (50%) percent of each class of the issued and outstanding shares of Fortress.

D. Sections 11.01(h) and (i) of the Development Agreement provide that an event of default by Fortress will have occurred if Aspen ceases to be the registered and beneficial owner of fifty (50%) percent of each class of the issued and outstanding shares of Fortress without the prior consent of the Province or if Aspen ceases to provide technical and management expertise to Fortress in connection with the performance of its obligations under the Development Agreement unless the party acquiring Aspen's shares in Fortress is a high quality developer, manager and operator of destination ski area who has covenanted with Fortress and the Province to provide such expertise.

E. By a letter of undertaking dated the 31st day of December, 1983 addressed to Fortress and the Province, Aspen undertook to provide Fortress with all management and technical expertise necessary for it to carry out the terms and conditions of the Development Agreement.

F. It is proposed that on or about June 8, 1984, TCF Holdings, Inc. will purchase all of its shares held by Richco Holdings, B.V.

G. Fortress has requested the Province to consent to the purchase contemplated in Recital F and to amend the Development Agreement as hereinafter provided.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid by Fortress to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. The Province hereby:

(a) acknowledges and agrees that notwithstanding anything in the Development Agreement to the contrary Fortress will not be in default under the Development Agreement as a result of the purchase contemplated in Recital F' hereof; and

(b) consents to the purchase set forth in Recital F hereof.

2. Fortress and the Province agree to delete Section 1.02 of the Development Agreement and to substitute the following therefor:

"1.02 "Aspen" means the Aspen Skiing Company, a partnership in which a fifty percent (50%) interest is held by each of:

(a) Twentieth Century-Fox Film Corporation (a Delaware corporation wholly owned by TCF Holdings, Inc., a Delaware corporation whose shares are held by Marvin Davis and trusts for the benefit of his children); and

(b) MKDG II, a partnership between MD Company (a partnership consisting of certain immediate members of the Marvin Davis family and certain trusts for certain members thereof), TJK Company (a sole proprietorship carried on by Thomas J. Klutznick), 3M Investment Company (a partnership consisting of certain immediate members of the Myron M. Miller family and certain trusts for certain members thereof) and GSG Company (a partnership consisting of certain immediate members of the Gerald S. Gray family and certain trusts for certain members thereof)."

3. This Agreement shall take effect concurrently with the completion of the purchase contemplated in Recital F hereof.

4. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement and these presents shall be read together and shall be construed as one instrument.

5. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

The CORPORATE SEAL of FORTRESS MOUNTAIN RESORTS LTD. was hereunto affixed in the presence of:

(c/s)

/s/ [illegible]

SIGNED, SEALED AND DELIVERED the duly authorized representative of the Minister of Lands, Parks and Housing on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ T.E. Ice

Assistant Deputy Minister Ministry of Lands, Parks & Housing

/s/ Brian D. Etheridge

# AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 18th day of April, 1985.

BETWEEN:

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

(hereinafter called the "Province")

OF THE FIRST PART,

AND:

FORTRESS MOUNTAIN RESORTS LTD., a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia and having an office at 2600 - 700 West Georgia Street, in the City of Vancouver, in the Province of British Columbia,

(hereinafter called "Fortress")

OF THE SECOND PART.

WHEREAS:

A. The Province and Fortress entered into an Agreement (hereinafter called the "Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb mountain in the Province of British Columbia.

B. The Development Agreement has been amended by agreements in writing between the parties dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983 and the 7th day of June, 1984.

C. The parties hereto have agreed to amend the definition of "Aspen" as contained in Section 1.02 of the Development Agreement as hereinafter provided.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid

by Fortress to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. Fortress and the Province agree to delete Section 1.02 of the Development Agreement and to substitute the following therefor:

"1.02 "Aspen" means the Aspen Skiing Company, a partnership in which a fifty percent (50%) interest is held by each of:

(a) Twentieth Century-Fox Film Corporation (a Delaware corporation); and

(b) MKDG II, a partnership between MD Company (a partnership consisting of certain immediate members of the Marvin Davis family and certain trusts for certain members thereof), TJK Company (a sole proprietorship carried on by Thomas J. Klutznick), 3M Investment Company (a partnership consisting of certain immediate members of the Myron M. Miller family and certain trusts for certain members thereof) and GSG Company (a partnership consisting of certain immediate members of the Gerald S. Gray family and certain trusts for certain members thereof)."

2. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

3. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

The CORPORATE SEAL of FORTRESS MOUNTAIN RESORTS LTD. was hereunto affixed in the presence of:

(c/s)

/s/ [illegible]

SIGNED, SEALED AND DELIVERED the duly authorized representative of the Minister of Lands, Parks and Housing on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ [illegible]

/s/ [illegible]

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 2nd day of December, 1985.

BETWEEN:

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

(hereinafter called the "Province")

OF THE FIRST PART,

AND:

FORTRESS MOUNTAIN RESORTS LTD., a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia and having an office at 2600 - 700 West Georgia Street, in the City of Vancouver, in the Province of British Columbia,

(hereinafter called "Fortress")

OF THE SECOND PART.

WHEREAS:

A. The Province and Fortress entered into an Agreement (hereinafter called the "Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain in the Province of British Columbia.

B. The Development Agreement has been amended by agreements in writing between the parties dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983, the 7th day of June, 1984 and the 18th day of April, 1985.

C. The parties hereto have agreed to further amend the Development Agreement on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid

by Fortress to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. The Province hereby:

   (a) acknowledges and agrees that notwithstanding anything to the contrary in the Development Agreement Fortress will not be in default under the Development Agreement as a result of the assignment by Twentieth Century-Fox Film Corporation of its interest in TCF/MKDG II Skiing Company (formerly called the Aspen Skiing Company) to MKDG IV where MKDG IV is a partnership between MD Company (a partnership consisting of certain immediate members of the Marvin Davis family and certain trusts for certain members thereof), TJK Company (a sole proprietorship carried on by Thomas J. Klutznick), 3M Investment Company (a partnership consisting of certain immediate members of the Myron M. Miller family and certain trusts for certain members thereof) and GSG Company (a partnership consisting of certain immediate members of the Gerald S. Gray family and certain trusts for certain members thereof);

   (b) consents to the assignment referred to in 1(a) hereof.

2. Fortress and the Province agree to amend the Development Agreement as follows:

   (a) by deleting Section 1.02 thereof and substituting the following therefor concurrently with aforesaid transfer by Twentieth Century-Fox Film Corporation of its interest in the TCF/MKDG II Skiing Company partnership:

      "1.02 "Aspen" means the TCF/MKDG II Skiing Company,a Colorado Partnership:

      (a) indirect effective control, of which is held by a Marvin Davis of Los Angeles, California; and

      (b) indirect ownership of which is held by certain immediate members of the Marvin Davis family and certain trusts for certain members thereof,

Thomas J. Klutznick, certain immediate members of the Myron M. Miller family and certain trusts for certain members therof and certain immediate members of the Gerald S. Gray family and certain trusts for certain members thereof."

(b) by deleting Section 7.04 and 11.01(i) thereof.

3. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

4. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

The CORPORATE SEAL of FORTRESS MOUNTAIN RESORTS LTD. was hereunto affixed in the presence of:

/s/ [illegible]

(c/s)

SIGNED, SEALED AND DELIVERED the duly authorized representative of the Minister of Lands, Parks and Housing on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ [illegible]

/s/ [illegible]

THIS AGREEMENT dated for reference the 15th day of July, 1986.

BETWEEN:

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

(hereinafter called the "Province")

OF THE FIRST PART,

AND:

FORTRESS MOUNTAIN RESORTS LTD., a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia and having an office at 2600 - 700 West Georgia Street, in the City of Vancouver, in the Province of British Columbia

(hereinafter called "Fortress")

OF THE SECOND PART.

WITNESS THAT WHEREAS:

A. The parties hereto entered into a Development Agreement (hereinafter called the "Development Agreement") dated for reference the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain;

B. The Development Agreement has been amended by Amending Agreements between the parties dated the 1st of September, 1981, the 10th of December, 1982, the 23rd of December, 1983, the 7th of January, 1984, the 10th of April, 1985 and the 2nd of December, 1985;

C. The parties have agreed to further amend the Development Agreement according to the terms and upon the conditions set out herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreements herein contained, the parties agree as follows;

1. The Province and Fortress agree to amend the Development Agreement by:

(a) adding the following as Sections 6.07 to 6.11 inclusive:

"6.07 subject to this Agreement, the Minister, in order to ensure the safe and orderly use of the Designated Area by all persons, hereby grants to Fortress the exclusive right to control the Designated Area for the sole purpose of ensuring the safe and orderly use thereof by all persons, including the right and privilege and authority:

(a) to establish and delineate a ski area boundary with the Designated Area and to designate such boundary by notices, posted signs, fences or otherwise;

(b) to control, regulate and direct the movement and activities of skiers and all other persons within the Designated Area upon such terms and conditions as Fortress may determine in its discretion;

(c) to regulate the access and entry of all persons to the Designated Area upon such terms and conditions as Fortress may determine in its discretion;

(d) to evict persons from the Designated Area;

(e) to regulate the use and movement of vehicles of any nature whatsoever within the Designated Area and at all times and upon such terms and conditions as Fortress may determine in its discretion;

(f) to regulate the landing of aircraft within the Designated Area upon such terms and conditions as Fortress may determine in its discretion.

6.08 Fortress' duty of care to persons entering the Designated Area and its liability arising from its use, occupation and control of the Designated Area shall not exceed that of an occupier under the Occupiers Liability Act.

6.09 Notwithstanding section 6.07, Fortress shall not unreasonably impede any person from passing freely and without charge over or through the Designated Area provided that Fortress may make reasonable restrictions on the activities of any such person that are consistent with the use and management of a ski area.

6.10 Fortress may make application to the Province for a License of Occupation within the Designated Area above the elevation of 700 metres, at specific locations satisfactory to the Province in its sole discretion, for the operation of mobile food facilities located in buildings equiped for the preparation and service of food and which may be moved from one location to another and individually do not exceed an area of 115 square metres.

6.11 In an application for a License of Occupation under Section 6.10:

(a) Issuance of the License and the form thereof shall be in the sole discretion of the Province provided however that the fees payable in respect of such License shall be deemed to be satisfied by payment of the fees due hereunder.

(b) The term of the License shall commence on the date of issuance and terminate May 1, 2029."

(b) deleting Section 10.01(b) and substituting the following therefor:

*(b) The purchaser, assignee or transferee of the Interest, has, in the opinion of the minister, the financial capability and proven management abilities and business experience to develop, operate and maintain the Improvements in accordance with accepted industry standards for similar developments in British Columbia, and enters into an agreement with the Province to perform all the obligations of Fortress under this Agreement and under the leases and rights-of-way granted hereunder.'

(c) deleting Schedule "B" thereof as it relates to the areas outlined in red and green and substituting the map attached hereto therefor;

2. Time shall be of the essence hereof.

3. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors or assigns.

4. In all other respects, save as amended herein, the agreement is hereby ratified and confirmed.

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

SIGNED, SEALED and DELIVERED by the Minister of Lands, Parks and Housing or his duly authorized representative on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ [illegible]

(c/s)

The Corporate Seal of FORTRESS MOUNTAIN RESORTS LTD. was hereunto affixed in the presence of:

/s/ [illegible]

/s/ [illegible]

Duly Authorized Representative

# AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as at the 25th day of July, 1986.

BETWEEN:

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

(hereinafter called the "Province")

OF THE FIRST PART

AND:

FORTRESS MOUNTAIN RESORTS LTD., a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia and having an office at 2600 - 700 West Georgia Street, in the City of Vancouver, in the Province of British Columbia

(hereinafter called "Fortress")

OF THE SECOND PART

WHEREAS:

A. The Province and Fortress entered into an Agreement (hereinafter called the "Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain in the Province of British Columbia.

B. The Development Agreement has been amended by agreements in writing between the parties and dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983, the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of October, 1985, the 2nd day of December, 1985 and the 15th day of July, 1986.

C. The parties hereto have agreed to further amend the Development Agreement on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid by Fortress to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. Fortress and the Province agree to amend the Development Agreement as follows:

(a) by deleting section 1.02 thereof and adding the following as sections 1.37, 1.38 and 1.39:

"1.37 "Holdings" means 309004 British Columbia Ltd., a company incorporated under the laws of the Province of British Columbia under incorporation number 309004;

1.38 "Intrawest" means Intrawest Properties Ltd., a company amalgamated under the laws of the Province of British Columbia under number 200486;

1.39 "Skicorp" means Skicorp Financial Corporation, a company incorporated under the laws of Canada under incorporation number 207445-1;";

(b) by deleting the last sentence of section 10.02 and replacing it with the following:

"Any party to whom any of the Interest is mortgaged, pledged, charged or otherwise encumbered will acknowledge by a covenant in writing to the Province given prior to the granting of such security that (i) if such party acquires the Interest pursuant to foreclosure proceedings taken to realize upon such security or exercises the rights of Fortress under this Agreement, the leases or rights-of-way pursuant to any collateral assignment thereof, such party will be bound by the terms and conditions of this Agreement and the leases and, rights-of-way and in the exercise of any of its remedies will have no greater rights than Fortress and (ii) any transfer of the assets of Fortress pursuant to a proceeding taken to realize upon such security will be conditional upon the Minister consenting to the transfer (which consent will not be unreasonably withheld if the transferee meets the requirements set out in subsection 1.0.01(b) of the Agreement) and the transferee acknowledging by a covenant in writing to the Province prior to such transfer that such transferee will be bound by the terms and conditions of this Agreement and the leases and rights-of-way and in the exercise of any of its remedies will have no greater rights than Fortress. The Province acknowledges that the foregoing is not intended to apply to, or in any way restrict Fortress from granting, any floating charge provided that the holder of such floating charge acknowledges by a covenant in writing to the Province given prior to such holder acquiring the Interest or any part thereof pursuant to foreclosure proceedings or transferring the Interest or any part thereof pursuant to proceedings taken to realize upon the floating charge security that it will comply with the requirements set out in (i) and (ii) above in connection with such acquisition or transfer.";

(c) by deleting subsection 11.01(h) and substituting the following in its place;

11.01(h) without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold:

(i) Holdings ceases to be the registered and beneficial owner of at least fifty percent (50%) of the issued and outstanding voting

shares of Fortress (not including any such shares issued to senior employees of Fortress);

(ii) Intrawest ceases to be the registered and beneficial owner of at least fifty percent (50%) of the issued and outstanding voting shares of Holdings.; and

(iii) Fortress ceases to be the registered and beneficial owner of at least fifty percent (50%) of the issued and outstanding voting shares of Skicorp.”; and

(d) by adding the following as section 7.07:

"7.07 Notice of Voting Control.

(a) Fortress will at least once each year and from time to time at the written request of the Minister, provide the Minister with such detail as the Minister may reasonably require as to identity of the holders of voting shares in Fortress, Skicorp, Holdings and Intrawest.”.

(b) Fortress will cause Intrawest to take reasonable steps to provide the Minister with 30 days notice of issuance or transfer or proposed issuance or transfer of voting shares in Intrawest which results in or would result in a change in voting control of Intrawest and provide the Minister with such detail as the Minister may reasonably require as to the identity of the party or parties who assume voting control of Intrawest, provided that a failure by Intrawest to so notify the Minister as a result of an honest error on the part of Intrawest or circumstances beyond the control of Intrawest shall not constitute a default under the Development Agreement as long as Intrawest forthwith advises the Minister upon becoming aware of such error or circumstances.”.

2. Defined terms in the Development Agreement not otherwise defined in this agreement shall apply herein as the context requires.

3. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

4. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

SIGNED, SEALED and DELIVERED by a duly authorized representative of the Ministry of Lands, Parks and Housing or his duly authorized representative on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ [illegible]

/s/ [illegible]

Duly Authorized Representative

C/S

The CORPORATE SEAL OF FORTRESS MOUNTAIN RESORTS LTD. was hereunto affixed in the presence of:

/s/ [illegible]

This is page four of an Agreement made as at the 25th day of July, 1986 between HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and FORTRESS MOUNTAIN RESORTS LTD.

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 1st day of August, 1989

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Crown Lands

(the “Province”)

OF THE FIRST PART

AND:

BLACKCOMB SKIING ENTERPRISES LTD., (formerly called Fortress Mountain Resorts Ltd.), a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia, having an office at 4545 Blackcomb Way, Whistler, British Columbia, V0N 1B0

(“Blackcomb”)

OF THE SECOND PART

WHEREAS:

A. The Province and Blackcomb entered into an Agreement (the “Development Agreement”) dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia.

B. The Development Agreement has been amended by agreements in writing between the parties and dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983, the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986 and the 25th day of July, 1986.

C. The parties hereto have agreed to further amend the Development Agreement on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid by Blackcomb to the Province (the receipt whereof is heresy Acknowledged) the parties hereto hereby agree as follows:

1. Blackcomb and the Province agree to amend Schedule “B” of the Development Agreement insofar as it pertains to the Designated Area by addition to Schedule “B” the plan

attached hereto. Hereafter the Designated Area will be the area shown outlined in red on the plan attached hereto rather than on the existing Schedule “B”. The Base Area and the Town Centre will continue to be as set out in the existing Schedule “B” to the Development Agreement and outlined therein in green and brown respectively.

2. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

3. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

4. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

SIGNED, SEALED and DELIVERED )
by a duly authorized representative of the Ministry of )
Lands, Parks )
and Housing or his duly authorized representative on behalf )
of Her Majesty the Queen in Right of the Province of )
British Columbia in the presence of: )
) /s/ [illegible]
/s/ [illegible] )
Name )
Burnaby, B.C. )
Address
Attorney/Manager Development Matters
Occupation

C/S

)
The Common Seal of BLACKCOMB SKIING )
ENTERPRISES LTD. was hereunto affixed in the )
presence of: )
)
)
)
)

/s/ [illegible]

# AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 1st day of March, 1990

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Crown Lands

(the "Province")

OF THE FIRST PART

AND:

BLACKCOMB SKIING ENTERPRISES LTD. (formerly called Fortress Mountain Resorts Ltd.), a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia, having an office at 4545 Blackcomb Way, Whistler, British Columbia, V0N 1B0

("Blackcomb")

OF THE SECOND PART

WHEREAS:

A. The Province and Blackcomb entered into an Agreement (the "Original Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia.

B. The Original Development Agreement has been amended by agreements in writing between the parties and dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983, the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986, the 25th day of July, 1986 and the 1st day of August, 1989 (the Original Development Agreement as amended is hereinafter referred to as the "Development Agreement").

C. The parties hereto have agreed to further amend the Development Agreement on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid by Blackcomb to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. Blackcomb and the Province agree to amend Schedule "B" of the Development Agreement insofar as it pertains to the Designated Area by deleting from the Designated Area all of that portion thereof which lies within the area shown outlined in red on the plan attached hereto.

2. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

3. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

4. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

SIGNED, SEALED and DELIVERED )
by a duly authorized representative of the Ministry of )
Lands, Parks )
and Housing or his duly authorized representative on behalf )
of Her Majesty the Queen in Right of the Province of )
British Columbia in the presence of: )
) /s/ [illegible]
/s/ [illegible] )
Name )
New Westminster, B.C. )
Address )
Examiner C/S
Occupation
)
The Common Seal of BLACKCOMB SKIING )
ENTERPRISES LTD. was hereunto affixed in the )
presence of: )
)
/s/ [illegible] )
Title: )

# AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 30th day of March, 1990

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Crown Lands

(the "Province")

OF THE FIRST PART

AND:

BLACKCOMB SKIING ENTERPRISES LTD., (formerly called Fortress Mountain Resorts Ltd.), a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia, having an office at 4545 Blackcomb Way, Whistler, British Columbia, V0N 1B0

("Blackcomb")

OF THE SECOND PART

WHEREAS:

A. The Province and Blackcomb entered into an Agreement (the "Original Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia.

B. The Development Agreement has been amended by agreements in writing between the parties and dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983, the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986, the 25th day of July, 1986, the 1st day of August, 1989 and the 1st day of March, 1990 (the Original Development Agreement as amended is hereafter referred to as the "Development Agreement").

C. The parties hereto have agreed to further amend the Development Agreement on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid by Blackcomb to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. Blackcomb and the Province agree to amend Schedule "B" of the Development Agreement insofar as it pertains to the Designated Area by replacing the plan added to Schedule "B" pursuant to the Amendment to Development Agreement dated the 1st day of August, 1989 (the "August '89 Amendment") with the plan attached hereto. Hereafter the Designated Area will be the area shown outlined in red on the plan attached hereto rather than on the plan attached to the August '89 Amendment. The Base Area and the Town Centre will continue to be as set out in the existing Schedule "B" to the Development Agreement and outlined therein in green and brown respectively.

2. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

3. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall. be construed as one instrument.

4. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

SIGNED, SEALED and DELIVERED )
by a duly authorized representative of the Ministry of )
Lands, Parks )
and Housing or his duly authorized representative on behalf )
of Her Majesty the Queen in Right of the Province of )
British Columbia in the presence of: )
) /s/ [illegible]
/s/ [illegible] )
Name )
1500-1040 W. Georgia, Vancouver, B.C. )
Address
Solicitor
Occupation

C/S

)
The Common Seal of BLACKCOMB SKIING )
ENTERPRISES LTD. was hereunto affixed in the )
presence of: )
)
/s/ [illegible] )
Title: )

# AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 15th day of August, 1990

BETWEEN:

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

(hereinafter called the "Province")

AND:

BLACKCOMB SKIING ENTERPRISES LTD. (formerly called Fortress Mountain Resorts Ltd.), a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia, having an office at 4545 Blackcomb Way, Whistler, British Columbia, V0N 1B0

(hereinafter called "BSE")

WHEREAS:

A. The Province and BSE entered into an agreement dated the 1st day of May, 1979, in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia (the "Original Development Agreement").

B. The Original Development Agreement has been amended by agreements in writing between the parties and dated the 1st day of September 1981; the 10th day of December, 1982, the 23rd day of December, 1983, the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986, the 25th day of July, 1986, the 1st day of August, 1989, the 1st day of March 1990 and the 30th day of March, 1990 (the Original Development as amended is hereafter referred to as the "Development Agreement").

C. The parties have contemporaneously agreed to amend the Development Agreement and the Lease (as defined in the Development Agreement) to allow BSE to sub-lease a portion of the lands included within the Lease to the Blackcomb Ski Club.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid

by BSE to the Province (the receipt where is hereby acknowledged) the parties hereto hereby agree as follows:

1. BSE and the Province agree to amend Article 10.01 of the Development Agreement by inserting after the phrase ". . . any lease . . ." in the fourth line thereof the following phrase:

"except as specifically provided for in any lease".

2. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

3. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

4. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

SIGNED, SEALED and DELIVERED )
by a duly authorized representative of the Ministry of )
Lands, Parks )
and Housing or his duly authorized representative on behalf )
of Her Majesty the Queen in Right of the Province of )
British Columbia in the presence of: )
) /s/ [illegible]
/s/ [illegible] )
Name )
Burnaby, B.C. )
Address
Development Officer C/S
Occupation
)
The Common Seal of BLACKCOMB SKIING )
ENTERPRISES LTD. was hereunto affixed in the )
presence of: )
)
/s/ [illegible] )
Authorized Signatory )

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 30th day of October, 1990

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Crown Lands

(the "Province")

OF THE FIRST PART

AND:

BLACKCOMB SKIING ENTERPRISES LTD. (formerly called Fortress Mountain Resorts Ltd.), a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia, having an office at 4545 Blackcomb Way, Whistler, British Columbia, V0N 1B0

("Blackcomb")

OF THE SECOND PART

WHEREAS:

A. The Province and Blackcomb entered into an Agreement (the "Original Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia.

The Original Development Agreement has been amended by agreements in writing between the parties and dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983 the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986, the 25th day of July, 1986, the 1st day of August, 1989, the 1st day of March, 1990, the 30th day of March, 1990 and the 15th day of August, 1990 (the Original Development Agreement as amended is hereafter referred to as the "Development Agreement").

C. The parties hereto have agreed to further amend the Development Agreement on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid

by Blackcomb to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. The Province and Blackcomb agree that the Development Agreement is amended as follows:

(a) by amending Article 1.37 by deleting "309004 British Columbia Ltd." in line one thereof and replacing it with "Blackcomb Mountain Properties Ltd.";

(b) by amending Article 1.38 by deleting "Intrawest Properties Ltd." in line one thereof and replacing it with "Intrawest Development Corporation";

(c) by amending Article 1 by adding immediately after Article 1.39 the following:

1.40 "Partnership" means Blackcomb Skiing Enterprises Limited Partnership, a British Columbia limited partnership registered under number 107376-90; and

1.41 "326976" means 326976 British Columbia Ltd., a company incorporated under the laws of the Province of British Columbia under incorporation number 326976.";

(d) by deleting Article 7.07(a) and replacing it with the following:

"(a) Fortress will at least once each year and from time to time at the written request of the Minister, provide the Minister with such detail as the Minister may reasonably require as to the identity of the holders of voting shares in Fortress, Skicorp, Holdings, 326976 and Intrawest and the identity of the holders of limited partnership units in the Partnership,";

e) by amending Article 10.01 by adding after the words "Article 10.02," in the first line thereof the words "Article 10.04,";

(f) by amending Article 10 by adding the following immediately after Article 10.03:

"10.04 Assignment to the Partnership. Fortress may assign its Interest to the Partnership upon the Partnership delivering to the Minister a covenant in favour of the Province to observe and perform all of the obligations of Fortress ender this Agreement. In such event, reference to Fortress in this Agreement snail thereafter be deemed to refer to the Partnership, other than references to Fortress contained in Article 7.07(a) and Article 11.01(h).";

(g) by deleting Article 11.01(h) and replacing it with the following:

“(h) Without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold:

(i) Intrawest ceases to be the registered and beneficial owner of at least 100% of the issued and outstanding voting shares of 326976;

(ii) 326976 ceases to be the registered and beneficial owner at least 50% of the issued and outstanding voting shares of Holdings;

(iii) Holdings ceases to be the registered and beneficial owner of at least 50% of the issued and outstanding voting shares of Fortress (not including any such shares issued to senior employees of Fortress);

(iv) Fortress ceases to be the registered and beneficial owner of at least 50% of the issued and outstanding voting shares of Skicorp until such time as Skicorp is wound up;

(v) Fortress ceases to beneficially own, directly or indirectly, at least 50% of the value of Partnership; or

(vi) Fortress ceases to be the sole general partner of the Partnership or to have the sole authority to manage the business of the Partnership,

provided that Intrawest may at any time elect to participation of 326976 or Holdings or both in the chain of ownership contemplated above so long as:

(vii) if 326976 is eliminated then it shall be a Default if, without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold, Intrawest ceases to be the registered and beneficial owner of at least 50% of the issued and outstanding voting shares of Holdings;

(viii) if Holdings is eliminated then it shall be a Default if, without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold, 326376 ceases to be the registered and beneficial owner of at least 50% of the issued and outstanding voting shares of Fortress (not including any such shares issued to senior employees of Fortress); and

(ix) if both 326976 and Holdings are eliminated then it shall be a Default if, without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold, Intrawest ceases to be the registered and beneficial owner of at least 50% of the issued and outstanding voting shares of Fortress (not including any such shares issued to senior employees of Fortress).”; and

(h) by amending Article 13.08 by deleting the address shown for notices to Fortress and replacing it with the following:

"Intrawest Development Corporation
6th Floor, 1111 West Hastings Street
Vancouver, British Columbia
V6E 2J3

Attention: President

With a copy to:

Blackcomb Skiing Enterprises Ltd.
4545 Backcomb Way
Whistler, British Columbia
V0N 1B0

Attention: President".

2. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

3. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed one instrument.

4. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

SIGNED, SEALED and DELIVERED )
by a duly authorized representative of the Ministry of )
Lands, Parks )
and Housing or his duly authorized representative on behalf )
of Her Majesty the Queen in Right of the Province of )
British Columbia in the presence of: )
) /s/ [illegible]
/s/ [illegible] )
Name )
Vancouver )
Address )

C/S

Occupation

)
The Common Seal of BLACKCOMB SKIING )
ENTERPRISES LTD. was hereunto affixed in the )
presence of: )
)
/s/ [illegible] )
Title: Vice President - Real Estate )
(Authorized Signatory)

# ASSUMPTION AGREEMENT

THIS AGREEMENT made as of October 31, 1990

MADE BY:

BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP, a British Columbia Limited Partnership having an office at 4545 Blackcomb Way, Whistler, British Columbia, V0N 1B0

(the “Partnership”)

AND:

BLACKCOMB SKIING ENTERPRISES LTD. (formerly called Fortress Mountain Resorts Ltd.), a company continued under the laws of Canada, registered extra-provincially in the Province of British Columbia, having an office at 4545 Blackcomb Way, Whistler, British Columbia, V0N 1B0

(“Blackcomb”)

IN FAVOUR OF:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Crown Lands

(the “Province”)

WHEREAS:

A. The Province and Blackcomb entered. into an Agreement (the “Original Development Agreement”) dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia;

B. The Original Development Agreement has been amended by agreements in writing between the parties and dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983 the 7th day of June, 1984, the 10th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986, the 25th day of July, 1986, the 1st day of August, 1989, the 1st day of March, 1990, the 30th day of March, 1990, the 15th day of August, 1990 and the 30th day of October, 1990 (the Original Development Agreement as amended is hereafter referred to as the “Development Agreement”);

C. Article 10.04 of the Development Agreement provides that Blackcomb may assign its interest (as defined in the Development Agreement) to the Partnership upon the Partnership delivering to the Minister (as defined in the Development Agreement) a covenant made by the

Partnership in favour of the Province to observe and perform all of the obligations of Blackcomb under the Development Agreement;

D. Pursuant to a contribution agreement (the "Contribution Agreement") dated for reference October 22, 1990, Blackcomb assigned to the Partnership all of it right, title and interest in and to the Interest; and

F. The Partnership is now required to deliver this Assumption Agreement to the Province.

THEREFORE in consideration of the consent of the Province to the assignment of the Interest from Blackcomb to the Partnership pursuant to the Contribution Agreement, the amount of $1.00 now paid by the Province to each of Blackcomb and the Partnership and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. The Partnership hereby covenants and agrees with the Province that from and after the date hereof the Partnership will be bound by the terms and conditions set out in the Development Agreement and strictly and fully observe, comply with and perform all of the covenants, duties and obligations of Blackcomb pursuant to the Development Agreement as and when such covenants, duties and obligations are due to be observed, complied with and performed by Blackcomb.

2. Blackcomb hereby covenants and agrees that, notwithstanding the assumption by the Partnership of Blackcomb's covenants, duties and obligations under the Development Agreement pursuant to this Assumption Agreement or the consent of the Province to the assignment of the Interest from Blackcomb to the Partnership, Blackcomb will not be released from any of its covenants, duties or obligations under the Development Agreement and Blackcomb will remain bound by the terms and conditions set cut in the Development Agreement and liable to fully observe, comply with and perform or see to the observance, compliance and performance of covenants, duties and obligations of Blackcomb under the Development Agreement.

3. All of the covenants and agreements made by Blackcomb and the Partnership herein will survive the transfer of the Interest from Blackcomb to the Partnership.

4. Each of the parties hereto will at all times and from time to time upon reasonable request, perform, execute and deliver all further assurances, acts and documents for the purpose of evidencing and giving full force and effect to the covenants and agreements set out in this Assumption Agreement.

5. This Assumption Agreement will enure to the benefit of and be binding upon the legal representatives, successors and permitted assigns of the parties.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

SIGNED by a duly authorized representative of the Minister of Environmental, Lands and Parks or his duly authorized representative on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ Pat Shea
Name

10470-152 Street, Surrey B.C.
Address

Regional Director's Assistant
Occupation

/s/ [illegible]

Authorized Representative of the Ministry of Environment, Lands and Parks

BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP by its general partner BLACKCOMB SKIING ENTERPRISES LTD. whose Common Seal was hereunto affixed in the presence of:

/s/ [illegible]
Title: _____
(Authorized Signatory)

/s/ [illegible]
Title: _____
(Authorized Signatory)

C/S

# AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 1st day of October, 1991

BETWEEN:

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

(the "Province")

OF THE FIRST PART

and:

BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP, a limited partnership created under the laws of British Columbia having an office at 4545 Blackcomb Way, Whistler, British Columbia, VON 1B0

("Blackcomb")

OF THE SECOND PART

WHEREAS:

A. The Province and Blackcomb Skiing Enterprises Ltd. ("BSE") entered into an Agreement (the "Original Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia.

B. The Original Development Agreement has been amended by agreements in writing between the parties and dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983, the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986, the 25th day of July, 1986, the 1st day of August, 1989, the 1st day of March, 1990, the 30th day of March, 1990, the 15th day of August, 1990 and the 30th day of October, 1990 (the Original Development Agreement as amended is hereafter referred to as the "Development Agreement").

C. By a Contribution Agreement dated for reference October 22, 1990, BSE assigned all of its rights under the Development Agreement to Blackcomb and by an Assumption Agreement dated as of October 31, 1990. Blackcomb assumed all of the obligations of BSE under the Development Agreement.

D. The parties hereto have agreed to further amend the development Agreement in the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid by Blackcomb to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. The Province and Blackcomb agree that the Development Agreement is amended as follows:

(a) by amending Article 5.10 by adding the following immediately after Article 5.10(d):

"(e) Garibaldi Provincial Park. Fortress covenants to provide or cause to be provided reasonable public access for individuals on foot or skis only through the Designated Area to Garibaldi Provincial Park having a width of not less than 16.5 feet and substantially as shown in the plan attached hereto as Schedule M. The access routes for this purpose may be changed from time to time by Fortress subject to the approval of the Minister, such approval not to be unreasonably withheld. The foregoing right of access is subject always to the provisions of Articles 6.07, 6.08 and 6.09 and to the right of Fortress to temporarily interrupt such access from time to time where it believes it is necessary to do so to ensure public safety.";

(b) by amending Article 6.07(a) by deleting the word "with" in the first line thereof and replacing it with the word "within";

(c) By amending Article 7.05 (a) (ii) by deleting "$10,000.00" where it appears and replacing it with "$10,000,000"; and

(d) by adding as Schedule "M" to the Development Agreement the plan attached hereto as Schedule 1.

2. Defined terms in the Development Agreement not otherwise defined in this agreement shall apply herein as the context requires.

3. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

4. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

SIGNED, SEALED and DELIVERED by a duly authorized representative of the Ministry of Lands, Parks and Housing or his duly authorized representative on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:

/s/ [illegible]

/s/ [illegible]
Name
401-4603 Kingsway
Burnaby, B.X. V5H 4M4
Address
Development Officer
Occupation

C/S

BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP by its general partner BLACKCOMB SKIING ENTERPRISES LTD. whose Common Seal was hereunto affixed in the presence of:

/s/ [illegible]
Title: _____
(Authorized Signatory)

This is page three (3) of an Amendment to Development Agreement made as of the 1st day of October, 1991 between HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP.

# AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the 31st day of October, 1997

BETWEEN:

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

(the "Province")

OF THE FIRST PART

AND:

BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP, a limited partnership created under the laws of British Columbia having an office at 4545 Blackcomb Way, Whistler, British Columbia, VON 1B0

(the "Blackcomb")

OF THE SECOND PART

WHEREAS:

A. The Province and Fortress Mountain Resorts Ltd. ("Fortress") entered into an Agreement (the "Original Development Agreement) dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia:

B. The Original Development Agreement has been amended by agreements in writing dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983, the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986, the 25th day of July, 1986, the 1st day of August, 1989, the 1st day of March, 1990, the 30th day of March, 1990, the 15th day of August, 1990, the 30th day of October, 1990 and the 1st day of October, 1991 (the Original Development Agreement as amended is hereafter referred to as the "Development Agreement");

C Effective February 2, 1987, Fortress changed its name to Blackcomb Skiing Enterprises Ltd. ("BSE");

D. By a Contribution Agreement dated for reference October 22, 1990, BSE assigned all of its rights under the Development Agreement (prior to the amendment dated as of the 30th day of October, 1990) to Blackcomb, a British Columbia limited partnership of which BSE was the general partner, and by an Assumption Agreement dated as of October 31, 1.990, Blackcomb assumed all of the obligations of BSE under the Development Agreement;

E. Effective October 31, 1997, BSE amalgamated (the "Amalgamation") pursuant to the provisions of the *Canada Business Corporations Act* with Whistler Mountain Holdings Limited. Whistler Mountain Ski Corporation, Intrawest Resort Corporation, Blackcomb Mountain

Properties Ltd., IW Resorts Ltd. and Mont Ste. Marie (1984) Inc. and continued as one corporation under the name Intrawest Resort Corporation; and

F. The parties hereto have agreed to further amend the Development Agreement on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and other good and valuable consideration (the receipt whereof is hereby acknowledged) the parties hereto hereby agree a follows:

1. The Province and Blackcomb agree that the Development Agreement is amended as follows:

(a) by amending Article 1 by deleting Article 1.11;

(b) by amending Article 1 by deleting Articles 1.37 to and including 1.41 and replacing them with the following:

"1.37 "Intrawest" means Intrawest Corporation, a company amalgamated under the laws of the Province of British Columbia under number 200486;

1.38 "IRC" means Intrawest Resort Corporation, a company amalgamated under the laws of Canada under number 343030-8; and

1.39 "Partnership" means Blackcomb Skiing Enterprises Limited Partnership, a British Columbia limited partnership registered under number 107376-90.";

(c) by amending Article 7.07(a) by deleting the words "Fortress, Skicorp, Holdings, 326976" in lines five and six thereof and replacing them with "IRC";

(d) by amending Article 10.04 by deleting the words "other than references to Fortress contained in Article 7.07(a) and Article 11.01(h)";

(e) by amending Article 11.01(f) by deleting "Fortress" in line two thereof and replacing it with "IRC";

(f) by deleting Articles 11.01(g) and 11.01(h) and replacing them with the following:

"(g) Without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold:

(i) IRC ceases to beneficially own, directly or indirectly, at least 50% of the value of the Partnership;

(ii) IRC ceases to be the sole general partner of the Partnership or to have the sole authority to manage the business of the Partnership; or

(iii) Intrawest ceases to be the registered and beneficial owner of at least 50% of the issued and outstanding voting shares of IRC (not including any such shares issued to senior employees of IRC).”; and

(g) by amending Article 13.08 by deleting the address for notices for the Partnership and replacing it with the following:

“if to the Partnership:

Intrawest Resort Corporation
Suite 300 - 200
Burrard Street
Vancouver, British Columbia
V6C 3L6

Attention: President”

2. The Province hereby consents to the Amalgamation.

3. Blackcomb warrants and represents to the Province that as of the date of this Agreement:

(a) IRC:

(i) is a corporation duly amalgamated under the *Canada Business Corporations Act* (the “CBCA”), has not been discontinued or dissolved under such Act and has sent to the Director under the CBCA all documents required to be sent to him under the CBCA;

(ii) will, within 30 days after the date hereof, be duly registered as an extra-provincial corporation under the laws of the Province of British Columbia, and be in good standing with respect to the filing of returns;

(iii) has the 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; and

(iv) is a non-reporting company wherein:

(I) the authorized capital of IRC is an unlimited number of common shares which are designated as Common shares;

(II) the following company is the only beneficial owner of shares in the capital of IRC of the number and class set opposite its name, free and clear of all liens, charges, options and encumbrances other than in favour of The Bank of Nova Scotia:

| Name | Number and Class of Shares |
|---|---|
| Intrawest Corporation | 10,514,848 Common shares |

(III) there are no outstanding securities of IRC 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 IRC; and

(IV) the directors and officers of IRC are as follows:

Directors:

Joseph S. Houssian
Hugh R. Smythe
Daniel O. Jarvis

Officers:

Joseph S. Houssian - Chairman of the Board
Daniel O. Jarvis - Executive Vice President and Chief Financial Officer
Hugh R. Smythe - President
John E. Currie - Senior Vice President, Financing and Taxation
David C. Blaiklock - Corporate Controller
Ross J. Meacher - Corporate Secretary
Doug J. Forseth - Vice President
David B. Brownlie - Vice President
Charles Blier - Vice President
Graham R. Wood - Vice President

4. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

5. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument,

This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

| | |
|---|---|
| SIGNED by a duly authorized representative of the Minister of Environment, Lands and Parks on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:<br><br>/s/ Pat Shea<br>Name<br><br>10470-152 Street, Surrey, BC<br>Address<br><br>Regional Director's Assistant<br>Occupation | /s/ [illegible]<br>Authorized Representative of the Ministry of Environment, Lands and Parks |
| BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP by its general partner INTRAWEST RESORT CORPORATION whose Common Seal was hereto affixed in the presence of:<br><br>/s/ [illegible]<br>Title: _____<br>(Authorized Signatory)<br><br>/s/ [illegible]<br>Title: _____<br>(Authorized Signatory) | C/S |

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT made as of the day of the *18th* day of *February*, 1998.

BETWEEN:

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

(the "Province")

OF THE FIRST PART

AND:

BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP, a limited partnership created under the laws of British Columbia having an office at 4545 Blackcomb Way, Whistler, British Columbia, VON 1B0

("Blackcomb")

OF THE SECOND PART

WHEREAS:

A. The Province and Blackcomb Skiing Enterprises Ltd. ("BSE") entered into an Agreement (the "Original Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia.

B. The Original Development Agreement has been amended by agreements in writing between the parties and dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983, the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986, the 25th day of July, 1986, the 1st day of August, 1989, the 1st day of March, 1990, the 30th day of March, 1990, the 15th day of August, 1990, the 30th day of October, 1990, the 1st day of October, 1991 and the 31st day of October, 1997 (the Original Development Agreement as amended is hereinafter referred to as the "Development Agreement").

C. By a Contribution Agreement dated for reference October 22, 1990, BSE assigned all of its rights under the Original Development Agreement as amended to such date to Blackcomb and by an Assumption Agreement dated as of October 31, 1990, Blackcomb assumed all of the obligations of BSE under the Original Development Agreement as amended to such date.

D. The parties hereto have agreed to further amend the Development Agreement on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the sum of One ($1.00) Dollar and other good and valuable consideration now paid by Blackcomb to the Province (the receipt whereof is hereby acknowledged) the parties hereto hereby agree as follows:

1. Blackcomb and the Province agree to amend Schedule “B” of the Development Agreement insofar as it pertains to the Designated Area by deleting from the Designated Area all of that portion thereof which is legally described in Schedule A hereto.

2. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

3. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

4. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

| | |
|---|---|
| SIGNED by a duly authorized representative of the Minister of Environment, Lands and Parks on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:<br><br>/s/ Valerie Anne Lowther<br>Name<br><br>_____Address<br><br>Examiner<br>Occupation | /s/ [illegible] |
| BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP by its general partner INTRAWEST RESORT CORPORATION whose Common Seal was hereto affixed in the presence of:<br><br>Per: /s/ [illegible]<br><br>Per: _____ | C/S |

This is page three (3) of an Amendment to Development Agreement made as of the *18th* day of *February*, 1998 between HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP.

# CONSENT AND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT dated September 14, 1999

BETWEEN:

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

(the "Province")

OF THE FIRST PART

AND:

BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP, a limited partnership formed under the laws of British Columbia having an office at 4545 Blackcomb Way, Whistler, British Columbia, VON 1B4

(the "Partnership")

OF THE SECOND PART

AND:

INTRAWEST RESORT CORPORATION, a corporation amalgamated under the *Canada Business Corporation Act* having an office at Suite 800 - 200 Burrard Street, Vancouver, British Columbia, V6C 3L6

("IRC")

OF THE THIRD PART

AND:

INTRAWEST CORPORATION, a British Columbia company having an office at Suite 800 - 200 Burrard Street, Vancouver, British Columbia, V6C 3L6

("Intrawest")

OF THE FOURTH PART

WHEREAS:

A. The Province and Fortress Mountain Resorts Ltd. (“Fortress”) entered into an Agreement (the “Original Development Agreement) dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia;

B. The Original Development Agreement has been amended by agreements in writing dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day or December, 1983, the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986, the 25th day of July, 1986, the 1st day of August, 1989, the 1st day of March, 1990, the 30th day of March, 1990, the 15th day of August, 1990, the 30th day of October, 1990, the 1st day of October, 1991 and the 31st day of October, 1997 (the Original Development Agreement as amended is hereafter referred to as the “Development Agreement”);

C. Effective February 2, 1987, Fortress changed its name to Blackcomb Skiing Enterprises Ltd. (“BSE”);

D. By a Contribution Agreement dated for reference October 22, 1990, BSE assigned all of its rights under the Development Agreement to the Partnership, a British Columbia limited partnership of which BSE was the general partner, and by an Assumption Agreement dated as of October 31, 1900, the Partnership assumed all of ’ the obligations of BSE under the Development Agreement;

E. Effective October 31, 1997, BSE amalgamated (the “Amalgamation”) with Whistler Mountain Holdings Limited, Whistler Mountain Ski Corporation, Intrawest Resort Corporation, Blackcomb Mountain Properties Ltd., IW Resorts Ltd. and Mont Ste. Marie ‘(1984) Inc. and continued as one corporation under the name “Intrawest Resort Corporation” pursuant to the provisions of the *Canada Business Corporations Act* (the “CBCA”);

F. Upon the Amalgamation IRC became the general partner of the Partnership;

G IRC is a wholly-owned subsidiary of Intrawest;

H. It is proposed that pursuant to provisions of the CBCA the winding-up of IRC into its parent Intrawest (the “Winding-Up”) be approved and implemented prior to the end of September 1999 and that in the course of the Winding-Up all the property of IRC be distributed to Intrawest and all the liabilities and obligations of IRC he assumed by Intrawest;

I. Upon, in the course of, and as a consequence of, the Winding-Up:

(i) Intrawest will, *inter alia*, become the general partner of the Partnership in substitution for IRC;

(ii) all of the property of IRC will become the property of Intrawest;

(iii) Intrawest will assume and become liable for all of the obligations and liabilities of IRC, including, without limitation, any and ad obligations and liabilities of IRC under the Development Agreement and each and every lease, licence, right of way and other document executed pursuant thereto (collectively, the ¯Tenures”); and

(iv) IRC will he dissolved alter all elements of the Winding-Up have been completed;

J. To facilitate the completion of the Winding-Up and the dissolution of IRC it is necessary that IRC be released and discharged from all of its obligations and liabilities, including, without limitation, any and all obligations and liabilities of IRC under the Development Agreement and the Tenures; and

K. The consent of the Province. is required to Intrawest becoming the general partner of the Partnership in substitution for IRC and to the release and discharge of IRC from all of its obligations and liabilities wider the Development Agreement and the Tenures and in connection with the giving or such consent and release the parties hereto have agreed to further amend the Development Agreement as hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged). the parties hereto hereby agree as follows:

1. The Province hereby:

(a) consents to Intrawest becoming the general partner of the Partnership in substitution for IRC in the course of" the Winding-Up; and

(b) acknowledges, confirms and agrees that effective upon Intrawest becoming the general partner of the Partnership in substitution for IRC in the course of the Winding-Up, IRC will be released and discharged from any and all obligations and liabilities under the Development Agreement and the Tenures including, without limitation, any and all obligations and liabilities of IRC thereunder as general partner the Partnership.

2. Intrawest hereby acknowledges, confirms and agrees that effective upon Intrawest becoming the general partner of the Partnership in substitution for IRC in the course of the Winding-Up, Intrawest will be liable for any and all obligations and liabilities of IRC under the Development Agreement and the Tenures, including, without limitation, any and all obligations of IRC thereunder as general partner of the Partnership.

3. Effective upon Intrawest becoming the general partner of the Partnership in substitution for IRC in the course of the Winding-Up, the Province and the Partnership agree that the Development Agreement is hereby amended as follows:

(a) by adding as Article 1.00 the following:

"1.00 "Acquisition of Control" means, in respect of any person, such person becoming the beneficial owner, directly or indirectly, of Voting Shares which carry more than 50% of the combined voting power of the outstanding Voting Shares (for such purpose beneficial ownership will take into account and will include beneficial ownership within the

meaning of section 1(4) of the *Securities Act* (British Columbia) in effect on August 31, 1999);";

(b) by adding as Article 1.32A the following:

"1.32A "Voting Shares" means securities of Intrawest of any class or classes which ordinarily have voting power for the election of directors of Intrawest, whether at all times or only so long as no senior class of securities of Intrawest has such voting power by reason of any contingency;";

(c) by deleting Article 1.38;

(d) by deleting Article 7.07(a) and replacing it with the following:

"(a) The Partnership will at any time and from time to time at the written request of the Minister, provide to the Minister a list of the registered holders of shares in the capital of Intrawest and a list of the holders of limited partnership units in the Partnership.";

(e) by deleting Article 7.07(b) and replacing it with the following:

"(b) In the event that there is an Acquisition of Control by any person. the Partnership will notify the Minister of such Acquisition of Control promptly after the later of the occurrence or such Acquisition of Control or the Partnership becoming aware of such Acquisition of Control and provide the Minister with such detail as is available to the Partnership as the Minister may reasonably request as to the identity or such person.";

(f) by adding to the end of Article 10.04 immediately before the period "other than references to Fortress contained in this Article 10.04 and in Articles 1.12, 1.16, 1.22, 3 and 4";

(g) by deleting Article 11.01(f) and replacing it with the following:

"(f) Intentionally deleted;";

(h) by deleting Article 11.01(g) and replacing it with the following:

"(g) Without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold:

(i) Intrawest ceases to beneficially own, directly or indirectly, at least 50% of the value of the Partnership; or

(ii) Intrawest ceases to be the sole general partner of the Partnership or to have the sole authority to manage the business of the Partnership."; and

(i) by deleting from Article 13.08 the address for notices for the Partnership and replacing it with the following:

"if to the Partnership:

c/o Intrawest Corporation
Suite 800 - 200 Burrard Street
Vancouver, British Columbia
V6C 3L6

Attention: Corporate Secretary".

4. Intrawest hereby warrants and represents to the Province that ns of the date of this Agreement:

(a) Intrawest:

(i) is a corporation duly amalgamated, validly existing and in good standing under the *Company Act* (British Columbia);

(ii) has the 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; and

(iii) is a reporting company; and

(b) the directors and officers of Intrawest are as follows:

Directors

R. Thomas M. Allan
Joe S. Houssain
Daniel O. Jarvis
David A. King
Gordon H. MacDougall
Paul M. Manheim
Paul A. Novelly
Gary Raymond
Bernard A. Roy
Khaled C. Sifri
Hugh R. Smythe
Nicholas C. Villiers

Officers:

| | |
|---|---|
| Joe S. Houssain | Chairman, President. and Chief Executive Officer |
| Daniel O. Jarvis | Executive Vice President and Chief Financial Officer |
| Gary L. Raymond | Executive Vice President, Development and Acquisitions |
| Hugh R. Smythe | President, Resort Operations Croup |
| James J. Gibbons | President, Intrawest Resort Club Group |
| Michael F. Coyle | Senior Vice President, Marketing |
| John E. Currie | Senior Vice President, Financing and Taxation |
| David C. Blaiklock | Vice President and Corporate Controller |
| David C. Brown | Vice President, information Technology |
| Ross J. Meacher | Corporate Secretary |

5. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

6. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement as amended and these presents shall be read together and shall be construed as one instrument.

7. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

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

| | |
|---|---|
| SIGNED by British Columbia Assets and Land Corporation, an authorized representative of the MINISTER OF ENVIRONMENT, LANDS AND PARKS on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:<br><br>/s/ [illegible]<br>Name<br><br>_____<br>Address<br><br>_____<br>Occupation | /s/ [illegible]<br>British Columbia Assets and Land Corporation, an authorized representative of the Minister of Environment, Lands and Parks |
| BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP by its general partner INTRAWEST RESORT CORPORATION whose Corporate Seal was hereunto affixed in the presence of:<br><br>By: /s/ John Currie<br>Title: Senior Vice President | C/S |
| The Corporate Seal of INTRAWEST RESORT CORPORATION was hereunto affixed in the presence of:<br><br>By: /s/ John Currie<br>Title: Senior Vice President | C/S |
| The Common Seal of INTRAWEST CORPORATION was hereunto affixed in the presence of:<br><br>By: /s/ John Currie<br>Title: Senior Vice President, Financing and Taxation | C/S |

**CONSENT AND AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS AGREEMENT dated as of November 27, 2001

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the Minister of Sustainable Resource Management

(the "Province")

OF THE FIRST PART

AND

**BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP**, a limited partnership formed under the laws of British Columbia having an office at 4545 Blackcomb Way, Whistler, British Columbia, VON 1B4

(the "Partnership")

OF THE SECOND PART

AND

**INTRAWEST CORPORATION**, a British Columbia company having an office at Suite 800-200 Burrard Street, Vancouver, British Columbia, V6C 3L6

(the "Intrawest")

OF THE THIRD PART

WHEREAS,

A. The Province and Fortress Mountain Resorts Ltd. ("Fortress") entered into an Agreement (the "Original Development Agreement") dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia:

B. The Original Development Agreement has been amended by agreements in writing dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day or December, 1983, the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986, the 25th day of July, 1986, the 1st day of August, 1989, the 1st day of March, 1990, the 30th day of March, 1990, the 15th day of August, 1990, the 30th day of October, 1990, the 1st day of October, 1991 and the 31st day of October, 1997 and September 14, 1999, respectively (the Original Development Agreement as amended is hereafter referred to as the "Development Agreement")

C. Effective February 2, 1987, Fortress changed its name to Blackcomb Skiing Enterprises

D. By a Contribution dated for reference October 22, 1990, BSE assigned all of its rights under the Development :Agreement to the Partnership, a British Columbia limited partnership of "hide BSE was the general partner, and by an Assumption Agreement dated as of October 31, 1990, the Partnership assumed all of the obligations of BSE under the Development Agreement:

E. Effective October 31, 1997, BSE amalgamated (the "Amalgamation") with Whistler Mountain Holdings Limited. Whistler Mountain Ski Corporation, Intrawest Resort Corporation, Blackcomb Mountain Properties Ltd., IW Resorts Ltd. and Mont Ste. Marie (1984) Inc. and continued as one corporation tinder the name "Intrawest Resort Corporation" ("IRC") pursuant to the provisions of the *Canada Business Corporations Act* (the "CBCA");

F. Upon the Amalgamation IRC became the general partner of the Partnership;

G. IRC was wound-up into its parent Intrawest with the consent of the Province pursuant to the provisions of the CBCA (the "Winding-Up") and in the course of, and as a consequence of. the Winding-Up. Intrawest became the sole general partner of the Partnership in substitution ;Or Ii C:

H. It is proposed that Intrawest Mountain Resorts Ltd. ("IMRL"), a British Columbia company and a wholly-owned subsidiary of Intrawest, become an additional general partner of the Partnership;

I. The consent of the Province is required to IMRL becoming an additional general partner of the Partnership; and

J. parties hereto have agreed to amend the Development Agreement to include provisions with respect to IMRL and to otherwise amend the terms and conditions thereof, in [illegible] as hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby agree as follows:

1. The Province hereby consents to IMRL becoming an additional general partner of the Partnership.

2. Effective upon IMRL becoming an additional general partner of the Partnership, the Province and the Partnership agree that the Development Agreement is amended as follow:

(a) by adding as Article 1.38 thereof the following:

"1.38 "IMRL" means Intrawest Mountain Resorts Ltd., a company incorporated under the laws of British Columbia under number 636020":

(b) by deleting Article 11.01(g) thereof and replacing it with the following:

"(g) Without the prior written consent of the Minister, which consent the Minister covenants not to unreasonably withhold:

(i) Intrawest ceases to beneficially own, directly or indirectly, at least 50% of the value of the Partnership;

(ii) so long as IMRL is a general partner or the Partnership. Intrawest ceases to be the registered and beneficial owner of all of the issued and outstanding voting shares of IMRL;

(iii) Intrawest ceases to be a general partner of the Partnership other than as a result of the bankruptcy west;

(iv) We general partner or general partners, as the ease may be. of the Partnership cease 10 have We sole authority 10 manage the business of the Partnership; or

(v) any other person is admitted as a general partner or the Partnership; and

(c) by replacing the reference in Article 12.06 to the "Arbitration Act of British Columbia" with a reference to the "Commercial Arbitration Act (British Columbia").

3. Intrawest hereby warrants and represents to the Province that as or the date or this Agreement:

(a) IMRL:

(a) is a corporation duly incorporated, validly existing and in good standing under the *Company Act* (British Columbia); and

(b) is a wholly owned subsidiary of Intrawest;

(c) the directors and officers of IMRL are as follows:

Directors:

Joe S. Houssian
Daniel O. Jarvis

Officers:

Joe S. Houssian President
Daniel O. Jarvis Vice President
John E. Carrie Vice President
Ross J. Meacher Corporate Secretary

4. Defined terms in the Development Agreement not otherwise defined in this Agreement shall apply herein as the context requires.

5. The parties hereto hereby ratify and confirm the Development Agreement as modified hereby and agree that the Development Agreement and these presents shall be read together and hall he construed as one instrument.

6. This Agreement shall enure to the benefit of and be binding upon he successors and assigns of the parties hereto.

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

| | |
|---|---|
| SIGNED AND DELIVERED by British Columbia Assets and Land Corporation, an authorized representative of the MINISTER OF SUSTAINABLE RESOURCE MANAGEMENT on behalf of Her Majesty the Queen in Right of the Province of British Columbia in the presence of:<br><br>/s/ Maxine Elizabeth Davie<br>Name<br>_____<br>Address<br>Examiner, Commissioner for taking Affidavits for British Columbia<br>Occupation | /s/ [illegible]<br>British Columbia Assets and Land Corporation, an authorized representative of the Minister of Sustainable Resource Management |
| BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP by its general partner INTRAWEST CORPORATION whose common seal was hereunto affixed in the presence of:<br><br>By: /s/ John Currie<br><br>Title: Senior Vice President, Financing and Taxation | CS |
| The Common Seal of INTRAWEST CORPORATION was hereunto affixed in the presence of:<br><br>By: /s/ John Currie<br><br>Title: Senior Vice President, Financing and Taxation | CS |

**CONSENT AND AMENDMENT TO DEVELOPMENT AGREEMENT - BLACKCOMB**

THIS AGREEMENT dated as of November 5, 2010

BETWEEN

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

(the **"Province")**

OF THE FIRST PART

AND

**BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP,** a limited partnership formed under the laws of British Columbia (No. 107376-90) having an office at 4545 Blackcomb Way, Whistler, British Columbia, VON 1134

(the **"Partnership")**

OF THE SECOND PART

AND:

**INTRAWEST ULC,** an Alberta unlimited liability company (Alberta Corporate Access Number 201277835) registered in British Columbia under number A0069356 and having an office at Suite 710- 375 Water Street, Vancouver, British Columbia, V6B 5C6

**("Intrawest")**

OF THE THIRD PART

AND:

**WHISTLER BLACKCOMB HOLDINGS INC.,** a corporation continued under the *Business Corporations Act* (British Columbia) under number C0894119 and having an office at 4545 Blackcomb Way, Whistler, British Columbia, VON 1B4

("**W/B Holdings**")

OF THE FOURTH PART

WHEREAS:

A. The Province and Fortress Mountain Resorts Ltd. **("FMRL")** entered into an Agreement (the **"Original Development Agreement")** dated the 1st day of May, 1979 in respect of the development of skiing facilities on Blackcomb Mountain, British Columbia;

B. The Original Development Agreement has been amended by agreements in writing dated the 1st day of September, 1981, the 10th day of December, 1982, the 23rd day of December, 1983, the 7th day of June, 1984, the 18th day of April, 1985, the 2nd day of December, 1985, the 15th day of July, 1986, the 25th day of July, 1986, the 1st day of August, 1989, the **1st** day of March, 1990, the 30th day of March, 1990, the 15th day of August, 1990, the 30th day of October, 1990, the 31st day October, 1990, the 1st day of October, 1991, the 31st day of October, 1997, the 18th day of February, 1998, the 14th day of September, 1999 and the 27th day of November, 2001, respectively, and District Lot 8103 has been removed from the Designated Area (as defined in the Development Agreement) in connection with the granting of the lease for the Whistler Sliding Centre (the Original Development Agreement, as amended from time to time, is herein referred to as the **"Development Agreement");**

C**.** In furtherance of the Development Agreement, the Province has issued to the operator thereunder certain leases, licences and rights of way (such leases, licences and rights of way, as amended and in effect from time to time, are herein referred to as the **"Tenures");**

D**.** Effective February 2, 1987, FMRL changed its name to Blackcomb Skiing Enterprises Ltd. **("BSE");**

E. By a Contribution Agreement dated for reference October 22, 1990, BSE assigned all of its rights under the Development Agreement to the Partnership, of which BSE was the general partner, and by an Assumption Agreement dated as of October 31, 1990, the Partnership assumed all of the obligations of BSE under the Development Agreement;

F. Effective October 31, 1997, BSE amalgamated (the **"BSE Amalgamation")** with Whistler Mountain Holdings Limited, Whistler Mountain Ski Corporation, Intrawest Resort Corporation, Blackcomb Mountain Properties Ltd., IW Resorts Ltd. and Mont Ste. Marie (1984) Inc. and continued as one corporation under the name "Intrawest Resort Corporation" **("IRC")** pursuant to the provisions of the *Canada Business Corporations Act* (the **"CBCA")** and upon the BSE Amalgamation, IRC became the general partner of the Partnership;

G. Effective September 26, 1999, IRC was wound-up into its parent Intrawest Corporation with the consent of the Province pursuant to the provisions of the CBCA (the **"Winding-Up")** and in the course of, and as a consequence of, the Winding-Up, Intrawest Corporation became the general partner of the Partnership in substitution for IRC;

H. Effective November 28, 2001, Intrawest Mountain Resorts Ltd. **("IMRL"),** a British Columbia company (Incorporation No. BC0636020), a wholly-owned subsidiary of Intrawest Corporation, become an additional general partner of the Partnership;

I. Effective October 27, 2006, Intrawest Corporation amalgamated (the **"Intrawest Amalgamation")** with Wintergames Acquisition ULC and continued as one corporation under

the name “Intrawest ULC” (defined as “Intrawest” herein) pursuant to the provisions of the *Business Corporations Act* (Alberta) and upon the Intrawest Amalgamation, Intrawest became general partner of the Partnership;

J. Under the tennis of the Development Agreement certain matters require the prior consent of the Province (where the context requires herein, a reference to the Province shall be deemed to include any minister or other public official from whom consent is required under the terms of the Development Agreement) and Intrawest has applied to the Province for its consent in connection with the transactions described in Schedule A to this Agreement (the **“Transactions”);** and

K. The parties hereto enter into this Agreement to set out the terms and conditions relating to the Province’s consent to the Transactions as contemplated by the Development Agreement and to amend the Development Agreement to reflect the new interests in the Partnership as a consequence of the Transactions, as hereinafter set forth.

THEREFORE, in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

1. Consent of the Province. The Province hereby consents to the Transactions in accordance with the consent requirements imposed by the Development Agreement and the *Land Act.* The Partnership, Intrawest and W/B Holdings acknowledge and agree that such consent and this Agreement do not:

    (a) constitute a consent, authorization or approval of or to the Transactions for the purpose of any other enactment or as may be required by any other Provincial governmental authority; or

    (b) waive or restrict any rights or remedies of the Province under the Development Agreement in respect of any matter other than the Transactions that are the subject of such consent and this Agreement.

2. Confirmations. Intrawest and the Partnership confirm to the Province and W/B Holdings as set out in the following paragraph 2(a) and the Province confirms to Intrawest, the Partnership and W/B Holdings as set out in the following paragraphs 2(b), (c) and (d):

    (a) the Partnership has not made, and is not aware of, any assignment of the Development Agreement or any Tenure except as set out in the Recitals hereto and except for in connection with security in respect of which the security holder has given a full release and discharge of its interest;

    (b) the Province has not given its consent to any assignment concerning the Development Agreement or any Tenure except as set out in the Recitals hereto and except for consents to security in respect of which the Province has received confirmation of the full release and discharge thereof;

    (c) as of the date of this Agreement, the Province has not given to the Partnership any notice of default or other similar notice in respect of which it has asserted the

right to terminate or to commence proceedings to terminate the Development Agreement or any Tenure; and

(d) as of the date of this Agreement, the Province is not aware of any outstanding Default (as defined in the Development Agreement) or failure to comply with the terms of the Development Agreement in respect of which it proposes to commence any proceedings in respect of the Development Agreement or any Tenure.

3. Ratification and Amendments to Development Agreement. Effective as of the date of the completion of the Transactions (the **"Effective Date"):**

(a) the Partnership makes the ratification, affirmation and confirmation set out in Schedule B hereto; and

(b) the Development Agreement is amended as set out in Schedule B hereto.

The Partnership will give the Province written notice of the occurrence of the Effective Date forthwith upon the occurrence thereof.

4. Representations and Warranties re: W/B Holdings. Intrawest and W/B Holdings represent and warrant to the Province that:

(a) as of the date of this Agreement W/B Holdings:

(i) is a corporation duly continued under the *Business Corporations Act* (British Columbia) (the **"BCBCA")** under number C0894119, has not been discontinued or dissolved under the BCBCA and has sent to the Director under the BCBCA all documents required to be sent to the Director under the BCBCA;

(ii) has the 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; and

(iii) is a corporation wherein:

A. the authorized capital of W/B Holdings is as follows:

a) an unlimited number of common shares; and

b) an unlimited number of preferred shares;

B. the following person is the only legal and beneficial owner of shares in the capital of W/B Holdings and is the holder of the number and class set opposite such person's name, free and clear of all liens, charges, options and encumbrances:

| Name | Number and Class of Shares |
|---|---|
| Graham Savage | 1 common share |

C. there are no outstanding securities of W/B Holdings 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 W/B Holdings;

D. the directors and officers of W/B Holdings are as follows:

Directors:

William (Bill) Jensen
Wesley Edens
Jonathan Ashley
John Furlong
Graham Savage
Scott Hutcheson
Cam Neely
Russell Goodman

Officers:

William (Bill) Jensen - Chairman and Chief Executive Officer
David Brownlie - President and Chief Operating Officer
Kevin Smith - Executive Vice President, Chief Financial Officer and Corporate Secretary
Doug Forseth - Senior Vice President, Operations
Stuart Rempel - Senior Vice President, Marketing and Sales; and

(b) they presently expect that upon the Effective Date Intrawest will own approximately 30% of the issued shares in the capital of W/B Holdings and the balance of the issued shares in the capital of W/B Holdings will be owned by other persons pursuant to the public offering referred to in Schedule A, and W/B Holdings agrees to provide to the Province forthwith after the Effective Date such updated information as to the share ownership of W/B Holdings as may be reasonably required by the Province.

5. Representations and Warranties re: Second Additional General Partner. The Partnership hereby represents and warrants to the Province that as of the date of this Agreement 0891986 B.C. Ltd.:

(a) is a corporation duly incorporated, validly existing and in good standing under the *Business Corporations Act* (British Columbia); and

(b) is directly or indirectly wholly-owned and controlled by Nippon Cable Co., Ltd.("Nippon Cable"), an existing limited partner in the Partnership, or by Nippon Cable and its affiliates.

6. Ratification and Affirmation. The parties hereto hereby ratify and affirm the Development Agreement, as modified hereby, and agree that the Development Agreement continues in full force and effect.

7. Execution and Delivery of this Agreement. This Agreement may be executed and delivered in counterparts and by fax, email or other electronic means.

8. Binding Effect. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have duly 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 an authorized representative of the Minister of Natural Resource Operations in the presence of:<br><br>/s/ T. L. Nykyforuk<br><br>(Signature)<br><br>T. L. Nykyforuk<br><br>(Print Name)<br><br>Lawyer<br><br>(Occupation) | /s/ [illegible]<br>Authorized representative of the<br>Minister of Natural Resource Operations |
| BLACKCOMB SKIING ENTERPRISES<br><br>LIMITED PARTNERSHIP by its general partner<br><br>INTRAWEST ULC whose corporate seal was hereunto affixed in the presence of:<br><br>By: /s/ [illegible]<br><br>Title: _____ | C/S |

The Corporate Seal of INTRAWEST ULC was hereunto affixed in the presence of:

By: /s/ [illegible]

Title: _____

C/S

The Corporate Seal of WHISTLER BLACKCOMB HOLDINGS INC. was hereunto affixed in the presence of:

By: /s/ [illegible]

Title: _____

C/S

**Exhibit 31.1**

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER**
**PURSUANT TO SECTION 302 OF THE**
**SARBANES-OXLEY ACT OF 2002**

I, Robert A. Katz, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Vail Resorts, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 9, 2016

/s/ ROBERT A. KATZ

Robert A. Katz
Chief Executive Officer

**Exhibit 31.2**

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER**
**PURSUANT TO SECTION 302 OF THE**
**SARBANES-OXLEY ACT OF 2002**

I, Michael Z. Barkin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Vail Resorts, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 9, 2016

/s/ MICHAEL Z. BARKIN

Michael Z. Barkin

Executive Vice President and Chief Financial Officer

**Exhibit 32**

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER**
**AND THE CHIEF FINANCIAL OFFICER**
**PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT**
**TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of the undersigned hereby certifies in his capacity as an officer of Vail Resorts, Inc. (the "Company") that the Company's Quarterly Report on Form 10-Q for the quarter ended October 31, 2016 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in such Report fairly presents, in all material respects, the financial condition and the results of operations of the Company at the end of and for the periods covered by such Report.

Date: December 9, 2016

/s/ ROBERT A. KATZ

Robert A. Katz

Chief Executive Officer

Date: December 9, 2016

/s/ MICHAEL Z. BARKIN

Michael Z. Barkin

Executive Vice President and Chief Financial Officer

This certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, is not a part of the Form 10-Q to which it refers, and is, to the extent permitted by law, provided by each of the above signatories to the extent of his respective knowledge. This certification is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Vail Resorts, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing. A signed original of this written statement required by Section 906 has been provided to Vail Resorts, Inc. and will be furnished to the Securities and Exchange Commission or its staff upon request.